

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

COLONEL FINANCIAL MANAGEMENT)
OFFICER, United States Marine Corps,)
LIEUTENANT COLONEL 1, United States)
Marine Corps, RESERVE LIEUTENANT)
COLONEL, United States Marine Corps,)
CAPTAIN, United States Marine Corps,)
CAPTAIN 2, United States Marine Corps,)
CAPTAIN 3, United States Marine Corps,)
FIRST LIEUTENANT, United States Marine)
Corps, SECOND LIEUTENANT, United)
States Marine Corps, CHIEF WARRANT)
OFFICER 4, United States Marine Corps,)
CHIEF WARRANT OFFICER 3, United)
States Marine Corps, LANCE CORPORAL 1,)
United States Marine Corps, LANCE)
CORPORAL 2, United States Marine Corps,)
LANCE CORPORAL 3, United States)
Marine Corps, MIDSHIPMAN 2/C, United)
States Marine Corps, GUNNERY)
SERGEANT, United States Marine Corps, for)
themselves and all others similarly situated,)

No. 8:22-cv-01275 SDM-TGW

Plaintiffs,)

v.)

LLOYD AUSTIN, in his official capacity as)
Secretary of the United States Department of)
Defense, GEN. DAVID H. BERGER, in his)
official capacity as Commandant of the United)
States Marine Corps,)

Defendants.)

**THIRD AMENDED
VERIFIED CLASS ACTION COMPLAINT
FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND DAMAGES**

“Our citizens in uniform may not be stripped of basic rights simply because they doffed their civilian clothes.”¹

For their VERIFIED CLASS ACTION COMPLAINT against Defendants, LLOYD AUSTIN, in his official capacity as Secretary of the United States Department of Defense, GEN. DAVID H. BERGER, in his official capacity as Commandant of the United States Marine Corps, Plaintiffs, COLONEL FINANCIAL MANAGEMENT OFFICER, United States Marine Corps, LIEUTENANT COLONEL 1, United States Marine Corps, RESERVE LIEUTENANT COLONEL, United States Marine Corps, CAPTAIN, United States Marine Corps, CAPTAIN 2, United States Marine Corps, CAPTAIN 3, United States Marine Corps, FIRST LIEUTENANT, United States Marine Corps, SECOND LIEUTENANT, United States Marine Corps, CHIEF WARRANT OFFICER 4, United States Marine Corps, CHIEF WARRANT OFFICER 3, United States Marine Corps, LANCE CORPORAL 1, United States Marine Corps, LANCE CORPORAL 2, United States Marine Corps, LANCE CORPORAL 3, United States Marine Corps, MIDSHIPMAN 2/C, United States Marines Corps, GUNNERY SERGEANT, United States Marine Corps, for themselves and all others similarly situated, allege and aver as follows:

¹ *Chappell v. Wallace*, 462 U.S. 296, 304 (1983) (citing E. Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. Rev. 181, 188 (1962)).

URGENCIES JUSTIFYING EMERGENCY RELIEF

“The Executive Order mandating vaccinations for all federal employees has provided clear direction. . . . Frankly, if you are not vaccinated, you will not work for the U.S. Navy.”²

1. Plaintiffs are United States Marines who face a deadline under the Federal COVID-19 Vaccine Mandate to receive a COVID-19 vaccine that violates their sincerely held religious beliefs, and have been refused any religious exemption or accommodation. United States Marine Corps servicemembers had until November 28, 2021 to become fully vaccinated. **These dates have passed, and disciplinary actions have already commenced.** Relief is needed now to prevent these military heroes from facing dishonorable discharge, court martial, other life-altering disciplinary procedures, and termination.

2. “Greater love hath no man than this, that a man lay down his life for his friends.” *John* 15:13 (KJV). Servicemember Plaintiffs have all agreed, voluntarily and sacrificially, to devote their entire lives by this axiomatic truth, regardless of the cost to them personally or to their families who likewise sacrifice in defense of this Nation. They all have sworn an oath to protect and defend the Constitution of the United States, to sacrificially lay down their lives for their fellow citizens against enemies both foreign and domestic, and to preserve for our progeny the heritage and treasure passed down to them by Veterans of old. And, for that ultimate sacrifice in defense of the

² Vice Admiral William Galinis, Commander, Naval Sea Systems Command (NAVSEA), *ALL HANDS NOTE (10/14/2021) COMNAVSEA Vaccination Message* (Oct. 14, 2021) (warning entire command, comprising more than 85,000 civilian and military personnel).

Constitution and our freedoms, **Defendants threatened these military heroes with dishonorable discharge for even requesting a religious exemption from the COVID-19 shots. Dishonorable discharge is worse than criminal conviction for these servicemembers because it is a badge of disgrace that follows them for the rest of their lives.** *Having sacrificed everything to defend America and its citizenry—and while carrying the images and sounds of war with them throughout their lives—America, the “land of the free and the home of the brave,” would betray them with the worst punishment of dishonorable discharge. And for what cause? Simply because they seek an accommodation from the COVID-19 shots on account of their sincerely held religious beliefs.*

3. **The deadlines for servicemember Plaintiffs to receive the COVID-19 shots have passed.** *No servicemembers should be forced to choose between dishonorable discharge by the Nation they love or sinning against God by violating their sincere religious beliefs (which, by the way, can be easily accommodated).* **The Court must protect the rights of these military heroes and remove from the Republic the stain of government coercion of conscience.**

4. As the Supreme Court has long affirmed, **the heroes of the United States Armed Forces do not shed their constitutional rights at the moment of their sacrificial oath.** Indeed, “[t]his Court has never held, nor do we now hold, that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service.” *Chappell v. Wallace*, 462 U.S. 296, 304 (1983).

5. Moreover, while servicemembers certainly have duties and responsibilities “without counterpart in civilian life,” *Schlesinger v. Councilman*, 420 U.S. 738, 757 (1975), **the Constitution still provides them with the same blanket of constitutional protection that their dedicated service and sacrifice provide to the average civilian.** For to turn the same Constitution that United States Armed Forces members protect and defend into a weapon against them would be a travesty unknown to the Nation’s founding charter and eclipse any dereliction of duty heretofore seen in the great experiment of America. Indeed, as Justice Brennan noted,

Military (or national) security is a weighty interest, not least of all because national survival is an indispensable condition of national liberties. But the concept of military necessity is seductively broad, and has a dangerous plasticity. **Because they invariably have the visage of overriding importance, there is always a temptation to invoke security “necessities” to justify an encroachment upon civil liberties. For that reason, the military-security argument must be approached with a healthy skepticism: its very gravity counsels that courts be cautious when military necessity is invoked by the Government to justify a trespass on First Amendment rights.**

Brown v. Glines, 444 U.S. 348, 369 (1980) (Brennan, J., dissenting) (emphasis added) (citation omitted).

6. As he continued,

To be sure, generals and admirals, not federal judges, are expert about military needs. **But it is equally true that judges, not military officers, possess the competence and authority to interpret and apply the First Amendment.** Moreover, in the context of this case, the expertise of military officials is, to a great degree, tainted by the natural self-interest that inevitably influences their exercise of the

power to control expression. Partiality must be expected when government authorities censor the views of subordinates, especially if those views are critical of the censors. **Larger, but vaguely defined, interests in discipline or military efficiency may all too easily become identified with officials' personal or bureaucratic preferences. This Court abdicates its responsibility to safeguard free expression when it reflexively bows before the shibboleth of military necessity.**

Id. at 370.

7. Servicemembers who protect the constitutional freedoms cherished in this Nation can also invoke those same constitutional protections for breaches of their own liberties, despite military service. Here, Defendants have made it clear that they think servicemember Plaintiffs' sacrificial act of swearing an oath to protect the Nation and support and defend the Constitution is accompanied by the sacrificial surrender of those same constitutional protections they defend. The Constitution opposes such callous indifference to sacrificial service, and so, too, should the Court. Indeed, "military life do[es] not, of course, render entirely nugatory in the military context the guarantees of the First Amendment." *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). *See also Crawford v. Cushman*, 531 F.2d 1114, 1120 (2d Cir. 1976) ("**[T]he military is subject to the Bill of Rights and its constitutional implications.**" (emphasis added)). Put simply, "although First Amendment rights . . . may be 'less' for a soldier than a civilian, they are by no means lost to him." *Anderson v. Laird*, 466 F.2d 283, 295 (D.C. Cir. 1972). "**Individual freedom may not be sacrificed to military interests to the point that constitutional rights are abolished.**" *Id.* (emphasis added).

8. Servicemember Plaintiffs and all those dedicated members of the United States Armed Forces voluntarily and sacrificially answered their Nation's call to defend the freedoms we enjoy. Yet, Defendants are demanding that these brave military members sacrifice their constitutional rights which they risk their lives to defend. Indeed, **“[i]t is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful. The military departments enjoy no immunity from this proscription.”** *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C. Cir. 1979) (emphasis added) (citation omitted). For without question, when critical constitutional rights are at issue, “the Supreme Court [has] heard numerous constitutional challenges to military policies.” *Singh v. Carter*, 168 F. Supp. 3d 216, 225 (D.D.C. 2016) (cleaned up).

9. As the Supreme Court held less than two years ago, **“even in a pandemic, the Constitution cannot be put away and forgotten.”** *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (emphasis added). When we have demanded so much of our Soldiers, Sailors, Airmen, and Marines, we owe them nothing less than the full measure of our own devotion and commitment to constitutional principles. Anything less would be desecrating the sacrifices these heroes have made for untold numbers of people when the call of duty demanded it, and would trample upon the graves of so many who made the ultimate sacrifice before them.

10. When the great American experiment was commenced, our Founders ordained and established the Constitution—including all of the rights it recognized and enshrined—“in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and **secure the Blessings of Liberty to ourselves and our Posterity.**” U.S. Const. Pmb1. (emphasis added). To this very day, “we continue to strive toward ‘[that] more perfect union.’” *Smith v. City of New Smyrna Beach*, No. 6:11-cv-1110-Orl-37KRS, 2013 WL 5230659, at *1 (M.D. Fla. Sept. 16, 2013). That work is not easy, and sometimes it requires the intervention of the judiciary to set the guardrails for the protection of the Republic’s liberties.

11. Recognizing that times of crisis would arise, that such times might lead governments to seek to repress precious freedoms, and that the Republic’s survival depended upon defeating such repressive instincts, the genius of our founding document is that it placed explicit protections into the text of the Bill of Rights. And, importantly, “[o]ur Bill of Rights placed our survival on firmer ground—that of freedom, not repression.” *Konigsberg v. State Bar of California*, 366 U.S. 36, 79 (1961) (Black, J., dissenting).

12. During times of national crisis, the very times when we call upon the United States Armed Forces heroes most, “the fog of public excitement obscures the ancient landmarks set up in our Bill of Rights.” *American Communist Ass’n, C.I.O. v. Douds*, 339 U.S. 382, 453 (1950) (Black, J., dissenting). But, where the fog of public excitement is at its apex, “the more imperative is the need to preserve inviolate the

constitutional rights of [the First Amendment].” *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937). Without doubt, “[t]herein lies the security of the Republic, the very foundation of constitutional government.” *Id.*

13. Indeed, “[t]imes of crisis take the truest measure of our commitment to constitutional values. **Constitutional values are only as strong as our willingness to reaffirm them when they seem most costly to bear.**” *Hartness v. Bush*, 919 F.2d 170, 181 (D.C. Cir. 1990) (Edwards, J., dissenting) (emphasis added). Our willingness to reaffirm our staunch commitment to our fundamental freedoms is imperative to the very survival of the American experiment. **Servicemember Plaintiffs have demonstrated their staunch commitment, and it is time that we honor ours.** “History reveals that the initial steps in the erosion of individual rights are usually excused on the basis of an ‘emergency’ or threat to the public. **But the ultimate strength of our constitutional guarantees lies in the unhesitating application in times of crisis and tranquility alike.**” *United States v. Bell*, 464 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring) (emphasis added). For, “[i]f the provisions of the **Constitution be not upheld when they pinch as well as when they comfort, they may as well be discarded.**” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 483 (1934) (Sutherland, J., dissenting) (emphasis added).

14. Plaintiffs have demonstrated their commitments to the United States Constitution and the Nation’s future comfort, security, and prosperity. **The Court should demand that the Nation return the favor.** Telling Plaintiffs they must accept

or receive a shot they oppose according to their sincerely held religious beliefs, or face court martial, dishonorable discharge, and other life altering disciplinary measures, disgraces the sacrifices these heroes have made.

15. Indeed, “Our nation asks the men and women in our military to serve, suffer, and sacrifice. But we do not ask them to lay aside their citizenry and give up the very rights they have sworn to protect.” *U.S. Navy Seals v. Biden*, No. 4:21-cv-1236-O, 2022 WL 34443, at *1 (N.D. Tex. Jan. 3, 2022) (granting preliminary injunction).

16. “The Navy provides a religious accommodation process, but by all accounts, **it is theater**. The Navy has not granted a religious exemption to any vaccine in recent memory. **It merely rubber stamps each denial.**” *Id.* (emphasis added).

17. The same is true of every other branch. While there have been many requests, Defendants have granted a grand total of **6 religious exemptions**—all to Marines already slated for separation. For example, one of the Marines whose request for a religious exemption was granted has been reported to have been on terminal leave and was thus already in the process of separating from service. *See* Jessica Chasmar & Peter Hasson, *Marines’ claim of granting 2 religious COVID-19 vaccine exemptions leads to more questions*, FoxNews (Jan. 18, 2022), www.foxnews.com/politics/marines-claim-2-religious-COVID-19-vaccine-exemptions. Another purportedly granted religious exemption was for an individual who was also already transitioning out of the Marine Corps and was already within 180 days of completing his service. *See id.*

18. The United States Marine Corps has received 3,539 requests for religious exemption and has denied 3,458 requests—all of which after a determination of sincerity. The Marine Corps has granted 6 appeals from religious exemption denials, all to Marines already slated for separation.

19. The Marine Corps has granted as many as 436 requests for medical exemption, both permanent and temporary, and possibly hundreds more because the Marines are only able to report the number of active medical exemptions at a given time, and are unable to report a total number over a period of time.

20. As the Court recognized in its Order (ECF No. 40) on Plaintiffs' preliminary injunction motion over seven months ago, Defendants had received 16,643 requests for religious exemption and "had granted none" at that time. (ECF No. 40 at 1.)

21. The Court noted, it is "quite plausible that each branch's procedure for requesting a religious exemption is a ruse that will result inevitably in the undifferentiated (and therefore unlawful under RFRA) denial of each service member's request." (ECF No. 40 at 33.)

22. The Court's foresight proves true in hindsight, as Defendants have still failed to grant any meaningful religious exemptions. What was a ruse at the commencement of this action is still a ruse today.

23. Defendants' vaccine mandate, ostensibly responding to a public health crisis, has created a national emergency of much greater magnitude. The mandate attacks the military from *within* by removing brave servicemembers from defending the

Nation by land, air, and sea, and from *without* by eliminating the dedicated civilian defense contractors and employees providing everything from boots and uniforms, to cyber security, to the world's most advanced stealth fighter jet—the F-35 Lightning II—solely because these protectors of our constitutional freedoms requested accommodation of their sincerely held religious beliefs under the same Constitution. The crisis created by Defendants' mandates, applied to two million federal employees, is unnecessary and completely avoidable, but nonetheless imminent and real.

24. An injunction is needed now to prevent the immediate and irreparable injury to Plaintiffs imposed by these unlawful COVID-19 mandates.

PARTIES

25. Plaintiff COLONEL FINANCIAL MANAGEMENT OFFICER, United States Marine Corps, served honorably for over two decades in the critical billet of Financial Management Officer, one of twelve (12) such Colonels in the Marine Corps. During his deployment to Afghanistan, he was nominated for and later received the Assistant Secretary of the Navy Financial Management and Comptroller Budgeting Award by the Assistant Secretary of the Navy (Comptroller) as the Comptroller of the Year. Because of his background and multiple advanced degrees, the Marine Corps considers him a Subject Matter Expert (SME) in his field of finance. He has worked at the highest levels of Headquarters Marine Corps inside the Pentagon, overseeing the development of a multibillion-dollar budget, and has personally briefed the Marine Corps Resource Oversight Counsel (essentially the Marine Corps' Board of Directors). He currently serves on the principal staff for a 3-

star General whose area of responsibility covers two-thirds of the Marine Corps' operating forces, including virtually all of the Marines in the Pacific region. If he is forced out due to his sincerely held religious beliefs, his local command will have a vacancy in a critical billet for which there are currently no replacements available, and its ripple effect will be felt throughout the entire Marine Corps. This will exacerbate the current shortage of Colonels and Lieutenant Colonels in the field, and with only one Finance Marine selected for Colonel on this year's most recent promotion board, it will be at least 2 years before the Marine Corps can make another one, not accounting for pending or inevitable Colonel retirements in his field. COLONEL FINANCIAL MANAGEMENT OFFICER requested a religious accommodation on August 23, 2021 to exempt him from the COVID shot directive. His request was denied on September 22. On October 1, he requested a ten (10) business day extension to file his appeal, and was permitted to submit his appeal to the Commandant of the Marine Corps on October 21. He received a final denial of his appeal from the Assistant Commandant of the Marine Corps (ACMC) on December 14, and an order on February 7, 2022 to get the COVID vaccine by February 11, 2022. The first denial used identical language to others he has seen (minus the names, dates, and a few typos that were later corrected in subsequent form letters). The denial did not address issues he raised in his request and did not meet the required burden to prove the vaccine is the least restrictive means of furthering a compelling government interest. His initial request was rubber-stamp denied without giving it the due consideration that is required. His final appeal denial contained information that is factually questionable

and disingenuous at best, and deeply condescending and disrespectful at worst. It summarily dismissed his sincerely held religious beliefs. In January 2022, in between his final denial and the order to vaccinate, he contracted and recovered from COVID-19, giving him natural immunity. As punishment for not being vaccinated in accordance with the order, the Marine Corps entered him into the Officer Disciplinary Notebook (ODN) on May 9, 2022, and issued a Report of Misconduct on May 26, 2022, which will lead to a Board of Inquiry (BOI) and separation from the Marine Corps.

26. Plaintiff LIEUTENANT COLONEL 1, United States Marine Corps, is a citizen of the State of Texas and a Marine Corps Lieutenant Colonel currently stationed at a United States military facility in the State of Arizona. LIEUTENANT COLONEL 1 is currently an officer and a pilot in the Marine Corps. He has more than 18 years' exemplary service in the Marine Corps and wishes to continue serving his country for many more. LIEUTENANT COLONEL 1's duties include service as a senior officer and pilot with his unit. LIEUTENANT COLONEL 1 has served the United States on five tours and deployments, including one combat deployment in support of Operation Iraqi Freedom (OIF) and two combat deployments in Operation Enduring Freedom (OEF – Afghanistan). LIEUTENANT COLONEL 1 has also served as a TopGun graduate, F/A-18 pilot and instructor, Forward Air Controller (ground-based position calling in air strikes in support of Marine infantry), and in many other billets. Close Air Support and Forward Air Control involves responsibility for dropping ordnance (bombs), firing rockets, and aerial gunnery on enemy targets in

close proximity to Marine infantry. An error in judgment or calculation can result in the deaths of Americans and allies in who are in close proximity to the enemy. LIEUTENANT COLONEL 1's skill at both has saved countless American lives and has destroyed America's enemies. LIEUTENANT COLONEL 1, United States Marine Corps, submitted a request for a religious accommodation and exemption from the United States Marine Corps. LIEUTENANT COLONEL 1 articulated to his command that he has and exercises sincerely held religious beliefs that compel him to abstain from receiving any of the currently available COVID-19 vaccines. LIEUTENANT COLONEL 1 met with his unit's Chaplain, who reviewed his request for a religious exemption and accommodation and who found that LIEUTENANT COLONEL 1's request was made from a position of "absolute sincerity." On December 22, 2021, the Marine Corps denied LIEUTENANT COLONEL 1's religious exemption request by typical form letter. He timely appealed the denial on January 12, 2022. Prior to his timely appeal, however, on January 4, 2022, the Marine Corps removed LIEUTENANT COLONEL 1 from his position as Executive Officer of his squadron. Upon denial of his appeal, LIEUTENANT COLONEL 1 faces potential court martial, dishonorable discharge, and other life-altering disciplinary measures for merely requesting an accommodation for his sincerely held religious beliefs.

27. Plaintiff RESERVE LIEUTENANT COLONEL, United States Marine Corps, is a lieutenant colonel in the United States Marine Corps Reserves (USMCR). She is a cradle Catholic who swore an oath to support and defend the United States

Constitution at the age of 17 when she entered the United States Naval Academy. With each promotion during her time in service, she has re-affirmed that oath. Her grandfather was a World War II veteran who landed in Normandy on D-Day and who inspired RESERVE LIEUTENANT COLONEL to pursue an appointment to the Naval Academy. She was a recruited Division 1 athlete and chose the Naval Academy so she would be immersed in the military culture with like-minded patriots with whom she would establish a bond that would extend beyond their time in Annapolis. RESERVE LIEUTENANT COLONEL was a senior at the Naval Academy on September 11, 2001. RESERVE LIEUTENANT COLONEL service selected the United States Marine Corps because she was called to its traditions and challenges, and she wanted to serve with some of the most inspirational officers and senior enlisted leaders who had influenced her while at the Naval Academy. On September 3, 2021, and in accordance with Marine Corps Order 1730.9, RESERVE LIEUTENANT COLONEL submitted a request for religious accommodation (RA) from the COVID-19 shot mandate to the Deputy Commandant, Manpower and Reserve Affairs (D/C, M&RA), a three-star general, based on RESERVE LIEUTENANT COLONEL's sincerely held Catholic religious beliefs that all life is sacred from conception to natural death, and receiving the COVID shot would constitute a violation of her conscience before God. Her RA request included a letter from her parish priest among other required documents. On October 1, RESERVE LIEUTENANT COLONEL received a denial of her RA request from D/C, M&RA, Lt. Gen. David Ottignon, USMC, stating that COVID-19 vaccination was the "least

restrictive means of furthering the government's compelling interest." The letter provided her the opportunity to appeal to the Commandant of the Marine Corps (CMC), and on October 13, 2021, RESERVE LIEUTENANT COLONEL did appeal the denial to the CMC. On December 10, 2021, General Eric M. Smith, Assistant Commandant of the Marine Corps (ACMC) denied the appeal, giving as a reason that "the COVID-19 vaccination requirement does not substantially burden your sincerely held religious belief because fetal stem cells are neither used in the manufacture of the Pfizer COVID-19 vaccines nor are they present in the vaccine itself." The ACMC's denial brazenly presupposes authority over RESERVE LIEUTENANT COLONEL's religious beliefs and her consciousness before God. Additionally, the ACMC's statement that "fetal stem cells are [not] used in the manufacture of the Pfizer COVID-19 vaccines" is in direct contradiction to the Archbishop of the Military Diocese's *Statement on Coronavirus Vaccines and the Sanctity of Conscience* of October 12, 2021. The Marine Corps on December 23, 2021, offered RESERVE LIEUTENANT COLONEL the "choice" of "voluntarily" dropping to "Inactive Ready Reserve" status, or facing administrative separation. Now, she is not able to work for the Marine Corps, losing income and service years toward retirement, because she cannot take vaccine in direct contradiction to her sincerely held religious beliefs and was trying to avoid defying a direct order.

28. Plaintiff CAPTAIN, United States Marine Corps, is a citizen of the State of South Carolina and a patriotic American whose faith is Islam. Desiring to serve his country, he enlisted in the United States Marine Corps in 2014, graduating from recruit

training in March 2015. After serving with a Law Enforcement Battalion and earning his undergraduate degree, he was selected for Officer Candidate School, and commissioned as a second lieutenant in 2016. After graduating from The Basic School, he attended the Military Police Basic Officer Course, with his first duty assignment at a Marine Corps Law Enforcement Battalion as a Platoon Commander. He attended courses in Norway and commanded a Military Police Integrated Company during a NATO Exercise. He has been deployed in several locations, including Africa. CAPTAIN desires to continue serving in the Marine Corps, consistent with his Islamic religious beliefs that require him to abstain from participation in that which is *haram*—forbidden—including the destruction and commoditization of innocent human life as exemplified by the use of human fetal cell lines derived from abortions. CAPTAIN desires to exercise “complete reliance on God” rather than in what he believes to be morally tainted COVID shots. The Marine Corps denied CAPTAIN’s religious accommodation request on October 27, 2021, which denial he timely appealed on November 11, 2021. The Marine Corps denied his appeal on February 23, 2022, and on March 1 ordered him to receive COVID-19 vaccination within two days, stating that his failure to comply would be a violation of a “lawful order” subjecting him to “punitive and/or administrative action.” CAPTAIN filed a motion for a temporary restraining order (TRO) against enforcement of the vaccination order on March 2, resulting in the Marine Corps’ temporarily extending his vaccination deadline to March 24. (ECF No. 147 at 1.) On March 28 the Marine Corps ordered CAPTAIN to vaccinate by April 1, 2022, again stating that his failure to vaccinate would be a

violation of a “lawful order” subjecting him to “punitive and/or administrative action.” (ECF No. 147 at 2.) On April 1 the Court entered a TRO against enforcement of the vaccination order (ECF No. 150), and following an evidentiary hearing on April 11, 2022, the Court entered a preliminary injunction against enforcement on April 21. (ECF No. 173.)

29. Plaintiff, CAPTAIN 2, United States Marine Corps is a captain in the United States Marine Corps. He loves America and wanted to serve and protect his fellow citizens in giving back to the Country that God has blessed, which has blessed his family. He comes from a rich line of those who have served their Country in the military, selflessly, since World War I. He enlisted in the Marine Corps in December of 2011 and graduated from the Recruit Training Depot in San Diego March of 2012 as the most physically fit recruit, winning the Iron Man award. He was the honor graduate for the bulk fuel course at the quartermaster schoolhouse and was meritoriously promoted to the rank of Corporal prior to being selected to go to Officer Candidate School (OCS). He subsequently attended and graduated from OCS and The Basic School (TBS) for officers, where he learned about leading Marines as an infantry officer. His current responsibility with the Marine Corps is a command and control (C2) officer (COMMO) 0602. His job is critical to mission success because it is a vital warfighting function. CAPTAIN 2 enables the commander to effectively C2 his or her units on the battlefield. Without C2, there is no feedback mechanism from the units on the ground regarding new developments to adapt to the situation and no method for commanders to issue orders to the units (division, regiment, battalion, company)

under their charge. He has also been trained as a 0603 Marine Air Ground Task Force (MAGTF) Communications Planner and has received training within the information domain, the newest warfighting function for both the Marine Corps and joint services. He is currently enrolled at the Marine Corps Expeditionary Warfare School (EWS). As one of the top ten percent of captains, CAPTAIN 2 was hand-selected by the Marine Corps to attend the resident course. The school focuses on educating and training company grade officers, to prepare them mentally, morally, and physically, for billets of increased leadership responsibility across the Fleet Marine Force and the Joint Force. The training provided by EWS emphasizes the warfighting capabilities of a MAGTF operating within a complex and distributed naval expeditionary environment. By meeting the challenges of the future through a Professional Military Education (PME) program, the Marine Corps is ensuring its leaders are the best prepared of any military organization in the world. In his career, he has served stateside and overseas. CAPTAIN 2 has now honorably served approximately ten years for the United States Marine Corps, both as active duty and in the reserve. CAPTAIN 2 never thought he would be placed in the position of conflict between his faith and a military order and have to decide whether to remain true to what God wants him to do or be kicked out of the service. CAPTAIN 2 submitted his Religious Accommodation (RA) waiver request on September 15, 2021. When he received an initial denial on September 30, he timely appealed on October 7. The denial did not address his specific request. He found out later that other Marines had received the same exact rubber stamp denial letter in response to their RAs. He learned that the

Religious Accommodation Review Board unanimously voted that he was sincere in his faith, but the Board still denied CAPTAIN 2's request. After he submitted his appeal, he received a final denial on December 7. On December 13, 2021, Brigadier General Field, Commanding General of Education Command, ordered CAPTAIN 2 to take the vaccine within 10 days or face an administrative separation. CAPTAIN 2 had to sign an acknowledgement of the order. Because of his sincerely held religious objection to the vaccination, CAPTAIN 2 was unable to get the vaccine, and the Marine Corps considers him in violation of the order. On February 2, 2022, the Marine Corps charged CAPTAIN 2 with an Article 92 UCMJ violation, starting the administrative process to separate CAPTAIN 2 from the Marine Corps, which is currently proceeding. On March 2, 2022, the command told CAPTAIN 2 to attend a phone muster, and not come to class any more at EWS while other students that were not vaccinated could not only still attend, but attend without masks. CAPTAIN 2 was told that he had met all graduation requirements and would graduate, yet the command did not want CAPTAIN 2 to be in class any more. An early graduation for a Ukrainian military student was provided that same week, yet CAPTAIN 2 was not permitted to attend graduation, and was deprived of participation in other events, like mess night and the Occupational Field Expansion Course (OFEC). The command then identified OFEC as the final item which the students needed to pass and since CAPTAIN 2 did not participate, he was informed he would fail. Other students, regardless of vaccination status, were allowed to take leave during OFEC, and still graduated. CAPTAIN 2 was removed from attending the final quarter of the course

by the leadership of the school, and then told he would not graduate with the rest of the school, due to “lack of participation.” CAPTAIN 2 received an “acknowledgement of receipt of report of misconduct and inclusion of adverse material in official military personnel file” on March 9, 2022. CAPTAIN 2 requested mast March 21, 2022 requesting an explanation of why he was dropped from school, not provided a formal written order and date regarding the drop, why he was told he would graduate (but was not provided a graduation certificate) and why unvaccinated servicemembers were attending graduation, while he could not. The mast was closed out with little resolution on March 22, 2022. CAPTAIN 2 was in receipt of a “Notice of Board of Inquiry” and signed an “Acknowledgement of Notice” on March 25, 2022. The Board of Inquiry is tentatively scheduled for July 7-8, 2022.

30. Plaintiff, CAPTAIN 3, United States Marine Corps, is a Captain in the United States Marine Corps. Shortly after turning 18, in June of 2009, he enlisted in the Marine Corps through the Delayed Entry Program (DEP). While in the DEP prior to going to boot camp, he was awarded the Naval Reserve Officer Training Corps (NROTC) Scholarship to the Virginia Military Institute (VMI). Upon graduating VMI with a degree in international studies, he was commissioned as an active duty Marine officer in May of 2014. Following The Basic School (TBS), CAPTAIN 3 was assigned the military occupational specialty (MOS) of Military Police (MP). While at the Military Police Basic Officer Leadership Course (MPBOLC), he was awarded the leadership award by the faculty and earned a gold medal for the German Armed Forces Proficiency Badge. He served approximately two years and ten months

overseas while stationed on Okinawa, Japan and later completed a successful recruiting tour on the east coast. While in the fleet, he became an instructor of non-lethal weapons and tactics (INWIC), as well as an instructor of combat water survival (MCIWS). His job as an MP officer (5803 MOS designation) is of vital importance to the overall mission readiness of the Marine Corps. Force Protection—one of the seven warfighting functions according to US military doctrine—plays an integral role in the military’s ability to protect the nation and our interests abroad. MP’s are included in every branch of service and have throughout their history provided essential capabilities, especially during times of war. He is a devout Christian who stands firmly in his beliefs in Jesus Christ and the Bible. CAPTAIN 3 submitted a Religious Accommodation (RA) waiver request on September 10, 2021. The Deputy Commandant for Manpower and Reserve Affairs denied the RA on October 1. The denial was identical to nearly every other RA denial across the Navy and Marine Corps. CAPTAIN 3 submitted his appeal package to the Commandant of the Marine Corps on October 13, fulfilling all procedural guidelines and timelines, and proposing numerous viable accommodations of his religious convictions that would achieve the same end state of protection against the virus backed by 20 citations of clinical studies and research materials. The appeal was denied on December 7, 2021, without providing a single source or citation backing the claims that the vaccine is the most efficient means of protection against the COVID-19 virus. On December 13, 2021, Brigadier General Field, Commanding General of Education Command, ordered CAPTAIN 3 to take the vaccine within 10 days or face an administrative separation.

