

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

HUNTER DOSTER, *et al.*,

Plaintiffs,

v.

FRANK KENDALL, *et al.*,

Defendants.

No. 1:22-cv-00084
Hon. Matthew W. McFarland

DEFENDANTS' OPPOSITION TO CLASS-WIDE PRELIMINARY INJUNCTION

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INTRODUCTION

On July 14, 2022, this Court certified a class of certain members¹ of the Air Force and Space Force who had submitted a religious accommodation request, where a Chaplain recommended a finding of religious sincerity, and whose requests were denied or still pending. Order Regarding Pending Motions, ECF No. 72 (“Class Order”), PgID # 4468–69. The Court issued a TRO “prohibiting Defendants from enforcing the vaccine mandate against any Class Member.” *Id.* at PgID # 4469. The Court also ordered Defendants to file a supplemental brief identifying why this Court should not grant a class-wide preliminary injunction. *Id.* In addition to the reasons already explained in previous filings and incorporated into this opposition,² the Court should not grant a class-wide injunction because it would interfere with ongoing legal proceedings and would otherwise be improper, particularly in light of significant new developments.

The FDA granted emergency use authorization to the Novavax vaccine, which uses traditional vaccine technology. FDA, *Coronavirus (COVID-19) Update: FDA Authorizes Emergency Use of Novavax COVID-19 Vaccine, Adjuvanted* (July 13, 2022), <https://perma.cc/CJ3N-8SAE>. “No human fetal-derived cell lines or tissue, including HEK293 cells, are used in the development, manufacture or production of the Novavax COVID-19 vaccine candidate.” J. Jenkins, *New Novavax Shot Could Appeal to Pro-Life Christian Skeptics*, Christianity Today (Feb. 18, 2022) <https://perma.cc/275N-YH8U>. Those class members whose religious objections were based on mRNA technology or the use of fetal-derived cell lines are no longer substantially burdened by the COVID-19 vaccine requirement because this option is now available. And since Plaintiffs cannot show that every class member’s religious beliefs are still substantially burdened, they cannot make the required showing of likelihood of success on every element of their RFRA and First Amendment claims for each class member, which is necessary for a class-wide injunction.

¹ As discussed below, the definition of the class is not clear whether it includes the Air National Guard.

² See ECF No. 27; ECF No. 55; ECF No. 58; see also ECF No. 34; ECF No. 35; ECF No. 51.

The number of religious exemptions granted continues to increase while medical and administrative exemptions continue to decrease. In Active Duty Air and Space Force, there are 109 religious exemptions, 286 medical exemptions, and 22 administrative exemptions. In the Air Force Reserve,³ there are 22 religious exemptions, 145 medical exemptions, and 83 administrative exemptions. *See* Ex. 2. Medical and administrative exemptions will likely continue to trend lower as medical conditions resolve and those with administrative exemptions retire or otherwise separate, underscoring that these types of temporary exemptions are materially different from the permanent religious exemptions that plaintiffs seek in this case.

Expanding the injunction to cover thousands of individuals will also “severely undermine military readiness and cause irreparable harm to military operations,” it “would significantly increase risk to accomplishing the Air Force mission while causing substantial and lasting harm to military order and discipline.” *See* Declaration of Lt. Gen. Kevin Schneider, Ex. 1. And an injunction prohibiting the Air Force “from enforcing the vaccine mandate” would improperly encroach on the military’s ability to make strategic and operational decisions necessary to discharge its mission. *See Austin v. U.S. Navy SEALs 1-26*, 142 S. Ct. 1301, 1302 (2022) (Kavanaugh, J., concurring).

Courts should exercise extreme caution before granting a preliminary injunction in a large class-action case such as this one, where class-wide preliminary injunctive relief effectively amounts to a nationwide injunction, and especially so in a RFRA case, where each service member’s claims must be resolved “to the person.” *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 590 (6th Cir. 2018). The Supreme Court has explicitly affirmed the importance of percolation in the lower courts—particularly when the government is involved—saying that “[g]overnment litigation frequently involves legal questions of substantial public importance,” and a rule allowing one court to issue a definitive ruling against the government in such cases “would substantially thwart the

³ The statistics for the Reserve do not include the Air National Guard. Most pending religious requests are from the Guard, with many requests awaiting State-level action.

development of important questions of law by freezing the first final decision rendered on a particular legal issue. Allowing only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants certiorari.” See *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

ARGUMENT

I. A Class-wide Injunction Would Interfere with Ongoing Legal Proceedings.

A class-wide preliminary injunction would interfere with multiple, ongoing cases in other jurisdictions where courts—including the Supreme Court—have already concluded that class members are not entitled to a preliminary injunction on the basis of RFRA or the First Amendment. A class-wide injunction would, for example, have the effect of reversing the Supreme Court’s decision that class member Lt. Col. Jonathan Dunn (a member of the Air Force Reserve) is not entitled to preliminary relief. *Dunn v. Austin*, 142 S. Ct. 1707 (2022). The district court found Dunn was unlikely to succeed on the merits, explaining that he is “not medically ready to deploy to certain areas of the world where he might be required to deploy” and that less restrictive means “are not viable options.” Prelim. Inj. Hrg. & Order, *Dunn v. Austin*, 2:22-cv-288, ECF No. 22 (E.D. Cal. Feb. 2, 2022). The Ninth Circuit and the Supreme Court both denied Dunn’s request for an injunction pending appeal. See *Dunn v. Austin*, No. 22-15286, 2022 WL 1136043, at *1 (9th Cir. Apr. 1, 2022). Other courts, with the benefit of individualized records, have reached similar conclusions for other members of this class.⁴ There is no good reason why this Court should overrule these other courts.

The Air Force is not currently subject to any conflicting orders because courts have thus far cabined their jurisdiction to the individuals properly before it. *Contra* Class Order, PgID # 4463–65

⁴ *Roth v. Austin*, --- F. Supp. 3d ---, 2022 WL 1568830, at *31 (D. Neb. May 18, 2022) (denying request for a preliminary injunction, finding that plaintiffs were unlikely to succeed on the merits of “either their RFRA claim or their Free Exercise of Religion claim”), *appeal filed*, No. 22-2058 (8th Cir. May 20, 2022); *Knick v. Austin*, No. 22-1267, 2022 WL 2157066, at *3, 31 (D.D.C. June 15, 2022) (similar); *Creaghan v. Austin*, --- F. Supp. 3d ---, 2022 WL 1500544 (D.D.C. May 12, 2022), *appeal filed* No. 22-5135 (D.C. Cir. May 20, 2022) (similar).

