

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

NAVY SEAL 1, et al.,

Plaintiffs,

v.

CASE NO. 8:21-cv-2429-SDM-TGW

JOSEPH R. BIDEN, et al.,

Defendants.

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**ORDER**

On August 24, 2021, the Department of Defense (DOD) directed “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.” (Doc. 1-4 at 1) The directive explained, “Mandatory vaccination against COVID-19 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.” (Doc. 1-4 at 1)

On September 9, 2021, the President of the United States issued two executive orders, one order directing each federal agency to “implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law” (Doc. 1-1) and the other order directing every federal contractor to “comply with all guidance for

contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force” (Doc. 1-2), which on September 24, 2021, issued guidance requiring the vaccination of covered employees of federal contractors (Doc. 1-3).

On behalf of themselves and a proposed class of similarly situated persons, the plaintiffs, including one or more members of the Army, Navy, Marines, Air Force, and Coast Guard; a member of the National Guard; several defense contractors; and others, sue the President, DOD, and DHS for injunctive, declaratory, and other relief. The verified complaint alleges, among other things, that no available vaccine has received “full licensure” from the FDA and that implementation of the executive orders and military directives offers members of the armed forces no accommodation for a sincerely held religious belief opposing injection of the available vaccines. The verified complaint claims a violation of (1) the emergency use authorization under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3; (2) the Free Exercise Clause of the First Amendment; and (3) the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

According to the verified complaint, the plaintiffs must accept before a stated day — November 22 for the Coast Guard and civilian contractors; November 28 for the Navy and Marines; and December 15 for the Army and Air Force — full vaccination by injection of one of the three available vaccines.\* The plaintiffs move

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\* The August 24, 2021 memorandum by the Department of Defense states that “[s]ervice members are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Those with previous COVID-19 infection are not considered fully vaccinated.”

(Doc. 2) for a temporary restraining order and a preliminary injunction to prevent the defendants' forcing the plaintiffs either to promptly accept the injection or to promptly incur discipline or penalty, including dishonorable discharge, court martial, termination, and "other life-altering disciplinary measures." (Doc. 1 ¶ 1)

The parties must conform to the following schedule:

1. **Immediately but not later than OCTOBER 19, 2021, at 12:00 P.M.**, the plaintiffs must e-mail to the lawfully authorized representative, including Karin Hoppmann, Acting United States Attorney for the Middle District of Florida, of each defendant a copy of the complaint, the motion, and this order and must file immediately a notice both confirming transmission of the e-mail to each defendant and identifying the recipient of each e-mail.

2. **Immediately but preferably not later than OCTOBER 20, 2021**, the plaintiffs must — in the most expeditious manner feasible — serve each defendant with the summons, the complaint, the motion, and this order and must file immediately a proof of service.

3. **Immediately after e-mail notice of this order or service of this order, whichever occurs first**, counsel for the defendants must file a notice of appearance (of course, without prejudice to the assertion of a Rule 12(b) or any other defense or response to the plaintiffs' claims).

4. **Not later than NOVEMBER 3, 2021**, and by a memorandum not exceeding thirty pages, the defendants must respond to the motion for a preliminary injunction in accord with the Local Rules, including Local Rule 1.08.

5. **Not later than NOVEMBER 10, 2021**, the plaintiffs may reply by a memorandum not exceeding twenty-five pages.

6. **A hearing will begin NOVEMBER 15, 2021, at 9:00 A.M.** in Courtroom 15A, United States Courthouse, 801 North Florida Avenue, Tampa, Florida, on the motion for a preliminary injunction and will continue day-to-day as required and until completion. Any party who will offer evidence at the hearing must file **not later than NOVEMBER 10, 2021**, a witness list and an exhibit list (any witness or exhibit not appearing on a list is inadmissible at the hearing).

The motion (Doc. 2) for a temporary restraining order **REMAINS UNDER ADVISEMENT**. Although a temporary restraining order directed to the conditional class, as alleged in the complaint, will likely not issue, the plaintiffs may move on behalf of any individual member of the alleged class who satisfies the requirements for temporary injunctive relief (that is, someone who has, among other things, not already suffered injury but who imminently will suffer serious and irreparable injury before a preliminary injunction, if any, issues); whose interests are otherwise not adequately protected by the hearing on November 15, 2021; and whose circumstances are for some singular reason markedly more acute than other members of the putative class. Any motion under this paragraph must include a

certificate that the parties have conferred in good faith and are unable to agree on an interim resolution to the issue presented in the motion.

ORDERED in Tampa, Florida, on October 18, 2021.



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STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE