

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NAVY SEAL # 1, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official
capacity as President of the United States, et al.,

Defendants.

Case No. 8:21-cv-02429-SDM-TGW

SECOND NOTICE OF COMPLIANCE

Pursuant to the Order dated November 22, 2021, ECF No. 40, Defendants respectfully notify the Court of compliance with the Order and submit the attached exhibits providing the requested data from the Army, Navy, Marines, Air Force and Coast Guard to the extent it is available.¹ An index of the Exhibits is at the end of this Notice.

As set forth in greater detail in the declarations submitted on January 7, 2022 from each Service, there are limitations as to the data that Defendants are able to provide, and other data requires contextual explanation. The data provided here is subject to the same limitations and context. *See generally* ECF No. 47-1 through 47-8.

Furthermore, for the reasons set forth in the Notice filed January 7, 2022, the Government continues to object to the submission of this data. The Plaintiffs' motion

¹ There are no Plaintiffs from the Space Force, but Space Force data should be captured by the Department of the Air Force.

for a preliminary injunction should be denied, and the case should then proceed in the ordinary course without court-ordered discovery every two weeks.

Dated January 21, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General
Civil Division

ALEXANDER K. HAAS
Director, Federal Program Branch

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs
Branch

/s/ Amy E. Powell

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Counsel for Defendants

1/21/2022

Table of Exhibits

Exhibit Number	Exhibit Description
1.	Army – Declaration of Colonel Kevin J. Mahoney
2.	Navy – Declaration of Captain Mery-Angela Sanabria Katson, and Data Exhibit
3.	Marines – Declaration of Colonel Mark R. Reid, and Data Exhibit
4.	Air Force – Declaration of Colonel Jason A. Holbrook, and Data Exhibit
5.	Coast Guard – Declaration of Commander Brooke Grant, and Data Exhibit

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL #1, et al.,

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V.

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Defendants.

Civil Action No. 8:21-cv-02429-SDM-TGW

DECLARATION OF COLONEL KEVIN J. MAHONEY

I, Colonel (COL) Kevin J. Mahoney, hereby state and declare as follows:

1. I am currently employed by the U.S. Army as the Chief, G-33 Operations Division, Office of The Army Surgeon General (OTSG) and U.S. Army Medical Command (MEDCOM), located in Falls Church, Virginia. I have held this position since June 14, 2021. As part of my official duties, I am a senior medical plans and operations officer on the Army staff, representing The Surgeon General (TSG) to the Army operations staff for medical aspects of Army missions. In this capacity I assist in developing the Army plans to implement directives related to COVID-19 and vaccination efforts. I am part of a team that facilitates the processing, evaluation, and adjudication of requests for exemptions from vaccination requirements for reasons of religious accommodation as well as for medical reasons. I consolidate current status of requests received for processing and keep Army senior leaders informed. In the exercise of these duties, I have been made aware of this lawsuit by counsel from the U.S. Army Litigation Division, and am generally aware of the allegations set forth in the pleadings filed in this matter.

2. I submit this declaration in support of Defendants' continuing response to this Court's November 22, 2021 Order, directing the branches of the Armed Forces to provide specified information concerning COVID-19 vaccination exemption requests. The information submitted remains subject to the data limitations and context provided in my previous declaration submitted on January 7, 2022, and reflects the data available as of January 21, 2022.

3. 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 U.S. Army. The information provided herein relates to the Court's inquiry and as is known to me at the time of this declaration.

Religious Exemption Requests and Related Information

4. As of the signing of this declaration, the OTSG has received 2,599 requests for religious-exemption from COVID-19 vaccination.¹

5. To date, TSG has denied 204 religious-exemption requests. Of those denials, 187 contained opinions from the interviewing chaplain that opined the applicant's request was based on a sincerely held religious belief, or did not otherwise find the applicant's stated reasons were not sincere.²

6. Of the 204 denials, 38 appeals have been received at HQDA to date and all 38 are in the process of being adjudicated.

¹ This number includes both those requests specifically for COVID-19 vaccination and those for "all vaccines" that would necessarily include the COVID-19 vaccine.

