

**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

**PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY
DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT**

On January 3, 2022, this Court issued a clear and unambiguous Order enjoining Defendants from applying four of Defendants' policies and enjoining Defendants from taking any adverse action against Plaintiffs on the basis of Plaintiffs' requests for religious accommodation. Dkt. 66. Defendants are disregarding and willfully violating that Order by continuing to apply the same policies and continuing to impose the same injuries on Plaintiffs that initially warranted injunctive relief, effectively granting themselves the stay of the injunction they are asking the Court for.¹

¹ See Dkt. 85; see also forthcoming Opposition to Defendants' Motion to Stay Injunction Pending Appeal.

Plaintiffs therefore respectfully request that the Court set a hearing on this matter and order the Defendants to show cause as to why they should not be held in contempt on the following grounds:

- Failure to comply with the Court’s preliminary injunction enjoining Defendants from applying NAVADMIN 225/21, NAVADMIN 256/21, MANMED § 15-105(4)(n)(9),² and Trident Order #12 to Plaintiffs;
- Failure to comply with the Court’s preliminary injunction enjoining Defendants from “taking any adverse action against Plaintiffs on the basis of Plaintiffs’ requests for religious accommodation.”

This motion is made and based on these grounds, the pleadings, papers, records, and files in this action, court minutes, and evidence and testimony to be presented at the hearing of this motion. Plaintiffs respectfully request that the Court enter an order directing Defendants to show cause as to why they should not be held in contempt for failing to comply with the Court’s January 3, 2022, Order, as described above.

² Plaintiffs’ complaint and motion for preliminary injunction, as well as the preliminary-injunction order, referred to MANMED § 15-105(3)(n)(9), but that is a scrivener’s error. The correct citation is MANMED § 15-105(4)(n)(9).

Respectfully submitted this 31st day of January, 2022.

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CERTIFICATE OF CONFERENCE

Before filing this motion, on January 31, 2021, I conferred by email with Defendants' counsel "to determine whether the motion is opposed." L.R. 7(a). Defendants' counsel said that he could not state whether Defendants are opposed to this motion until he is made aware of what the allegations are and has investigated them.

Defendants' counsel later stated that he wanted Plaintiffs to include the following as Defendants' position on this motion for order to show cause:

Defendants' counsel asked Plaintiffs' counsel to explain how Defendants are allegedly violating the Court's Preliminary Injunction. Plaintiffs' counsel declined to provide any information regarding their allegations. Defendants' counsel explained that the factual allegations are needed before the Navy can look into the issue, and with the facts, the parties could attempt to resolve or at least narrow any issues without litigation. Plaintiffs' counsel still declined to provide any information regarding their allegations. Since Plaintiffs have not provided any details regarding the basis of their motion, Defendants cannot provide a position.

Defendants are already on notice of most of these issues, as they were discussed in the preliminary-injunction briefing, the preliminary-injunction order, and Defendants' motion to stay the injunction pending appeal. Plaintiffs also fear continued retaliation without intervention from the Court, and because this motion is related to Plaintiffs' opposition to Defendants' motion to stay (which is due today), Plaintiffs decline to delay filing the instant motion pending investigation by Defendants, especially when it is obvious that Defendants oppose the motion. *See* L.R. 7(a).

/s/Heather Gebelin Hacker
HEATHER GEBELIN HACKER

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2021, 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
HEATHER GEBELIN HACKER

**UNITED STATES DISTRICT COURT
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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**,

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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

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT

Before the Court is Plaintiffs' Motion to Show Cause Why Defendants Should Not Be Held in Contempt. Plaintiffs argue that after the Court issued a preliminary injunction (Dkt. 66), Defendants disregarded and violated the injunction by: (1) failing to comply with the Court's preliminary injunction enjoining Defendants from applying NAVADMIN 225/21, NAVADMIN 256/21, MANMED § 15-105(4)(n)(9), and Trident Order #12 to Plaintiffs; and (2) failing to comply with the Court's preliminary injunction enjoining Defendants from "taking any adverse action against Plaintiffs on the basis of Plaintiffs' requests for religious accommodation." Plaintiffs ask the Court to find Defendants in civil contempt and defer to the Court to implement appropriate sanctions.

Generally, “[j]udicial sanctions in civil contempt proceedings [are] employed for either or both of two purposes: to coerce the defendant into compliance with the court’s order [or] to compensate the complainant for losses sustained.” *Am. Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d 574, 585 (5th Cir. 2000). Plaintiffs, as the party seeking a finding of contempt, “bears the burden of establishing by clear and convincing evidence 1) that a court order was in effect, 2) that the order required certain conduct by the respondent, and 3) that the respondent failed to comply with the court’s order.” *Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir. 1992). The allegedly “contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court’s order.” *Am. Airlines*, 228 F.3d at 581.

The Court finds that Plaintiffs have established all three necessary elements by clear and convincing evidence. First, the preliminary injunction was in effect. (Dkt. 66). Second, the preliminary injunction required Defendants to refrain from certain conduct. (Dkt. 66 at 26). Third, Plaintiffs presented sufficient evidence to show that Defendants did not comply with the preliminary injunction. The Court agrees with Plaintiffs that Defendants should be required to show cause for their noncompliance with the preliminary injunction.

Accordingly, **IT IS ORDERED** that Plaintiffs’ Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt is **GRANTED**.

IT IS FURTHER ORDERED that the parties shall appear for a hearing on [_____], 2022. At the hearing, Defendants must show cause for why they should not be held in civil contempt, and have appropriate sanctions imposed against them, for their noncompliance with the preliminary injunction (Dkt. 66). Failure to attend the hearing may be a separate ground for the Court to hold Defendants in civil contempt and impose appropriate sanctions. *See, e.g., In re Shah*, 200 F. App’x 349, 350 (5th Cir. 2006) (imposing civil contempt

sanctions is appropriate when defendant fails to appear at hearing); *RMC Publications v. Doulos PM Training*, No. CIV A 307-CV-2139-O, 2009 WL 1974286, at *2 (N.D. Tex. July 7, 2009) (same); *see also Quilling for Sardaukar Holdings, IBC v. 3-D Mktg., LLC*, No. 3-06-CV-0293-L, 2007 WL 9711514, at *3 (N.D. Tex. July 18, 2007) (corporate officers who do not appear at show cause hearings in cases to which their companies are parties are subject to civil contempt sanctions).

Should Defendants wish to respond to this Order in writing, they may do so on or before [_____], 2022. Responding in writing does not excuse appearance at the hearing.

SO ORDERED this _____ day of _____, 2022.

Hon. Reed O'Connor
UNITED STATES DISTRICT JUDGE