CAPTAIN 3 had to sign an acknowledgement of the order. Because of his faith, CAPTAIN 3 was unable to get the vaccine, and the Marine Corps considers him in violation of the order. On January 14, 2022, the Marine Corps charged CAPTAIN 3 with an Article 92 UCMJ violation, starting the administrative process to separate CAPTAIN 3 from the Marine Corps. On March 1, 2022, the Marine Corps dropped CAPTAIN 3 from the resident Expeditionary Warfare School (EWS) for not complying with the vaccine mandate. The effect of this decision by the EWS command will result in CAPTAIN 3 no longer being Professional Military Education (PME) complete for grade, and consequently no longer eligible for promotion next year. Currently, CAPTAIN 3 is in a legal hold status awaiting a separation board date and is not allowed to move (PCS or PCA) to any other unit in the meantime. These actions are detrimental to CAPTAIN 3's career and promotion competitiveness.

31. Plaintiff, FIRST LIEUTENANT, United States Marine Corps, is a Supply Officer (SUPO) with the First Marine Expeditionary Force (MEF). His job is critical to mission success because it focuses on maintaining the battle tempo and winning battles via supply chain and logistic functions. His role at the Supply Management Unit (SMU) provides for the demands of consumable repair parts to maintain readiness of equipment stateside and abroad. As a SUPO, he keeps track of a multimillion-dollar account and the fiscal obligations of I MEF to the SMU. His section works in coordination with Marines of the General Account section to communicate how much money is available to replenish stocks within the SMU to support the MEF's missions. Since the start of COVID, all of the units with which

FIRST LIEUTENANT has been associated have been fully mission capable. FIRST LIEUTENANT received an initial denial of his Religious Accommodation (RA) request on September 30, 2021, and timely appealed on October 7. The denial did not address his specific request, and he found out later that other Marine had received the same exact rubber stamp denial letter in response to their RAs. To this date, no RA within his personal knowledge has been approved in the USMC. He has since found out that the Religious Accommodation Review Board unanimously voted that he was sincere in his faith, but the Board still denied his request for accommodation. FIRST LIEUTENANT received a final denial of his RA request on December 27, 2021, and consequences have already occurred. He received the order to get the COVID shots on December 28, stating that if he did not comply within two calendar days, he would be subjected to discipline, and the process would begin to kick him out of the Marine Corps. On December 30, 2021 FIRST LIEUTENANT was required to sign a Form 3005 written counseling, stating he was in violation of Article 92—failure to obey a lawful order—by not receiving the COVID shot. There was no mention of his RA request or appeal on this form, which went into his personnel file. Another Form 3005 written counseling came on January 5, 2022, relieving FIRST LIEUTENANT of his duties for cause, and he was entered into the Officer Disciplinary Notebook. He attended a “Transition Readiness Seminar” initial counseling on January 10, 2022 and a pre-separation brief the following day to schedule the week-long seminar starting on February 28. FIRST LIEUTENANT completed his final physical paperwork on the afternoon of February 7. On February 10, 2022, FIRST LIEUTENANT received a

Report of Misconduct and Notification of Recommendation for Administrative Separation. These documents give a timeline of events and claim the following reasons for separation are substandard performance of duty and misconduct, moral or professional dereliction. The Report of Misconduct and Notification of Recommendation for Administrative Separation claim FIRST LIEUTENANT failed to demonstrate acceptable qualities of leadership required of an officer in the member's grade; Failure to properly discharge duties assigned to or expected of an officer in the member's grade; and Commission of a military offense that could be punished by confinement of six months or more; specifically, violations of Article 92 (violation of or failure to obey a lawful general order; Failure to obey other lawful order) of the Uniform Code of Military Justice. FIRST LIEUTENANT timely filed rebuttals to both the Report of Misconduct and Notification of Recommendation for Administrative Separation on February 28, 2022. On March 2, even after FIRST LIEUTENANT provided nine positive character statements and presented all previous positive fitness reports, his Commanding General recommended that he be administratively separated with a General (Under Honorable Conditions) characterization of service. Both the Report of Misconduct and the Notification of Recommendation for Administrative Separation was then routed with all other previously mentioned documentation through every echelon of his chain of command and up to the Secretary of the Navy. FIRST LIEUTENANT completed Transition Readiness Seminar March 4th and the Capstone Interview with his command on March 7th. Completion of the interview was the last requirement needed for Secretary

of the Navy to make a final determination and to complete the Administrative Separation process. On April 27th, FIRST LIEUTENANT also received an adverse fitness report for his previously relieved billet. FIRST LIEUTENANT received word that his administrative package was at the Secretary of the Navy's level the second week of May 2022. FIRST LIEUTENANT expects to receive notice of his final separation at any time. Meanwhile, while FIRST LIEUTENANT has been subjected to outprocessing because he has not received a COVID vaccination, more than 100 "fully vaccinated" members of his unit were required to quarantine in January 2022 because they came down with COVID.

32. Plaintiff SECOND LIEUTENANT, United States Marine Corps, is a citizen of the State of Alabama who graduated from the United States Naval Academy (USNA) in 2021 and is now currently at The Basic School (TBS). Prior to the Naval Academy, he attended Marion Military Institute (MMI) for two years. His six years of military college were deliberate, as he has spared no expense in preparing himself to serve as the caliber of leader that United States Marines deserve. He has maintained a flawless conduct record throughout his time in college and in service, as he believes setting such an example is paramount. He has sought out every opportunity for leadership positions requiring ironclad integrity and a dedication to the Profession of Arms, including the MMI Cadet Honor Board and USNA Brigade of Midshipman Honor Investigation System. His professional education and mentorship has focused extensively on the nuances of military law, good order and discipline, the concept of "immediate obedience to orders," and the invaluable obligation that a commissioned

officer holds to honor his or her Oath of Office. He is well known by his peers to be exceptionally disciplined in his conduct and dedicated to his Oath of Office, even in facing the potential loss of his livelihood and lifelong dream of serving and leading Marines. SECOND LIEUTENANT submitted a request for a religious accommodation from the COVID shot mandate, on multiple grounds, including his sincerely-held religious belief “that, first and foremost, a Christian's body is the Temple of the Holy Spirit and should be protected from deliberate or reckless injury or violation,” and second, that “deceit pursuant to personnel compliance and/or financial gain, is morally objectionable before God.” Upon submitting his religious exemption request, he was immediately removed from his training company, and placed in Mike Company, a non-training company reserved for 2nd Lieutenants who are either injured and unable to complete training, or are pending punitive legal action, while his religious accommodation request is routed up his Chain of Command for a final decision from the Deputy Commandant of the Marine Corps. SECOND LIEUTENANT should have been kept in his training company while his request was pending, as he has not violated any DoD or Marine Corps orders in doing so, and is administratively exempt from all pertinent orders for the duration of time awaiting a final decision. His placement in Mike Company and removal from active training does not protect the force from COVID, as SECOND LIEUTENANT is required to provide administrative and labor assistance to the command, in support of his colleagues in the field and elsewhere. He is required to physically interact with his peers in all current Basic Officer Course classes in the execution of his support role

duties. In other words, he remains active around base, working to help his former colleagues graduate from training, while his own training has been placed on hold indefinitely despite no legal or administrative misconduct. This is punitive and an improper response to a religious exemption request. SECOND LIEUTENANT deeply desires to continue training for service to the Nation in the United States Marine Corps, without the profound conflict between his religious beliefs and the COVID shot directives, and without discrimination. On January 20, 2022, SECOND LIEUTENANT was removed from the training cycle. On January 25, 2022, the Marine Corps Deputy Commandant for Manpower and Reserve Affairs denied SECOND LIEUTENANT's request for religious accommodation, and SECOND LIEUTENANT appealed the denial on February 4, 2022. During his 10-day window to appeal the denial, and after he had notified his Chain of Command in writing of his intent to appeal the denial, the TBS Chain of Command directed SECOND LIEUTENANT to preemptively conduct his terminal separation/retirement physical examination. Beginning January 20, 2022, through June 30, 2022, SECOND LIEUTENANT remains out of the training cycle because of his fidelity to his religious beliefs, despite the outstanding personal and professional reviews from his command. SECOND LIEUTENANT has continued, daily full contact responsibilities in the support program for the same training cycle from which he was removed. To date, SECOND LIEUTENANT has been compelled to complete over 400 hours of unabated close-contact interaction with hundreds of officers and enlisted personnel, many of whom traveled to out-of-state or overseas duty stations within days of contact.

If SECOND LIEUTENANT's appeal is denied, the Marine Corps will immediately begin the separation process.

33. Plaintiff CHIEF WARRANT OFFICER 4, United States Marine Corps, is a United States Marine currently domiciled in Hillsborough County, Florida with temporary station in Hawaii. He has served his country honorably for 26 years in the Marine Corps. On October 6, 2021, CHIEF WARRANT OFFICER 4 requested accommodation of his religious objections to COVID-19 vaccination. On November 24, 2021, the Marine Corps denied his request for religious accommodation using the same form letter and boilerplate language as used in denying all Marines' religious accommodation requests. On December 8, 2021, he timely appealed the denial. CHIEF WARRANT OFFICER 4 was previously a plaintiff in *Crosby v Austin*, M.D. Fla. No. 8:21-cv-2730 TPB-CPT, and following severance from that action, in *Bongiovanni v. Austin*, M.D. Fla. No. 3:22-cv-00237-MMH-MCR. Following severance from the *Bongiovanni* action, CHIEF WARRANT OFFICER 4 became a plaintiff in yet another action, M.D. Fla. No. 8:22-CV-01188 TPB-JSS, which was transferred by Judge Barber to Judge Merryday on June 24, 2022, and now numbered 8:22-cv-1188 SDM-JSS. (Contemporaneously with the filing of this Third Amended Complaint, Plaintiffs are moving for consolidation of the transferred action, No. 8:22-CV-01188 TPB-JSS, with this action.) CHIEF WARRANT OFFICER 4 believes that the Marine Corps has finally denied his religious accommodation appeal, but that, due to his ongoing litigation against the Marine Corps, his chain of command is withholding the written notice of denial from him in an effort to prevent the ripening of his claims

before the Court. CHIEF WARRANT OFFICER 4 has made inquiries as to the status of his appeal but has still not received official notice that his appeal has been denied.

34. Plaintiff CHIEF WARRANT OFFICER 3, United States Marine Corps, is a Christian who swore an oath to support and defend the United States Constitution at the age of 20 when he entered the United States Marine Corps. With each reenlistment during his time in service, he has reaffirmed that oath, which he has committed to memory because of its importance. CHIEF WARRANT OFFICER 3 has served in Naval Aviation for nearly two decades where he has deployed on 9 separate occasions, with several being in support of Operation Iraqi Freedom and Operation Enduring Freedom. He has spent more than 6 years of his 20 years of service away from his family and loved ones in service to his Nation. Despite COVID-19's impact on our Nation beginning in March of 2020, his command has been able to accomplish its mission. He received the prestigious Advanced Aircraft Maintenance Officer Course during Weapons Tactics Instructor training over several weeks in Yuma, Arizona without interruption under the COVID protocols in place at the time. After this course, he received an additional MOS making his knowledge and experience essential to combat command as it applies to Marine Corps Aviation abilities. On August 17, 2021, he submitted a Religious Accommodation (RA) request to the Deputy Commandant, Manpower and Reserve Affairs (D/C, M&RA), based on his sincere religious beliefs. It was denied on September 22. He later discovered that the denial letter was virtually identical to other RA denials, without consideration for the uniqueness of his request. He timely appealed on October 2, 2021, and his appeal

received its final denial on November 24. CHIEF WARRANT OFFICER 3 was given a January 7, 2022 deadline to be fully vaccinated, despite his religious beliefs. His faith did not allow him to receive a COVID vaccination. Now, nothing stands between him and immediate punitive consequences, except the Court's intervention.

35. Plaintiff LANCE CORPORAL 1, United States Marine Corps, is a citizen of the State of California currently stationed at a United States Marine Corps facility in California. LANCE CORPORAL 1 is currently serving in the United States Marine Corps in the 1st Radio Battalion, I Marine Expeditionary Force Information Group with the I Marine Expeditionary Force. LANCE CORPORAL 1 was raised in a Christian home where his father always told him that he had the choice of going to college or joining the military. Once he decided to join the military, LANCE CORPORAL 1 instantly chose the Marines because he believed they are the best of the bunch. LANCE CORPORAL 1 started dedicating his life to physical fitness to prepare for the difficult journey he chose. LANCE CORPORAL 1 has discovered a talent and passion for Electrical Maintenance and intends to pursue it as a civilian career post-military. LANCE CORPORAL 1 signed a 5-year contract, and he plans on serving his country for 5 years. LANCE CORPORAL 1 submitted a request for religious exemption from the vaccine mandate, articulating to his command that he has and exercises sincerely held religious beliefs that compel him to abstain from receiving any of the currently available COVID-19 vaccines. The Marine Corps denied the request on November 9, 2021, and LANCE CORPORAL 1 timely appealed the denial. Upon denial of his appeal, LANCE CORPORAL 1 faces potential court

martial, dishonorable discharge, and other life-altering disciplinary measures for merely requesting an accommodation of his sincerely held religious beliefs.

36. Plaintiff LANCE CORPORAL 2 is a citizen of the Commonwealth of Virginia, and was stationed in North Carolina on active duty orders throughout this action. LANCE CORPORAL 2's active duty orders were terminated May 26, 2022, based on his request for a religious exemption from the COVID shot, and he has returned to his Marine Corps Reserve unit in Virginia. LANCE CORPORAL 2 joined the Marine Corps in 2018 out of a desire to serve his Country. He graduated Boot Camp, Marine Corps Combat Training, and MOS School, and became a Combat Engineer. LANCE CORPORAL 2 has a strong faith in God and his Son Jesus Christ. He submitted a religious exemption request to the COVID shot orders based on his sincere Christian religious beliefs. He feels the strong conviction of God's Holy Spirit upon his heart that he must not get the COVID shot, and that if he were to get the COVID shot, it would be sin as a violation of the Holy Spirit's leading and direction, and also that it would be sinful complicity in the murder of innocent unborn humans. He believes that all people, born and unborn, are created in God's image, and that life should be respected. He believes it is disrespectful to innocent human life to be associated with or take into his body products derived from abortion. Lance Corporal 2 has been told by several non-commissioned officers that "it is unlikely your religious exemption request will be approved," and that "they're just going to deny them all." If these superiors are correct, he faces involuntary administrative separation at best, and at worst, dishonorable discharge and other life-altering punishment. LANCE

CORPORAL 2's Religious Accommodation (RA) request was denied on December 7, 2021, and he appealed the denial on December 18. On or about December 21, LANCE CORPORAL 2 received a phone call from a mental health counselor. The counselor called him to check on his mental health in the wake of the suicide of LANCE CORPORAL 2's platoon mate, because the platoon mate was "being Administratively Separated for refusing the COVID vaccine." LANCE CORPORAL 2's final appeal was denied on May 2, 2022. The Marine Corps presented him with a Form 6105, stating he had failed to obey a lawful order under Article 90 and Article 92 UCMJ. LANCE CORPORAL 2 was discharged from active duty in North Carolina on May 25, 2022, based on his request for a religious exemption from the COVID shot. He returned to Virginia and checked into his UMSC Reserve unit in Virginia on May 26, 2002. Upon return to his reserve unit, LANCE CORPORAL 2 signed acknowledgment of "Notification of Separation Proceedings" dated June 17, 2022. Absent relief from this court, LANCE CORPORAL 2 faces discharge at any time.

37. Plaintiff LANCE CORPORAL 3, United States Marine Corps, is a Marine currently domiciled in Tampa, Florida. His father served in Vietnam, and he desired to follow in his footsteps and also serve his country. LANCE CORPORAL 3 holds sincere patriotic and religious beliefs. He enlisted in the Marine Corps in 2005, and deployed from 2007-2008 in Operation Iraqi Freedom (OIF), a combat deployment. He received an Honorable discharge in 2009 at the end of his term of service, but later felt called by God to resume service in the Marine Corps. He

reenlisted in April 2021, and currently serves as an Amphibious Assault Vehicle (AAV) crew member. He was raised in a Cuban Catholic home and is deeply committed to his faith. Therefore, on September 6, 2021, he submitted a request for a religious accommodation from the COVID-19 vaccine mandate. On October 4, 2021, the Chaplain for LANCE CORPORAL 3's unit issued a memorandum outlining his belief that LANCE CORPORAL 3's request for a religious accommodation was based on strongly held convictions that he must adhere to God's principles and design for his life. On December 14, 2021, the Deputy Commandant for Manpower and Reserve Affairs issued his order denying LANCE CORPORAL 3's request for a religious accommodation. On March 25, 2022, LANCE CORPORAL 3 timely submitted his appeal of the denial of his requested religious accommodation. LANCE CORPORAL 3 is still waiting on a final adjudication of his appeal.