² The approval/denial authority makes the ultimate determination of whether an applicant's request is based upon a sincerely held religious belief. Although the chaplain's assessment is heavily weighed, it remains an assessment and the report, which addresses the religious basis and sincerity of the Soldier's request serves as a resource for the decision authority. *See* Army Regulation 600-20, ¶P-2b.(2).

7. At this time, no request for appeal has been denied based on the timeliness of submission.

8. To date, no appeals have been denied or granted as all 38 appeals are in progress.

The Number of Medical Exemption Requests Granted, Denied, and Pending

9. As of January 21, 2022, there have been 675 permanent medical exemption requests from COVID-19 vaccination. To date, 610 requests have been disapproved by the RHC commanding generals, 4 have been approved, and 20 are pending adjudication. Of the 610 disapproved, 272 have appealed this decision to TSG. Of those 272 appeals, 225 have been disapproved, 1 has been approved, and 12 are pending adjudication. Additionally, 34 appeals have been returned to the RHCs because the request in the appeal is no longer for permanent exemption and can now be handled at the local level.

10. A total of five permanent medical exemptions have been approved as of January 21, 2022; four by the RHC commanders and one on appeal. As previously reported in my January 7, 2022 declaration, all five of these Soldiers voluntarily received an initial dose of the COVID-19 vaccine and experienced a serious and documented medical reaction to the first dose.

11. The Army does not track all requests for temporary medical exemption. However, approved temporary medical exemptions are centrally tracked. As of January 21, 2022, 1,256 temporary medical exemptions have been granted for the active duty component, 1,155 granted for the Army National Guard, and 74 for the Army Reserve. These numbers reflect current temporary exemptions, which are automatically removed when they reach the expiration date. If a temporary exemption expires, but medical conditions preventing vaccination persist or new reasons arise, the Soldier can request a new exemption.

The Number of Other Exemptions from COVID-19 Vaccination Granted

12. At present, there have not been any other permanent exemptions granted from the COVID-19 vaccine.

The Number of Courts-Martial and Separation Proceedings Pending

13. As of the signing of this declaration, the Army remains in Phase I of its implementation. While in Phase I, judicial and non-judicial punishment (which includes the ability to adjudicate punishment pursuant to Article 15, Uniform Code of Military Justice and to initiate/carry out courts-martial) is not authorized. Furthermore, administrative separations are also prohibited during Phase I. Accordingly, there are no courts-martial or separation proceedings pending based solely on vaccine refusal at this time.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 21, 2022, in Washington, DC,

MAHONEY.KEVIN.J
AMES.1044210289

Digitally signed by
MAHONEY.KEVIN.JAMES.10442102
89
Date: 2022.01.21 16:57:34 -05'00'

Kevin J. Mahoney
Chief, G-33 Operations Divisions
Office of The Army Surgeon General and
U.S. Army Medical Command

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL #1, et al.

Plaintiffs,

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JOSEPH R. BIDEN, in his official capacity as
President of the United States, *et al.*

Defendants.

Case No. 8:21-cv-02429-SDM-TGW

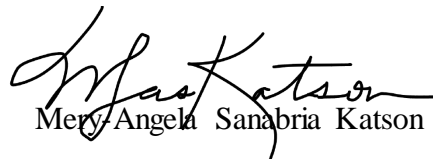
DECLARATION OF CAPTAIN MERY-ANGELA SANABRIA KATSON, U.S. NAVY

I, Captain Mery-Angela Sanabria Katson, U.S. Navy, hereby state and declare as follows:

1. I am a captain in the United States Navy, currently serving as the Branch Head, Enlisted Plans and Policy (OPNAV N132), located in Arlington, Virginia. I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. Subject to the data limitations and important context provided in my previous declaration (submitted 1/7/2022), the attached exhibit reflects the data available as of January 21, 2022.

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 January, 2022.



Mery-Angela Sanabria Katson

Captain, U.S. Navy

Exhibit 1 to Declaration of CAPT Katson

U.S. Navy Court-Ordered DataCurrent as of 21 January 2021

(1) Number of religious exemption from COVID-19 vaccination:

# Initial Requests Under Review	# Initial Request Approved	# Initial Requests Denied	# Denials Where Chaplain Determined Belief Sincere	Total Initial Requests
356	0	3,573	UNKNOWN	3,930

# Denials w/o Appeal Before Deadline ¹	# Appeals Under Review	# Appeals Denied	# Appeals Approved	Fully Resolved Requests	
				Aggregate # of Approved Requests	Aggregate # of Denied Requests
UNKNOWN	1,161	0	0	N/A	N/A

(2) Number of medical-exemption requests from COVID-19 vaccination:

Temporary Medical Exemption Requests	# Medical Exemptions Denied	# Medical Exemptions Granted		Total Medical Exemption Requests
UNKNOWN	UNKNOWN	Temporary ²	Permanent	UNKNOWN
		260	10	

(3) Number of other exemptions from COVID-19 vaccination granted for any other reason (i.e. administrative exemptions):

Emergency Leave	Permanent Change of Station (PCS)	Administrative Separation/ Terminal Leave	Administrative Temporary (i.e. no access to vaccine)
0	49	423	36

(4) Number of courts-martial and separation proceedings pending or concluded against a service member whose request for a religious exemption was denied after appeal:

Courts-Martial		Administrative Separation (ADSEP)	
Pending	Concluded	ADSEP Initiated	ADSEP Completed
0	N/A	UNKNOWN	45

¹ Appeals submitted after deadline will still be considered.² This number reflects the total number of active temporary exemptions, but does not include expired medical exemptions. Absent a new exemption, a member is required to obtain the COVID-19 vaccine after their temporary medical exemption expires.

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL #1, et al.

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as
President of the United States, *et al.*

Defendants.

Case No. 8:21-cv-02429-SDM-TGW

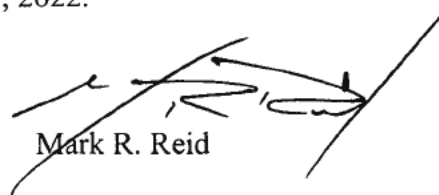
DECLARATION OF MARK R. REID

I, Mark R. Reid, hereby state and declare as follows:

1. I am a Colonel in the United States Marine Corps, currently serving as the Deputy Director of Operations, Plans, Policy and Operations, Headquarters Marine Corps. I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. Subject to the data limitations and important context provided in previously filed declarations in this matter, ECF Nos. 42-3, 47-4, the attached exhibit reflects the data available as of January 21, 2022.

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 January, 2022.

A handwritten signature in black ink, appearing to read 'Mark R. Reid', is written over a diagonal line.

Colonel, USMC

Exhibit 1 to Declaration of Colonel Mark R. Reid, USMC

U.S. Marine Corps Court-Ordered DataCurrent as of 21 January 2022

(1) Number of religious exemption from COVID-19 vaccination:

# Initial Requests Under Review	# Initial Request Approved	# Initial Requests Denied	# Denials Where Chaplain Determined Belief Sincere	Total Initial Requests
81	0	3324	3324	3405

# Denials w/o Appeal Before Deadline ¹	# Appeals Under Review	# Appeals Denied	# Appeals Approved	Fully Resolved Requests	
				Aggregate # of Approved Requests	Aggregate # of Denied Requests
UNKNOWN	1091	97	3	3	97 ²

(2) Number of medical-exemption requests from COVID-19 vaccination:

Temporary Medical Exemption Requests	# Medical Exemptions Denied	# Medical Exemptions Granted		Total Medical Exemption Requests
UNKNOWN	UNKNOWN	Temporary ³	Permanent	UNKNOWN
		214	20	

(3) Number of other exemptions from COVID-19 vaccination granted for any other reason (i.e. administrative exemptions):

