

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

FIRST 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.¹ An index of the Exhibits is at the end of this Notice.

1. The Availability of the Data Requested by the Court Is Limited.

As set forth in greater detail in the attached declarations from each Service, there are limitations as to the data that Defendants are able to provide, and other data requires contextual explanation. Because the availability of the requested data varies by Service, each Service has submitted explanatory declarations and data in compliance with the Court's Order. For example, the Court requested data regarding the number of exemption requests in which the chaplains determined sincerity. The

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

religious exemption process differs across the Armed Forces, but in general, an interviewing chaplain does not make a “determination” as to sincerity. Typically, an interviewing chaplain makes an assessment of the request based on the interview and provides input to the decisionmaker, who may have access to additional information. *See, e.g.*, Ex. 1 ¶ 9& n.4; Ex. 2 ¶ 2; ECF No. 42-3 ¶¶ 11-12; Ex. 3 ¶ 2; Ex. 5 ¶¶ 5-11; Ex. 7 ¶ 4.

In addition, the Services differ with respect to the ability to report on current temporary or permanent medical exemptions, and each responding Service lacks the ability to aggregate data on a provider’s denial of temporary medical exemptions because that information is not centrally managed. *See, e.g.*, Ex. 1 ¶ 5; Ex. 2 ¶ 2; Ex. 3 ¶ 2; Ex. 6 ¶¶ 4-10; Ex. 7 ¶ 5.

Each Service Declaration provides additional information about the limitations and necessary context for the data estimates provided. *See generally* Exs. 1-7.

2. The Government Objects to the Provision of Periodic Reports.

Finally, the Government reserves its objections to the continued collection, analysis and submission of this data to the Court, for several reasons.

First, the Court presently lacks jurisdiction to proceed in this case and thus to order the submission of information to the Court. In response to Defendants’ ripeness arguments, the Court reasoned that “the first moment an objecting service member must act contrary to a religious belief is when the exemption is finally denied” and that ripeness “can occur no later than the moment the member must irreparably receive the injection or irreparably defy an order.” ECF No. 40, at 30. Accepting that analysis,

arguendo, it appears from the Complaint that no Plaintiff has a ripe claim. *See generally* ECF No. 23, at 33-34 (no service member with pending exemption request is subject to discipline). Ripeness is jurisdictional, *see Elend v. Basham*, 471 F.3d 1199, 1205 (11th Cir. 2006), and “[w]ithout jurisdiction the court cannot proceed at all in any cause.” *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 430–31 (2007) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998)).

Second, as set forth in Defendants’ Opposition, the Court should not order any relief, including data collection and submission, for these anonymous Plaintiffs, nor rely on anonymous declarations, because the Court lacks jurisdiction to do so in the absence of an operative complaint with named plaintiffs. *See* ECF No. 23, at 12-13; *see also Doe v. Austin*, No. 3:21-cv-01211-AW-HTC (N.D. Fla. Dec. 1, 2021) (denying similar motion and striking complaint); *Oklahoma v. Biden*, No. CIV-21-1136-F, 2021 WL 6126230, at *2 (W.D. Okla. Dec. 28, 2021) (“Absent permission, the district court lacks jurisdiction over the unnamed parties, as a case has not been commenced with respect to them.” (quotation omitted)). In early November 2021, Plaintiffs represented that a motion to proceed under a pseudonym was “forthcoming.” *See* ECF No. 30, at 15-16n.2. Months later, Defendants still do not know the identities of the Plaintiffs, and Plaintiffs still have not filed the promised motion.² The Court should deny the preliminary injunction on those grounds alone, and in any event should not proceed

² Plaintiffs also represented to the Court an intention to file a motion for leave to file an amended complaint, *see* ECF No. 41, and represented to Defendants that it would be filed in December, *see* ECF No. 45. Plaintiffs have not filed a motion to amend.

with discovery at this stage on behalf of anonymous plaintiffs.

Finally, putting the military services to the burden on assembling the request data every two weeks is unwarranted where the requested data is irrelevant.

For example, the total number of sincerity assessments, even if available, would not determine the viability of any individual's RFRA claim. In addition, aggregate data on the availability or unavailability of temporary medical exemptions from vaccination requirements does not determine whether any individual service member is entitled to a permanent religious exemption. The data is at best tangentially related to Plaintiffs' claims, and not related to the pending motion at all because the emergency relief sought by Plaintiffs must be based on the viability of these particular Plaintiffs' requests.

More fundamentally, the Court appears to have ordered the submission of this data based on speculation that data showing exemptions were denied could be some evidence that the process was a "ruse", or in the alternative, that data showing some exemptions were granted could undermine a showing of the Government's compelling interest. *See* ECF No. 40, at 31-33. But drawing either conclusion from data would be improper at any stage of the proceedings. The denial of many or most RFRA exemptions would not show that the process is a "ruse"; it would be consistent with a finding that the military had assessed its interests in vaccination of service members as extremely compelling and not readily satisfied by less restrictive alternatives. In that instance, the lawfulness of the military's actions under RFRA would hinge on whether the military had properly considered the relevant factors and reasonably concluded

that no less restrictive alternatives were available in each individual case. It would be improper to conclude from results alone that senior military leadership was acting in bad faith. The Supreme Court has long directed district courts to give deference to the professional judgment of military authorities concerning the relative importance of a particular military interest. *See Rostker v. Goldberg*, 453 U.S. 57, 71, 81-82 (1981) (It is “quite wrong” and “palpably exceed[s]” the court’s authority to “undertak[e] an independent evaluation of [] evidence, rather than adopting an appropriately deferential examination” of the military “evaluation of that evidence.”); *Trump v. Hawaii*, 138 S. Ct. 2392, 2421-22 (2018) (declining in matters of national security to “substitute” the Court’s own “predictive judgments,” or its own “evaluation of the underlying facts,” for those of the President); *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986); *Winter v. NRDC, Inc.*, 555 U.S. 7, 9 (2008); *cf. Doe 2 v. Shanahan*, 917 F.3d 694, 728 (D.C. Cir. 2019) (assessing plaintiffs’ empirical attacks on the military’s justifications with extreme deference for military judgment). Similarly, if the data showed that some or many exemptions are being granted, that also would not undermine the Government’s compelling interest; on the contrary, it would be consistent with a finding that in appropriate individual circumstances, the Government was properly considering less restrictive alternatives only when they were available.