38. Plaintiff, MIDSHIPMAN 2/C, United States Marine Corps, is a Marine currently domiciled in Polk County, Florida. MIDSHIPMAN 2/C submitted a request for accommodation for her religious objections to COVID-19 vaccination on October 9, 2021. She stated that she has sincerely held religious objections to the COVID-19 vaccines because they are derived from aborted fetal cell lines and informed her command that she believes this violates and desecrates human nature as God created it. Because the vaccines are developed with aborted fetal cells, MIDSHIPMAN 2/C believes that to accept any of them would be to destroy God's temple and tamper with what God created in His own image. Because of that connection, MIDSHIPMAN 2/C cannot in good conscience accept any of the

vaccines. On December 3, 2021, the Navy Chaplain responsible for determining MIDSHPMAN 2/C's sincerity informed the command that he believed MIDSHPMAN 2/C's request was based upon sincerely held religious beliefs and was consistent with the articulated beliefs. On January 12, 2022, the Marine Corps Deputy Commandant for Manpower and Reserve Affairs denied MIDSHPMAN 2/C's requests for a religious accommodation. On February 18, 2022, MIDSHPMAN 2/C timely submitted her appeal of the denial of her religious accommodation request. On June 5, 2022, the Assistant Commandant of the Marine Corps denied MIDSHPMAN 2/C's appeal. In the same form letter that has been issued to all other Marines, the Assistant Commandant stated that although her request was sincere, he did not find that it substantially burdened MIDSHPMAN 2/C's religious beliefs because aborted fetal cells were purportedly not used in the development of the vaccines and cited to good order and discipline as the basis for why no other alternatives were available to MIDSHPMAN 2/C.

39. Plaintiff GUNNERY SERGEANT, United States Marine Corps, is a Marine currently domiciled in St. Petersburg, Florida. He has served stateside, and on numerous deployments. These include deployments in 2010–2011 with the 101st Airborne Division to Nangahar, Afghanistan, 2013 with Special Operations Task Force North in Mazar-e-Sharif, 2014 with Special Operations Task force to Khost, Afghanistan, 2016 to Bagram, Afghanistan, 2017 to Irbil, Iraq, and 2021 to Doha, Qatar. During all these operations he served as a high value target analyst or

Airborne Intelligence Surveillance Operator. He has served in the Marine Corps for almost 14 years. During his deployments he was exposed to hostile fire and hazardous environmental conditions, including his 2014 deployment to a former Soviet chemical weapons dump in Afghanistan, and is on the burn pit registry at the Veterans Administration for toxic fumes exposure. On October 14, 2021, GUNNERY SERGEANT submitted his request for a religious accommodation from the COVID-19 vaccine mandate. The Chaplain responsible for his unit found the request sincere and recommended approval. The Marine Corps Deputy Commandant for Manpower and Reserve Affairs denied his request on December 8, 2021, and GUNNERY SERGEANT timely appealed on December 20, 2021. He is still awaiting a final denial of his appeal.

40. Defendant LLOYD AUSTIN, in his official capacity as the Secretary of the United States Department of Defense (DoD), is responsible for enacting, implementing, and enforcing the federal COVID-19 vaccine mandate for members of the United States Armed Forces under DoD authority. Specifically, Secretary Austin issued the August 24 Memorandum for Senior Pentagon Leadership and other officials mandating that all military servicemembers under Department of Defense authority receive a COVID-19 vaccine. Secretary Austin is sued in his official capacity.

41. Defendant GEN. DAVID H. BERGER, in his official capacity as Commandant of the United States Marine Corps, is responsible for enacting, implementing, and enforcing the Federal COVID-19 Vaccine Mandate for members

of the United States Marine Corps. Defendant Gen. Berger is sued in his official capacity.

JURISDICTION AND VENUE

42. This action arises under the First Amendment to the United States Constitution. This action also arises under federal statutory law, namely the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4, and the Emergency Use Authorization provisions of the Federal Food Drug and Cosmetic Act, 21 U.S.C. § 360bbb-3, as applied by 10 U.S.C. §§ 1107 and 1107a.

43. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

44. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a this action is against an officer or employee of the United States and is where a plaintiff resides.

45. This Court has the authority to grant the requested declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, implemented through Rule 57, Federal Rules of Civil Procedure, and the requested injunctive relief under 28 U.S.C. § 2202 and Rule 65, Federal Rules of Civil Procedure.

46. This Court has the authority to award the requested costs and attorney's fees under 28 U.S.C. §§ 1920 and 2412 and 42 U.S.C. § 1988.

GENERAL ALLEGATIONS

A. THE FEDERAL COVID-19 VACCINE MANDATE.

47. On September 9, 2021, President Biden issued Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, requiring all federal employees to receive one of the COVID-19 vaccines as a condition of employment. (A true and correct copy of Executive Order 14043 is docketed at ECF No. 1-1 as **EXHIBIT A** and incorporated herein.)

48. In Executive Order 14043, President Biden stated: “I have determined that to promote the health and safety of the Federal workforce and the efficiency of the civil service, it is necessary to require COVID-19 vaccination for all Federal employees” (Ex. A at 2.)

49. Consistent with that determination, Executive Order 14043 states: “Each agency shall implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees” (Ex. A at 2.)

50. Also on September 9, 2021, President Biden issued Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, requiring that all federal contractors and subcontractors “comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force.” (A true and correct copy of Executive Order 14042 is docketed at ECF No. 1-2 as **EXHIBIT B** and incorporated herein.) Pursuant to Executive Order 14042, the Safer Federal Workforce Task Force issued its *Guidance*

for Federal Contractors and Subcontractors on September 24, 2021, requiring that all employees of federal contractors and subcontractors receive one of the COVID-19 vaccines as a condition of performing any contract for work for the Federal Government. (A true and correct copy of the *Guidance* is docketed at ECF No. 1-3 as **Exhibit C** and incorporated herein.)

51. On August 24, 2021, Secretary Austin issued a Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, and Defense Agency and DoD Field Activity Directors, Subject: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, mandating that all military servicemembers under DoD authority receive the COVID-19 vaccine. (A true and correct copy of the Secretary's August 24 Memorandum is docketed at ECF No. 1-4 as **EXHIBIT D** and incorporated herein.)

52. In his Memorandum, Secretary Austin stated: "After careful consultation with medical experts and military leadership, and with the support of the President, I have determined that mandatory vaccination against coronavirus disease 2019 (COVID-19) is necessary to protect the Force and defend the American people." (Exhibit C at 1.)

53. Secretary Austin further stated: "I therefore direct the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19." (Exhibit C at 1.)

54. Though not even possible right now (*see infra*), the Secretary stated that mandatory vaccination “will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance.” (Ex. C at 1.)

55. President Biden’s Executive Orders, Secretary Austin’s Memorandum, and all related, resulting, subsequent, amended, or superseding federal orders or directives mandating the vaccination of United States Armed Forces servicemembers, federal civilian employees, or federal civilian contractors, are sometimes collectively referred to herein as the “Federal COVID-19 Vaccine Mandate.”

B. PLAINTIFFS’ SINCERELY HELD RELIGIOUS BELIEFS.

56. Plaintiffs all have sincerely held religious beliefs, rooted in Scripture, that preclude them from complying with the Federal COVID-19 Vaccine Mandate because of the connections between the various COVID-19 vaccines and the cell lines of aborted fetuses, whether in the vaccines’ origination, production, development, testing, or other inputs. Plaintiffs also have sincerely held religious beliefs, rooted in Scripture, that their bodies are temples of the Holy Spirit and that they cannot place anything into their Temples without confirmation and conviction from the Holy Spirit.

57. A fundamental component of Plaintiffs’ sincerely held religious beliefs is that all life is sacred, from the moment of conception to natural death, and that abortion is the murder of an innocent life and a grave sin against God.

58. Plaintiffs’ sincerely held religious beliefs are rooted in Scripture’s teachings that “[a]ll Scripture is given by inspiration of God, and is profitable for

doctrine, for reproof, for correction, [and] for instruction in righteousness.” *2 Timothy* 3:16 (KJV).

59. Because of that sincerely held religious belief, Plaintiffs believe that they must conform their lives, including their decisions relating to medical care, to the commands and teaching of Scripture.

60. Plaintiffs have sincerely held religious beliefs that God forms children in the womb and knows them prior to birth, and that because of this, life is sacred from the moment of conception to natural death. *See Psalm* 139:13–14 (ESV) (“For you formed my inward parts; you knitted me together in my mother’s womb. I praise you, for I am fearfully and wonderfully made.”); *Psalm* 139:16 (ESV) (“Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them.”); *Isaiah* 44:2 (ESV) (“Thus says the LORD who made you, who formed you from the womb”); *Isaiah* 44:24 (ESV) (“Thus says the LORD, your Redeemer, who formed you from the womb: ‘I am the Lord, who made all things’”); *Isaiah* 49:1b (ESV) (“The LORD called me from the womb, from the body of my mother he named my name.”); *Isaiah* 49:5 (ESV) (“And now the LORD says, he who formed me from the womb to be his servant”); *Jeremiah* 1:5 (ESV) (“‘Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations.’”).

61. Plaintiffs also have sincerely held religious beliefs that every child’s life is sacred because each is made in the image of God. *See Genesis* 1:26–27 (ESV) (“Then God said, ‘Let us make man in our image, after our likeness. . . . So God created man

in his own image, in the image of God he created him; male and female he created them.” (footnote omitted)).

62. Plaintiffs have sincerely held religious beliefs that because life is sacred from the moment of conception, the killing of that innocent life is the murder of an innocent human in violation of Scripture. *See, e.g., Exodus* 20:13 (ESV) (“You shall not murder.”); *Exodus* 21:22–23 (ESV) (imposing death penalty for killing of an unborn child); *Exodus* 23:7 (ESV) (“[D]o not kill the innocent and righteous”); *Genesis* 9:6 (ESV) (“Whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image.”); *Deuteronomy* 27:25 (ESV) (“Cursed be anyone who takes a bribe to shed innocent blood.” (internal quotation marks omitted)); *Proverbs* 6:16–17 (ESV) (“There are six things that the LORD hates, seven that are an abomination to him: . . . hands that shed innocent blood”).

63. The Hebrew word for “abomination” in the text above is תוֹעֵבָה (to`eba). The verbal form is “abhor,” “loath,” “detest,” and “exclude.” Twelve times the Book of Proverbs uses תוֹעֵבָה in reference to an “abomination to the LORD.” (יהוה or Yahweh). The word is also used in conjunction with the Ammonites and the Ashtoreth, the Sidonians, Chemosth, and Moab. Some of these nations sacrificed their children to Baal. Indeed, *Jeremiah* 19:4–9, refers to the shedding of innocent blood by sacrificing children as the reason for judgement against Judah. Abortion is the modern-day sacrifice of children made in the image of God. Plaintiffs do not want to be part of such an “abomination.” They do not want indirectly or directly to be in any way associated with abortion. To do so is abhorrent, loathsome, detestable, abominable to

God. In short, to require these employees to inject a substance into their bodies that has any association (no matter how near or remote to abortion) is a sin against their Creator, their Lord, and their Savior.

64. Plaintiffs also have sincerely held religious beliefs that it would be better to tie millstones around their necks and be drowned in the sea than to bring harm to an innocent child. *See Matthew 18:6; Luke 17:2* (ESV).

65. Plaintiffs also have sincerely held religious beliefs that their bodies are temples of the Holy Spirit, and that to inject medical products that have any connection whatsoever to aborted fetal cell lines would be defiling the temple of the Holy Spirit. (*See 1 Corinthians 6:15–20* (ESV) (“Do you not know that your bodies are members of Christ? . . . Or do you not know that your body is a temple of the Holy Spirit within you, whom you have from God? You are not your own, for you were bought with a price. So glorify God in your body.”)).

66. Plaintiffs’ religious beliefs compel them to not condone, support, justify, or benefit (directly or indirectly) from the taking of innocent human life via abortion, and that to do so is sinning against God.

67. Plaintiffs’ sincerely held religious beliefs preclude them from accepting any one of the three currently available COVID-19 vaccines derived from, produced or manufactured by, tested on, developed with, or otherwise connected to aborted fetal cell lines.

68. As reported by the North Dakota Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, “[t]he non-replicating

viral vector vaccine produced by Johnson & Johnson **did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine.**”

See North Dakota Health, *COVID-19 Vaccines & Fetal Cell Lines* (Apr. 20, 2021), https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf.

69. The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which “is a retinal cell line that was **isolated from a terminated fetus in 1985.**” La. Dep’t of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 21, 2020), https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf (emphasis added).

70. Scientists at the American Association for the Advancement of Science have likewise published research showing that the Johnson & Johnson vaccine used aborted fetal cell lines in the development and production phases of the vaccine. Meredith Wadman, *Vaccines that use human fetal cells draw fire*, *Science* (June 12, 2020), available at <https://science.sciencemag.org/content/368/6496/1170.full>.

71. The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health’s publications again confirm that aborted fetal cells lines were used in the “proof of concept” phase of the development of their mRNA vaccines. See La. Dep’t of Public Health, *supra*.

72. The North Dakota Department of Health likewise confirms: “Early in the development of mRNA vaccine technology, **fetal cells were used for ‘proof of concept’ (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein.**” N.D. Health, *supra* (emphasis added).

73. The Chief Scientific Officer and Senior Director of Worldwide Research for Pfizer have also been reported to demonstrate that its COVID-19 vaccine is derived from aborted fetal cells and have made statements that they wanted to keep that information from the public. *See PFIZER LEAKS: Whistleblower Goes On Record, Reveals Internal Emails from Chief Scientific Officer & Senior Director of Worldwide Research Discussing COVID Vaccine ... ‘We Want to Avoid Having the Information on the Fetal Cells Floating Out There’, ProjectVeritas (Oct. 6, 2021), <https://www.projectveritas.com/news/pfizer-leaks-whistleblower-goes-on-record-reveals-internal-emails-from-chief/>.*

74. Specifically, Vanessa Gelman, Pfizer Senior Director of Worldwide Research: “From the perspective of corporate affairs, we want to avoid having the information on fetal cells floating out there...The risk of communicating this right now outweighs any potential benefit we could see, particularly with general members of the public who may take this information and use it in ways we may not want out there. We have not received any questions from policy makers or media on this issue in the last few weeks, so we want to avoid raising this if possible.” *Id.*

75. And, Philip Dormitzer, Pfizer's Chief Scientific Officer is reported as saying that he wanted to keep the information secret because of the objections that pro-life individuals, such as Plaintiffs in this action, would have: "HEK293T cells, used for the IVE assay, are ultimately derived from an aborted fetus. On the other hand, the Vatican doctrinal committee has confirmed that they consider it acceptable for Pro-Life believers to be immunized. Pfizer's official statement couches the answer well and is what should be provided in response to an outside inquiry." *Id.*

76. Because all three of the currently available COVID-19 vaccines are developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, Plaintiffs' sincerely held religious beliefs compel them to abstain from obtaining or injecting any of these products into their body, regardless of the perceived benefit or rationale.

77. Plaintiffs have sincerely held religious beliefs that their bodies are temples of the Holy Spirit, and that to inject medical products that have any connection whatsoever to aborted fetal cell lines would be defiling the temple of the Holy Spirit.

78. Plaintiffs sincerely religious beliefs that their bodies are temples of the Holy Spirit and that they are to glorify God with their bodies lays the foundation for everything they do, consume, or inject into their bodies. From this foundation they make studied and reasonable decisions about what is good and what is not good or may not be good for their bodies. To knowingly abuse their bodies by engaging in a dishonorable act, or consuming or injecting a substance that will or may produce adverse consequences, is a sin against God. Based on this foundation, Plaintiffs would

consume pure water over a similarly clear liquid they know or reasonably conclude is harmful to the body. This belief and other sincerely held religious beliefs are foundational to all their decisions and actions and are not limited to aborted fetal cell lines.

79. Plaintiffs have sincerely held religious beliefs that the Holy Spirit—through prayer and the revelation of Scripture—guide them in all decisions they make in life.