Emergency Leave	Permanent Change of Station (PCS)	Administrative Separation/ Terminal Leave	Administrative Temporary (i.e. no access to vaccine)
0	18	332	62

(4) Number of courts-martial and separation proceedings pending or concluded against a service member whose request for a religious exemption was denied after appeal:

Courts-Martial		Administrative Separation (ADSEP)	
Pending	Concluded	ADSEP Initiated	ADSEP Completed
0	N/A	UNKNOWN	UNKNOWN ⁴

¹ Appeals submitted after deadline will still be considered.² The last declaration erroneously reported this number as 81. The correct number should have been 79.³ This number reflects the total number of active temporary exemptions, but does not include expired medical exemptions. Absent a new exemption, a member is required to obtain the COVID-19 vaccine after their temporary medical exemption expires.⁴ For the last declaration, we reported the total number of adseps pending or completed for all vaccine refusals and not just for those service members whose religious exemption was denied after appeal. For the next declaration, we will cross reference the denied appeals with those who have completed or pending adseps. This will require a scrub by DOD ID number, which will take some time.

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL #1, et al.,

Plaintiffs,

v.

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et al.,

Defendants.

No. 8:21-cv-02429

DECLARATION OF COLONEL JASON A. HOLBROOK

I, Jason A. Holbrook, hereby state and declare as follows:

1. I am a Colonel in the United States Air Force currently assigned as the Deputy Director of Staff (DDS) COVID-19 Team Chief at the Pentagon. I have been in this position since August 17, 2021. As a part of my duties, I am responsible for 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. I submit this declaration in support of Defendants' response to this Court's November 22, 2021 Order. Attached to this declaration as "Exhibit 1" is a summary of the information provided herein as it relates to the Court's inquiry and as is known to me to the best of my knowledge at the time of this declaration. The Department of the Air Force is not able to provide

certain statistical data or the data is otherwise limited for the reasons previously provided in the declarations provided by Colonel Artemio C. Chapa, Chaplain, Major Matthew J. Streett, and myself, on January 7, 2022.

4. 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 January 2022.

HOLBROOK.JASON.A.1084810688
N.A.1084810688
JASON A. HOLBROOK, Colonel, USAF
DDS COVID-19 Team Chief

Digitally signed by
HOLBROOK.JASON.A.1084810688
8
Date: 2022.01.21 12:41:51 -05'00'

Attachment:

Exhibit 1: Department of the Air Force Vaccination & Religious Accommodation Data, dated January 21, 2022

Exhibit 1 to Colonel Jason A. Holbrook's Declaration

Department of the Air Force Court-Ordered Data¹Current as of 21 January 2021

Number of requests for a religious exemption from injection of a COVID-19 vaccine:

Estimated Total Requests ²	Initial Requests Under Review ³	Initial Request Approved	Initial Requests Denied	Denials Where Chaplain Determined Belief Sincere
11,713	2,443	0	2,740	UNKNOWN

# of Denials With No Appeal Before Appeal Deadline ⁴	# of Appeals Pending	# of Appeals Denied	# of Appeals Approved (i.e., accommodation granted)	Aggregate # of Approved Requests	Aggregate # of Requests Fully Resolved & Denied ⁵
1,010	363	282	0	0	1,292

Temporary Medical Exemptions:

Total Medical Exemption Requests	Number of Exemptions Granted ⁶	Number of Exemptions Denied
UNKNOWN	1,593	UNKNOWN

Other Administrative Exemptions:

Total Administrative Exemptions ⁷
2,318

Courts-Martial or Separation Proceedings against a Service Member whose request for a religious exemption denied after appeal:

Courts-Martial		Administrative Separation	
Pending	Concluded	Administrative Separation Initiated	Administrative Separation Completed
0	0	0	0

¹ Although none of the plaintiffs are members of the U.S. Space Force, the data provided reflects the data for the Department of the Air Force, which is comprised of both the U.S. Air Force and U.S. Space Force.