In any case, the current data shows that only a fraction of the overall appeals filed have been adjudicated, and thus no conclusion can be drawn from the current data. *See* Exs. 1 ¶ 10 (6 appeals pending, none adjudicated); Ex. 2 (1008 appeals

pending, none adjudicated); Ex. 3 (997 appeals pending, 81 adjudicated); Ex. 4 (140 pending, 235 adjudicated); Ex. 7 (82 appeals pending, none adjudicated).

For the foregoing reasons, the Government objects to the submission of this data. The Plaintiffs' motion 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 7, 2022

Respectfully submitted,

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1/7/2022

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.	Air Force – Declaration of Major Matthew J. Streett
6.	Air Force – Declaration of Artemio C. Chapa
7.	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.,

Plaintiffs,

V.

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

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' 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.

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.

Exemption Tracking and System Limitations

4. On September 14, 2021, the Army issued Fragmentary Order 5 (FRAGO 5) to Headquarters Department of the Army (HQDA) Execute Order (EXORD) 225-21 COVID Steady State Operations dated September 14, 2021.¹ FRAGO 5 implements the procedures for Soldiers to submit requests for vaccination exemptions, to include religious exemptions. In accordance with those procedures and other applicable regulations, there are numerous steps for processing those requests, which were designed to ensure efficient and fair processing. Processing times vary, in part because of the nature and depth of the Soldier's request(s), a review process that flows through the requestor's company or immediate Commander through their battalion, brigade, division, and General Court-Martial Convening Authority Commanders (typically a General Officer) to TSG. The process also includes an in-person or telephonic interview between the Soldier and the assigned unit chaplain, a memorandum from the chaplain as a result of that interview, and counseling from a licensed healthcare provider. Accordingly, while unit-level personnel track each individual request, centralized tracking of these requests does not occur until after a packet is reviewed for completeness and for compliance with the implementing directives

¹ FRAGO 5 was filed on the docket at ECF No. 23-7.

and received at HQDA via an electronic processing system known as the Enterprise Task Management Software Solution (ETMS2) (formerly the Task Management Tool or “TMT”) for TSG approval or disapproval. Those packets that do not comply with the administrative requirements of the directives are returned for correction before TSG takes action. If TSG disapproves a Soldier’s religious exemption request, the Soldier may appeal through his or her chain of command to the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA(M&RA)), who is the final appellate authority. While a Soldier is pending the adjudication of an exemption request, regardless of whether it is processing at the unit or at the U.S. Army Office of the Surgeon General (OTSG), the Soldier is not required to receive the vaccine and Commanders are not permitted to take adverse action against Soldiers with pending exemption requests. FRAGO 5, ¶ 3.D.8.B.1.F.

5. There are two categories of medical exemption: temporary and permanent. Temporary medical exemptions may be granted by a Department of Defense healthcare provider at the local (treatment) level, and result from consultation between Soldier and provider. Guidance from the Centers for Disease Control and Prevention (CDC) assist in guiding the provider’s decision. Temporary medical exemptions may be granted due to a recent documented COVID-19 infection, pregnancy, or other clinical conditions at the discretion of the healthcare provider. Permanent (indefinite) medical exemptions require a higher level of approval to ensure fairness and consistency across the system. Permanent medical exemption approval authorities are the four Regional Health Command (RHC) commanding generals, and all components (active, guard, and reserve) are aligned with a designated region for exemption review and adjudication. Soldiers who request a permanent medical exemption have their request entered into a secure portal called Carepoint to document and track the request. The RHC Commanding Generals are both the

approval and disapproval authority. If a Soldier's request is disapproved, they may appeal this decision to TSG. At the Army level, the number of requests, status, and determination of requests is centrally tracked, as well as the reasons for approved requests. The Army does not have the capability to centrally track the reasons for temporary medical exemptions or how many may have been declined by the local provider. Only the total number of granted temporary medical exemptions is centrally compiled.

6. Administrative exemptions may also be temporary or permanent. Temporary administrative exemptions are approved by local commanders and may be for reasons that include: pending requests for permanent exemption; the Soldier being absent without leave from the organization or in a civilian confinement facility; the Soldier is on emergency leave away from the organization; or if the Soldier is pending their immediate separation from the service (typically within 60 days). The Army can report the total number of temporary administrative exemptions, but does not centrally track the individual reasons or cases. Permanent administrative exemptions are considered for Soldiers seeking religious accommodation and follow the process described above. Cases are not centrally tracked until received at HQDA via ETMS2, so the Army does not have central visibility of the number of requests that are in-progress at the local level.

Influx of Requests

7. Prior to the implementation of the COVID-19 mandate, requests for religious exemptions were rare. From January 1, 2019, up to and including August 23, 2021, the OTSG processed 17 requests for religious exemptions to immunizations.² Since the August 24, 2021-mandate was issued, the OTSG has received approximately 2,064 religious-exemption requests

² Prior to January 1, 2019, there was no regulatory requirement to maintain this information and the U.S. Army Office of the Surgeon General is not in possession of historical information that would permit additional historical reporting.

to date, each of which requires thorough review and evaluation at both the initial-decision-level and on appellate review. This surge in requests has resulted in extended adjudication timelines as the administrative and processing burdens fall to a small staff consisting of only 12 personnel, who are responsible for ensuring administrative correctness, preparing packets for review, and ultimately must be reviewed and adjudicated by the TSG as the sole approval authority in the Army, who, in addition to this responsibility, bears overall responsibility for Army Medicine and the command of over 50,000 Soldiers and civilians. In addition, if a Soldier's religious exemption request is denied by TSG, that Soldier can appeal the decision to the ASA M&RA who, in addition to being responsible for all manpower and reserve component affairs for the Department of the Army, is the sole appeal authority for religious accommodation requests.