80. Plaintiffs have sincerely held religious beliefs that Jesus Christ came to this earth, died on the cross for their sins, was resurrected three days later, and that when He ascended to Heaven, He sent the Holy Spirit to indwell His believers and to guide them in all aspects of their lives. *See John 16:7* (ESV) (“Nevertheless, I tell you the truth: it is to your advantage that I go away, for if I do not go away, the Helper will not come to you. But if I go, I will send him to you.”); *John 14:26* (ESV) (“But the Helper, the Holy Spirit, whom the Father will send in my name, he will teach you all things and bring to your remembrance all that I have said to you.”).

81. Plaintiffs have sincerely held religious beliefs that the Holy Spirit was given to them by God to reprove them of righteousness and sin and to guide them into all truth. *See John 16:8–13* (ESV) (“And when he comes, he will convict the world concerning sin and righteousness and judgment When the Spirit of truth comes, he will guide you into all the truth, for he will not speak on his own authority, but whatever he hears he will speak, and he will declare to you the things that are to come.”).

82. Plaintiffs also have sincerely held religious beliefs that they will receive answers to their questions through prayer and supplication, including for decisions governing their medical health. *See James* 1:5 (ESV) (“If any of you lacks wisdom, let him ask God, who gives generously to all without reproach, and it will be given him.”); *Mark* 11:24 (ESV) (“Therefore I tell you, whatever you ask in prayer, believe that you have received it, and it will be yours.”); *Philippians* 4:6–7 (ESV) (“[D]o not be anxious about anything, but in everything by prayer and supplication with thanksgiving let your requests be made known to God. And the peace of God, which surpasses all understanding, will guard your hearts and your minds in Christ Jesus.”); *1 John* 4:14–15 (ESV) (“And we have seen and testify that the Father has sent his Son to be the Savior of the world. Whoever confesses that Jesus is the Son of God, God abides in him, and he in God.”).

83. Through much prayer and reflection, Plaintiffs have sought wisdom, understanding, and guidance on the proper decisions to make concerning these COVID-19 vaccines, and Plaintiffs have been convicted by the Holy Spirit that accepting any of the three currently available vaccines is against the teachings of Scripture and would be a sin.

84. Plaintiffs have sincerely held religious beliefs that compel them to follow the teachings of the Holy Spirit, who has not given them peace, comfort, or admonition to accept any of the three currently available COVID-19 vaccines.

85. Plaintiffs have sincerely held religious beliefs that they are being guided and instructed by the Holy Spirit not to accept any of the three currently available COVID-19 vaccines and that it would be a sin against God to do so.

86. Plaintiff CAPTAIN, United States Marine Corps, is of the Islamic faith whose sincerely held religious beliefs that require him to abstain from participation in that which is *haram*—forbidden—including the destruction and commoditization of innocent human life as exemplified by the use of human fetal cell lines derived from abortions. CAPTAIN desires to exercise “complete reliance on God” rather than in what he believes to be morally-tainted COVID shots.

C. PLAINTIFFS’ WILLINGNESS TO COMPLY WITH SAFE AND TESTED ALTERNATIVES TO UNIVERSAL VACCINATION AS ACCOMMODATION OF THEIR SINCERELY HELD RELIGIOUS BELIEFS.

87. Plaintiffs have offered, and are ready, willing, and able to comply with all reasonable health and safety requirements to facilitate their religious exemption and accommodation from the Federal COVID-19 Vaccine Mandate.

88. Plaintiffs have all informed their respective commanding officers that they are willing to comply with reasonable conditions that were sufficient for nearly two years, permitting them to fulfill their sworn duties and faithful service to their employers and a grateful nation, and which reasonable conditions continued from the FDA’s Emergency Use Authorization (EUA) of the first COVID-19 vaccine in December 2020, until August 24, 2021 for military servicemembers. Nothing has

changed except for the Vaccine Mandate, and thus the past proves a good example of present and future reasonable accommodations.

89. The accommodations which have been ongoing for nearly two years are certainly reasonable under the accumulating scientific evidence. Indeed,

A preliminary study has shown that in the case of a breakthrough infection, the Delta variant is able to grow in the noses of vaccinated people **to the same degree as if they were not vaccinated at all**. The virus that grows is just as infectious as that in unvaccinated people, meaning vaccinated people can transmit the virus and infect others.

Sanjay Mishra, *Evidence mounts that people with breakthrough infections can spread Delta easily*, National Geographic (Aug. 20, 2021), <https://www.nationalgeographic.com/science/article/evidence-mounts-that-people-with-breakthrough-infections-can-spread-delta-easily> (emphasis added); *see also Statement from CDC Director Rochelle P. Walensky, MD, MPH on Today's MMWR* (July 30, 2021), <https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html> (noting “**the Delta infection resulted in similarly high SARS-CoV-2 viral loads in vaccinated and unvaccinated people**” (emphasis added).)

90. The CDC Director also admitted that the currently available COVID-19 vaccines do not prevent transmission. *See* Tim Hains, *CDC Director: Vaccines No Longer Prevent You From Spreading COVID* (Aug. 6, 2021), https://www.realclearpolitics.com/video/2021/08/06/cdc_director_vaccines_no_longer_prevent_you_from_spreading_covid.html#!.

91. Other reasonable protocols beyond the currently-available COVID vaccines remain sufficient to prevent the spread of COVID-19 among military servicemembers, and constitute a reasonable alternative to mandatory, universal vaccination as an accommodation of sincerely held religious beliefs.

92. The United States District Court for the Western District of Louisiana recently issued a TRO against a medical school for the school's failure to grant religious exemptions when other reasonable accommodations were available and mandatory vaccination was not the least restrictive means of achieving the school's interest in protecting the school's student body. *See Magliulo v. Edward Via College of Osteopathic Medicine*, No. 3:21-CV-2304, 2021 WL 36799227 (W.D. La. Aug. 17, 2021).

93. The United States District Court for the Western District of Michigan issued a TRO against a university for its failure to allow students with religious objections to vaccination to participate in athletics and other extracurricular activities when other reasonable alternatives were available as a reasonable accommodation for their religious beliefs. *See Dahl v. Bd. of Trustees of W. Mich. Univ.*, No. 1:21-cv-757, 558 F. Supp. 3d 561 (W.D. Mich. Aug. 31, 2021). The Sixth Circuit Court of Appeals affirmed that preliminary injunction in its order refusing to stay the preliminary injunction. *See Dahl v. Bd. of Trustees of W. Mich. Univ.*, No. 21-2945, 15 F.4th 728 (6th Cir. Oct. 7, 2021).

94. In *U.S. Navy Seals v. Biden*, No. 4:21-cv-1236-O, 2022 WL 34443 (N.D. Tex. Jan. 3, 2022), the United States District Court for the Northern District of Texas

entered a preliminary injunction against the United States Navy's sham process for requesting and receiving a religious exemption and accommodation. Indeed, the Court there noted that "The Navy provides a religious accommodation process, but by all accounts, **it is theater**. The Navy has not granted a religious exemption to any vaccine in recent memory. **It merely rubber stamps each denial.**" *Id.* at *1 (emphasis added).

95. In *State v. Nelson*, No. 8:21-cv-2524-SDM-TGW, 2021 WL 6108948, *11 (M.D. Fla. Dec. 22, 2021) (Merryday, J.), this Court held that Defendants' COVID-19 vaccine mandate on federal contractors was also unlawful and issued a preliminary injunction. This Court held that the mandate was issued in excess of the statutory jurisdiction provided to Defendants.

96. The Sixth Circuit, too, has held that the President and the agencies to whom he purportedly delegated authority for the vaccine mandate on federal contractors lacked authority to issue a mandate on federal contractors. *See Kentucky v. Biden*, No. 21-6147, 23 F.4th 585 (6th Cir. Jan. 5, 2022). Indeed, "if the President can order medical interventions in the name of reducing absenteeism, what is the logical stopping point of that power?" *Id.* at 610. Defendants' vaccine mandate on federal contractors "**requires vaccination everywhere and all the time**. It is not 'anchored' to the statutory text, not is it even 'anchored' to the work of federal contractors." *Id.* (emphasis added).

97. The United States Military Health System allows three different types of permanent *medical* exemptions from compulsory immunizations: (1) "determination

by a medical provider that vaccination will seriously endanger a patient's health;" (2) "‘Medical, Reactive’ exemption . . . based on previous severe reaction . . . after a specific vaccine;" and (3) "‘Medical, Immune’ exemption . . . based on evidence of existing immunity to a vaccine-preventable infection." See Military Health System, *Immunization Exemption Guidance*, Health.mil, <https://www.health.mil/Military-Health-Topics/Health-Readiness/Immunization-Healthcare/Clinical-Consultation-Services/Exemption-Guidance> (last visited June 29, 2022).

98. Several Plaintiffs and countless other class members were previously infected with COVID-19, have serologic test results demonstrating natural antibodies and immunity to COVID-19, and otherwise qualify for the exemptions ostensibly available for servicemembers. Plaintiffs, however, have been denied the ability to even requests the officially available exemptions.

D. PLAINTIFFS’ REQUESTS FOR AN ACCOMMODATION FROM THE MANDATORY COVID-19 VACCINE POLICY.

99. COLONEL FINANCIAL MANAGEMENT OFFICER has submitted a request for a religious exemption on August 23, 2021 to exempt him from the COVID shot directive. His request was denied on September 22. On October 1, he requested a ten (10) business day extension to file his appeal, and was permitted to submit his appeal to the Commandant of the Marine Corps on October 21. He received a final denial of his appeal from the Assistant Commandant of the Marine Corps (ACMC) on December 14, and an order on February 7, 2022 to get the COVID vaccine by February 11, 2022. As punishment for not being vaccinated in accordance

with the order, the Marine Corps entered him into the Officer Disciplinary Notebook (ODN) on May 9, 2022, and issued a Report of Misconduct on May 26, 2022, which will lead to a Board of Inquiry (BOI) and separation from the Marine Corps.

100. On November 24, 2021, LIEUTENANT COLONEL 1 submitted to the United States Marine Corps a request for religious exemption from the Federal COVID-19 Vaccine Mandate as an accommodation of his sincerely held beliefs. LIEUTENANT COLONEL 1 articulated to his command that he has and exercises sincerely held religious beliefs that compel him to abstain from receiving any of the currently available COVID-19 vaccines. LIEUTENANT COLONEL 1 met with his unit's Chaplain, who reviewed his request for a religious exemption and accommodation and found that LIEUTENANT COLONEL's request was made from a position of "absolute sincerity." On December 22, 2021, the Marine Corps denied LIEUTENANT COLONEL 1's religious exemption request by typical form letter. He timely appealed the denial on January 12, 2022. Prior to his timely appeal, however, on January 4, 2022, the Marine Corps removed LIEUTENANT COLONEL 1 him from his position as Executive Officer of his squadron. Upon denial of his appeal, LIEUTENANT COLONEL 1 faces potential court martial, dishonorable discharge, and other life-altering disciplinary measures for merely requesting an accommodation for his sincerely held religious beliefs.

101. RESERVE LIEUTENANT COLONEL submitted a request for religious exemption and received her initial denial of October 1, 2021. She timely submitted an appeal, and received a final appeal denial on December 10. The Marine

Corps on December 23, 2021, offered RESERVE LIEUTENANT COLONEL the “choice” of “voluntarily” dropping to “Inactive Ready Reserve” status, or facing administrative separation. Now, she is not able to work for the Marine Corps, losing income and service years toward retirement, because she cannot take vaccine in direct contradiction to her sincerely held religious beliefs and was trying to avoid defying a direct order.

102. CAPTAIN submitted a request for a religious exemption because of his Islamic religious beliefs that require him to abstain from participation in that which is *haram*—forbidden—including the destruction and commoditization of innocent human life as exemplified by the use of human fetal cell lines derived from abortions. CAPTAIN desires to exercise “complete reliance on God” rather than in what he believes to be morally-tainted COVID shots. The Marine Corps denied CAPTAIN’s religious accommodation request on October 27, 2021, which denial he timely appealed on November 11, 2021. The Marine Corps denied his appeal on February 23, 2022, and on March 1 ordered him to receive COVID-19 vaccination. CAPTAIN filed a motion for a temporary restraining order (TRO) against enforcement of the vaccination order on March 2, resulting in the Marine Corps’ temporarily extending his vaccination deadline to March 24. (ECF No. 147 at 1.) On March 28 the Marine Corps ordered CAPTAIN to vaccinate by April 1, 2022. (ECF No. 147 at 2.) On April 1 the Court entered a TRO against enforcement of the vaccination order (ECF No. 150), and following an evidentiary hearing on April 11, 2022, the Court entered a preliminary injunction against enforcement on April 21. (ECF No. 173.)

103. CAPTAIN 2 submitted a request for a religious exemption on September 15, 2021. When he received an initial denial on September 30, he timely appealed on October 7. The denial did not address his specific request. He found out later that other Marines had received the same exact rubber stamp denial letter in response to their RAs. To date, no RA within CAPTAIN 2's personal knowledge has been approved. He learned that the Religious Accommodation Review Board unanimously voted that he was sincere in his faith, but the Board still denied CAPTAIN 2's request. After he submitted his appeal, he received a final denial on December 7, and consequences have begun to flow. On December 13, 2021, Brigadier General Field, Commanding General of Education Command, ordered CAPTAIN 2 to take the vaccine within 10 days or face an administrative separation. CAPTAIN 2 had to sign an acknowledgement of the order. Because of his faith in Jesus, CAPTAIN 2 was unable to get the vaccine, and the Marine Corps considers him in violation of the order. On February 2, 2022, the Marine Corps charged CAPTAIN 2 with an Article 92 UCMJ violation, starting the administrative process to separate CAPTAIN 2 from the Marine Corps, which is currently proceeding as fast as the Marine Corps can prosecute it.

104. CAPTAIN 3 submitted a Religious Accommodation (RA) waiver request on September 10, 2021. The Deputy Commandant for Manpower and Reserve Affairs denied the RA on October 1, and his final appeal of his denial was issued on December 7. On December 13, 2021, Brigadier General Field, Commanding General of Education Command, ordered CAPTAIN 3 to take the vaccine within 10 days or face an administrative separation. CAPTAIN 3 had to sign an acknowledgement of

the order. Because of his faith, CAPTAIN 3 was unable to get the vaccine, and the Marine Corps considers him in violation of the order. On January 14, 2022, the Marine Corps charged CAPTAIN 3 with an Article 92 UCMJ violation, starting the administrative process to separate CAPTAIN 3 from the Marine Corps, which is currently proceeding as fast as the Marine Corps can prosecute it.

105. FIRST LIEUTENANT received an initial denial of his Religious Accommodation (RA) request on September 30, 2021, and timely appealed on October 7. The denial did not address his specific request, and he found out later that other Marine had received the same exact rubber stamp denial letter in response to their RAs. To this date, no RA within his personal knowledge has been approved in the USMC. He has since found out that the Religious Accommodation Review Board unanimously voted that he was sincere in his faith, but the Board still denied his request for accommodation. FIRST LIEUTENANT received a final denial of his RA request on December 27, 2021, and consequences have already occurred. He received the order to get the COVID shots on December 28, stating that if he did not comply within 2 calendar days, he would be subjected to discipline, and the process will begin to kick him out of the Marine Corps. On December 30, 2021 FIRST LIEUTENANT was required to sign a Form 3005 written counseling, stating he was in violation of Article 92—failure to obey a lawful order—by not receiving the COVID shot. There was no mention of his RA request or appeal on this form, which will go into his personnel file. He received another Form 3005 written counseling on January 5, 2022, relieving FIRST LIEUTENANT of his duties for cause, and he was entered into the

Officer Disciplinary Notebook. He attended a “Transition Readiness Seminar” initial counseling on January 10, 2022 and a pre-separation brief the following day to schedule the week-long seminar starting on February 28. Following that, the only remaining step prior to FIRST LIEUTENANT’s separation from the Marine Corps will be completion of the Transition Readiness Seminar on March 4.

106. SECOND LIEUTENANT submitted a request for a religious exemption from the COVID shot mandate, on multiple grounds, including his sincerely-held religious belief “that, first and foremost, a Christian's body is the Temple of the Holy Spirit and should be protected from deliberate or reckless injury or violation,” and second, that “deceit pursuant to personnel compliance and/or financial gain, is morally objectionable before God.” Upon submitting his religious exemption request, he was immediately removed from his training company, and placed in Mike Company, a non-training company reserved for 2nd Lieutenants who are either injured and unable to complete training, or are pending punitive legal action, while his religious accommodation request is routed up his Chain of Command for a final decision from the Deputy Commandant of the Marine Corps. SECOND LIEUTENANT should have been kept in his training company while his request was pending, as he has not violated any DoD or Marine Corps orders in doing so, and is administratively exempt from all pertinent orders for the duration of time awaiting a final decision. As of January 20, 2022, SECOND LIEUTENANT remains out of the training cycle because of his fidelity to his religious beliefs, despite the outstanding personal and professional reviews from his command, and has continued, daily full

contact responsibilities in the support program for the same training cycle from which he was removed.