(discussing Rule 23(b)(1)(A)). Courts have independently reviewed extensive individual records and decided based on those individualized facts whether specific plaintiffs were entitled to preliminary injunctions, with most courts finding plaintiffs did not demonstrate a substantial likelihood of success. Because the purpose of certifying a class under Rule 23(b)(1)(A) is to prevent “inconsistent or varying adjudications with respect to individual class members,” this Court’s class-certification ruling is incompatible with the individualized, case-specific assessments that RFRA demands. This Court should not compound the error in its class-certification ruling by issuing a class-wide injunction that *would* subject the Air Force to conflicting judicial rulings and effectively nullify the decisions of other courts, including the Supreme Court.

II. Plaintiffs Fail to Meet Evidentiary Burden on Threshold RFRA Elements.

Even assuming that every single class member has a sincerely held religious belief, Plaintiffs still must show that the vaccination requirement substantially burdens each and every individual class member’s religious beliefs. “If the plaintiff cannot prove” that the government action substantially burdens the plaintiff’s exercise of religion, the “RFRA claim fails.” *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1068 (9th Cir. 2008). Particularly given the availability of a new vaccine not developed from fetal cell lines, Plaintiffs cannot make out a *prima facie* RFRA claim for each class member.

Religious beliefs of class members are varied. For example, many have religious-based objections based on abortion and the “use [of] stem cells derived from aborted humans in both development and production” of certain vaccines. ECF No. 11-16, PgID # 498.⁵ Some class members object to mRNA vaccines, for example, believing that use of those types of vaccines “asserts that God did not understand how to make an immune system.” ECF No. 11-9, PgID # 430. Others object to COVID-19 vaccines because they believe that their bodies are “the temples of God” and

⁵ The current record demonstrates that Plaintiffs are unlikely to show that the fetal-derived HEK-293 cell lines used in some testing of Pfizer/BioNTech and Moderna vaccines came from voluntary abortions as opposed to spontaneous abortion (miscarriage). *See* ECF No. 45, Tr. 26:22–27:5, PgID # 3089–90.

vaccination “would constitute a desecration of the temple.” ECF No. 11-10, PgID # 438. Still others base their religious objections on “a personal connection with God in which He instructed [them] to deny vaccination against the COVID-19 virus.” ECF No. 11-15, PgID # 494. Separate analyses are required for whether each belief is substantially burdened by the vaccination requirement. Class-wide relief is improper in these circumstances and certainly not supported by such a sparse record.

Even among those with similar religious objections, differences persist among the class members about whether beliefs are substantially burdened. There is no dispute, for example, that class members who have objected to vaccination based on the use of fetal-derived cell lines do not share a uniform view of Novavax. Some class members maintain that Novavax is inconsistent with their faith.⁶ While others, like class member Adam Theriault, have concluded that receiving the Novavax vaccine would be consistent with their faith. ECF No. 30-2 ¶ 3, PgID #2147–48. Plaintiff Joe Dills likewise testified that he “would take [Novavax] if it was available in the United States,” and now it is. ECF No. 48, Hearing Tr., 75:9–14, PgID # 3280. Since the COVID-19 vaccine requirement does not substantially burden Theriault’s or Dills’ religious exercise now that Novavax is approved in the United States, there is no basis to grant a preliminary injunction that covers them or similar class members.⁷

Moreover, religious beliefs of service members who object to vaccination based on mRNA technology are not substantially burdened by the Novavax and Johnson & Johnson vaccines, which

⁶ But no Plaintiff whose religious objection is based on the use of fetal-derived cell lines has carried their factual burden to show that taking Novavax would substantially burden their religious exercise. Novavax has confirmed that “[n]o human fetal-derived cell lines or tissue, including HEK293 cells, are used in the development, manufacture or production of the Novavax COVID-19 vaccine candidate.” Christianity Today, <https://perma.cc/275N-YH8U>. Plaintiffs ask this Court to ignore the company’s statement, and instead rely on a website, Children of God for Life, which claims that a paper published in Science analyzing the Novavax vaccine candidate references HEK-293 cells. See ECF No. 30-19 ¶3 & n.1. But those objections do not withstand scrutiny; Novavax explained that “[t]he reference in the Science paper to HEK293 cells was based on well-established scientific knowledge, did not include our vaccine protein, and is completely independent of Novavax COVID-19 vaccine development.” Christianity Today, <https://perma.cc/275N-YH8U>. Plaintiffs who object to the use of fetal-derived cell lines cannot show that Novavax would substantially burden their religion on this record.

⁷ Two other plaintiffs decided to receive two doses of the COVID-19 vaccine Covaxin, bringing them in full compliance with the vaccine mandate. ECF No. 68. Before they came into compliance, they too would have been in the class.

do not use mRNA technology. Novavax uses a technology that has “been used for more than 30 years in the United States” in vaccines for the flu and whooping cough. CDC, CDC Recommends Novavax’s COVID-19 Vaccine for Adults (July 19, 2022), <https://perma.cc/H6ZQ-3ZBH>.

Plaintiffs’ failure to carry their threshold obligation to show substantial burden for every class member is enough to deny a class-wide injunction. *See Navajo Nation*, 535 F.3d at 1068.

III. Plaintiffs Cannot Demonstrate the Availability of Less Restrictive Means for Every Class Member.

Even if they had sufficient evidence to show every class member was likely to succeed on the threshold RFRA elements, Plaintiffs still would not be entitled to an injunction because the Air Force indisputably has a compelling interest. “It would be a waste of time and wrong to state that ‘[s]temming the spread of COVID-19’ isn’t a compelling interest—the Supreme Court has already decided it is.” *Air Force Off. v. Austin*, ---F. Supp. 3d---, 2022 WL 468799, at *9 (M.D. Ga. Feb. 15, 2022) (citing *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020)).

Plaintiffs have not shown that less restrictive means are available to every single member of the class, and there is no common question that could resolve this issue for every class member simultaneously. RFRA and First Amendment questions of less restrictive means must be decided “to the person.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014). To start, for pending religious exemption requests, it is premature for this Court to step in and decide that there are less restrictive means, particularly when the Air Force has not made a determination and those decisions impact military readiness. *See e.g.*, ECF No. 51, PgID # 3375–79. For others, the Air Force has already determined that no less restrictive means are available, which is entitled to significant deference. *See, e.g.*, ECF No. 55, PgID #3882–84 (discussing how Air Force personnel, including Chaplains, unanimously determined that there was “no comparable less restrictive means” for two class members (citation omitted)). And even if these individual decisions were subject to further review, they still do not justify a class-wide injunction. The fact other courts have found that at least 39 class members

have not demonstrated a substantial likelihood of success (including whether less restrictive means were available) clearly demonstrates Plaintiffs have already failed to carry their burden on a class-wide basis.