Religious Exemption Requests and Related Information

8. As of the signing of this declaration, the OTSG has received 2,064 requests for religious-exemption from COVID-19 vaccination.³ As discussed above, it is important to note that the reported information does not include the number of requests in progress at each unit. Those requests are not logged with the OTSG until the requestor's packet is uploaded into ETMS2, which occurs after the packet contains the requisite documentation and reviews required by FRAGO 5 and applicable regulations.

9. To date, TSG has denied 122 religious-exemption requests. Of those denials, 115 contained opinions from the interviewing chaplain that opined the applicant's request was based

³ This number includes both those requests specifically for COVID-19 vaccination and those for "all vaccines" that would necessarily include the COVID-19 vaccine.

on a sincerely held religious belief, or did not otherwise find the applicant's stated reasons were not sincere.⁴ If a request is denied, the Soldier can appeal the decision.

10. Of the 122 denials, 6 appeals have been received at HQDA to date and all 6 are in the process of being adjudicated.

11. The court has asked for the "aggregate number of denials for which the time to appeal has expired without appeal." Fragmentary Order 9 (FRAGO 9) to HQDA EXORD 225-21 COVID Steady State Operations dated November 10, 2021, states that active component Soldiers who elect to appeal must do so within seven calendar days of receipt of their denied religious exemption request, and reserve component Soldiers within 30 calendar days. However, at this time, no request for appeal has been denied based on the timeliness of submission.

12. To date, no appeals have been denied or granted as all 6 appeals are in progress.

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

13. As of January 5, 2022, there have been 649 permanent medical exemption requests from COVID-19 vaccination. To date, 596 requests have been disapproved by the RHC commanding generals, 4 have been approved, and 49 are pending adjudication. Of the 596 disapproved, 251 have appealed this decision to TSG. Of those, 172 appeals have been disapproved, 1 has been approved, and 51 are pending adjudication. Additionally, 27 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.

14. A total of five permanent medical exemptions have been approved as of January 5, 2022; four by the RHC commanders and one on appeal. All five of these soldiers voluntarily

⁴ 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).

received an initial dose of the COVID-19 vaccine and experienced a serious and documented medical reaction to the first dose. Three experienced post-vaccination myopericarditis, one experienced thrombocytopenia, and one experienced Parsonage-Turner syndrome. In all five cases, the decision was in alignment with CDC guidelines for vaccine exemption and the decision authority determined that the potential risk to the Soldier outweighed the benefit of the vaccine.

15. As stated above, the Army does not track all requests for temporary medical exemption since that is a local provider decision. However, approved temporary medical exemptions are centrally tracked. As of January 5, 2022, 1,354 temporary medical exemptions have been granted for the active duty component, 1,260 granted for the Army National Guard, and 40 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

16. 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

17. There are no courts-martial or separation proceedings pending based solely on vaccine refusal because those actions have been withheld at this time and, because no service member's request for a religious exemption has been denied after appeal. The Army has limited the types of consequences that may be imposed on service members who have received lawful orders to become vaccinated and then refuse to comply with those orders. In accordance with FRAGO 5, administrative and punitive actions have been divided among two phases. The Army

remains in Phase I as of the signing of this declaration and has not moved to Phase II. 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. Regardless of phase, commanders are not permitted to take adverse action against soldiers, to include judicial, non-judicial, and separation actions, while a soldier has a pending exemption request. FRAGO 5, para. 3.D.8.B.1.F.

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

Executed on January 7, 2022, in Washington, DC,

MAHONEY.KEVIN.JA
MES.1044210289
Kevin J. Mahoney
Chief, G-33 Operations Divisions
Office of The Army Surgeon General and
U.S. Army Medical Command

Digitally signed by
MAHONEY.KEVIN.JAMES.1044210289
Date: 2022.01.07 13:57:38 -05'00'

Exhibit 2

**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 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. Exhibit 1, attached to this declaration, provides the available information ordered by the court. Order, 34 ECF No. 40. However, certain data elements are unavailable due to limitations on service information systems:

(a) The number of those denials in which the chaplain determined that the asserted belief is sincere.

(1) The chaplain assessment is not a determination of the sincerity of the requestor's belief. In accordance with Bureau of Naval Personnel Instruction ("BUPERSINST") 1730.11A, the chaplain provides the requestor's commander with an assessment of the sincerity of the Service member's personal religious

belief. While not questioning the validity of the beliefs, the approval and appeal authority (i.e. DCNO N1 and CNO, respectively) for the Navy will consider the chaplain's input and assess the sincerity of the religious belief on a case-by-case basis using the same criteria in BUPERSINST 1730.11A, enclosure (2). The chaplain's conclusion of the sincerity of the requestor's religious beliefs is not binding on either the approval or appeal authority.

(2) The overwhelming majority of religious accommodation requests include a chaplain's assessment finding the requestor's belief to be sincere. Requests where the chaplain did *not* find the belief sincere are atypical. To determine the number of initial denials in which the chaplain found the member sincere requires identifying those requests where the chaplain found the requestor *not* sincere in order to subtract that number from initial denials already acted upon. We do not presently have that information.

(b) Number of denials for which the time to appeal has expired without appeal.

Navy policies governing religious accommodation requests do not provide an explicit deadline for a requestor to submit an appeal once notified that his or her request has been denied. A requestor is generally afforded 5 business days to submit an appeal using the process outlined in BUPERSINST 1730.11A ¶ 5f(1).¹ Because the deadline does not begin until the member is notified of the decision, and because the applicable deadline may be modified by the cognizant commander (i.e. due to local practice, due to an extension for good cause shown, etc.), the number of denials for which time to appeal has expired without an appeal cannot be accurately determined.

¹ Personnel who do not appeal within 5 business days will be considered vaccine refusers. If the requestor appeals after 5 days, separation processing will be suspended. If the requestor subsequently received an approved religious exemption CNO approval, separation processing cease.

(c) Number of medical-exemption requests from COVID-19 vaccination. Both temporary and permanent medical exemption requests are initiated by consulting a medical provider; however, there is no reporting system that records the number of medical appointments scheduled for the purpose of a requestor seeking a medical exemption. Similarly, medical providers serve as the denial authority for both permanent and temporary medical exemption.

