

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

**MICHAEL BAZZREA, et al.**

**Plaintiffs**

**v.**

**ALEJANDRO MAYORKAS, et  
al.**

**Defendants.**

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**CA No. 3:22-cv-00265**

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**MICHAEL AKEY,  
AUSTIN ALBRIGHT,  
ELIZABETH ALBRITTON,  
ASHLEY ANDERSON,  
NATHANIEL ANDERSON,  
MARTIN ANDRADA,  
STANLEY ANDRISKI,  
STEPHANIE ANINOS,  
ZACHARY ATCHISON,  
ALTARA AVERY,  
JUSTIN BAKER,  
BRETT BARKER,  
BECKHAM WILLIAM,  
MARY BENDER,  
SCOTT BLEICKEN,  
NOAH BODEY,  
JENNY BONE,  
WILLIAM BRENNAN,  
JADEON BROOKS,  
DEAN CAPPS,  
ADAM CARR,  
ADRIAN CHUQUILLANGUI,  
CHRISTOPHER COLLINS,  
JEFF DAILY,  
ADAM DELANO,  
RICHARD DELEON,  
DANIEL DERITO,**

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MAIKALANI DIAS,  
TAYLOR DICKINSON,  
EDWARD DIPIERRO,  
PAUL DORPEMA,  
LAUREN EMMONS,  
JONATHAN FASSNACHT,  
JASON FIELDS,  
JOHN FLORES,  
STEVE FORTIN,  
CARRIE GAGNON,  
JOSEPH GAROFALO,  
ALEC GAUDIN,  
MARGARITO GONZALES,  
NICOLE GOODRICH,  
JENTZEN GREEN,  
ROBERT HADEN  
MICHAEL HAMAIDE,  
ROBYN HAMILTON,  
BROOKS HARGROVE,  
MATTHEW HEATON,  
DYLAN HENNIGAN,  
TIMOTHY HICKS,  
THOMAS HIGHAM,  
JUSTIN JERRY,  
CARL KENNEDY,  
CHRISTINE KENNEDY,  
ANDREW KUCHARCZYK,  
IAN LEBLANC,  
NATALIE LITTLE,  
BRETT MANGIARACINA,  
KEN MARKS,  
TAYLOR MCDEVITT,  
JASON MOZINGO,  
JOSHUA MUHLENBECK,  
CHRISTOPHER MUSGRAVE,  
TIMOTHY NAVARRO,  
HALEY NIX,  
ISAAK OLSON,  
CALEB PEACOCK,  
STEPHEN PREVATT,  
DION PURCELL,

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**CARLOS QUINTERO,  
BLAKE RAUSCH,  
ROBERT RENDON,  
STEPHEN RICARDO,  
ADAM RIECK,  
ANGEL RIOS,  
ANDREW ROSS,  
JASON RUFFENACH,  
JOSHUA SCHWEINSBERG,  
RICK SHEILL,  
MATTHEW SHELTON,  
JASON SHIFLETT,  
KATIE SMITH,  
BRITTNEY SONNIER,  
EASON SPINELLI,  
STEPHEN SPOTTS,  
TIM STAMM,  
JACOB STONECIPHER,  
BENAIA STOWELL,  
JEREMIAH STROMBECK,  
DANIEL SZUBA,  
MELINDA THIBODEAU,  
JEREMY TROYER,  
SIMON TRUMAN,  
ROBERT TURNER  
PEDRO VARGAS,  
LEONARDO VEGA,  
BRETT WATTS,  
CHRISTIANE WEBER,  
WEIMANN, MITCHELL  
PAUL WINCHELL,  
BEN WOLHAUPTER,  
CLAY YANCEY,  
MATT YEE,  
CHRISTY YORK,**

**Intervening Plaintiffs**

**v.**

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**ALEJANDRO MAYORKAS, in  
his official capacity as  
Secretary of the U.S.  
DEPARTMENT OF  
HOMELAND SECURITY,**

**LINDA L. FAGAN, in her  
official capacity as  
Commandant of the UNITED  
STATES COAST GUARD,**

**LLOYD AUSTIN, in his official  
capacity as Secretary of the  
U.S. DEPARTMENT OF  
DEFENSE,**

**JANET WOODCOCK, in her  
official capacity as Acting  
Commissioner of the U.S.  
FOOD AND DRUG  
ADMINISTRATION,**

**Defendants.**

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**INTERVENING COMPLAINT OF 103 ADDITIONAL PLAINTIFFS**

1. Pursuant to Rule 24 of the Federal Rules of Civil Procedure (“FRCP”), the 103 Additional Plaintiffs appearing above move this honorable Court to intervene in the captioned action. The Additional Plaintiffs are (1) all members of the United States Coast Guard, active duty or Reserve, and (2) all subject to the Coast Guard Vaccine Mandate. The additional Plaintiffs are all equally situated as the named plaintiffs with respect to the Mandate, and all pursue the same exact legal claims

and remedies against the Defendants as the original Plaintiffs in this action. *See* ECF #1. Plaintiffs move the Court to be recognized on the same footing as their named colleagues so they are not processed for separation during the pendency of the action while their rights are being adjudicated.