Plaintiffs argue that the Air Force's granting of medical and administrative exemptions show that less restrictive means are available for everyone. But the Government has repeatedly debunked this meritless argument. Permanent religious exemptions are materially different than temporary medical and administrative exemptions. Medical exemptions are short-term and protect service members' health, which furthers the compelling interest in military readiness. "[G]iving a vaccine to a service member who has medical contraindications to the vaccine would harm the member's health, *detracting* from the military's interests in ensuring readiness and the health and safety of members." *Knick*, 2022 WL 2157066, at *4 (citation omitted). And anyone whose medical exemption lasts longer than 12 months is subject to a retention review, where the Air Force may decide not to retain that individual. *See* DoDI 1332.45 ¶ 1.2(b), <https://perma.cc/9FNU-ZR89>. Administrative exemptions are also temporary and allow a service member to complete a limited term of service before retiring or separating. Those who receive medical and administrative exemptions remain subject to restrictions because of their unvaccinated status, including limits on travel and deployment.

In contrast, Plaintiffs' religious accommodation requests seek a permanent exemption from vaccination (although they argue it's only "temporary," none identify a foreseeable end-date to their requested exemption). Plaintiffs also argue that they should be permitted to serve without any restrictions that account for their unvaccinated status, such as limits on travel, training, deployment, and other restrictions that apply to all unvaccinated service members. In short, they seek nothing like the kind of treatment granted to persons with medical or administrative exemptions, but entirely distinct, permanent, preferential treatment that undermines the military's efforts to protect the health of the force. *See Roth*, 2022 WL 1568830, at *20.

Finally, the Air Force has treated requests for all types of exemptions similarly, carefully

analyzing the individual factors applicable to each request. The Air Force has granted 135 religious exemption requests, with 109 of those for Active Duty Air Force—compare that number with 286 current Active Duty medical exemptions and just 22 current Active Duty administrative exemptions. Ex. 2. Given that there are nearly *five times* the number of religious exemptions as administrative exemptions in Active Duty Air Force, there is no factual basis to conclude that the Air Force has an “overt policy to deny virtually all religious accommodation requests.” Class Order, PgID # 4459.

This Court should not look to the reasoning of the decision in *U.S. Navy Seals 1–26 v. Austin*, because those facts were strikingly different—at the time of that order, “[e]xactly zero requests ha[d] been granted” by the Navy. --- F. Supp. 3d. ----, 2022 WL 1025144, at *5 (N.D. Tex. Mar. 28, 2022), *appeal filed*, *U.S. Navy SEALs 1-26 v. Biden*, No. 22-10534 (5th Cir. May 31, 2022). And, of course, that reasoning was in support of an injunction that was stayed in significant part by the Supreme Court, which recognized the military’s discretion to consider vaccination status in making deployment, assignment, and other operational decisions. *Navy SEALs 1-26*, 142 S. Ct. at 1301. As one district court observed, in granting this stay, the Supreme Court implicitly held “the Government is likely to succeed on the merits” of RFRA claims similar to those brought by plaintiffs here, which constitutes “the most persuasive authority on which a District Court may rely.” *Navy SEAL 1 v. Austin*, ---F. Supp. 3d---, 2022 WL 1294486, at *4 (D.D.C. Apr. 29, 2022), *appeal filed*, No. 22-5114 (D.C. Cir. May 5, 2022). Thus, the district court’s decision in *Navy SEALs 1-26* (N.D. Tex.) should not be considered on any merits issue, let alone whether Plaintiffs have satisfied their burden to show that less restrictive means are available for every single member of the Air Force class.

IV. No Other Common Questions Show Likelihood of Success on the Merits.

Plaintiffs have not provided any other common proof that shows that the entire class is entitled to a preliminary injunction. Plaintiffs have not provided any evidence, let alone “[s]ignificant proof,” that the Air Force “operated under a general policy of discrimination.” *Wal-Mart Stores, Inc. v.*

Dukes, 564 U.S. 338, 353 (2011) (citation omitted); see *In re Navy Chaplaincy*, 306 F.R.D. 33, 48 (D.D.C. 2014) (“In this case, just as in *Walmart*, Plaintiffs do not allege that the Navy ever had an express policy” of discrimination). At best, Plaintiffs provide “statistical” differences between religious and medical/administrative exemptions, which are negligible when broken out by active duty/reserve. The Supreme Court has found this type of evidence is “insufficient to establish that respondents’ theory can be proved on a classwide basis.” *Wal-Mart*, 564 U.S. at 356. Regardless, none of that is relevant to the elements that need to be proven under RFRA or shows that any particular religious accommodation request—much less *all* of them—were incorrectly decided.

V. Equities and Public Interest Strongly Disfavor a Class-wide Injunction.

A preliminary injunction would not be equitable or in the public interest for all the reasons Defendants previously explained, but those reasons are amplified given the immense scope of this proposed order. “[E]ven accepting that RFRA applies in this particular military context, RFRA does not justify judicial intrusion into military affairs” and there is “no basis in this case for employing the judicial power in a manner that military commanders believe would impair the military of the United States as it defends the American people.” *Navy SEALs 1-26*, 142 S. Ct. at 1302 (Kavanaugh, J., concurring). As three-star general, Lt. Gen. Kevin Schneider, Director of Staff for the Headquarters of the Air Force, explains: “In my opinion, if a large number of Department of Air Force Service members were to be exempt from the COVID-19 vaccine mandate, it would pose a significant and unprecedented risk to military readiness and our ability to defend the nation.” Ex. 1, ¶ 6. An injunction at this scale would amplify harm “across the Force, creating significant and irreparable harm to good order and discipline, force health protection, and military readiness; seriously endangering the Department of the Air Force’s ability to decisively execute its mission.” *Id.* ¶ 8.

VI. Scope of Any Potential Order.

If the Court is still inclined to enter a class-wide preliminary injunction, at the very least it

should clarify its terms. To start, the class definition is unclear about whether it includes the Air National Guard.⁸ The short phrase in the TRO—“prohibit[s] Defendants from enforcing the vaccine mandate”—is vague and ambiguous in several respects. That phrase does not specify whether it prohibits the Air Force from making deployment, assignment, and other operational decisions—which, of course, would conflict with the Supreme Court’s stay in *Navy Seals 1–26*. The order is also unclear whether it prohibits Defendants from initiating separation procedures, including discharge boards, or just the enforcement of final discharge orders. It also does not specify whether it requires the military halt ongoing court martial or other proceedings under the Uniform Code of Military Justice if they involve a class member, which would conflict with the Supreme Court’s decision in *Schlesinger v. Councilman*, 420 U.S. 738, 758 (1975) (“when a serviceman . . . can show no harm other than that attendant to resolution of his case in the military court system, the federal district courts must refrain from intervention, by way of injunction or otherwise”). And for members of the Reserve, that phrase does not specify whether it requires the Air Force to reinstate individuals who previously been placed in No Pay/No Points status, which would directly conflict with the ruling in *Poffenbarger v. Kendall*, --- F. Supp. 3d ---, 2022 WL 594810, at *20 (S.D. Ohio Feb. 28, 2022), or whether it requires the Air Force to transfer class members out of the Individual Ready Reserve. The Order also does not specify how the Air Force should treat individuals who fall within the definition of the class, but still want to be separated. Without answering each of these questions, any preliminary injunction would run afoul of Rule 65(d) of the Federal Rules of Civil Procedure.⁹

⁸ There are no class representatives who are in the Air National Guard.

