

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALs 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

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

MOTION FOR CLASSWIDE PRELIMINARY INJUNCTION

Plaintiffs United States Navy SEALs 1-3 and United States Navy Explosive Ordnance Disposal Technician 1 (“Named Plaintiffs”), on behalf of themselves and all others similarly situated, by and through counsel, and pursuant to Federal Rule of Civil Procedure 65, respectfully move this Court for a preliminary injunction against enforcement of Defendants’ COVID-19 vaccine mandate.

In support of this Motion, Plaintiffs rely on the following:

1. The Brief in support of this Motion, filed contemporaneously herewith;
2. The Briefing, Appendices, and Supplemental Declarations in support of Plaintiffs’

Motion for Preliminary Injunction (Dkt. 16, 17, 58, 59, 62, 63);

3. The Testimony, Exhibits, and Evidence offered and admitted by Plaintiffs at the December 20, 2021 hearing on Plaintiffs' Motion for Preliminary Injunction (*See* Dkt. 61, 101);
4. The First Amended Class Action Complaint (Dkt. 84);
5. The Briefing and Declarations in support of Named Plaintiffs' Motion for Class Certification (Dkt. 90 and forthcoming); and
6. All Evidence necessary to support this Motion, filed hereafter or presented at a hearing on this Motion or Plaintiffs' Motion for Class Certification.

Named Plaintiffs respectfully request the Court to grant the following relief:

1. A preliminary injunction enjoining Defendants, their agents, servants, employees, attorneys, and all persons and entities in active concert or participation with them, directly or indirectly, from enforcing the DoD COVID-19 Vaccine Mandate (August 24, 2021 memorandum from Defendant Austin titled "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members"), and the Navy COVID-19 Vaccine Mandate (ALNAV 0622/21), against any member of the Navy Class and/or Subclasses; and
2. A preliminary injunction enjoining Defendants, their agents, servants, employees, attorneys, and all persons and entities in active concert or participation with them, directly or indirectly, from applying any policies, guidance, or memoranda implementing the DoD COVID-19 Vaccine Mandate or the Navy COVID-19 Vaccine Mandate, to any member of the Navy Class and/or Subclasses.
3. A preliminary injunction enjoining Defendants, their agents, servants, employees, attorneys, and all persons and entities in active concert or participation with them, directly or indirectly, from applying MANMED § 15-105(4)(n)(9), Trident Order #12, or any other policies, guidance, or memoranda implementing the DoD COVID-19 Vaccine Mandate or the Navy

COVID-19 Vaccine Mandate, to any member of the Naval Special Warfare/Operations Subclass and/or the Navy SEALs Subclass.

4. A preliminary injunction enjoining Defendants, their agents, servants, employees, attorneys, and all persons and entities in active concert or participation with them, directly or indirectly, from taking any adverse action against any member of the Navy Class, the Naval Special Warfare/Operations Subclass, and/or the Navy SEALs Subclass because of their requests for religious accommodation.

Named Plaintiffs request a waiver of any bond required by Federal Rule of Civil Procedure 65(c) as these issues involve the free exercise of religion, there is no money at stake in issuance of the injunction, and no financial impact on the Defendants. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (recognizing district courts have discretion to waive the bond requirement of Rule 65(c)); *see also Gordon v. City of Hous.*, 79 F. Supp. 3d 676, 695 (S.D. Tex. 2015) (waiving Rule 65 bond in First Amendment lawsuit).

WHEREFORE, the Named Plaintiffs respectfully request that the Court grant this Motion for Preliminary Injunction.

Respectfully submitted this 7th day of February, 2022.

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CERTIFICATE OF CONFERENCE

Plaintiffs' counsel conferred with Defendants' counsel on February 7, 2022. Defendants are opposed to the relief requested in this motion.

/s/ Heather Gebelin Hacker
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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, I electronically filed the foregoing document through the Court's ECF system, which automatically notifies counsel of record for each party.

/s/ Heather Gebelin Hacker
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