2. Consistent with the Secretary of Defense's direction, on August 26, 2021, the Commandant announced that all Coast Guard active duty and Ready Reserve members who are not fully vaccinated, and do not fall within an approved exception, must be vaccinated against COVID-19.<sup>1</sup>

3. Defendants have mandated that all members of the Coast Guard receive a COVID-19 vaccine or be involuntarily separated. In theory, Defendants offer medical, administrative, and Religious Accommodation Requests (RARs) to the mandate. In practice, only servicemembers with medical or administrative reasons for an exemption from the mandate are accommodated, and even those sparingly, while RARs are universally denied.

4. All 103 Plaintiffs have sincerely held religious beliefs that

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<sup>1</sup> USCG, *COVID-19 vaccine mandated for all military members* (Aug. 27, 2021), available at: <https://www.mycg.uscg.mil/News/Article/2753888/covid-19-vaccine-mandated-for-all-military-members/> (last visited July 11, 2022).

prohibit them from receiving the COVID-19 vaccine and have submitted RARs. Of the 101 RARs submitted, 0 have been granted.

5. Because of their vaccination status, Plaintiffs have been singled out publicly by their leaders, treated differently than identically situated peers, had their normal leave and liberty restricted,<sup>2</sup> been removed from senior/leadership positions, been denied promotion, received official discipline, been barred from training/travel/new assignments and permanent change of station (“PCS”) orders, have been forced to waive their informed consent rights by repeated nasal swab tests for Covid-19 with EUA (i.e. unapproved) products, and face imminent involuntary separation, all while they have continued to perform the mission alongside their “vaccinated” peers – in many cases, the Intervenor Plaintiffs have had to pick up the slack while their “vaccinated” peers got sick with Covid-19 in large numbers.

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<sup>2</sup> Article 13 of the Uniform Code of Military Justice (“UCMJ”) prohibits unlawful restraint and punishment before a servicemember has had a trial and been convicted. *See* Art. 13, UCMJ. Additionally, the Coast Guard’s Military Justice Manual (COMDTINST 5810.1H) specifically instructs that “[d]eprivation of normal liberty as a punishment, except as specifically authorized under the UCMJ, is illegal.” *Id.*, ¶ A.3.a. For a discussion of the legality, and analysis, of orders restricting the liberty of military criminal accused, *see, generally, U.S. v. Milldebrandt*, 8 USCMA 635 (1958); *U.S. v. Mack*, 65 M.J. 108 (CAAF, 2007)(“The essential attributes of a lawful order include: (1) issuance by competent authority; (2) communication of words that express a specific mandate to do or not do a specific act; and (3) relationship of the order to a military duty.”)

6. Secretary Austin's August 24, 2021 memorandum states that the only vaccines that may be mandated are those *fully licensed* by the Food and Drug Administration ("FDA") and labeled in accordance with FDA requirements. Due to the unavailability of any FDA-licensed vaccines, however, Defendants directed that service members must instead take unlicensed EUA vaccines because Defendants determined that the unlicensed vaccines to be "interchangeable" with, and thus may be treated "as if" they were the FDA-licensed and labeled vaccines. Defendants' actions violate the Informed Consent Laws, which expressly prohibit the mandate and coercive measures for medical treatments like unlicensed Emergency Use Authorization ("EUA") vaccines.

7. The DOD Mandate and Coast Guard Mandate are unconstitutional insofar as Defendants have deprived Plaintiffs of: (1) their rights to free exercise of religion under the First Amendment and the Religious Freedom Restoration Act ("RFRA"). 42 U.S.C. §2000bb-1, *et seq.*; and (2) their rights to substantive and procedural due process under the Fifth Amendment because the mRNA shots being forced on servicemen and women are not vaccines as a matter of fact and law, but instead are gene-therapy *treatments* that meet none of the statutory and historical definitions to be considered "vaccines."

8. The Mandate is also illegal in that it violates the following

federal statutes and regulations: (1) the informed consent statutes for products subject to an EUA, *see* 10 U.S.C. § 1107a and 21 U.S.C. § 360bbb-3 (collectively, the “Informed Consent Laws”); (2) the substantive provisions of the Public Health Service Act (“PHSA”), 42 U.S.C. § 262; (3) multiple provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*; and (4) the Defendants’ own rules and regulations (this includes DoD instructions and regulations, Coast Guard instructions and regulations, and numerous provisions of 21 C.F.R governing the FDA).

9. Plaintiffs file this action seeking the following declaratory relief and injunctive relief on behalf of themselves and similarly situated Coast Guard class members:

- (1) Declare the DoD Mandate and the Coast Guard Mandate to be unlawful and unconstitutional and to vacate these orders;
- (2) Declare that the Defendants’ No Accommodation Policy violates services members’ rights under RFRA, the First Amendment Free Exercise Clause, and the Fifth Amendment Due Process Clause;
- (3) Enjoin the implementation or enforcement of the DOD Mandate and the Coast Guard Mandate by the Defendants with respect to the Plaintiffs and similarly situated Coast Guard members; and
- (4) Enjoin any adverse or retaliatory action against the Plaintiffs as a result of, arising from, or in conjunction with the Plaintiffs’ RAR requests or denials, or for pursuing this action, or any other action for relief from Defendants’ constitutional, statutory, or regulatory violations;
- (5) Provide reinstatement to any members wrongfully discharged already or during the pendency of this action.