⁹ The entry of any class-wide injunction would be clear error and Defendants reserve the right to appeal, but if the Court is inclined to enter a class-wide PI it should limit its order to enjoining only the enforcement of final adverse actions, like separation or transfer orders.

Dated: July 21, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

ALEXANDER K. HAAS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Branch Director
Federal Programs Branch

/s/ Zachary A. Avallone

ANDREW E. CARMICHAEL

AMY E. POWELL

Senior Trial Counsel

STUART J. ROBINSON

Senior Counsel

ZACHARY A. AVALLONE

LIAM HOLLAND

CATHERINE YANG

CASSANDRA SNYDER

Trial Attorneys

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, N.W.

Washington, DC 20005

Tel: (202) 514-2705

Email: zachary.a.avallone@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2022, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Zachary A. Avallone

ZACHARY A. AVALLONE

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, N.W.

Washington, DC 20005

Tel: (202) 514-2705

Email: zachary.a.avallone@usdoj.gov

Exhibit 1

DECLARATION OF LIEUTENANT GENERAL KEVIN B. SCHNEIDER

I, Kevin B. Schneider, hereby state and declare as follows:

1. I am a Lieutenant General¹ in the United States Air Force currently assigned as the Director of Staff for the Headquarters of the Air Force, located in the Pentagon, Arlington, Virginia. I have served in this position since August 2021.
2. I am generally aware of the various lawsuits – and kept apprised of new lawsuits – filed throughout the United States concerning the Coronavirus Disease 2019 (COVID-19) vaccination mandates issued by the Secretary of Defense and the Secretary of the Air Force, that require all Department of the Air Force Service members on active duty, in the Air Force Reserve, and Air National Guard, to be fully vaccinated against COVID-19. I make this declaration in support of the Government to address the impact COVID-19 has had within the Department of the Air Force,² and the impact that granting thousands of religious accommodations would have on the mission, and the harm posed by a preliminary injunction exempting a single Plaintiff from being vaccinated – let alone an injunction covering thousands of Service members. The statements made in this declaration are based upon my personal knowledge, my military judgment and experience, and upon information that has been provided to me in my official duties.

Air Force Background and Experience

3. I am a 1988 graduate of the U.S. Air Force Academy and have continuously served in the U.S. Air Force for nearly 34 years. My experience includes multiple assignments in senior leadership and operational positions. As Commander of the 380th Air Expeditionary Wing, I led

¹ The rank of “Lieutenant General” is the second highest military rank in the Department of the Air Force, and is sometimes referred to as a “Three-Star General.” The term “general” is also frequently referred to as “general officers.” General officers include the ranks of Brigadier General, Major General, Lieutenant General, and General. General Officers comprise the most senior levels of uniformed leadership in the Department of the Air Force.

² The Department of the Air Force is comprised of two distinct military services: the U.S. Air Force and the U.S. Space Force.

one of the most diverse combat wings in the U.S. Air Force and conducted combat operations to include close air support and strike missions as well as intelligence, surveillance, reconnaissance, and aerial refueling. In my duties as Assistant Deputy Commander of U.S. Air Forces Central Command and Vice Commander of the 9th Air Expeditionary Task Force, I was responsible for the command and control of all air operations in a 20-nation area of responsibility covering Central and Southwest Asia. While serving as the Chief of Staff for the Headquarters of the Pacific Air Force, I coordinated a command staff directing 46,000 personnel across sixteen time zones. As Chief of Staff for the U.S. Indo-Pacific Command, I coordinated a joint force staff providing combat capabilities to the Secretary of Defense across 52% of the globe. Most recently, as Commander of U.S. Forces Japan and the 5th Air Force, I was responsible for overseeing joint and bilateral exercises and improving combat readiness for 54,000 military and Department of Defense civilian personnel. I am also a command pilot with more than 4,000 flying hours in the F-16C *Fighting Falcon*, F-15E *Strike Eagle*, T-38C *Talon*, and UH-1N *Iroquois*; which includes 530 combat flying hours, serving in Operations SOUTHERN WATCH, ENDURING FREEDOM, IRAQI FREEDOM, and INHERENT RESOLVE.

4. I currently serve as the Director of Staff for the Air Force Headquarters. In that role, I assist the Secretary of the Air Force in his statutory duties and responsibilities as they pertain to the U.S. Air Force. Under 10 U.S.C. § 9032, those duties include “prepar[ing] for such employment of the Air Force” and “recruiting, organizing, supplying, equipping . . . , training, servicing, mobilizing, demobilizing, administering, and maintaining of the Air Force.” Additionally, I synchronize and integrate policy, plans, positions, procedures, and cross functional issues for the headquarters staff. In that role, I work with my counterpart in the U.S. Space Force, Lieutenant General Nina M. Armagno, and am aware of the overall impact of

COVID-19 on both the U.S. Air Force and U.S. Space Force. Specifically, as related to COVID-19, I am responsible for providing oversight to the Air Force COVID-19 Team, which has implemented the Secretary of Air Force vaccination mandate across both services within the Department of the Air Force.

Preliminary Statement

5. I have reviewed the Declaration of Admiral Daryl Caudle, Commander, United States Fleet Forces Command, filed in *U.S. Navy SEALs 1-26 v. Austin et. al.*, N.D. TX, Case 4:21-CV-01236-O. I agree with his assessment regarding the importance of having a fully vaccinated Force to blunt the impact of COVID-19 and the significant harm that would come from allowing a subset of that Force to remain unvaccinated. Unvaccinated or partially vaccinated Service members are at a higher risk of contracting COVID-19 and substantially more likely to develop severe symptoms resulting in hospitalization or death. Not only does this increase risks to the health and safety of vaccinated Service members, and the communities in which they live, it adversely impacts our ability to execute the mission. It is my professional military judgment that vaccination against COVID-19 is the most effective way to combat the disease and is necessary to ensure we maintain a credible fighting force able to deter our adversaries, protect our nation, and – if necessary – prosecute our wars and other military operations.

