

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

NAVY SEALs 1-3, et al.,

Plaintiffs,

v.

LLOYD J. AUSTIN, III in his official capacity as
United States Secretary of Defense, et al.,

Defendants.

Case No. 4:21-cv-01236-O

DEFENDANTS' MOTION FOR A PARTIAL STAY PENDING APPEAL

Defendants respectfully request that this Court partially stay, pending appeal, the preliminary injunction granted by the Court on January 3, 2022 (ECF No. 66). In particular, Defendants respectfully request that the Court grant a partial stay of its order, or otherwise clarify and narrow the order, to the extent the order precludes Defendants from making the assignment and reassignment decisions that the military deems appropriate, taking into account Plaintiffs' vaccination status, including with respect to deployment and training. Defendants do not seek a stay of the order insofar as the order merely forbids the Navy from initiating involuntary separation or disciplinary proceedings¹ against Plaintiffs for refusing to be vaccinated against COVID-19. Defendants respectfully request a ruling by the end of the day January 28, 2022. After that date, if relief has not been granted, Defendants will seek relief from the U.S. Court of Appeals for the Fifth Circuit.

Dated: January 24, 2022

Respectfully submitted,

¹ The Navy defines "disciplinary proceedings" as proceedings initiated pursuant to the Uniformed Code of Military Justice (UCMJ). These proceedings include courts-martial and Article 15 (non-judicial punishment (NJP)) as implemented under Part V of the Manual for Courts-Martial. For members refusing the COVID-19 vaccine, the Vice Chief of Naval Operations (VCNO) is the sole disposition authority for courts-martial and NJP. NAVADMIN 225/21 ¶5.b.

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CERTIFICATE OF CONFERENCE

Counsel for Defendants conferred with Plaintiffs' counsel regarding this motion through email on January 21, 2022 and by email and phone on January 24, 2022. Plaintiffs' counsel indicated that they oppose the relief requested in Defendants' motion but would consider consenting to individualized employment actions on a case by case basis. Plaintiffs' proposal involves continued judicial superintending of military operational judgments and therefore is inappropriate for the reasons stated in Defendants brief.

/s/ Andrew E. Carmichael
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[PROPOSED] ORDER

Upon consideration of Defendants' Motion for a Partial Stay Pending Appeal, IT IS HERBY ORDERED that the Motion is GRANTED. The Court's January 3, 2022 Order (ECF No. 66), to the extent it precludes Defendants from making the assignment and reassignment decisions that the military deems appropriate, taking into account Plaintiffs' vaccination status, including with respect to deployment and training, is hereby stayed pending Defendants' appeal thereof to the United States Court of Appeals for the Fifth Circuit.

SO ORDERED on _____.

Hon. Reed O'Connor
UNITED STATES DISTRICT JUDGE