(1) Medical readiness for naval forces is documented in the Medical Readiness Reporting System (MRRS). However, military health care providers are not required to record denials of medical exemptions in MRRS, only in the patient's individual medical record. Because medical exemption denials are documented in each Service member's individual medical record, and is therefore not centrally tracked or reported, the number of denials cannot be determined. Conversely, an approved medical exemption is reported in MRRS and is therefore retrievable.

(2) The Navy Bureau of Medicine ("BUMED") Instruction 6230.15B, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*, (Oct. 7, 2013) outlines authorized administrative exemptions. *See* BUMED Instruction 62310.15B PPP 2-6; App. C. Additional guidance concerning documenting administrative exemptions in MRRS is provided in BUMED Notice 6150, *Guidance for Coronavirus Disease 2019 Vaccination Deferral Status Reporting* (Sep. 21, 2021). While an exemption code may be recorded in MRRS, it generally indicates the Service member is unavailable to receive the (e.g., because they are on emergency leave, executing a PCS move, in civilian confinement, etc.). Ultimately, the code documents a Service member's

vaccination status on a given date under a category that generally explains why he or she has not yet received the vaccine. Of note, the Administrative Separation code (often when someone is on terminal leave²), does not necessarily represent a decision to exempt someone from the vaccine, but it reflects the fact that a Service member will not be compelled to cancel terminal leave in order to return and receive the vaccine.

(d) Number of administrative separation proceedings pending or concluded against a Service member whose request for a religious exemption was denied after appeal. Navy policy is to process for separation all Navy service members who refuse the lawful order to receive the COVID-19 vaccine and do not have an approved exemption. *See* NAVADMIN 283/21 ¶ 2. Service members who are denied a vaccine exemption request must receive the COVID-19 vaccine within 5 days of being notified of the denial unless otherwise directed by the exemption adjudication authority. *Id.* ¶ 3.f.

(1) For enlisted Service members, administrative separation processing is initiated at the command level and is not centrally tracked. The notification process or the administrative board procedure, when applicable, is conducted under the authority each individual Service member's commander. Upon completion of the applicable procedure, the Service member's administrative separation case is forwarded to the COVID Consolidated Disposition Authority (CCDA) for approval. Once approved, the commander is granted authority by the CCDA to separate the Service member from the naval service. Only at this phase

² "Terminal Leave" refers to Service members using all accrued leave in order to take a prolonged absence (generally 30-60 days) at the end of their service obligation, to be discharged on their final day of leave.

is it feasible to calculate the number of completed administrative separation proceedings for enlisted personnel.

(2) For officers, the CCDA serves as the show cause authority (i.e., the authority which directs that the member be processed for separation following a report of misconduct). Once the applicable administrative procedures are completed, the Service member's commander is directed to complete administrative separation processing. *See* Secretary of the Navy Instruction 1920.6D, *Administrative Separation of Officers*, encl. 10 ¶¶ 5, 6; encl. 11 ¶¶ 14-17. Only at this phase is it feasible to calculate the number of completed administrative separation proceedings for officers.

(3) For either enlisted personnel or officers, however, while the Service tracks the total number of separation proceedings for failure to adhere to the COVID-19 vaccine requirement, it does not distinguish between those who had a religious accommodation that was denied and those who had no religious accommodation request at all. To determine this information the Service must complete a manual comparison of the list of personnel who are separated against the list of personnel who were denied religious accommodation exemptions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th 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 7 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
227	0	3,484	UNKNOWN	3,711

# 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	1008	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
		303	8	

(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	50	482	63

(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	0

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, Policies 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. Exhibit 1, attached to this declaration, provides the available information ordered by the court. Order, 34 ECF No. 40. However, certain data elements are unavailable due to limitations on service information systems:

(a) The number of those denials in which the chaplain determined that the asserted belief is sincere. The overwhelming majority of religious accommodation requests include a chaplain's assessment finding the requestor's belief to be sincere. Requests where the chaplain did *not* find the belief sincere is included are atypical.

(b) Number of denials for which the time to appeal has expired without appeal. In accordance with Marine Corps Order 1730.9, a Service member who desires to appeal DC M&RA's decision concerning his or her request for a religious accommodation from the COVID-19 vaccine must submit the appeal in standard naval letter addressed to the Commandant of the Marine Corps (CMC) within 10 business days of receiving the determination. Because the deadline does not begin until the member is notified of the decision, and because the deadline may be modified by the cognizant commander (i.e. due to the member's leave or unavailability, due to an extension for good cause shown, etc.), the number of denials for which time to appeal has expired without an appeal cannot be accurately determined.

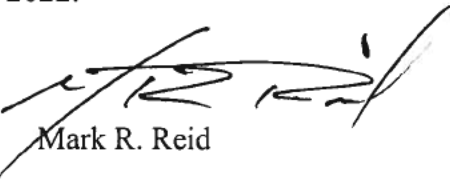
(c) Number of medical-exemption requests from COVID-19 vaccination. Both temporary and permanent medical exemption requests are initiated by consulting a medical provider; however, there is no reporting system that records the number of medical appointments scheduled for the purpose of a requestor seeking a medical exemption. Similarly, medical providers serve as the denial authority for both permanent and temporary medical exemptions. Medical readiness for Marines is documented in the Medical Readiness Reporting System (MRRS). A medical exemption denial is documented in each Service member's individual medical record, and is therefore not centrally tracked or reported. Conversely, an approved medical exemption is reported in MRRS and is therefore retrievable.