6. Not only does the Department of the Air Force have a compelling interest in the health and mission readiness of the U.S. Air Force and U.S. Space Force as a whole, we have a compelling interest to ensure the health and mission readiness of each and every Service member. This is because we cannot ensure the collective health or readiness of the Force unless we ensure the health and readiness of each member who composes that Force. In my opinion, if a large number of Department of the Air Force Service members were to be exempt from the

COVID-19 vaccine mandate, it would pose a significant and unprecedented risk to military readiness and our ability to defend the nation.

7. Observing the current state of global affairs verifies that we are operating in a volatile, uncertain, and complex environment. In this environment, the need for constant vigilance and defense preparation cannot be overstated. This requires our Service members to be in a constant state of readiness. Recently, our nation responded to the Russian invasion of Ukraine by rapidly deploying aircraft, equipment, and thousands of Service members, many within only 24 to 48 hours of notification. Currently, there are hundreds of aircraft and tens of thousands of Department of the Air Force personnel deployed in support of operations furthering our nation's interests throughout the world. Those personnel must be medically ready to deter conflict and aggressively execute the mission. In my opinion, it would be a failure of leadership to allow Service members who are not fully vaccinated against COVID-19 to deploy without regard to the risk they pose to themselves, others, and the mission. For this reason, such decisions, and the appropriate balance of risks associated with them, should be left to the judgment of the military chain of command.

8. A preliminary injunction that prevents the Department of the Air Force from enforcing the COVID-19 vaccination mandate on even a single plaintiff would result in that plaintiff not being medically ready to support military operations to defend the nation. Similarly, an injunction expanded to apply to 10,000 or more Service members seeking a vaccination exemption would amplify this outcome across the Force, creating significant and irreparable harm to good order and discipline, force health protection, and military readiness; seriously endangering the Department of the Air Force's ability to decisively execute its mission.

Specific Functions of the Department of the Air Force

9. The U.S. Air Force and U.S. Space Force comprise the Nation's principal Air and Space Forces. Their mission is to "provide the Nation with global vigilance, global reach, and global power in the form of in-place, forward-based, and expeditionary forces possessing the capacity to deter aggression and violence by state, non-state, and individual actors to prevent conflict, and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests."³

10. The Department of the Air Force is tasked to "organize, train, equip, and provide air, space, and cyberspace forces for the conduct of prompt and sustained combat operations, military engagement, and security cooperation in defense of the Nation, and to support the other military services and joint forces."⁴ These forces include pilots, aircraft maintainers, aircrew, chaplains, security forces, medical providers, personnel specialists, and more. Providing fully trained and combat ready Service members to Combatant Commanders⁵ is vital to ensuring the security of our nation and operational success. Whether tasked to stand as ever-ready sentinels of freedom at outposts throughout the world, provide humanitarian aid, or engage in armed conflict with our adversaries, our Service members must be medically and physically ready to accomplish the mission under inhospitable conditions and in hostile environments.

³ Department of Defense Directive (DoDD) 5100.01, *Functions of the Department of Defense and Its Major Components*, Change 1, Sep. 17, 2020, Encl. 6, ¶ 6.a.

⁴ *Ibid.*

⁵ The military services provide forces to combatant commanders who then exercise authority, direction and control over the commands and forces assigned to them and employ those forces to accomplish missions assigned to the combatant commander within their area of operation. Department of Defense Directive (DoDD) 5100.0 I, Change I, 09/17/20, Encl. 5, ¶ 1.a through d. The operational chain of command runs from the President of the United States to the Secretary of Defense to the Combatant Commanders. There are 11 combatant commands, each of which provides command and control of military forces, regardless of branch of service, in peace and war. Some combatant commands are geographic, such as Central Command (CENTCOM), whose area of responsibility includes the Middle East. Others are functional, such as Special Operations Command (SOCOM), which utilizes the special operations units within the services to carry out special operations world-wide.

11. The U.S. Air Force protects U.S. interests and defends the nation through its five core missions: (1) Air and Space Superiority; (2) Intelligence, Surveillance, Reconnaissance (ISR); (3) Rapid Global Mobility; (4) Global Strike; and (5) Command and Control.⁶ Air and space superiority are crucial to ensuring the safety of our Service members. It is axiomatic that “whoever controls the air generally controls the surface.”⁷ Air and Space Superiority: the U.S. Air Force brings the ability and capability to conduct offensive and defensive operations to gain and maintain air superiority in support of U.S. and allied forces in the domains of land, sea, air, and space. This includes the ability to engage in offensive operations within our adversaries’ airspace, as well as defensive operations to protect our own airspace. ISR: the U.S. Air Force provides the ability to gather real-time intelligence for warfighters and policymakers through manned and unmanned aircraft, space, and other technology. Rapid Global Mobility: the U.S. Air Force rapidly moves personnel and equipment around the world, enabling operational success. This includes providing aerial refueling to truly make global deployment possible and aeromedical transport to ensure the prompt treatment of injured troops. Global Strike: through bombers, fighters, and missiles, the U.S. Air Force provides the ability to attack targets, worldwide, in support of U.S. interests and in the defense of our nation. In addition to conventional ordnance, the U.S. Air Force mission includes two of the three legs of the nuclear deterrence triad – nuclear-capable bombers, and intercontinental ballistic missiles (ICBMs). Command and Control: finally, through various means, including air, space, and cyberspace platforms, the U.S. Air Force provides and defends the systems necessary to ensure a clear operational picture and means of communicating with our forces throughout the world.

⁶ Congressional Research Service, *Defense Primer: The United States Air Force*, Oct. 26, 2021, available at <https://crsreports.congress.gov>.

⁷ Col Philip S. Meilinger, *Ten Propositions Regarding Airpower*, 1995.

12. Similarly, the U.S. Space Force protects U.S. interests and defends the nation through its missions: (1) Space Security; (2) Combat Power Projection; (3) Space Mobility and Logistics; (4) Information Mobility; and (5) Space Domain Awareness.⁸ Space Security: controlling space has become increasingly important to ensure successful military operations and the U.S. Space Force protects U.S. military, civilian, and commercial space assets from danger or hostile actions. Combat Power Projection: the U.S. Space Force ensures U.S. and allied forces are able to operate freely in space by employing offensive and defensive capabilities designed to reduce the effectiveness of threats to space capabilities. Space Mobility and Logistics: the ability to sustain our space assets is crucial to sustaining continued space technology and operational advantages. The U.S. Space Force ensures the continued ability to launch and recover space assets vital to the protection of our nation. Information Mobility: U.S. Space Force technology allows for the rapid collection and dissemination of information globally in support of military operations. This capability ensures, communications, ISR, missile warning, and nuclear detonation detection, and other important capabilities. Space Domain Awareness: finally, the U.S. Space Force effectively monitors space, and objects in the space domain, analyzing potential impacts to military operations, and the safety and security of U.S. interests.