107. CHIEF WARRANT OFFICER 4 submitted his request for religious accommodation on October 6, 2021. On November 24, 2021, the Marine Corps denied his request for religious accommodation using the same form letter and boilerplate language as used in denying all Marines' religious accommodation requests. On December 8, 2021, he timely appealed the denial. CHIEF WARRANT OFFICER 4 was previously a plaintiff in *Crosby v Austin*, M.D. Fla. No. 8:21-cv-2730 TPB-CPT, and following severance from that action, in *Bongiovanni v. Austin*, M.D. Fla. No. 3:22-cv-00237-MMH-MCR. Following severance from the *Bongiovanni* action, CHIEF WARRANT OFFICER 4 became a plaintiff in yet another action, M.D. Fla. No. 8:22-CV-01188 TPB-JSS, which was transferred by Judge Barber to Judge Merryday on June 24, 2022, and now numbered 8:22-cv-1188 SDM-JSS. (Contemporaneously with the filing of this Third Amended Complaint, Plaintiffs are moving for consolidation of the transferred action, No. 8:22-CV-01188 TPB-JSS, with this action.) CHIEF WARRANT OFFICER 4 believes that the Marine Corps has finally denied his religious accommodation appeal, but that, due to his ongoing litigation against the Marine Corps, his chain of command is withholding the written notice of denial from him in an effort to prevent the ripening of his claims before the Court. CHIEF WARRANT OFFICER 4 has made inquiries as to the status of his appeal but has still not received official notice that his appeal has been denied.

108. CHIEF WARRANT OFFICER 3 submitted his request for a religious exemption on August 17, 2021, which was denied on September 22. He timely appealed on October 2, 2021, and his appeal received its final denial on November 24. CHIEF WARRANT OFFICER 3 was given a January 7, 2022 deadline to be fully vaccinated, despite his religious beliefs. Now, nothing stands between him and immediate punitive consequences, except the Court's intervention.

109. On September 9, 2016, LANCE CORPORAL 1 submitted to the United States Marine Corps a request for religious exemption from the Federal COVID-19 Vaccine Mandate as an accommodation of his sincerely held beliefs. LANCE CORPORAL articulated to his command that he has and exercises sincerely held religious beliefs that compel him to abstain from receiving any of the currently available COVID-19 vaccines. The Marine Corps denied the request on November 9, 2021, and LANCE CORPORAL 1 timely appealed the denial. Upon denial of his appeal, LANCE CORPORAL 1 faces potential court martial, dishonorable discharge, and other life-altering disciplinary measures for merely requesting an accommodation of his sincerely held religious beliefs.

110. LANCE CORPORAL 2's request for a religious exemption was denied on December 7, 2021, and he appealed the denial on December 18. On or about December 21, LANCE CORPORAL 2 received a phone call from a mental health counselor. The counselor called him to check on his mental health in the wake of the suicide of LANCE CORPORAL 2's platoon mate, because the platoon mate was "being Administratively Separated for refusing the COVID vaccine." LANCE

CORPORAL 2 expects his appeal and his RA to be denied and remains resolute in his trust in God, but is deeply grieved over the suicide of his friend.

111. On September 6, 2021, LANCE CORPORAL 3 submitted a request for a religious accommodation from the COVID-19 vaccine mandate. On October 4, 2021, the Chaplain for LANCE CORPORAL 3's unit issued a memorandum outlining his belief that LANCE CORPORAL 3's request for a religious accommodation was based on strongly held convictions that he must adhere to God's principles and design for his life. On December 14, 2021, the Deputy Commandant for Manpower and Reserve Affairs issued his order denying LANCE CORPORAL 3's request for a religious accommodation. On March 25, 2022, LANCE CORPORAL 3 timely submitted his appeal of the denial of his requested religious accommodation. LANCE CORPORAL 3 is still waiting on a final adjudication of his appeal.

112. MIDSHIPMAN 2/C submitted a request for accommodation for her religious objections to COVID-19 vaccination on October 9, 2021. On December 3, 2021, the Navy Chaplain responsible for determining MIDSHIPMAN 2/C's sincerity informed the command that he believed MIDSHIPMAN 2/C's request was based upon sincerely held religious beliefs and was consistent with the articulated beliefs. On January 12, 2022, the Marine Corps Deputy Commandant for Manpower and Reserve Affairs denied MIDSHIPMAN 2/C's requests for a religious accommodation. On February 18, 2022, MIDSHIPMAN 2/C timely submitted her appeal of the denial of her religious accommodation request. On June 5, 2022, the Assistant Commandant of the Marine Corps denied MIDSHIPMAN 2/C's appeal.

113. GUNNERY SERGEANT submitted his request for a religious accommodation from the COVID-19 vaccine mandate on October 14, 2021. The Chaplain responsible for his unit found the request sincere and recommended approval. The Marine Corps Deputy Commandant for Manpower and Reserve Affairs denied his request on December 8, 2021, and GUNNERY SERGEANT timely appealed on December 20, 2021. He is still awaiting a final denial of his appeal.

114. While many Plaintiffs' and class members' religious exemption requests have already been denied, the still pending requests have been effectively denied, as Plaintiffs and class members with pending requests have been threatened with dishonorable discharge, court martial, termination, or other life-altering disciplinary measures for merely seeking accommodation of their sincerely held religious beliefs, and some of these Plaintiffs have been informed by their superiors that **no religious exemption or accommodation will be given so there is no point in even making a request.**

115. For example, on October 14, 2021, Vice Admiral William Galinis, Commander, Naval Sea Systems Command (NAVSEA), sent a warning to his entire command, comprising more than 85,000 civilian and military personnel: "The Executive Order mandating vaccinations for all federal employees has provided clear direction. We are moving quickly toward a workforce where vaccinations are a condition of employment. Frankly, if you are not vaccinated, you will not work for the U.S. Navy."

E. THE ONLY COVID-19 VACCINES AVAILABLE IN THE UNITED STATES ARE ADMINISTERED UNDER EMERGENCY USE AUTHORIZATION BECAUSE THERE IS NO FDA APPROVED COVID-19 VACCINE CURRENTLY AVAILABLE IN THE UNITED STATES.

116. Despite the misreporting, there is no COVID-19 vaccine available in the United States that has received full FDA licensing and approval.

117. On August 23, 2021, the United States Food and Drug Administration issued two separate letters pertaining to two separate COVID-19 vaccines. *See* Letter, United States Food and Drug Administration to BioNTech Manufacturing GmbH (Aug. 23, 2021), <https://www.fda.gov/media/151710/download> (“BioNTech Letter”); Letter, United States Food and Drug Administration to Pfizer, Inc. (Aug. 23, 2021), <https://www.fda.gov/media/150386/download> (“Pfizer Letter”). (A true and correct copy of the BioNTech Letter is docketed at ECF No. 1-5 as **EXHIBIT E** and incorporated herein. A true and correct copy of the Pfizer Letter is docketed at ECF No. 1-6 as **EXHIBIT F** and incorporated herein.)

118. In the Pfizer Letter, the FDA confirms that, on December 11, 2020, it granted Emergency Use Authorization (EUA) for the Pfizer-BioNTech COVID-19 Vaccine. (Pfizer Letter at 1.) It also notes that the EUA was continued on December 23, 2020, February 25, 2020, May 10, 2021, June 25, 2021, and August 12, 2021. (Pfizer Letter at 1-2.)

119. The Pfizer Letter also makes clear that there are scientific, manufacturing, and **legal** differences between the Pfizer-BioNTech COVID-19

Vaccine and the newly approved BioNTech COMIRNATY, COVID-19 Vaccine, mRNA. (Pfizer Letter at 2 n.9, 3 n.10.)

120. Specifically, the FDA stated that although COMIRNATY was granted full approval by the FDA, the Pfizer-BioNTech COVID-19 Vaccine was still only authorized under the EUA. (Pfizer Letter at 2 n.9 (“In the August 23, 2021 revision, FDA clarified that, subsequent to the FDA approval of COMIRNATY (COVID-19 Vaccine, mRNA) for the prevention of COVID-19 for individuals 16 years of age and older, **this EUA would remain in place for the Pfizer-BioNTech COVID-19 vaccine for the previously-authorized indication and uses.** It also authorized COMIRNATY (COVID-19 Vaccine, mRNA) under this EUA for certain uses that are not included in the approved biologics license application (BLA).” (emphasis added).

121. All existing vials of the Pfizer-BioNTech COVID-19 Vaccine remain available only under the authorization of the EUA. (Pfizer Letter at 2 n.9.)

122. On information and belief, the existing vials of Pfizer-BioNTech COVID-19 Vaccine in the United States number in the millions, and that all of these EUA vaccine doses will be administered **before any does of the fully approved COMIRNATY**, meaning the fully approved COMIRNATY will not be available for administration in the United States in the near future.

123. There are currently no available doses of COMIRNATY in the United States, and **COMIRNATY is not being manufactured for production or distribution in the United States at this time.**

124. In fact, the FDA Pfizer Letter plainly states that COMIRNATY is not available in the United States: “Although COMIRNATY (COVID-19 Vaccine, mRNA) is approved to prevent COVID-19 in individuals 16 years of age and older, there is no sufficient approved vaccine for distribution to the population.” (Pfizer Letter at 6 n.12 (emphasis added).)

125. Thus, the FDA has admitted and acknowledged that COMIRNATY is not available for the population in the United States, and thus extended the EUA for the Pfizer-BioNTech Covid-19 Vaccine. (*Id.*)

126. Indeed, in order for the FDA to have extended the EUA for the Pfizer-BioNTech Covid-19 Vaccine, **it was required to find that there were no alternatives available for the Pfizer-BioNTech Vaccine.** (*See* Pfizer Letter at 6 (“There is no adequate, approved, and **available alternative** to the Pfizer-BioNTech COVID-19 Vaccine to prevent COVID-19.” (emphasis added).)

127. Moreover, though Secretary Austin stated that the Federal COVID-19 Vaccine Mandate “will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance,” (Ex. D at 1), additional military documents reveal that the Department of Defense is not following its own directive and is, instead, using EUA vaccines because there is no FDA approved vaccine available. In a Memorandum for Assistant Secretary of the Army (Manpower and Reserve Affairs), Assistant Secretary of the Navy (Manpower and Reserve Affairs), Assistant Secretary of the Air Force

(Manpower and Reserve Affairs), and the Director of the Defense Health Agency, Terry Adirim, Acting Assistant Secretary of Defense for Health Affairs, admitted that the Department of Defense was not administering a fully licensed and approved vaccine to the heroes in the United States Armed Forces, but was instead skirting federal law by mandating an EUA vaccine instead. (A true and correct copy of Acting Assistant Secretary Adirim's Memorandum is docketed at ECF No. 1-7 as **EXHIBIT G** and incorporated herein.)

128. Specifically, the Memorandum stated that Department of Defense health care providers “**should use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.**” (Ex. G at 1 (emphasis added).)

129. The same distinctions exist between the Moderna COVID-19 Vaccine, authorized for emergency use on December 18, 2020, and which is available in the United States under the EUA, and Moderna's SPIKEVAX (COVID-19 Vaccine, mRNA), which was approved on January 31, 2022, and which is not available in the United States. *See* Letter, United States Food and Drug Administration to ModernaTX, Inc. (June 17, 2022), <https://www.fda.gov/media/144636/download>, at 1–2, 11 & n.16 (“Although SPIKEVAX (COVID-19 Vaccine, mRNA) and Comirnaty (COVID-19 Vaccine, mRNA) are approved to prevent COVID-19 in certain individuals who fall within the scope of the Moderna COVID-19 Vaccine authorization, **there is not sufficient approved vaccine available** for distribution to

this population” (emphasis added)), 16 (“The Moderna COVID-19 Vaccine . . . and Spikevax (COVID-19 Vaccine, mRNA) have the same formulation. **The products are legally distinct** with certain differences that do not impact safety or effectiveness.” (emphasis added)).

130. Thus, the only currently available COVID-19 vaccines are authorized under EUA only, and therefore cannot be mandated by Secretary Austin. (*See* Count I, *infra*.)

131. The Federal Food, Drug, And Cosmetic Act provides that

subject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an “emergency use.”

21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute].

132. As an essential part of the explicit statutory conditions for EUA, **the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product:**

With respect to the emergency use of an unapproved product, the Secretary, to the extent practicable given the applicable circumstances described in subsection (b)(1), shall, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

. . . .

(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed—

(I) that the Secretary has authorized the emergency use of the product;

(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

(III) **of the option to accept or refuse administration of the product**, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I)–(III) (emphasis added).

133. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. *See, e.g.,* Pfizer-BioNTech, *Fact Sheet for Recipients and Caregivers* (June 25, 2021), <https://www.fda.gov/media/144414/download> (“**It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.**” (emphasis added)).

134. Because all COVID-19 vaccines available in the United States are subject to the EUA Statute restrictions and limitations, all individuals—**including military servicemembers, federal employees, and federal civilian contractors**—have the explicit right under the EUA Statute to accept or refuse administration of the products.

F. IRREPARABLE HARM TO PLAINTIFFS.

135. Because of Defendants’ refusal to grant Plaintiffs merited religious exemptions from the Federal COVID-19 Vaccine Mandate, Plaintiff servicemembers face the unconscionable choice of violating their sincerely held religious beliefs or

facing court martial and dishonorable discharge from their faithful service to the Nation.

136. As a result of the Federal COVID-19 Vaccine Mandate, Plaintiffs have suffered and are suffering irreparable injury by being prohibited from engaging in their constitutionally and statutorily protected rights to the free exercise of their sincerely held religious beliefs.

137. As a result of the Federal COVID-19 Vaccine Mandate, Plaintiffs have suffered and are suffering irreparable injury by being forced to choose between maintaining the ability to feed their families and the free exercise of their sincerely held religious beliefs.

138. As a result of the Federal COVID-19 Vaccine Mandate, Plaintiffs have suffered and are suffering irreparable injury by being stripped of their rights to equal protection of the law and being subjected to disfavored class status in the United States Armed Forces.

139. Servicemember Plaintiffs also face the prospect of irreparable medical injury as a result of the Federal COVID-19 Vaccine Mandate. A recent study conducted by the Department of Defense found “**higher than expected rates of heart inflammation following receipt of COVID-19 vaccines**” among military servicemembers. See Patricia Kime, *DoD Confirms: Rare Heart Inflammation Cases Linked to COVID-19 Vaccines*, Military.com (June 30, 2021), <https://www.military.com/daily-news/2021/06/30/dod-confirms-rare-heart-inflammation-cases-linked-covid-19-vaccines.html> (emphasis added).

In fact, on or about June 29, 2021, Defendants knew that the mRNA vaccines would causing myocarditis/pericarditis (a potentially serious and deadly heart inflammation) in certain members of the military, particularly in males 30 and under. In a study conducted by United States Army, Navy, and Air Force physicians specifically found: **A total of 23 male patients (22 currently serving in the military and 1 retiree; median [range] age, 25 [20-51] years) presented with acute onset of marked chest pain within 4 days after receipt of an mRNA COVID-19 vaccine. All military members were previously healthy with a high level of fitness.** Seven received the BNT162b2-mRNA vaccine and 16 received the mRNA-1273 vaccine. A total of 20 patients had symptom onset following the second dose of an appropriately spaced 2-dose series. All patients had significantly elevated cardiac troponin levels. Among 8 patients who underwent cardiac magnetic resonance imaging within the acute phase of illness, all had findings consistent with the clinical diagnosis of myocarditis. . . . **While the observed number of myocarditis cases was small, the number was higher than expected among male military members after a second vaccine dose.**

Jay Montgomery, et al., *Myocarditis Following Immunization With mRNA COVID-19 Vaccines in Members of the US Military*, Journal of American Medical Association Network (June 29, 2021), *available at* <https://jamanetwork.com/journals/jamacardiology/fullarticle/2781601> (emphasis added).