(d) Number of courts-martial and/or administrative separation proceedings pending or concluded against a Service member whose request for a religious exemption was denied after appeal. Marine Corps policy is to process for separation all Service

members who refuse the lawful order to receive the COVID-19 vaccine absent an approved administrative or medical exemption. *See* MARADMIN 612/21 ¶ 3.a. Because General Court-Martial Convening Authorities (GCMCA) retain authority to take any additional adverse administrative or disciplinary action they deem appropriate, *id.*, this data is not retrievable in any centralized database. A Marine is not considered to have “refused the vaccine” until final adjudication of any administrative or medical exemption or pending appeal, however, required administrative actions are expected to be initiated as soon as a Marine meets the definition of refusing the vaccine. *Id.* ¶¶ 3.b., 4.a. For enlisted Service members, administrative separation processing is initiated at the command level and is not centrally tracked. The notification process or the administrative board procedure, when applicable, is conducted under the authority of each individual Service member’s commander. *Id.* ¶ 4.c. Upon completion of the applicable procedure, the Service member’s administrative separation case is forwarded to the cognizant separation authority for approval. *See* Marine Corps Order 1900.16, *Separation and Retirement Manual* § 6307. In most cases, the separation authority is the cognizant GCMCA. Once approved, the commander is granted authority to separate the Service member from the service. Only at this phase is it feasible to calculate the number of completed administrative separation proceedings for enlisted personnel, though there is no centralized database that records Service members involuntarily separated for misconduct by reason of refusing the vaccine. For officers, the cognizant GCMCA is required to report officers refusing the vaccine to CMC, Military Personnel Policy Branch, and initiate administrative separation. MARADMIN 612/21 ¶4.b. Once the applicable administrative procedures are completed, the Service member’s commander is

directed to complete administrative separation processing. *See* Secretary of the Navy Instruction 1920.6D, *Administrative Separation of Officers*, encl. 10 ¶¶ 5, 6; encl. 11 ¶¶ 14-17. Only at this phase is it feasible to calculate the number of completed administrative separation proceedings for officers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of January, 2022.



Mark R. Reid

Colonel, USMC

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

U.S. Marine Corps Court-Ordered DataCurrent as of 6 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
112	0	3080	3080	3192

# 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	997	79	2	2	81

(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
		419	17	

(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)
1	47	382	169

(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	253

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 4

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

NAVY SEAL #1, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 8:21-cv-02429
)	
JOSEPH R. BIDEN, JR., in his official)	
capacity as President of the United States,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

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, requesting specific data be provided every fourteen days starting on January 7, 2022, pertaining to the number of requests filed in the Department of the Air Force for religious exemption from the COVID-19 vaccine, including the status of those requests, data on the

number of medical and exemption requests, and courts-martial or discharge proceedings related to service members denied their religious accommodation request. 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 provided below.

Data Limitations

4. The total number of Religious Accommodation Requests is an estimate, based on the total estimated to be in progress plus the aggregate number approved and estimated aggregate number fully resolved and denied.¹ Under Air Force Instruction (AFI) 48-110_IP, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*, dated 7 October 2013 (certified current 16 February 2018),² religious accommodation requests, pending or approved, are coded as “Admin Refused” (AR).³ This code is used for other purposes as well, including a refusal unrelated to a religious accommodation request. The total number of Religious Accommodation Requests *in progress* is estimated by pulling the number of service members with an “AR” code from the Aeromedical Services Information Management System (ASIMS) then subtracting the number of service members who have refused, unrelated to a religious accommodation request, as reported by the chain of command. While used internally by the Department of the Air Force, this method has acknowledged limitations and is susceptible

¹ See below for more information on the limitations for the aggregate number fully resolved and denied.

² AFI 48-110_IP is an inter-service publication. The Army identifies it as Army Regulation (AR) 40-562, Navy as Bureau of Medicine and Surgery Instruction (BUMEDINST) 6230.15B, and Coast Guard (CG) Commandant Instruction (COMDTINST) M6230.4G.

³ AFI 48-110_IP, Table C-2.

to service members being mis-identified or mis-categorized, as a result of human error at the data entry level.

5. The Department of the Air Force does not have a system for tracking the status of a Religious Accommodation Request before it reaches the Approval Authority-level.

Consequently, the number of pending Religious Accommodation Requests is limited to those requests that have made it to the Approval Authority or for which the Approval Authority has been notified as being processed at a lower level.

6. As previously noted, the Department of the Air Force did not implement an appeal deadline until December 7, 2021 and statistics on the number of cases where a member did not appeal by the deadline is limited to disapprovals after December 7, 2021. As a result, the aggregate number of requests that have been fully resolved and denied does not completely capture the total number of requests fully resolved and denied.

7. The total number of administrative exemptions is data pulled from ASIMS. The data pull, however, only provided the overarching number of administrative exemptions. It did not distinguish type of exemptions.⁴ In addition to exemptions for terminal leave and approved retirement or separation dates, it also covers other situations, including situations where the individual is unavailable to take the vaccine. For example, individuals who are incarcerated or absent without leave (AWOL) would have an administrative exemption code placed in their records.

8. Pursuant to Secretary of the Air Force memorandum, "Supplemental Coronavirus Disease 2019 Vaccination Policy," dated December 7, 2021, a service member who is notified their religious accommodation request was disapproved by the Approval Authority has five (5)

⁴ Future reporting may be able to better distinguish this number.

calendar days submit an appeal. Prior to that date, the Department of the Air Force did not implement an Air Force-wide appeal deadline. Data indicating the number of cases where a service member did not appeal the initial disapproval of their request are limited to those requests disapproved after the December 7 memorandum. Additionally, this number is subject to some fluctuation. 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.

9. Please refer to the declaration of Chaplain, Major Matthew J. Streett, dated January 7, 2022, regarding limitations in providing data for religious accommodation denials “in which the chaplain determined the asserted belief is sincere.”

10. Please refer to the declaration of Colonel Artemio C. Chapa, dated January 7, 2022, regarding limitations in providing data for the “number of medical-exemption requests from COVID-19 vaccination and the number of medical exemptions . . . denied.”

11. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of January 2022.