10. Plaintiffs bring this action on their own behalf and as a class action as representative of all members of the class and subclasses defined herein under the provisions of Federal Rules of Civil Procedure (the Rules) 23(a) and 23(b). *See infra* Section **Error! Reference source not found.** (“Class Action Allegations”). Plaintiffs seek declaratory and injunctive relief, and relief incident to it, including, damages, costs and attorney fees.

11. Plaintiffs seek this relief pursuant to the APA, 5 U.S.C. §§ 702 and 704; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; the All Writs Act, 28 U.S.C. § 1651; and 42 U.S.C. § 1988.

### **PARTIES**

12. Plaintiffs are 103 members of the Coast Guard who are subject to the DOD Mandate and the Coast Guard Mandate.

13. Plaintiff Michael Akey is a Yeoman Second Class (YN2) Petty Officer in the U.S. Coast Guard, is domiciled in Adel, Iowa and is stationed at Base Detachment St. Louis. YN2 Akey enlisted in the Coast Guard in April 2010, was selected as “Squad Leader” in bootcamp, and was awarded the “Director’s Award” while attending the Maritime Enforcement Academy. *See* Ex. 1, Decl. of YN2 Michael Akey, USCG, ¶¶2-4. In response to the Covid-19 vaccine mandate, YN2 Akey submitted an RAR on October 29, 2021. YN2 Akey’s RAR was denied on

February 15, 2022; YN2 Akey appealed this decision on February 21, 2022, and the appeal was denied on May 19, 2022. *Id.* at ¶¶ 6-8.

14. On June 6, 2022, YN2 Akey was issued official counseling from his commanding officers to receive a “fully FDA Approved COVID-19 vaccine.” On June 14, 2022, YN2 Akey sought such a vaccine from Sumpter Pharmacy and was informed that no such vaccine was available. *Id.* at ¶¶ 9-10. On June 27, 2022, Akey received a negative remark on a CG-3307 document (administrative remark entry) for, *inter alia*, “willfully disobeying a superior Commissioned Officer” and “Failure to obey a lawful order.” Akey responded to the CG-3007 on June 30, 2022, noting that there was no FDA-approved vaccine act that time. *Id.* at 12. On July 12, 2022, Akey was informed by Captain Michael Rogers that Akey would need to obtain the Comranity vaccine on August 13, 2022; on July 29, 2022, Akey sought advice from the Sector Upper Mississippi Medical Clinic on seeking a religious exemption from that requirement. *Id.* at 13-15. On August 13, 2022, Akey received another CG-3307 regarding his vaccination status. *Id.* at 16. On August 15, 2022, Akey was informed that he had until the close of business on August 16, 2022, to schedule a medical interview. *Id.* at 17. Throughout this time, Akey was treated differently than other similarly situated USCG members, including several attempts to coerce him into receiving the vaccine. *Id.*

at 18. Since writing his declaration, YN2 Akey was issued a formal transfer to the Inactive Status List (ISL) on August 25, 2022 and will be involuntarily transferred out of the reserves and stripped of his benefits.

15. Plaintiff Austin Albright is a Maritime Enforcement Specialist Third Class (ME3) in the U.S. Coast Guard Reserve and is domiciled in Ramsey, Minnesota. *See* Ex. 2, Decl. of ME3 Austin Albright, USCG, ¶¶2-3. ME3 Albright has a family history of potential COVID-19 vaccination adverse events, including death of his grandfather within 10 days of receiving the COVID-19 vaccination on February 10, 2021. *Id.* at ¶ 7.

16. On October 22, 2021, ME3 Albright was ordered to report to Walgreens to receive his first dose of a COVID-19 vaccine; Albright refused and was issued a negative CG-3007 on October 23, 2021. *Id.* at ¶¶ 9-10. On July 29, 2022, ME3 Albright reported to Station Duluth, MN for Active Duty Training (ADT) and was advised that he had been released from the U.S Coast Guard; on August 1, 2022, Albright was informed that his training was terminated due to his vaccination status. *Id.* at ¶¶11-13. ME3 Albright's inability to complete ADT will leave him unqualified as a Boat Crew and as a Boarding Team Member. ME3 Albright's vaccination status will leave him unable to advance, deploy, or receive additional training. *Id.* at ¶¶14-15. Since writing his

declaration, ME3 Albright was issued a formal transfer to the Inactive Status List (ISL) on August 11, 2022 and will be involuntarily transferred out of the reserves and stripped of his benefits.

17. Plaintiff Elizabeth Albritton is an Electrician's Mate Chief (EMC) in the U.S. Coast Guard is domiciled at Norfolk, Virginia. Since enlisting in the Coast Guard, EMC Albritton has received three Coast Guard Achievement Medals, five Coast Guard Good Conduct Medals and various personal and unit awards; EMC Albritton has accumulated over 9 years of seagoing sea time. *See* Ex. 3, Decl. of EMC Elizabeth Albritton, USCG, ¶¶2, 5. In response to the Covid-19 vaccine mandate, EMC Albritton submitted a RAR on September 22, 2021. EMC Albritton's RAR was denied on February 15, 2022; EMC Albritton appealed this denial on February 28, 2022 and this appeal was denied on May 10, 2022. *Id.* at 6-8. On May 10, 2022, EMC Albritton was issued an official counseling (CG-3307) from her commanding officer ordering her to receive a "fully FDA approved COVID-1i vaccine." On May 12, 2022, EMC Albritton sought such a vaccine from Base Portsmouth Medical Clinic and was informed that no such vaccine was available. *Id.* at 9-10. Throughout this process, EMC Albritton has been unduly burdened to prepare for involuntary separation from the Coast Guard due to her religious beliefs. *Id.* at 16.