140. Dr. Matthew Oster, a member of the President's COVID-19 Task Force, confirmed the link between the COVID-19 vaccines and myocarditis, stating: "It does appear that mRNA vaccines may be a new trigger for myocarditis yet it does have some different characteristics." Jackie Salo, *COVID-19 mRNA vaccines likely linked to rare heart condition in kids: CDC panel*, (June 23, 2021), <https://nypost.com/2021/06/23/covid-19-vaccines-from-pfizer-moderna-likely-linked-to-rare-heart-condition-cdc-panel/>.

141. Indeed, it is now well confirmed by the CDC and other studies that males 30 and under have an unacceptable risk of developing myocarditis as a result of the COVID-19 vaccines. (*See* Declaration of Dr. Peter McCullough, docketed at ECF No. 1-8 as **EXHIBIT H** and incorporated herein.)

142. The COVID-19 genetic vaccines (Pfizer, Moderna, J&J) skipped testing for genotoxicity, mutagenicity, teratogenicity, and oncogenicity. In other words, it is unknown whether or not these products will change human genetic material, cause birth defects, reduce fertility, or cause cancer. (Ex. H, McCullough Decl. ¶ 16.)

143. The Pfizer, Moderna, and JNJ vaccines are considered “genetic vaccines”, or vaccines produced from gene therapy molecular platforms which according to US FDA regulatory guidance are classified as gene delivery therapies and should be under a 15-year regulatory cycle with annual visits for safety evaluation by the research sponsors. FDA. Food and Drug Administration. (*Id.* ¶ 17.)

144. The FDA has “advised sponsors to observe subjects for delayed adverse events for as long as 15 years following exposure to the investigational gene therapy product, specifying that the long-term follow-up observation should include a minimum of five years of annual examinations, followed by ten years of annual queries of study subjects, either in person or by questionnaire.” (emphasis added) Thus, the administration of the Moderna, Pfizer, and JNJ vaccines should not be undertaken without the proper consent and arrangements for long-term follow-up which are currently not offered in the US. (See, EUA briefing documents for commitments as to follow up: Moderna , Pfizer , J&J). They have a dangerous mechanism of action in

that they all cause the body to make an uncontrolled quantity of the pathogenic wild-type spike protein from the SARS-CoV-2 virus for at least two weeks probably a longer period based on the late emergence of vaccine injury reports. This is unlike all other vaccines where there is a set amount of antigen or live-attenuated virus. This means for Pfizer, Moderna, and J&J vaccines it is not predictable among patients who will produce more or less of the spike protein. The Pfizer, Moderna, and JNJ vaccines because they are different, are expected to produce different libraries of limited antibodies to the now extinct wild-type spike protein. We know the spike protein produced by the vaccines is obsolete because the 17th UK Technical Report on SARS-CoV-2 Variants issued June 25, 2021, and the CDC June 19, 2021, Variant Report both indicate the SARS-CoV-2 wild type virus to which all the vaccines were developed is now extinct. (*Id.* ¶ 18.)

145. The spike protein itself has been demonstrated to injure vital organs such as the brain, heart, lungs, as well as damage blood vessels and directly cause blood clots. Additionally, because these vaccines infect cells within these organs, the generation of spike protein within heart and brain cells, in particular, causes the body's own immune system to attach to these organs. This is abundantly apparent with the burgeoning number of cases of myocarditis or heart inflammation among individuals below age 30 years. (*Id.*)

146. Because the US FDA and CDC have offered no interpretation of overall safety of the COVID-19 vaccines according to the manufacturer or as a group, nor have they offered methods of risk mitigation for these serious adverse effects which

can lead to permanent disability or death, no one should be pressured, coerced, receive the threat or reprisal, or be mandated to receive one of these investigational products against their will. Because the vaccine centers, CDC, FDA, and the vaccine manufacturers ask for the vaccine recipient to grant indemnification on the consent form before injection, all injuries incurred by the person are at their own cost which can be prohibitive depending on the needed procedures, hospitalizations, rehabilitation, and medications. (*Id.*)

147. The COVID-19 public vaccination program operated by the CDC and the FDA is a clinical investigation and under no circumstance can any person receive pressure, coercion, or threat of reprisal on their free choice of participation. Violation of this principle of autonomy by any entity constitutes reckless endangerment with a reasonable expectation of causing personal injury resulting in damages. (*Id.* ¶ 21.)

148. The total safety reports in VAERS for all vaccines per year up to 2019 was 16,320. The total safety reports in VAERS for COVID-19 Vaccines alone through October 1, 2021, is 778,683. Based on VAERS as of October 1, 2021, there were 16,310 COVID-19 vaccine deaths reported and 75,605 hospitalizations reported for the COVID-19 vaccines (Pfizer, Moderna, JNJ). By comparison, from 1999, until December 31, 2019, VAERS received 3167 death reports (158 per year) adult death reports for all vaccines combined. Thus, the COVID-19 mass vaccination is associated with at least a 39-fold increase in annualized vaccine deaths reported to VAERS. (*Id.* ¶ 28.)

149. COVID-19 vaccine adverse events account for 98% of all vaccine-related AEs from December 2020 through the present in VAERS. (*Id.* ¶ 29.)

150. The COVID-19 vaccines are not safe for general use and cannot be deployed indiscriminately or supported, recommended, or mandated among any group. (*Id.* ¶ 30.)

151. There are emerging trends showing that the vaccine is especially risky for those 12- 29 in Dr. McCullough's expert medical opinion with complications in the cardiovascular, neurological, hematologic, and immune systems. (See, Rose J, et al). Increasingly the medical community is acknowledging the possible risks and side effects including myocarditis, Bell's Palsy, Pulmonary Embolus, Pulmonary Immunopathology, and severe allergic reaction causing anaphylactic shock. See Chien-Te Tseng, Elena Sbrana, Naoko Iwata- Yoshikawa, Patrick C Newman, Tania Garron, Robert L Atmar, Clarence J Peters, Robert B Couch, Immunization with SARS coronavirus vaccines leads to pulmonary immunopathology on challenge with the SARS virus, <https://pubmed.ncbi.nlm.nih.gov/22536382/> (last visited June 21, 2021); Centers for Disease Control and Prevention, Allergic Reactions Including Anaphylaxis After Receipt of the First Dose of Pfizer-BioNTech COVID-19 Vaccine—United States, December 14– 23, 2020 (Jan 15, 2021). (*Id.* ¶ 31.)

152. The Centers for Disease Control has held emergency meetings on this issue and the medical community is responding to the crisis. It is known that myocarditis causes injury to heart muscle cells and may result in permanent heart damage resulting in heart failure, arrhythmias, and cardiac death. These conditions

could call for a lifetime need for multiple medications, implantable cardio defibrillators, and heart transplantation. Heart failure has a five-year 50% survival and would markedly reduce the lifespan of a child or young adult who develops this complication after vaccine-induced myocarditis. (*Id.* ¶ 32.)

153. COVID-19 vaccine-induced myocarditis has a predilection for young males below age 30 years. The Centers for Disease Control has held emergency meetings on this issue and the medical community is responding to the crisis and the US FDA has issued a warning on the Pfizer and Moderna vaccines for myocarditis. In the cases reviewed by the CDC and FDA, 90% of children with COVID-19 induced myocarditis developed symptoms and clinical findings sufficiently severe to warrant hospitalization. Because this risk is not predictable and the early reports may represent just the tip of the iceberg, no individual under age 30 under any set of circumstances should feel obliged to take this risk with the current genetic vaccines particularly the Pfizer and Moderna products. (*Id.* ¶ 33.)

154. Multiple recent studies and news reports detail people 18-29 dying from myocarditis after receiving the COVID-19 vaccine. According to the CDC, 475 cases of pericarditis and myocarditis have been identified in vaccinated citizens aged 30 and younger. See FDA, Vaccines and Related Biological Products Advisory Committee June 10, 2021, Meeting Presentation. The FDA found that people 12-24 account for 8.8% of the vaccines administered, but 52% of the cases of myocarditis and pericarditis were reported. (*Id.* ¶¶ 34-35.)

155. The CDC recently released data stating that there have been 267 cases of myocarditis or pericarditis reported after receiving one dose of the COVID-19 vaccines and 827 reported cases after two doses through June 11. There are 132 additional cases where the number of doses received is unknown. *Id.* There have been 2466 reported cases of myocarditis that have occurred, and the median age is thirty. (*Id.* ¶ 37.) And, the CDC just announced that the vaccine is “likely linked” to myocarditis. Advisory Board, CDC panel reports ‘likely association’ of heart inflammation and mRNA COVID-19 vaccines in young people. (*Id.* ¶ 36.)

156. The irreparable harm to Plaintiffs and the class members they represent is incalculable, unconscionable, and unconstitutional.

CLASS ALLEGATIONS

157. Plaintiffs satisfy the requirements Fed. R. Civ. P. 23(a) because the class is so numerous that joinder of all members is impracticable, each member’s claims involve common questions of law and fact, the claims of the representatives are typical of and identical to the claims of the other members of the class, and the representatives here will fairly and adequately protect the interests of the class in having the primarily legal questions addressed by the Court in an expeditious manner. In the Marines Corps, 3,539 individuals have submitted requests for religious accommodation.

158. Plaintiffs have typicality with the other members of the class of military servicemembers who have been denied religious exemption from the Federal COVID-19 Vaccine Mandate and who are threatened with the unconscionable choice

between conformance with their sincerely held religious convictions adverse employment action.

159. Plaintiffs have commonality with the other members of the class because they are all members of the United States Marine Corps subject to the Federal COVID-19 Vaccine Mandate with a policy-in-fact of denying all merited religious accommodation requests.

160. Plaintiffs' claims in the Court are representative of the claims of other class members and involve questions of fact and law that are common to all class members, including, *inter alia*,

(a) whether the EUA Statute requires that Plaintiffs be given the option to refuse a COVID-19 vaccine because there is currently no FDA approved COVID-19 vaccine available;

(b) whether Defendants violate the First Amendment to the United States Constitution by mandating that Plaintiffs accept and receive a COVID-19 vaccine regardless of whether Plaintiffs' and the other class members' sincerely held religious beliefs compel them to abstain from acceptance or receipt of the three currently available COVID-19 vaccines; and

(c) whether the federal Religious Freedom Restoration Act (RFRA) requires Defendants and all those in active concert with them to provide accommodations and exemptions to those Plaintiffs with sincerely held religious convictions that compel them to abstain from receiving one of the three currently available COVID-19 vaccines.

161. Plaintiffs' claims are representative and common among all class members because the injury sustained—Defendants' refusals to grant exemption and accommodation for sincerely held religious objections to the COVID-19 vaccines and the resulting adverse employment actions—are categorically identical. Indeed, Plaintiffs and the other members of the class "have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

162. Plaintiffs will fairly and adequately protect the interests of the class because they are seeking a temporary restraining order, preliminary and permanent injunctive relief, and declaratory relief against enforcement of the Federal COVID-19 Vaccine Mandate and Defendants' refusals to entertain or grant religious exemptions and accommodations which will provide relief to all class members.

163. Plaintiffs likewise satisfy the requirements of Fed. R. Civ. P. 23(b) because Defendants have acted in a manner that applies to all members of the class with respect to the Federal COVID-19 Vaccine Mandate, and have refused to grant religious accommodations to the entire group of class members who have sincerely held religious objections to receiving a COVID-19 vaccine under the Mandate. Fed. R. Civ. P. 23(b)(2).

164. Additionally, Plaintiffs' requested injunctive and declaratory relief would appropriately protect of the entire class as a whole. Fed. R. Civ. P. 23(b)(2).

165. Moreover, Plaintiffs satisfy the requirements of Fed. R. Civ. P. 23(b) because the common questions of law and fact applicable to the class members' claims

predominate over individualized questions pertaining to individual class members. Fed. R. Civ. P. 23(b)(3).

166. Adjudication of Plaintiffs and the other class members' claims are more fairly and efficiently adjudicated by a class action, as the claims for religious accommodation and exemption from the Federal COVID-19 Vaccine Mandate are virtually identical among all class members, the relevant facts applicable to each individual class member are substantially similar, and the applicable substantive law for the class members' claims is identical in all respects. Fed. R. Civ. P. 23(b)(3).

COUNT I – VIOLATION OF THE EMERGENCY USE AUTHORIZATION PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 U.S.C. § 360bbb-3, AS APPLIED BY 10 U.S.C. §§ 1107 AND 1107a

167. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–166 as if fully set forth herein.

168. The Federal Food, Drug, And Cosmetic Act provides that

subject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an “emergency use.”

21 U.S.C. § 360bbb-3(a)(1) (emphasis added).

169. For ease of reference, Plaintiffs will refer to the general provisions of 21 U.S.C. §360bbb-3 as the “Emergency Use Authorization Statute” or “EUA Statute.”

170. The Emergency Use Authorization Statute further provides the limitations on when the Secretary may authorize the emergency use of an unapproved

product for use in interstate commerce, and specifically limits such authorization to circumstances where the Secretary of Homeland Security has determined certain emergencies exist, where the Secretary of Defense has determined that certain military emergencies exist, where the Secretary of the Department of Health and Human Services has determined that certain public health emergencies exist, and where there has been some identification of a material threat pursuant to other provisions of the United States Code. *See* 21 U.S.C. § 360bbb-3(b)(1)(A)-(D).

171. The Secretary's Emergency Use Authorization terminates whenever the circumstances described in 21 U.S.C. § 360bbb-3(b)(1)(A)-(D) cease to exist or where the product approved for Emergency Use under the statute receives a change in approval status. 21 U.S.C. § 360bbb-3(b)(2)(A)(i)-(ii).

172. As an essential part of the explicit statutory conditions for EUA, **the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product:**

With respect to the emergency use of an unapproved product, the Secretary, to the extent practicable given the applicable circumstances described in subsection (b)(1), shall, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

....

(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed—

(I) that the Secretary has authorized the emergency use of the product;

(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I)–(III) (emphasis added).

173. Consistent with the requirement in the Emergency Use Authorization statute that all potential recipients of the COVID-19 vaccine be informed of the option to accept or refuse the vaccine, the Emergency Use Authorization Fact Sheet for all three of the currently available COVID-19 vaccines specifically states—**as required by the Emergency Use Authorization Statute**—that individuals have the right to refuse administration of the COVID-19 vaccine. *See Moderna, Vaccine Information Fact Sheet for Recipients and Caregivers* (Jan. 31, 2022), <https://www.fda.gov/media/144638/download> (“**Under the EUA, it is your choice to receive or not receive the vaccine. Should you decide not to receive it, it will not change your standard medical care.**” (emphasis added)); *Pfizer-BioNTech, Vaccine Information Fact Sheet for Recipients and Caregivers* (Jan. 31, 2022), <https://www.fda.gov/media/153716/download> (“**Under the EUA, it is your choice to receive or not receive the vaccine. Should you decide not to receive it, it will not change your standard medical care.**” (emphasis added)); *Janssen, Fact Sheet for Recipients and Caregivers* (Jan. 31, 2022), <https://www.fda.gov/media/146305/download> (“**It is your choice to receive or not receive the Janssen**

COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.” (emphasis added)).

174. “Congress has prohibited the administration of investigational drugs to service members without their consent.” *Doe v. Rumsfeld*, 341 F. Supp. 2d 1, 19 (D.D.C. 2004).

175. There is a very strict mechanism under which any military exception to the EUA statute may be deployed, and neither have occurred here.

176. First, the President can waive the informed consent requirement, but that Presidential waiver must be in writing and demonstrate that the President has determined “that obtaining consent is not in the interests of national security,” 10 U.S.C. § 1107(f), or “that complying with such requirement is not in the interests of national security,” 10 U.S.C. § 1107a(a).

177. The strict criteria laid out in the statutory framework demonstrate the limited scope of the exceptions to the informed consent requirement. To start, the initial emergency declaration by the HHS Secretary must be based on one of four statutorily listed justifications—none of which apply here. The first requires the Secretary of Defense to find a **domestic emergency**, or significant potential for a domestic emergency, based on heightened risk of attack with a **biological, chemical, radiological, or nuclear agent**. 21 U.S.C. § 360bbb–3(b)(1)(A) (“A “determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant

potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents.”).

178. The second requires a finding that there is a **military emergency** involving a heightened risk to US military forces of an attack with a **biological, chemical, radiological, or nuclear agent**, or an agent that may cause an imminently life-threatening and specific risk to US military forces. 21 U.S.C. § 360bbb-3(b)(1)(B) (“A “determination by the Secretary of Defense that there is a **military emergency**, or a significant potential for a military emergency, involving a heightened risk to United States military forces, including personnel operating under the authority of title 10 or title 50, of **attack with a biological, chemical, radiological, or nuclear agent or agents**; or an agent or agents that may cause, or are otherwise associated with, **an imminently life-threatening and specific risk** to United States military forces.” (emphasis added)).