13. As of March 14, 2022, the Department of the Air Force had approximately 501,000 uniformed Service members – including 326,000 active duty, 68,000 Reserve, and 107,000 Air National Guard personnel – and 5,800 aircraft to support the mission. Regardless of the career field, rank, or duty status, every Service member plays an important role in accomplishing the mission and must be ready to perform their duties when called upon anytime, anywhere.

⁸ Space Capstone Publications, *Space Power: Doctrine for Space Forces*, June 2020, available at https://www.spaceforce.mil/Portals/1/Space%20Capstone%20Publication_10%20Aug%202020.pdf.

Mandatory Vaccination Requirements for COVID-19

14. On August 24, 2021, the Secretary of Defense directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces, including Service members on active duty or in the Ready Reserve, including the National Guard. The Secretary of Defense found that “[t]o defend the nation, we need a healthy and ready force” and “[a]fter careful consultation with medical experts and military leadership, and with the support of the President . . . vaccination against the coronavirus disease 2019 (COVID-19) is necessary to protect the Force and defend the American people.”⁹ The Secretary of the Air Force directed implementation via Department-wide memorandum on September 3, 2021. The memorandum applies to both services within the Department of the Air Force, the U.S. Air Force and the U.S. Space Force. It requires all active duty Service members, unless exempted, to be fully vaccinated with an FDA-approved COVID-19 vaccine¹⁰ by November 2, 2021. It further requires, unless exempted, all Service members in the Ready Reserve, to include the Air National Guard, to be fully vaccinated by December 2, 2021. Like other orders in the United States military, the COVID-19 vaccination mandate constitutes a lawful order under Article 92 of the Uniform Code of Military Justice and failure to comply may result in administrative and/or disciplinary action. On the same date, the Department of the Air Force also issued implementation guidance, outlining the policy, administration and reporting requirements, and general guidance related to logistics and distribution of vaccines.

⁹ Secretary of Defense memorandum, *Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members* (August 24, 2021).

¹⁰ Although only FDA-approved vaccines are mandated by the order, Service members may voluntarily receive a vaccine that has obtained an FDA Emergency Use Authority or is included on the World Health Organization’s Emergency Use Listing.

15. On December 7, 2021, the Secretary of the Air Force issued supplemental guidance that reiterates the requirement to be vaccinated against COVID-19 unless the Service member has an approved or pending medical, religious, or administrative exemption. It also implements and outlines options for Service members if they are notified that their exemption request is denied, providing opportunities for Service members to request a voluntary separation or retirement, if eligible, in lieu of vaccination. If approved in accordance with the applicable separation or retirement regulations, and they meet other conditions (e.g., separating within established timelines), they would be temporarily exempt from the vaccination requirement for the brief period of their remaining service. The guidance provides options that are adapted to active duty, various types of Reserve, and Air National Guard situations.

16. The COVID-19 vaccination requirement is not unique. The Department of Defense has a well-established “Individual Medical Readiness” requirement for all Service members – whether on active duty or in the Reserves – to ensure each Service member is physically and medically fit to perform their duties and to mobilize in support of our national defense. Among other things, Service members are required to undergo required physical health assessments and dental examinations to ensure the member is medically ready for operational needs.¹¹ Included in that requirement are a number of vaccines that all Service members are required to receive, including communicable diseases – such as influenza, hepatitis A & B, measles, mumps, and rubella – and non-communicable diseases – such as tetanus. These required based on the professional judgment of Department of Defense military and civilian leadership, that the vaccinations are

¹¹ While not intuitive, dental care is an important component of operational readiness. A deployed Service member with a dental emergency (e.g., abscessed or cracked tooth) may be unable to perform their duties – limiting the unit’s ability to complete its mission – and may require a medical evacuation to ensure they are able to receive the care they need. This can be a drain on operational capabilities as resources are diverted from their original tasking to evacuate the member. Annual dental examinations and follow-up care is a DoD requirement to reduce the operational risks.

necessary to medically protect our Service members and to maintain a combat ready force.

Diseases can be a serious threat to the ability of our Service members to perform their duties, and especially dangerous for Service members who are mobilized in support of combat operations.

Vaccination is the most effective way to minimize the risk of disease in Service members which allows us to maximize our operational capabilities and mission effectiveness.

17. Service members who fail to meet medical readiness requirements are typically non-deployable. While Service members may go through brief periods where they are non-deployable, all members are expected to return to and maintain a deployable status. Reserve Component Service members are required to maintain the same physical and medical readiness as active duty Service members. The purpose of the Reserve Component is to provide fully trained and qualified personnel to support the military mission as necessary. In fact, medical readiness is a long-standing pre-requisite for active participation in the Air Force Reserve and Air National Guard.¹²

18. It is my professional judgment that Service members who are not fully vaccinated against COVID-19 pose an unacceptable risk to military operations while in garrison¹³ or at deployed locations in the field. Although Combatant Commands can waive medical readiness

¹² See Air Force Manual (AFMAN) 36-2136, *Reserve Personnel Participation*, Sept. 6, 2019, para. 1.7.1-1.7.2 (“All reservists have to meet the medical standards in AFI 48-123 and the associated Medical Standards Directory (MSD) to be considered medically qualified to fully participate in the Air Force Reserve. . . . Note: Air Force Reserve commanders may initiate involuntary transfer to the Individual Ready Reserve (IRR) for failing to meet medical standards. . . . Reservists with any expired Individual Medical Readiness requirement as defined in AFI 10-250 will not participate in any point-gaining activities other than a military medical/dental evaluation or examination consistent with DoDI 1215.06.”); Air National Guard Instruction (ANGI) 36-2001, *Management of Training and Operational Support within the Air National Guard*, Apr. 30, 2019, para. 2.1 (“Members must meet the standards as outlined in DoDI 1215.06 [requiring medical readiness] when taking part in a pay or points gaining activity.”) See also Department of the Air Force Instruction (DAFI) 36-2110, *Total Force Assignments*, Aug 2, 2021 (“Members with any expired Individual Medical Readiness requirements in accordance with DAFMAN 48-123 are subject to involuntary reassignment to a non-participating status”).

¹³ “In garrison” refers to Service members at their assigned duty location (e.g., base) and not currently deployed.

requirements¹⁴ to allow a Service member to deploy, those decisions are informed by risk assessments on a case-by-case basis.¹⁵ Medical readiness is similarly important while in garrison, to ensure each Service member is able to perform their duties in support of the mission. In garrison, illness can delay or prevent a Service member from being effectively trained or prepared to perform their duties if tasked to deploy. Vaccination is the most effective way of decreasing the risk that a member will unexpectedly be taken out of the fight or otherwise be prevented from performing their duties.