18. Plaintiff Ashley Anderson is a Maritime Enforcement Specialist Third Class (ME3) in the U.S. Coast Guard stationed at Sector Puget Sound, Seattle, Washington. ME3 Anderson enlisted in the Coast Guard in February 2019 and has conducted over 100 high interest vessel boardings, operations for deportation of foreign nationals, seized illegal drugs, and has dedicated her personal time to aid the operations of the Coast Guard. *See Ex. 4 Decl. Of ME3 Ashley Anderson, USCG ¶4-5.* In response to the Covid-19 vaccine mandate, ME3 Anderson submitted a RAR on November 11, 2021. ME3 Anderson’s RAR was denied, and she subsequently appealed this denial on February 24, 2022. This appeal was then also denied. *Id.* at 6-8. After her denial, ME3 Anderson was issued an official counseling (CG-3307) from her commanding officer ordering her to receive a “fully FDA approved COVID-19 vaccine.” *Id.* at 9. ME3 Anderson was then transferred to Seattle, WA from Jacksonville, FL after experiencing a sexual assault. After arriving in Seattle, ME3 Anderson was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11. On August 11, 2022, ME3 Anderson was issued an intent to discharge and will be involuntarily discharged from the Coast Guard. *Id.* at 15.

19. Plaintiff Nathaniel Anderson is an Operation Specialist Third Class (OS3) in the U.S. Coast Guard stationed on the CGC Hamilton in Charleston, South Carolina. OS3 Anderson enlisted in the Coast Guard in March 2019 and has executive counter narcotics patrols, Black Sea patrols, assisted/rescued hundreds of migrants, captured drug smugglers and worked with 10 other countries for various missions. *See* Ex. 5 Decl. of OS3 Nathaniel Anderson, USCG ¶4-5. In response to the Covid-19 vaccine mandate, OS3 Anderson submitted a RAR on September 9, 2021. OS3 Anderson’s RAR was denied on February 4, 2022; OS3 Anderson appealed this denial on March 4, 2022 and this appeal was denied on May 6, 2022. *Id.* at 6-8.

20. On June 7, 2022, OS3 Anderson was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” In a series of emails with his command and doctors, as well as CG District 8 Legal, OS3 Anderson was told that legally the FDA and EUA vaccines could not be used interchangeably but that he was required to vaccinate with the EUA vaccine regardless. *Id.* At 9-10. On June 22, 2022, OS3 Anderson was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11. On August 2, 2022, OS3 Anderson was issued an intent

to discharge and will be involuntarily processed out of the Coast Guard.

*Id.* at 15.

21. Plaintiff Martin Andrada is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in San Diego, California and serving at Sector San Diego. AMT2 Andrada enlisted in the Coast Guard in February 2015 and has flown over 350 flight hours, executed multiple rescues, saved/assisted numerous lives, and received multiple awards including the Sikorsky Lifesaving Award. He is currently a nominee for the Coast Guard's 2022 Chief Oliver F. Berry Aviation Award. *See* Ex. 6 Decl. of AMT2 Martin Andrada, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AMT2 Andrada submitted a RAR on October 7, 2021. AMT2 Andrada's RAR was denied on January 12, 2022; AMT2 Andrada appealed this denial on January 25, 2022 and this appeal was denied on May 18, 2022. *Id.* at 6-8.

22. On May 31, 2022, AMT2 Andrada was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." AMT2 Andrada sought such a vaccine from multiple pharmacies and was informed that no such vaccine was available. AMT2 Andrada was informed by his command that Comirnaty was available at the base clinic but was denied the opportunity to view the vial unless he signed a consent form stating

he was willing to be vaccinated. *Id.* at 9. On June 14, 2022, AMT2 Andrada was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” On August 11, 2022, AMT2 Andrada received a notification of intent to separate and will be involuntarily discharged from the Coast Guard. *Id.* at 10 and 12.

23. Plaintiff Stanley Andriski, III is a Maritime Enforcement Specialist First Class (ME1) in the U.S. Coast Guard Reserve domiciled in Barre, Massachusetts and stationed at Port Security Unit 301. ME1 Andriski enlisted in the Coast Guard Reserve in August 2016 and has completed boarding team and law enforcement operations and received several awards including two Letters of Commendation. *See* Ex. 7 Decl. of ME1 Stanley Andriski III, USCGR ¶4. In response to the Covid-19 vaccine mandate, ME1 Andriski submitted a RAR on October 28, 2021. ME1 Andriski’s RAR was denied on January 5, 2022; ME1 Andriski appealed this denial on January 24, 2022 and this appeal was denied on May 9, 2022 but ME1 Andriski was not informed until May 19, 2022. *Id.* at 6-8. On May 19, 2022, ME1 Andriski was issued an official counseling (CG-3307) from his command ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 1, 2022, ME1 Andriski sought such a vaccine from Base Boston Medical Clinic and was informed that

no such vaccine was available. *Id.* at 9-10. On June 23, 2022, ME1 Andriski was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” He was also informed that this CG-3307 would be used as evidence to support his removal from the Coast Guard. *Id.* at 13. On August 21, 2022, ME1 Andriski was issued a CG-3307 stating that he would be placed into the Inactive Status List (ISL) and lose his health benefits, opportunity to earn benefits to retire, and will no longer be paid or eligible to drill. *Id.* at 16.