HOLBROOK.JASON.A.1084810688 Digitally signed by
HOLBROOK.JASON.A.1084810688
Date: 2022.01.07 17:37:41 -05'00'

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

Attachment:

Exhibit 1: Department of the Air Force Vaccination & Religious Accommodation Data, dated January 7, 2022

Exhibit 1 to Colonel Jason A. Holbrook's Declaration

Department of the Air Force Court-Ordered Data¹Current as of 7 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
10,973	2,151	0	2,387	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
76	140	235	0	0	311

Temporary Medical Exemptions:

Total Medical Exemption Requests	Number of Exemptions Granted ⁶	Number of Exemptions Denied
UNKNOWN	1,723	UNKNOWN

Other Administrative Exemptions:

Total Administrative Exemptions ⁷
2,170

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
FOR THE MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL #1, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 8:21-cv-02429
)	
JOSEPH R. BIDEN, JR., in his official)	
capacity as President of the United States,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

DECLARATION OF CHAPLAIN, MAJOR MATTHEW J. STREETT

I, Matthew J. Streett, hereby state and declare as follows:

1. I am a Major in the United States Air Force currently assigned as a Staff Chaplain at the Office of the Chief of Chaplains. I have been in this position since June 2021. As a part of my duties, I am responsible for coordinating Chaplain Corps policy, publications, and religious accommodation concerns for the United States Air Force and the United States Space Force, lead the Policy branch of the Plans and Programs division, and I serve as one of the chaplain representatives on the Headquarters Air Force Religious Resolution Team advising the Air Force Surgeon General on religious accommodation appeals for vaccination exemption requests.
2. I am generally aware of the allegations set forth in the pleadings filed in this matter. I make this declaration in my official capacity as a Staff Chaplain and based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.
3. I submit this declaration in support of Defendants' response to this Court's November 22, 2021 Order, requesting specific data be provided every fourteen days starting on January 7,

2022, pertaining to the number of requests filed in the Department of the Air Force for religious exemption from the COVID-19 vaccine, including “the aggregate number of initial denials” and “the number of those denials in which the chaplain determined that the asserted belief is sincere”. The Department of the Air Force is not able to provide the number of denials in which the chaplain determined the asserted belief is sincere for the reasons provided below.

Chaplains Advise on, but Do Not Make Final Determinations of, Sincerity

4. The Air Force policy and procedures for addressing religious accommodation requests are outlined in Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, dated 23 June 2021 and Air Force Instruction (AFI) 48-110_IP, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*, dated 7 October 2013 (certified current 16 February 2018).¹

5. The role of the chaplain under DAFI 52-201 is not to make a final determination on the sincerity of a belief, but to provide a professional assessment based on data to ensure the approval authority is able to make an informed decision. They may provide an assessment of sincerity, but that assessment informs rather than limits decisions. DAFI 52-201, paragraph 4.2.7 states “the chaplain will submit a written memorandum to the approval authority that addresses each item in Attachment 5.” Attachment 5 requires the chaplain’s memorandum to address, in relevant part, whether the “Requestor’s religious beliefs *seemed* honestly, consistently and sincerely held” based on one or more enumerated factors (e.g., credibility, demeanor and pattern of conduct consistent with the request, other persons supporting the claim, etc.).² As a practical matter, a chaplain will generally presume a belief to be sincere unless there is evidence to the

¹ AFI 48-110_IP is an inter-service publication. The Army identifies it as Army Regulation (AR) 40-562, Navy as Bureau of Medicine and Surgery Instruction (BUMEDINST) 6230.15B, and Coast Guard (CG) Commandant Instruction (COMDTINST) M6230.4G.

² DAFI 52-201, Attachment 5.

contrary. Since the chaplain's assessment is based primarily on the member's inputs rather than investigation of external data, a statement on sincerity of belief is a statement that the chaplain did not determine that the member was provably lying. In other words, disproving sincerity of belief is difficult, and so the chaplain may instead choose to focus on whether the belief is a sincerely held religious belief versus a sincerely held nonreligious belief. "Sincerity" is easy to affirm positively and difficult to determine the absence of.³

6. The decision authority (i.e., the Approval and/or Appeal Authority) is still free to make final determination of the members' case, to include whether a member has a sincerely held religious belief, especially since that decision authority will have access to additional data the chaplain does not and since the chaplain's assessment provides data for the leader's decision. The chaplain's inputs to the decision authority are limited to the information available from the interview and anything presented by the member. It does not include other information that may be relevant in determining whether the member has a sincerely held religious belief, such as vaccination records or previous statements made by the member. In this sense, the chaplain's advisements are based on a member's affirmations rather than objective data available to the chaplain that could counter the member's claims.

7. Although the chaplain's memorandum must also include a recommendation to the decision authority, the recommendation is not necessarily whether the accommodation should be granted or not. While the chaplain is not prohibited from saying whether an exemption should or should not be granted, the chaplain could also recommend that alternate means be explored, or

³ It is uncommon for the chaplain at the interviewer or appeal level to disagree with the member's determination and view a religious request as a non-religious belief of conscience request. In those cases, that will likely happen only if the member's claim makes no reference to religion, or if documents to include the member's own memorandum and appeal make no link between religious claims and vaccination. However, this assessment would simply be a data point considered by the decision authority.

that a belief should be viewed as a belief of conscience or moral principle, which involves a different standard of review, as opposed to religious belief. For example, in appeals, the chaplain opines on whether the request appears to be religious in nature, the vaccination does or does not constitute a substantial burden, more information should be requested before further chaplain analysis, or further group discussion is requested.

8. Additionally, there are multiple chaplains involved in the Religious Accommodation request process. In the average active duty case there is an interviewing chaplain at the tactical level, a wing chaplain at an installation Religious Respect Team (RRT), and a chaplain advising the Approval Authority. If a member's request is disapproved and the member appeals, there is an additional chaplain in the appeal process advising the Appeal Authority. Chaplains may disagree with each other on whether a belief is sincere or religious. Each chaplain's input is advisory and a data point for the Approval and Appeal Authorities to consider. The Department of the Air Force has not designated any one chaplain in the process as the authoritative voice for the Chaplain Corps on sincerity. Accordingly, it is not clear which chaplain's opinion should be provided to the court. For example, while an interviewing chaplain has the benefit of meeting with the member in person, the RRT chaplain, MAJCOM chaplain, or appeal chaplain, may be more experienced and may have access to other relevant data not available to the interviewer. Moreover, because the chaplain's function is advising a specific commander, decision authority, or appeal authority, it has not been necessary to log all levels of chaplain opinion in written records. For example, the RRT memorandum provides overall recommendations and inputs from the team, which means the RRT chaplain's views may not be readily apparent or distinguished from others on the team. The cumulative impact means that any data to the court on chaplain assessments of sincerity would be incomplete and misleading. It would not provide a full picture

of the depth and breadth advice the various chaplains provided and could inaccurately leave the impression that all chaplains within the process agreed that a belief was sincere and/or religious.