19. Policies and procedures were established, and implemented, to allow Service members the opportunity to request an exemption from the COVID-19 vaccination mandate based on medical or administrative criteria, including religious objections. All Department of the Air Force Service members who remain unvaccinated are subject to limitations on their service. Being unvaccinated impacts readiness for deployment, travel, and certain assignments or trainings. Service members with an approved religious accommodation are not treated differently than Service members with pending or approved exemptions in other categories.

20. Service members may request an administrative exemption through a religious accommodation based on their sincerely held beliefs. The Department of the Air Force does not have a blanket policy of denying religious accommodation requests. Each religious accommodation is individually considered by the Service member's chain of command to ascertain, among other things, whether the circumstances may lessen the compelling government interest in the health and medical readiness of every Service member or whether the situation

¹⁴ The waiving of a medical readiness requirement would be required for Service members with an approved exemption to deploy without meeting one or more medical requirements for that deployment.

¹⁵ Some unvaccinated Service members deployed within a few months of the vaccine mandate, before there was a sufficient pool of vaccinated members to institute a vaccination requirement to that deployed location to reduce the operational risks. Although the mission continues, it does so at a heightened risk to success and typically with less effective mitigation measures that reduce the operational effectiveness of the member and/or units.

lends itself to less restrictive alternatives to vaccination that are just as effective in furthering those interests.¹⁶ If a request is initially denied, the Service member may appeal that decision to the Air Force Surgeon General. If the appeal is denied, that Service member must comply with the requirements of the COVID-19 vaccination mandate.

21. As previously noted, the Department of the Air Force also has procedures for processing medical exemptions. Requests for medical exemptions are adjudicated by professional military medical providers based on the medical condition(s) of the individual. Medical exemptions primarily exist to support the compelling government interest in protecting the health of the Force where vaccination is contraindicated for that Service member. Approved medical exemptions are temporary and the Service member is expected to receive the vaccination when the temporary exemption expires.

22. Likewise, the Department of the Air Force allows administrative exemptions to account for individual circumstances, primarily, individuals on terminal leave (that is, on leave immediately prior to separating or retiring and not expected to return to duty), individuals approved to retire or separate within a short period of time, and individuals participating in a vaccine clinical trial. These exemptions reflect how the military's compelling interests intersect. For example, providing an exemption for Service members to participate in vaccine clinical trials would be in the interest of the military because it provides the opportunity for new and better vaccines in the future. With that said, to the best of my knowledge, I am not aware of any Service member in the Department of the Air Force who is currently exempt from the COVID-19 vaccine because they are participating in a vaccine clinical trial. Additionally, it is the

¹⁶ I am aware that some courts have expressed skepticism that the religious accommodation process is individualized. The low number of approvals reflects the difficulty in identifying situations where a Service member's beliefs can be accommodated without undermining Force Health Protection and Readiness; both are a Department of the Air Force-wide and individual interest.

professional judgment of the Department of the Air Force, military and civilian leadership, that its interest in military readiness and mission accomplishment is not served by requiring members to be vaccinated when they are not returning to duty (i.e., terminal leave) or are leaving military service within a short timeframe (i.e., retiring or separating). Since many of those with administrative exemptions are in the process of leaving the Air Force, I expect the number of administrative exemptions to continue declining.

23. Good order and discipline, which includes obeying orders, is a foundational principle in the U.S. military. Absent a pending or approved exemption, Service members are expected to promptly comply with the lawful order to vaccinate. When a Service member willfully refuses to comply with a lawful order it erodes good order and discipline. The military cannot properly function when orders are disregarded because of personal objections. Senior Department of the Air Force officials are reviewing the religious accommodation requests and taking into account any religious concerns in determining whether the member should be ordered to receive the vaccine. If the senior officials determine the member still needs to vaccinate (i.e., religious accommodation request disapproved), ignoring the order is not an acceptable option and would likely result in the Service member being subject to formal disciplinary proceedings, including discharge proceedings.

24. Military operations require complete trust in the integrity of units and individual Service members to swiftly and unwaveringly execute lawful orders. For many military operations, obedience is literally a matter of life or death. Our ability to secure our nation's interests and to

protect our people depends on unhesitating compliance with orders. The only exception is an order that is “patently illegal.”¹⁷

25. The judgment of the Military Services is that the order to receive the COVID-19 vaccine is a lawful order and it is “a key Force Protection and readiness issue.”¹⁸ Vaccination is the most effective and readily available tool to protect the Force and to ensure military personnel are fully mission capable and ready to execute operations. The more unvaccinated members in the Force, the greater the threat to readiness and successful mission accomplishment. Therefore, ensuring Service members are vaccinated is a national security issue and the amount of risk acceptable to our national security should be left to the military chain of command, and the Legislative and Executive branches.

COVID-19 Threat to the Department of the Air Force

26. Since the beginning of the pandemic, COVID-19 has unquestionably threatened the health and safety of the Armed Forces – as a whole and individually – and has diminished our abilities to perform our mission and effectively defend the nation. As of March 14, 2022, a total of 91,984 Department of the Air Force Service members had contracted COVID-19 during the pandemic, resulting in 229 hospitalizations, of which 14 died. Of those who died, 12 (86%) were completely unvaccinated.

27. Service members must often work in close physical proximity. The configuration of aircraft often requires Service members to sit and work in cramped operating conditions without the possibility of socially distancing. Likewise, Service members working on the ground are

¹⁷ Manual for Courts-Martial (MCM), Part IV, ¶ 16.c.(2)(a)(i), 2019 (For a violation of Article 90, Willfully disobeying superior commissioned officer, “an order requiring the performance of a military duty or act may be inferred to be lawful, and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime”). *See also* id. at ¶ 18.c(1)(c) (referencing ¶ 16.c for a violation of Article 92, Failure to obey order or regulation).

¹⁸ Memorandum for the Joint Force from General Mark A. Milley, Chairman of the Joint Chiefs of Staff, CM-0141-21 (Aug. 9, 2021).

often unable to socially distance due to the nature of military operations. Additionally, most forward-deployed locations do not have extensive medical facilities like those we are accustomed to in garrison. An outbreak of COVID-19 in Service members deployed to the field, where everyone is in close contact and living within the same area for months at a time, could easily overwhelm local medical capacity, taking away from the ability to effectively treat front-line battle injuries and other illnesses. Furthermore, such an outbreak could severely diminish operational capabilities, as deployed locations are often minimally manned. If a Service member were to get sick – let alone contract long-COVID, get hospitalized, or die – that would directly impact our ability to perform the mission. For example, an outbreak could limit the number of available pilots and aircrew to directly accomplish operations, or the number of maintainers and weapons loaders to ensure aircraft are serviced and fully armed in support of operations. COVID-19 is a threat across all career fields and operational needs, an infection removing a Service member from the fight could leave little redundancy or backup to perform that Service member's duties. Under these conditions, an outbreak impacting multiple Service members could potentially risk the mission altogether. While illness is always a hazard in a deployed environment, COVID-19 has already had a real impact on military readiness and operations and we have a duty to mitigate the impact and ongoing risk to the greatest extent possible.