24. Plaintiff Stephanie Aninos is a Culinary Specialist First Class (CS1) in the U.S. Coast Guard Reserve domiciled in Plymouth, Michigan and stationed at Training Center Yorktown. CS1 Aninos enlisted in the Coast Guard in 2004 and has completed search and rescue and law enforcement operations, as well as human and drug smuggling interdictions and has received numerous awards. *See Ex. 8 Decl. of CS1 Stephanie Aninos, USCGR ¶4.* In response to the Covid-19 vaccine mandate, CS1 Aninos submitted a RAR on November 22, 2021. CS1 Aninos’ RAR was denied on February 11, 2022; CS1 Aninos appealed this denial on February 24, 2022 and this appeal was denied on May 9, 2022. *Id.* at 6-8. On June 12, 2022, CS1 Aninos was issued an official counseling (CG-3307) from her command ordering her to receive a “fully

FDA approved COVID-19 vaccine.” CS1 Aninos sought such a vaccine from local pharmacies and was informed that no such vaccine was available. *Id.* at 9-10. On May 25, 2022, CS1 Aninos was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11. Throughout this process, CS1 Aninos has been harassed for her religious beliefs and is at risk of losing the retirement she has worked to obtain over the past 18 years. *Id.* at 12. Since writing her declaration, CS1 Aninos was issued a formal transfer to the Inactive Status List (ISL) on August 31, 2022 and will be involuntarily transferred out of the reserves and stripped of her benefits.

25. Plaintiff Zachary Atchison is an Aviation Electrical Technician Chief (AETC) in the U.S. Coast Guard domiciled in Elizabeth City, North Carolina and stationed at Aviation Logistics Center. AETC Atchison enlisted in the Coast Guard in May 2005 and has executed multiple helicopter deployments, saved/assisted 30+ lives, and receive numerous awards including the Coast Guard Enlisted Person of the Year. *See Ex. 9 Decl. of AETC Zachary Atchison, USCG ¶4-5.* In response to the Covid-19 vaccine mandate, AETC Atchison submitted a RAR on October 15, 2021. AETC Atchison’s RAR was denied on February 10, 2022; AETC Atchison appealed this denial on February 9, 2022 and this

appeal was denied on May 5, 2022. *Id.* at 6-8. On May 9, 2022, AETC Atchison was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On May 13, 2022, AETC Atchison sought such a vaccine from Base Elizabeth City Clinic and was informed that no such vaccine was available. *Id.* at 9-10. On June 26, 2022, AETC Atchison was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11. Throughout this process, AETC Atchison has faced discriminatory interpretations of Coast Guard policy and been stripped of his right to travel as his command attempted to coerce him into vaccination. *Id.* at 13.

26. Plaintiff Altara Avery is a Yeoman First Class (YN1) in the U.S. Coast Guard domiciled in Baytown, Texas and stationed at Marine Safety Unit Port Arthur. YN1 Avery enlisted in the Coast Guard in December 2003 and has served in many roles above paygrade. *See* Ex. 10 Decl. of YN1 Altara Avery, USCG ¶4. In response to the Covid-19 vaccine mandate, YN1 Avery submitted a RAR on October 5, 2021. YN1 Avery’s RAR was denied on February 14, 2022; YN1 Avery appealed this denial on March 1, 2022 and never received a denial or approval. *Id.* at 5-7. YN1

Avery was issued a notification of intent to discharge on June 9, 2022 and will be involuntarily discharged from the Coast Guard any day.

27. Plaintiff Justin Baker is a Lieutenant (LT) in the U.S. Coast Guard domiciled in Kountze, Texas and stationed at Air Station Borinquen, Puerto Rico. LT Baker enlisted in the Coast Guard in June 2010 and was named Honor Guardsman of the Year in 2013. During his enlisted and commissioned career, LT Baker has served honorably for 12 years completing numerous deployments, narcotics and migrant interdictions, responded to disaster relief, saved/assisted 95 lives, and received numerous awards including the National Defense Service Medal. *See* Ex. 11 Decl. of LT Justin Baker, USCG ¶4-8. In response to the Covid-19 vaccine mandate, LT Baker submitted a RAR on September 17, 2021. LT Baker's RAR was denied on December 22, 2021; LT Baker appealed this denial on January 6, 2022 and the appeal was denied on May 18, 2022. *Id.* at 9-12. Following his denial, LT Baker was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved vaccination" of which none was available. *Id.* at 13. On June 15, 2022, LT Baker was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey other lawful order." *Id.* at 15. Throughout this process, LT Baker has been restricted within 50 miles

of his duty station, has been and denied opportunities for advancement and required training. *Id.* at 16.