System Limitations

9. Existing systems for processing religious accommodation for vaccination were not made for the purpose of this type of data collection, which means that data may be present, but not aggregated, consistent, or searchable. Although the Department of the Air Force tracks the number of religious accommodation request packages being processed and their general status (e.g., pending), I am not aware that any enterprise-level system tracks individual packages prior to appeals. The packages are not stored or routed via a central system unless the initial request is disapproved and appealed. Prior to that time, packages are routed through the service member's chain of command to the various Approval Authorities in a decentralized manner. If a request is disapproved and subsequently appealed, the appeals and packages are routed via a centralized system to the Appeal Authority. Even when the request is centrally stored during appeal, the system does not have a searchable identifier for reporting the number of requests where the chaplain opined that the member seemed to have a sincere belief or that it was religious in nature. Although the Air Force Chaplain Corps historically attempted to track some of the data points accessible to chaplains, this information is incomplete, it asked questions that did not fit the complexity of the situation, it has no command authority to require responses, and it remains disconnected from any data set linked to determining whether accommodations were granted or denied, so it was never completed and is paused as of this date. In my opinion, if this information were needed, a new data system would have to be built for it, which would require appropriated funds, assigned manpower or contracts, and development time. In effect, the Chaplain Corps' attempt demonstrated that the data request cannot be done simply or with

existing capabilities.

10. Additionally, chaplains do not necessarily provide inputs using consistent language as to whether the belief seemed to be sincere or religious in nature, and the Department of the Air Force has no methodology for categorizing those inputs. There are no uniform wording requirements mandated at the strategic level that chaplains must follow in discussing the sincerity or religious nature of a belief in the chaplain memorandum, even if there may be uniformity at a given MAJCOM level. Accordingly, a wide range of language may be used, which may result in inconsistent inputs. This would hamper the ability to review religious accommodation requests to categorize the chaplain's inputs. In addition, although DoDI 1300.17 makes a clear distinction between religious vs. conscience or moral principles (para. 1.2.d), some religious bodies do not, and the mixed language of those religious bodies informs the language of requests and the chaplain response to them.⁴ In other words, DoD chaplains may use language that makes it unclear whether or not the chaplain felt a request seemed to be sincere or religious in nature.

11. Any attempts to categorize the chaplain's inputs as to sincerity or religious nature would be subject to interpretation and result in inaccurate data.

12. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of January 2022.

STREETT.MATTHEW.
JAMES.1147844570

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MATTHEW J. STREETT, Maj, USAF
 Staff Chaplain

⁴ For example, see the 12 October 2021 "Statement on Coronavirus Vaccines and the Sanctity of Conscience" by Archbishop Timothy P. Broglio of the Catholic Archdiocese for Military Services, USA, which provides a religious justification for conscience objection. In other words, many religious traditions use the language of conscience in a way that is closely tied to religious exercise. By contrast, the DoD understands conscience objections in a different category from religious objections. Some stakeholders (or chaplains) may use language about a belief of conscience as a facet of a religious belief while others may use the same term to distinguish a non-religious belief.

Exhibit 6

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

NAVY SEAL #1, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 8:21-cv-02429
)	
JOSEPH R. BIDEN, JR., in his official)	
capacity as President of the United States,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

DECLARATION OF COLONEL ARTEMIO C. CHAPA

I, Artemio C. Chapa, hereby state and declare as follows:

1. I am a Colonel in the United States Air Force currently assigned as the Division Chief for Medical Operations at the Air Force Medical Readiness Agency. I have been in this position since July 2018. As a part of my duties, I am responsible for drafting medical COVID-19 pandemic policy.
2. I am generally aware of the allegations set forth in the pleadings filed in this matter. I make this declaration in my official capacity as the Division Chief for Medical Operations and based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.
3. I submit this declaration in support of Defendants' response to this Court's November 22, 2021 Order, requesting specific data be provided every fourteen days starting on January 7, 2022, pertaining to the number of requests filed in the Department of the Air Force for religious exemption from the COVID-19 vaccine, including "the number of medical-exemption requests

from COVID-19 vaccination and the number of medical exemptions granted and denied.” The Department of the Air Force is not able to provide the number of denials in which a service member sought a medical exemption for the reasons provided below. Additionally, the number of medical exemptions granted, in a format of data provided every fourteen days, secondary to the temporary nature of DAF medical COVID-19 exemptions, would fluctuate and not produce trend line information, for the reasons outlined below.

System Limitations

4. The Department of the Air Force electronic health records systems are unable to identify in a searchable format whether a service member had previously *requested* a medical exemption from the COVID-19 vaccination requirement. In order to be compatible with other Services’ and Defense Health Agency’s systems, the Department of the Air Force systems utilize standardized diagnostic codes and appointment types. For example, Air Force Instruction (AFI) 48-110_IP, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*, dated 7 October 2013 (certified current 16 February 2018),¹ provides medical exemption codes. However, there is no standard or uniform diagnostic or appointment code to identify an appointment for a medical exemption request.

5. Moreover, any attempt to provide a uniform appointment type for medical exemptions would be lead to incomplete and/or inaccurate data because a request for a medical exemption can arise at any time, including during an otherwise unrelated medical appointment. For example, it may come up during an annual health assessment, pregnancy check-up, or follow-up post-surgery. There is no way to reasonably capture all of the requests that have been received.

¹ AFI 48-110_IP is an inter-service publication. The Army identifies it as Army Regulation (AR) 40-562, Navy as Bureau of Medicine and Surgery Instruction (BUMEDINST) 6230.15B, and Coast Guard (CG) Commandant Instruction (COMDTINST) M6230.4G.

6. Similarly, the Department of the Air Force systems are unable to identify in a searchable format the number of medical exemption requests where the member's medical circumstances do not warrant a medical exemption, resulting in the request *being denied*. The recommended coding for a denial is "Z71.9 Counseling, unspecified." This same coding, however, is used for a variety of circumstances and is not limited to medical exemption request counseling pertaining to vaccine(s). As such, a search for the number of appointments with the Z71.9 code would be over-represent medical exemption denials. While the individual medical notes would annotate the purpose of the appointment (i.e., the notes themselves would indicate whether an individual requested an exemption and the result), those notes are not stored in a searchable format. Additionally, some providers may annotate the denial under a different code and any results of a search for Z71.9 codes would underrepresent medical exemption denials. The purpose of the coding is diagnostic and is meant to annotate medical concerns. The coding does not indicate when there is an absence of a medical concern.