Harm to Readiness if Preliminary Injunction is Issued

28. A preliminary injunction preventing the Department of the Air Force from enforcing the vaccination mandate against a Plaintiff, and from determining the assignment of Service members based on their unvaccinated status, removes control of health and readiness from the Services and places it under the control of the judiciary. Every individual plaintiff judicially-exempted from being fully vaccinated against COVID-19 undermines the Department of the Air

Force's ability to support operations and defend our nation. This danger would be exponentially greater if the Department of the Air Force was enjoined from enforcing the vaccination mandate for large numbers of Service members, and would create an unacceptable risk to operational readiness. The Department of the Air Force is facing an unprecedented number of religious accommodation requests for exemption from the COVID-19 vaccination. Given the sheer volume of religious accommodation requests, an injunction that prevents the Air Force from enforcing the vaccination mandate, or from determining the assignment of Service members based on their unvaccinated status, would seriously threaten our readiness. We would be required to keep in service a large number of personnel who are non-deployable – or worse, be forced to assign and deploy unvaccinated Service members despite an intolerable risk to military operations. The amount of risk the Department of the Air Force should accept to the health and readiness of the Force should be left to the professional judgment of senior military officials based on the individualized circumstances of the requestor (e.g., career field, duties, and work environment).

29. Over the last two years, the Department of the Air Force has deployed unvaccinated individuals because there was no alternative when vaccination was not available. In doing so, our Service members were exposed to a heightened risk of illness and operations at an increased risk of failure. Operational efficiency was also degraded and Service members were delayed in reaching the theater of operations. Deployed Service members were exposed to and contracted COVID-19. As a result, personnel were taken out of the fight to quarantine or isolate and assets were unavailable for in-theater use as some members were medically evacuated to better medical facilities. This is not a sustainable model for continued operational success, vaccination is necessary to minimize the risk from COVID-19. Additionally, COVID-19 vaccination is

necessary to enhance our ability to project power into certain regions. Some allied and friendly countries require Service members to be vaccinated against the COVID-19 disease prior to entering their country.

30. If all religious accommodation requests were approved, or if the Department of the Air Force was prevented from enforcing the mandate on those Service members, the Department would be faced with an unparalleled crisis – unvaccinated fighter and bomber pilots who cannot deploy without risking the overall success of the mission; Reservists who cannot be called to active duty without risking the health of others. Across the Service, we would have some leaders who are exempt from the vaccination requirement themselves but still obligated to enforce a requirement to be medically ready that they themselves do not have to meet. In that circumstance, the authoritative force of the vaccination mandate would be entirely undermined, along with the fundamental principle of obedience to lawful orders and military discipline itself. This would weaken readiness and diminish the true strength of the Force. For these reasons, having large numbers of unvaccinated Service members poses an unacceptable risk to mission accomplishment and to the health of the Force.

31. An injunction that would prohibit discipline and adverse administrative action, would also irreparably harm good order and discipline. Service members have even alleged that non-adverse, routine personnel decisions, such as assignment or training decisions, are punishments and should be enjoined. Deployments, assignments, and training, however, are not rights or privileges. Rather, they are command decisions about how best to allocate personnel for national security and mission success. Any injunction that would prohibit the Air Force from not only enforcing the vaccination mandate but also from determining the assignment of Service members based on their unvaccinated status would wrest control of the Force from military leaders, would

cause immense and lasting harm to military discipline, and would create an unacceptable risk to operational readiness.

Conclusion

32. In summary, it is my professional military judgment, and that of the Department of the Air Force military and civilian leadership, that our mission requires a healthy, fit, and medically ready fighting force, and that the most effective means of furthering this compelling interest is for Service members to receive the COVID-19 vaccine. An injunction blocking the enforcement of the mandate for a single Plaintiff, group of Plaintiffs, or class of many thousands seeking an exemption, would severely undermine military readiness and cause irreparable harm to military operations. Allowing unvaccinated members to serve without restriction, would significantly increase risk to accomplishing the Air Force mission while causing substantial and lasting harm to military order and discipline.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 23rd day of March 2022.



KEVIN B. SCHNEIDER, Lt Gen, USAF
Director of Staff

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

HUNTER DOSTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:22-cv-00084
)	
FRANK KENDALL, <i>et al.</i> ,)	
)	
Defendants.)	
)	

DECLARATION OF LIEUTENANT GENERAL KEVIN B. SCHNEIDER

I, Kevin B. Schneider, hereby state and declare as follows:

1. I am a Lieutenant General in the United States Air Force currently assigned as the Director of Staff (DS), Headquarters United States Air Force at the Pentagon, Washington D.C. I have been in this position since September 2021. As a part of my duties, I am responsible for overseeing Air Force service member COVID-19 vaccination status reporting.
2. I am generally aware of the allegations set forth in the pleadings filed in this matter. I base this declaration upon my personal knowledge and upon information that has been provided to me in the course of my official duties, and I make this declaration on behalf of the Department of the Air Force, which is comprised of the U.S. Air Force and U.S. Space Force.
3. As of July 12, 2022, the Department of the Air Force still has 2,847 pending Religious Accommodations Requests (RARs) at Decision Authority Level to be exempt from the COVID-19 vaccination requirement: 378 Active Duty Air Force, 1 Air Force Reserves (including Individual Mobilization Augmentees), 1 Space Force, and 2,467 Air National Guard. Additionally, the Department of the Air Force still has 575 pending RAR appeals: 321 Active Duty Air Force, 68 Air Force Reserves (including Individual Mobilization Augmentees), 13

Space Force, and 173 Air National Guard. For the Air National Guard, many of the requests are at the state, not federal level. This means they have either not yet been submitted to the National Guard Bureau for review or they have been returned to the state for further action.

4. As of July 12, 2022, the Department of the Air Force has approved 135 religious accommodation requests to be exempt from the COVID-19 vaccination requirement: 106 Active Duty Air Force, 22 Air Force Reserves (including Individual Mobilization Augmentees), 3 Space Force, and 4 Air National Guard.

5. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of July 2022.

SCHNEIDER.KEV
IN.B.102501001
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KEVIN B. SCHNEIDER
Lieutenant General, USAF
Director of Staff