28. Plaintiff Brett Barker was an Electrical Technician First Class (ET1) in the U.S. Coast Guard domiciled in Martindale, Texas and was stationed at ESD Ketchikan until his involuntary discharge from the Coast Guard on July 29, 2022. ET1 Barker enlisted in the Coast Guard in October 2011 and completed over 12,000 maintenance and corrective hours, 4 years of sea time deployments, saved/assisted 500+ lives and received numerous awards. *See* Ex. 12 Decl. of ET1 Brett Barker, USCG ¶4-5. In response to the Covid-19 vaccine mandate, ET1 Barker did not submit a RAR as it was well known that RAR's were being denied. *Id.* at 6. On October 5, 2021, ET1 Barker was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On October 16, 2021, ET1 Barker sought such a vaccine from Coast Guard Ketchikan Medical Clinic and was informed that no such vaccine was available. *Id.* at 7-8. On October 18, 2021, ET1 Barker was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 9. Throughout this process, ET1 Barker was treated poorly by his command and was left with no responsibilities or involvement in his job until he was involuntarily

discharged for his religious beliefs. *Id.* at 10. ET1 Barker was issued a formal Intent to Discharge and will be involuntarily discharged from the Coast Guard any day. On August 29, 2022, ET1 Barker was issued a Payment Plan Agreement to repay an enlistment bonus in the amount of \$10,011.23.

29. Plaintiff William Beckham, Jr. is an Aviation Electrical Technician First Class (AET1) in the U.S. Coast Guard domiciled in Cooper City, Florida and stationed at Air Station Corpus Christi, Texas. AET1 Beckham enlisted in the Coast Guard in May 2009 and has served honorably for 13 years with a perfect service record. AET1 Beckham has completed multiple search and rescue missions and deployments, and received numerous awards including four consecutive Good Conduct awards. *See* Ex. 13 Decl. of AET1 William Beckham Jr., USCG ¶4-7. In response to the Covid-19 vaccine mandate, on December 7, 2021, AET1 Beckham was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “COVID-19 vaccine in accordance with FDA-approved labeling.” On December 8, 2021, AET1 Beckham sought such a vaccine from Nueces County Vaccination Clinic and was informed that no such vaccine was available. *Id.* at 10-11. On December 9, 2021, AET1 Beckham was issued an additional negative CG-3307 for, *inter alia*, “failure to obey a lawful order.” *Id.* at 12.

30. After multiple conversations with his command and legal intervention, AET1 Beckham submitted a RAR on April 6, 2022. AET1 Beckham's RAR was denied on May 5, 2022; AET1 Beckham appealed this denial on May 19, 2022. *Id.* at 24-25. On June 21, 2022, AET1 Beckham received an email from his commanding officer informing him that the Pfizer Comirnaty vaccine was available and he was instructed to respond that he would receive it. On June 22, 2022, AET1 Beckham's RAR appeal was denied. *Id.* at 26. On July 26, 2022, AET1 Beckham was informed on August 16, 2022 that he would be processed for involuntary separation and given a General discharge. *Id.* At 27-28.

31. Plaintiff Mary Bender is a Lieutenant Commander (LCDR) in the U.S. Coast Guard domiciled in Portland, Texas and stationed at Air Station Corpus Christi. LCDR Bender was commissioned in the Coast Guard in May 2006 after graduating from the Academy with honors. LCDR Bender has served as the Search and Rescue Pilot, trained Navy, Marine, and Coast Guard students, executed multiple deployments, saved/assisted 15+ lives and received numerous awards including the Spirit of the Bear Award. *See* Ex. 14 Decl. of LCDR Mary Bender, USCG ¶4-5. In response to the Covid-19 vaccine mandate, LCDR Bender submitted a permanent medical exemption on September 10, 2021. LCDR Bender's medical exemption was denied on March 28, 2022

but she was not informed of its denial until May of 2022. *Id.* at 6-7. On August 3, 2022, LCDR Bender submitted an appeal to her medical exemption denial and this appeal was denied the next day on August 4, 2022, less than 24 hours from when her appeal was submitted. *Id.* at 9-10. On August 5, 2022, LCDR Bender submitted a RAR even though she knew her commanding officer did not look favorably on those who had submitted RARs. *Id.* at 12. Since writing her declaration, LCDR Bender received a denial of her RAR on August 18, 2022 and is now facing involuntary discharge from the Coast Guard.

32. Plaintiff Richard Bleicken is a Lieutenant Commander (LCDR) in the U.S. Coast Guard Reserve domiciled in Fernandina Beach, Florida and stationed at U.S. SOUTHCOM in Doral, Florida. LCDR Bleicken joined the Coast Guard in November 2002 and spent nine years on active duty outside of his reserve requirements completing numerous sea and land-based missions. *See* Ex. 15 Decl. of LCDR Richard Bleicken, USCGR ¶4-5. In response to the Covid-19 vaccine mandate, LCDR Bleicken submitted a RAR on November 30, 2021. LCDR Bleicken's RAR was denied on February 13, 2022; LCDR Bleicken appealed this denial on February 28, 2022 and this appeal was denied on May 16, 2022. *Id.* at 6-8. On May 23, 2022, LCDR Bleicken was issued an official counseling (CG-3307) and ordered to receive a "fully FDA

approved COVID-19 vaccine.” LCDR Bleicken sought such a vaccine on June 23, 2022 from the base clinic and was informed no such vaccine was available. On June 28, 2022, LCDR Bleicken was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” He was then informed his promotion was temporarily delayed. *Id.* at 10-12. Throughout this process, LCDR Bleicken’s health has deteriorated from the stress, and he has experienced undue stress and discrimination for standing on his religious beliefs. *Id.* at 16. Since writing this declaration, LCDR Bleicken was issued a formal transfer to the Inactive Status List (ISL) on August 17, 2022 and will be involuntarily transferred out of the reserves and stripped of his benefits.

33. Plaintiff Noah Bodey is a Boatswain’s Mate Second Class (BM2) in the U.S. Coast Guard domiciled in Sitka, Alaska and stationed at Coast Guard Cutter Kukui. BM2 Bodey enlisted in the Coast Guard in May 2016 and has completed over 130 successful missions including search and rescue and law enforcement. BM2 Bodey has saved/assisted 87 lives and received many qualifications on a variety of platforms. *See* Ex. 16 Decl. of BM2 Noah Bodey, USCG ¶4-5. In response to the Covid-19 vaccine mandate, BM2 Bodey submitted a RAR in August, 2021. BM2 Bodey’s RAR was denied on January 20, 2021; BM2 Bodey appealed this

denial on January 25, 2021 and this appeal was denied on May 9, 2022. *Id.* at 6-8. On May 20, 2022, BM2 Bodey was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine” of which none was available. *Id.* at 9. On June 10, 2022, BM2 Bodey was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* At 10. BM2 Bodey has been treated poorly by his command who has attempted to coerce him into vaccinating and has been denied several opportunities for professional development. *Id.* at 12.

34. Plaintiff Jenny Bone is a Storekeeper Senior Chief (SKCS) in the U.S. Coast Guard Reserves domiciled in Elizabeth City, North Carolina and serving at District 5. SKCS Bone enlisted in the Coast Guard in July 2005 and has completed multiple voluntary active-duty orders throughout her 17.2 years in service. *See* Ex. 17 Decl. of SKCS Jeny Bone, USCGR ¶4-5. In response to the Covid-19 vaccine mandate, SKCS Bone submitted a RAR on September 16, 2021. SKCS Bone’s RAR was denied on February 9, 2022; SKCS Bone appealed this denial on February 28, 2022 and this appeal was denied on May 17, 2022. *Id.* at 6-8. On August 2, 2022, SKCS Bone was issued official counseling (CG-3307) from her commanding officer ordering her to receive a “vaccine in

accordance with the Food and Drug Administration approved labeling and guidance.” SKCS Bone was then informed she would not be authorized to complete her next active-duty training which will hinder her ability to earn for retirement. *Id.* At 9.

35. Plaintiff William Brennan is a Machinery Technician Chief (MKC) in the U.S. Coast Guard Reserve domiciled in Mullica Hill, New Jersey and stationed at Surface Forces Logistics Center. MKC Brennan enlisted in the Coast Guard Reserves in June 2004 and has been activated on active duty for 5 years. Throughout his service, MKC Brennan has conducted hundreds of search and rescue missions, multiple deployments, saved/assisted dozens of lives, and received numerous awards. *See* Ex. 18 Decl. of MKC William Brennan, USCGR ¶4-5. In response to the Covid-19 vaccine mandate MKC Brennan submitted a RAR on October 27, 2021. MKC Breanna’s RAR was denied on February 11, 2022; MKC Brennan appealed this denial on March 8, 2022 and this appeal was denied on May 18, 2022. *Id.* at 6-8. On May 25, 2022, MKC Brennan was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” *Id.* at 9. Throughout this process, MKC Brennan has been treated poorly by his command as they attempted to coerce him into vaccinating, and he has faced discriminatory interpretations of Coast

Guard Policy. *Id.* at 13. Since writing this declaration, MKC Brennan was issued a formal transfer to the Inactive Status List (ISL) on August 29, 2022 and will be involuntarily transferred out of the reserves and stripped of his benefits.

36. Plaintiff Jadeon Brooks is a Machinery Technician Third Class (MK3) in the U.S. Coast Guard domiciled in Cape Coral, Florida and stationed at Station Fort Myers Beach. MK3 Brooks enlisted in the Coast Guard in January 2019 and has completed search and rescue and law enforcement operations, boarding team missions, and maintenance operations. *See* Ex. 19 Decl. of MK3 Brooks, USCG ¶4. In response to the Covid-19 vaccine mandate, MK3 Brooks submitted a RAR on September 20, 2021. MK3 Brooks' RAR was denied on February 11, 2022; MK3 Brooks appealed this denial on February 15, 2022 and this appeal was subsequently denied. *Id.* at 5-7. On June 6, 2022, MK3 Brooks was issued official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine" of which none was available. On June 15, 2022, MK3 Brooks was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* At 8-9. Throughout this process, MK3 Brooks has received discouragement and threats of being discharged from Coast Guard ALCOAST and is

burdened daily with the stress of being involuntarily processed out of the Coast Guard. *Id.* at 11-12.