7. Additionally, while the Department of the Air Force is providing information on the number of approved medical exemptions, that information has its own limitations. The Department of the Air Force policy is to only grant *temporary* medical exemptions from the COVID-19 vaccine. The period of an exemption is dependent on the underlying medical reason, but can be as short as 30 days (or less) for someone who has an acute COVID-19 infection to 365 days for an individual with a severe allergic reaction. Many exemptions are limited to 30, 60, or 90 days. Absent another type of exemption or religious accommodation, when a medical exemption expires, the service member is required to obtain the COVID-19 vaccine.

8. Accordingly, the number of approved exemptions provided indicates the number of current, active exemptions. Once an exemption expires, the medical exemption code is no longer associated with that service member's medical records and can no longer be found via a search

for the medical exemption codes. Even if it was possible to provide an aggregate number of all previously approved medical exemptions, that data would be inaccurate as a significant number of those individuals would no longer have an exemption and would be required to be vaccinated, if not already vaccinated. It could also miscount the total number of individual service members who have been exempted. For example, a service member may have received an exemption due to an acute COVID-19 infection; after that exemption expired, they could have been given another medical exemption because the member received treatment with monoclonal antibodies or convalescent plasma. Providing only current, active medical exemptions provides a snapshot of the exemptions at that time. A “total” exemptions would only equate to the number of conditions exempted, not the total number of service members exempted.

9. Providing the number of current medical exemptions also has severe limitations. Prior to the vaccination deadline passing, the number of approved exemptions fluctuated weekly as service members were granted new exemptions and other service members with exemptions expired. This leads to inaccurate information. For example, if Week 1 had 100 approved medical exemptions and Week 2 also had 100 that does not mean there was no change. There could have been 6 new medical exemptions and 6 expired medical exemptions. Although the deadlines for Active Duty personnel and Reserve personnel to vaccinate have passed—thus resulting in fewer new medical exemption requests—this fluctuation continues to be present.

10. It is also possible for the data request to fail to identify certain medical exemptions. For example, medical exemptions due to a current COVID-19 infection are of a very short duration and depend on when the person received the exemption in relationship to when he/she contracted COVID-19. A service member could be approved for a medical exemption on January 10, 2022—after the January 7 filing—and have the exemption expire before the next filing on January 21, 2022.

Temporary Nature of Medical Exemptions

11. Medical exemptions are granted based on concerns that a COVID-19 vaccine would place the individual service member at a heightened health risk. As previously noted, Department of the Air Force policy is to only grant temporary medical exemptions from immunization requirements. While a service member may have a severe allergic reaction to an ingredient, it may not occur with a future COVID-19 vaccine of a different formulation. An exemption may also be temporarily granted for other medical reasons, such as when receiving the vaccine could create a confusing clinical diagnostic assessment during an active COVID-19 infection (e.g., is a fever due to a side effect from a COVID-19 vaccine or due to the COVID-19 infection), or for a pregnancy (which is time limited). The individual health risks to a service member from a specific vaccine may temporarily outweigh the benefits of the protection offered by the vaccine to the member and others. Many of these issues are temporary in nature. After the health risk has subsided, the member is again required to vaccinate.

12. During the period a member is medically exempt from receiving the vaccine, they are unprotected and at an increased risk of contracting COVID-19. This is mitigated by maximizing the number of people around the service member that are vaccinated to prevent the spread of the disease in the community.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of January 2022.

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ARTEMIO C. CHAPA, Colonel, USAF
Division Chief, Medical Operations,
AFMRA SG3

Exhibit 7

**IN THE UNITED STATES DISTRICT COURT
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.

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. Exhibit 1, attached to this declaration, provides the available information ordered

by the court. Order, 34 ECF No. 40. However, certain data elements are either not available or require further explanation.

3. Requests for religious accommodation from the COVID-19 vaccination requirement in the Coast Guard are centrally managed with the final approval authority being the Office of Military Personnel Policy, CG-133. Until religious accommodation requests reach Coast Guard Headquarters, they are not tracked so the column labeled Total Initial Requests is the number that have been received at Headquarters. Most requests for religious accommodation from the COVID-19 vaccination requirement should be at Coast Guard Headquarters at this time. Ten members have withdrawn their initial request and chosen to receive a vaccine.

4. Exhibit 1 includes information about determinations by chaplain's regarding the sincerity of the requestor's belief. It is important to note that chaplains provide their professional opinion regarding the sincerity of the requestor; they do not make the ultimate determination regarding the sincerity of the requestor's belief.

5. Permanent medical exemptions from vaccine requirements are also centrally managed at Coast Guard Headquarters through the Office of Occupational Medicine, CG-112. Temporary medical exemptions, however, are granted or denied by medical officers in the field. The Coast Guard does not have a database from which it can pull a complete and accurate account of temporary medical exemptions. In addition, because the temporary exemptions expire and are based on medical conditions that could arise during a reporting period (e.g., a member infected with COVID-19 would not be eligible to be vaccinated for the duration of the infection and for a period afterwards, and thus would be granted a medical exemption), changes in the total number of temporary medical exemptions can be misleading. For example, during any given period, two temporary medical exemptions might expire and two new temporary medical exemptions might be granted, but the net change in temporary medical exemptions would be zero.

6. All permanent medical exemptions granted thus far are based on a documented severe allergic reaction to a COVID-19 vaccine or a component of the vaccine.

7. The Coast Guard currently has no policy providing for other administrative exemptions to the COVID-19 vaccine mandate.

8. 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: December 7, 2021

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BROOKE GRANT
Commander
U.S. Coast Guard

Exhibit 1 to Declaration of CDR Grant

U.S. Coast Guard Court-Ordered DataCurrent as of 7 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
1067	0	226	226	1303 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	82	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	3	6	11

(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 Seven appeal timeline extensions have been granted. 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.