179. The third requires a finding that there is a public health emergency, or significant potential for a public health emergency that affects national security or the health and security of US citizens abroad that involves a **biological, chemical, radiological, or nuclear agent or a disease or condition attributable to one of those agents**. 21 U.S.C. §360bbb-3(b)(1)(C) (A “determination by the Secretary that there is a **public health emergency**, or a significant potential for a public health emergency, **that affects**, or has a significant potential to affect, **national security** or the health and security of United States citizens living abroad, **and** that involves a **biological,**

chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents.” (emphasis added)).

180. The fourth requires the identification of a material threat involving **chemical, biological, radiological, and nuclear agents** sufficient to affect national security or the health and security of US citizens living abroad. 21 U.S.C. § 360bbb-3(b)(1)(D) (“The “identification of a **material threat** [involving chemical, biological, radiological, and nuclear agents] pursuant to section 319F–2 of the Public Health Service Act [42 U.S.C. § 247d–6b] sufficient **to affect national security** or the health and security of United States citizens living abroad.” (emphasis added)).

181. Under the above statute, there is no legal basis on which the President may waive consent for the COVID-19 vaccines for the military. Indeed, he has not done so because he has no statutory authority under these facts to waive the EUA requirements for the military.

182. Even after the HHS Secretary establishes that one of the four criteria are satisfied, then under § 360bbb–3 the HHS Secretary then must make a separate determination that an “agent” referred to in the declaration can cause a serious or life-threatening disease or condition **and** that based on the scientific evidence available for the product authorized under the EUA (i) it may be effective in diagnosing, treating, or preventing the disease or serious life-threatening disease, (ii) the known and potential benefits outweigh the risks; (iii) there is no adequate, approved, and available alternative to the product authorized under the EUA; (iv) **in the case of a military**

emergency based on a biological, chemical, radiological, or nuclear agent, the Secretary of Defense made the emergency use request; and (v) other criteria established by regulation are satisfied.

183. None of the foregoing criteria has been satisfied.

184. Defendants have ignored their obligations under the EUA Statute.

185. There has been no Presidential declaration sufficient to invoke the consent exceptions of the EUA statute.

186. There has been no domestic emergency, military emergency, public health emergency, or material threat of a biological, chemical, radiological, or nuclear agent, or a disease attributable to one of those conditions.

187. As such, Defendants are prohibited by the EUA statute from mandating that any Plaintiffs or similarly situated military servicemembers receive or accept one of the COVID-19 vaccines.

188. Put simply, the Emergency Use Authorization Statute provides that, **as a condition of receiving authorization for emergency use, ALL individuals to whom the EUA product may be administered are given the right to accept or refuse administration of the product—and this includes members of the military. And, of course, the EUA right to accept or refuse applies and cannot be waived respecting the federal employees and federal civilian contractor Plaintiffs.**

189. The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer/BioNTech) are only authorized for use under the

Emergency Use Authorization statute and have no general approval under the United States Code.

190. Because all three of the currently available COVID-19 vaccines are subject only to Emergency Use under the Emergency Use Authorization statute, the Emergency Use Authorization statute mandates that all individuals to whom the product may be administered, **including Plaintiffs**, be given the right to accept or refuse administration of the product.

191. Put simply, because all three of the currently available COVID-19 vaccines are subject only to Emergency Use under the Emergency Use Authorization statute, the Emergency Use Authorization statute prohibits Defendants from making the COVID-19 vaccines mandatory.

192. The Federal COVID-19 Vaccine Mandate, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs' sincerely held religious beliefs.

193. Plaintiffs have no adequate remedy at law for the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

**COUNT II – VIOLATION OF THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION**

194. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–166 above as if fully set forth herein.

195. The Free Exercise Clause of the First Amendment to the United States Constitution prohibits the government from abridging Plaintiffs' rights to free exercise of religion.

196. Plaintiffs have sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

197. Plaintiffs have and exercise sincerely held religious beliefs (articulated in Section B, *supra*) which compel them to abstain from receiving or accepting any of the currently available COVID-19 vaccines.

198. The Federal COVID-19 Vaccine Mandate, on its face and as applied, targets Plaintiffs' sincerely held religious beliefs by prohibiting Plaintiffs from seeking and receiving exemption and accommodation for their sincerely held religious beliefs against the COVID-19 vaccines.

199. The Federal COVID-19 Vaccine Mandate, on its face and as applied, impermissibly burdens Plaintiffs' sincerely held religious beliefs, compels Plaintiffs to either change those beliefs or act in contradiction to them, and forces Plaintiffs to choose between the teachings and requirements of their sincerely held religious beliefs in the commands of Scripture and the government's imposed value system.

200. The Federal COVID-19 Vaccine Mandate, on its face and as applied, places Plaintiffs in an irresolvable conflict between compliance with the mandate and their sincerely held religious beliefs.

201. The Federal COVID-19 Vaccine Mandate, on its face and as applied, puts substantial pressure on Plaintiffs to violate their sincerely held religious beliefs or face loss of their ability to feed their families.

202. The Federal COVID-19 Vaccine Mandate, on its face and as applied, is neither neutral nor generally applicable.

203. The Federal COVID-19 Vaccine Mandate, on its face and as applied, specifically targets Plaintiffs' religious beliefs for disparate and discriminatory treatment.

204. The Federal COVID-19 Vaccine Mandate, on its face and as applied, creates a system of individualized exemptions for preferred exemption requests while discriminating against requests for exemption and accommodation based on sincerely held religious beliefs.

205. The Federal COVID-19 Vaccine Mandate, on its face and as applied, constitutes a religious gerrymander by unconstitutionally orphaning exemption and accommodation requests based solely on sincerely held religious beliefs of Plaintiffs while permitting the more favored medical exemptions to be granted.

206. The Federal COVID-19 Vaccine Mandate, on its face and as applied, constitutes a substantial burden on Plaintiffs' exercise of their sincerely held religious beliefs.

207. The Federal COVID-19 Vaccine Mandate, on its face and as applied, fails to accommodate Plaintiffs' sincerely held religious beliefs.

208. There is no legitimate, rational, or compelling interest in the Federal COVID-19 Vaccine Mandate's exclusion of exemptions and accommodations for sincerely held religious beliefs.

209. The Federal COVID-19 Vaccine Mandate is not the least restrictive means of achieving an otherwise permissible government interest.

210. The Federal COVID-19 Vaccine Mandate, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs' sincerely held religious beliefs.

211. Plaintiffs have no adequate remedy at law to protect the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

COUNT III - VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT, 42 U.S.C. §§ 2000bb to 2000bb-4

212. Plaintiffs hereby reallege and adopt each and every allegation in paragraphs 1–166 above as if fully set forth herein.

213. The Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb to 2000bb-4, provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 U.S.C. § 2000bb-1(a).

214. RFRA also demands that, should the government substantially burden a person’s free exercise of religion, it bears the burden of demonstrating that its burden on religious exercise furthers a compelling government interest and is the least restrictive means of achieving that compelling government interest. 42 U.S.C. § 2000bb-1(b).

215. RFRA plainly applies to Defendants, as they constitute a “branch, department, agency, instrumentality, and official of the United States.” 42 U.S.C. § 2000bb-2(1).

216. Congress enacted RFRA “to provide **very broad** protection for religious liberty,” going “far beyond what [the Supreme Court] has held is constitutionally required” under the First Amendment. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693, 706 (2014) (emphasis added).

217. As such, RFRA encompasses a very broad definition of “exercise of religion,” which includes ““any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”” *Hobby Lobby*, 573 U.S. at 696 (quoting 42 U.S.C. § 2000bb—5(7)(A)).

218. Congress has mandated that RFRA ““be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.”” *Hobby Lobby*, 573 U.S. at 696 (quoting 42 U.S.C. § 2000cc-3(g)).

219. “RFRA operates as a kind of super statute, displacing the normal operation of other federal laws.” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1754 (2020).

220. Plaintiffs have sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

221. Plaintiffs have and exercise sincerely held religious beliefs (articulated *supra* Section B) which compel them to abstain from receiving or accepting any of the currently available COVID-19 vaccines.

222. The Federal COVID-19 Vaccine Mandate, on its face and as applied, targets Plaintiffs' sincerely held religious beliefs by prohibiting Plaintiffs from seeking and receiving exemption and accommodation for their sincerely held religious beliefs against the COVID-19 vaccines.

223. The Federal COVID-19 Vaccine Mandate, on its face and as applied, impermissibly burdens Plaintiffs' sincerely held religious beliefs, compels Plaintiffs to either change those beliefs or act in contradiction to them, and forces Plaintiffs to choose between the teachings and requirements of their sincerely held religious beliefs in the commands of Scripture and the government's imposed value system.

224. The Federal COVID-19 Vaccine Mandate, on its face and as applied, places Plaintiffs in an irresolvable conflict between compliance with the mandate and their sincerely held religious beliefs.

225. The Federal COVID-19 Vaccine Mandate, on its face and as applied, puts substantial pressure on Plaintiffs to violate their sincerely held religious beliefs or face loss of their ability to feed their families.

226. The Federal COVID-19 Vaccine Mandate, on its face and as applied, specifically targets Plaintiffs' religious beliefs for disparate and discriminatory treatment.

227. The Federal COVID-19 Vaccine Mandate, on its face and as applied, creates a system of individualized exemptions for preferred exemption requests while discriminating against requests for exemption and accommodation based on sincerely held religious beliefs.

228. The Federal COVID-19 Vaccine Mandate, on its face and as applied, constitutes a substantial burden on Plaintiffs' exercise of their sincerely held religious beliefs.

229. By forcing Plaintiffs into the unconscionable choice between violating their sincerely held religious convictions or facing dishonorable discharge, courts martial, termination, and other disciplinary measures, Defendants' mandate constitutes a substantial burden on Plaintiffs' exercise of religion.

230. The Federal COVID-19 Vaccine Mandate, on its face and as applied, fails to accommodate Plaintiffs' sincerely held religious beliefs.

231. There is no legitimate, rational, or compelling interest in the Federal COVID-19 Vaccine Mandate's exclusion of exemptions and accommodations for sincerely held religious beliefs.

232. The Federal COVID-19 Vaccine Mandate is not the least restrictive means of achieving an otherwise permissible government interest.

233. The Federal COVID-19 Vaccine Mandate, on its face and as applied, has caused, is causing, and will continue to cause irreparable harm and actual and undue hardship on Plaintiffs' sincerely held religious beliefs.

234. Plaintiffs have no adequate remedy at law for the continuing deprivation of their most cherished constitutional liberties and sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray for relief against Defendants as hereinafter set forth in their prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully pray for relief as follows:

A. That the Court issue a preliminary injunction pending trial, and a permanent injunction upon judgment, restraining and enjoining Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, from enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with the Federal COVID-19 Vaccine Mandate such that:

- i. Defendants will immediately comply with the Emergency Use Authorization Statute so that each individual has the "option to accept or refuse" administration of the COVID-19 vaccines as there is currently no FDA approved COVID-19 vaccine available to the population;

- ii. Defendants will immediately cease in their refusal to consider, evaluate, or accept Plaintiffs' requests for exemption and accommodation for their sincerely held religious beliefs;
- iii. Defendants' will immediately grant Plaintiffs' requests for religious exemption and accommodation from the Federal COVID-19 Vaccine Mandate; and
- iv. Defendants will immediately cease any actions arising from or connected to Plaintiffs' religious exemption and accommodation requests, including current and ongoing punishment and threatening to dishonorably discharge, court martial, and impose other life-altering disciplinary actions on Plaintiffs for failure to accept a COVID-19 vaccine that violates their sincerely held religious beliefs;

B. That the Court render a declaratory judgment declaring that the Federal COVID-19 Vaccine Mandate, both on its face and as applied by Defendants, is illegal and unlawful in that it purports to remove federal civil rights and constitutional protections from military servicemembers, and further declaring—

- i. the Federal COVID-19 Vaccine Mandate violates the federal Emergency Use Authorization provisions of the Federal Food, Drug, and Cosmetic Act by imposing a mandatory COVID-19 shot upon Plaintiffs without giving the “option to accept or refuse” the EUA product;

- ii. the Federal COVID-19 Vaccine Mandate, without sufficient provision for exemption or accommodation for sincerely held religious beliefs, violates the First Amendment to the United States Constitution by imposing a substantial burden on Plaintiffs' sincerely held religious beliefs; and
- iii. the Federal COVID-19 Vaccine Mandate, without sufficient provision for exemption or accommodation for sincerely held religious beliefs, violates the federal Religious Freedom Restoration Act by imposing a substantial burden on Plaintiffs' sincerely held religious beliefs;

C. That the Court adjudge, decree, and declare the rights and other legal obligations and relations within the subject matter here in controversy so that such declaration shall have the full force and effect of final judgment;

D. That the Court award Plaintiffs actual damages in an amount to be determined at trial;

E. That the Court award Plaintiffs their reasonable attorney's fees, costs, and other expenses and disbursements in this action under 28 U.S.C. §§ 1920 and 2412 and 42 U.S.C. § 1988, and as otherwise allowed by law;

F. That the Court retain jurisdiction over the matter for the purposes of enforcing the Court's order; and

G. That the Court grant such other and further relief as the Court deems equitable and just under the circumstances.

/s/ Daniel J. Schmid
Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid*
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*Specially admitted
Attorneys for Plaintiffs

VERIFICATION

I, COLONEL FINANCIAL MANAGEMENT OFFICER, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ COLONEL FINANCIAL MANAGEMENT OFFICER
COLONEL FINANCIAL MANAGEMENT OFFICER
(Original Signature retained by Counsel)

VERIFICATION

I, LIEUTENANT COLONEL 1, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ LIEUTENANT COLONEL 1
LIEUTENANT COLONEL 1
(Original Signature retained by Counsel)

VERIFICATION

I, RESERVE LIEUTENANT COLONEL, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ RESERVE LIEUTENANT COLONEL
RESERVE LIEUTENANT COLONEL
(Original Signature retained by Counsel)

VERIFICATION

I, CAPTAIN, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ CAPTAIN
CAPTAIN
(Original Signature retained by Counsel)

VERIFICATION

I, CAPTAIN 2, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ CAPTAIN 2
CAPTAIN 2
(Original Signature retained by Counsel)

VERIFICATION

I, CAPTAIN 3, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/S/ CAPTAIN 3
CAPTAIN 3
(Original Signature retained by Counsel)

VERIFICATION

I, FIRST LIEUTENANT, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ FIRST LIEUTENANT
FIRST LIEUTENANT
(Original Signature retained by Counsel)

VERIFICATION

I, SECOND LIEUTENANT, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ SECOND LIEUTENANT
SECOND LIEUTENANT
(Original Signature retained by Counsel)

VERIFICATION

I, CHIEF WARRANT OFFICER 4, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ CHIEF WARRANT OFFICER 4
CHIEF WARRANT OFFICER 4
(Original Signature retained by Counsel)

VERIFICATION

I, CHIEF WARRANT OFFICER 3, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ CHIEF WARRANT OFFICER 3
CHIEF WARRANT OFFICER 3
(Original Signature retained by Counsel)

VERIFICATION

I, LANCE CORPORAL 1, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ LANCE CORPORAL 1
LANCE CORPORAL 1
(Original Signature retained by Counsel)

VERIFICATION

I, LANCE CORPORAL 2, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ LANCE CORPORAL 2
LANCE CORPORAL 2
(Original Signature retained by Counsel)

VERIFICATION

I, LANCE CORPORAL 3, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ LANCE CORPORAL 3
LANCE CORPORAL 3
(Original Signature retained by Counsel)

VERIFICATION

I, MIDSHIPMAN 2/C, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ MIDSHIPMAN 2/C
MIDSHIPMAN 2/C
(Original Signature retained by Counsel)

VERIFICATION

I, GUNNERY SERGEANT, am over the age of eighteen years and a Plaintiff in this action. The statements and allegations that pertain to me or which I make in this THIRD AMENDED VERIFIED CLASS ACTION COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Dated: June 29, 2022

/s/ GUNNERY SERGEANT
GUNNERY SERGEANT
(Original Signature retained by Counsel)