² This estimate is based on the number in progress (data from ASIMS and the field) plus the aggregate approved & aggregate fully resolved and denied.

³ This data is limited to the number of packages currently at the Approval Authority-level still pending resolution.

⁴ On December 7, 2021, the Department of the Air Force implemented a deadline for filing an appeal for a disapproved religious accommodation request (five calendar days from notice of disapproval). This data is limited to requests disapproved after the December 7 memorandum was issued. Additionally, a service member who is given an extension by their commander to file an appeal may initially be listed as not appealing before the deadline with subsequent data adjusting for the extension.

⁵ This is the sum of appeals denied and initial denials who did not appeal. This data does not include individuals who did not file an appeal prior to the December 7, 2021 memorandum.

⁶ Medical exemptions are temporary. This number reflects the total number of active exemptions, but does not include expired medical exemptions.

⁷ This estimate is a snapshot in time based on data from ASIMS and also includes other types of administrative exemptions, such as service members unavailable to vaccinate (e.g. incarcerated, AWOL, etc.).

Exhibit 5

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL 1, *et al.*,

Plaintiffs,

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JOSEPH R. BIDEN, in his official capacity
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Defendants.

Civil Action No. 8:21-cv-02429

DECLARATION OF COMMANDER BROOKE GRANT

I, Commander Brooke Grant, hereby declare and state:

1. I am a commissioned officer serving on active duty in the United States Coast Guard. I have served on active duty in the Coast Guard for over 19 years and am currently serving as Chief, Military Personnel Policy Development Division. I have served in this position since August, 2021. My prior assignments include Logistics Department Head, United States Coast Guard Sector Key West; Deputy, Office of Legal Policy and Program Development; and Staff Attorney, United States Seventh Coast Guard District Legal Office. I am generally aware of the allegations set forth in the pleadings filed in this matter and make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties. My office is the office that originally receives requests for religious accommodation from the COVID-19 vaccination requirements at Coast Guard Headquarters.

2. Subject to the data limitations and important context listed in my declaration

submitted January 7, 2022, Exhibit 1, attached to this declaration, provides an update to the available information ordered by the court. Order, 34 ECF No. 40.

3. I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and information.

Dated: January 21, 2022

GRANT.BROOKE
.E.1013312210

Digitally signed by
GRANT.BROOKE.E.1013312210
Date: 2022.01.21 12:20:17 -05'00'

BROOKE GRANT
Commander
U.S. Coast Guard

Exhibit 1 to Declaration of CDR Grant

U.S. Coast Guard Court-Ordered DataCurrent as of 21 January 2021

(1) Number of religious exemption requests from COVID-19 vaccination:

# Initial Requests Under Review	# Initial Request Approved	# Initial Requests Denied	# Denials Where Chaplain Determined Belief Sincere	Total Initial Requests
959	0	335	335	1304 ¹

# Denials w/o Appeal Before Deadline ²	# Appeals Under Review	# Appeals Denied	# Appeals Approved	Fully Resolved Requests	
				Aggregate # of Approved Requests	Aggregate # of Denied Requests
Unknown	125	0	0	0	0

(2) Number of medical-exemption requests from COVID-19 vaccination:

Temporary Medical Exemption Requests	Permanent Medical Exemptions Denied	Permanent Medical Exemptions Granted	Total Permanent Medical Exemption Requests
Unknown	4	6	12

(3) Number of courts-martial and separation proceedings pending or concluded against a service member whose request for a religious exemption was denied after appeal:

Courts-Martial		Administrative Separation (ADSEP)	
Pending	Concluded	ADSEP Initiated	ADSEP Completed
0	N/A	0	0

¹ Ten members have withdrawn their request after deciding to receive the vaccine.² A number of appeal timeline extensions have been granted for good cause or when reasonable. The deadline is based on when the command notifies the member of the decision, not on the date the decision is signed or sent to the Command. Appeals submitted after deadline will likely still be considered.