37. Plaintiff Dean Capps is an Aviation Electrical Technician Third Class (AET3) in the U.S. Coast Guard domiciled in Tamarac, Florida and stationed at Air Station Miami. AET3 Capps enlisted in the Coast Guard in November 2017 and completed 4 years at sea before joining the Airman program. AET3 Capps has completed boarding team missions, aviation missions, and received numerous awards including the Sailor of the Quarter and Coast Guard Achievement Medal. *See* Ex. 20 Decl. of AET3 Dean Capps, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AET3 Capps submitted a RAR on October 14, 2021. AET3 Capps RAR was denied on January 13, 2022; AET3 Capps appealed this denial on February 2, 2022 and this appeal was denied on May 22, 2022. *Id.* at 6-8. On June 6, 2022, AET3 Capps was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 13, 2022, AET3 Capps sought such a vaccine from Ari Station Miami Clinic and was informed that no such vaccine was available. On June 16, 2022, AET3 Capps was issued an additional CG-3307 for, *inter alia*, having “had the opportunity and the means to follow the order and failed to do so.” *Id.* At 9-11. AET3 Capps has endured a hostile work environment

and been harassed for his religious beliefs throughout this process. *Id.* at 13. Since writing this declaration, AET3 Capps was issued a formal Intent to Discharge on August 12, 2022 and will be involuntarily discharged from the Coast Guard.

38. Plaintiff Adam Carr is an Aviation Survival Technician First Class (AST1) in the U.S. Coast Guard domiciled in Kodiak, Alaska and stationed at Air Station Kodiak. AST1 Carr enlisted in the Coast Guard in November 2007 and graduated AST training school as a Honor Graduate. Throughout his service, AST1 Carr has received awards such as the Community Service Award, has saved/assisted 60+ lives, and executed multiple deployments during the Covid-19 pandemic to complete more deployment days than any other Rescue Swimmer in Kodiak. *See* Ex. 21 Decl. of AST1 Adam Carr, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AST1 Carr submitted a RAR on October 6, 2021. AST1 Carr's RAR was denied on January 31, 2022; AST1 Carr appealed this denial on February 15, 2022 and this appeal was denied on July 13, 2022. *Id.* at 6-8.

39. On July 13, 2022, AST1 Carr was issued official counseling (CG-3307) from his commanding officer ordering him to receive "the first/second dose of the COVID-19 vaccine." AST1 Carr was set to deploy and was assured that the issuance of this CG-3307 would be postponed

until after his deployment. *Id.* at 9. On July 29, 2022, while deployed, AST1 Carr was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 9-10. Throughout this process, AST1 Carr has been treated poorly by his command in violation of his religious beliefs. He has been blamed for putting extra burden on those who did not have restrictions and has been restricted to Kodiak Island and the state of Alaska. *Id.* at 12. Since writing his declaration, AST1 Carr was issued a formal Intent to Discharge on August 12, 2022 and will be involuntarily discharged from the Coast Guard.

40. Plaintiff Adrian Chuquillangui is a Lieutenant (LT) in the U.S. Coast Guard domiciled in Stafford, Virginia and stationed at USCG Headquarters in Washington, DC. LT Chuquillangui was commissioned in the Coast Guard in May 2017 and has been in charge of planning and coordinating multiple sea and land-based missions as well as aviation training. *See Ex. 22 Decl. of LT Adrian Chuquillangui, USCG ¶¶4-5.* In response to the Covid-19 vaccine mandate, LT Chuquillangui submitted a RAR on October 13, 2021. LT Chuquillangui’s RAR was denied on February 11, 2021; LT Chuquillangui appealed this denial on March 14, 2022 and his appeal was denied on May 18, 2022. *Id.* at 5-7. On June 1, 2022, LT Chuquillangui was issued official counseling (CG-3307) from

his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” LT Chuquillangui sought such a vaccine from the base clinic and multiple civilian pharmacies but was informed that no such vaccine was available. *Id.* at 8-9. On June 24, 2022, LT Chuquillangui was issued an additional negative CG-3307 for, *inter alia*, “failure to obey a lawful order.” *Id.* at 11. Throughout this process, LT Chuquillangui has been unduly burdened with the stress and fear of being involuntarily processed out of the Coast Guard. *Id.* at 13.

41. Plaintiff Christopher Collins is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in La Marque, Texas and stationed at Airstation Houston Texas. AMT2 Collins enlisted in the Coast Guard in May 2011 and throughout his career has ensured safe waterways, completed illegal drug interdictions, and conducted search and rescue operations resulting in multiple lives saved. *See* Ex. 23 Decl. of AMT2 Christopher Collins, USCG ¶4, and 7-8. In response to the Covid-19 vaccine mandate, AMT2 Collins submitted a RAR on October 13, 2021. *Id.* at 9. AMT2 Collins submitted an additional request to be exempt from the J&J vaccine on March 3, 2022 after being told to “comply with Coast Guard policy by taking the J&J vaccine” and “this is not an order to receive the J&J vaccine, but if you do not receive the J&J vaccine within 10 days of your receipt of this letter, you will be

considered non-compliant with the policy.” This second accommodation request was denied on May 16, 2022. *Id.* at 11.

42. On February 16, 2022, AMT2 Collins’ initial request for RAR was denied; his appeal for his second request was denied on April 4, 2022, and he appealed his first request denial May 16, 2022, which was then denied on June 21, 2022. On June 7, 2022, AMT2 Collins was ordered to receive a “fully FDA approved COVID-19 vaccine.” *Id.* at 14-15. On July 8, 2022, AMT2 Collins received official counseling (CG-3307) from his commanding officer for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey other lawful order.” AMT2 Collins is now facing involuntary discharge from the Coast Guard where he has faithfully served for over 11 years. *Id.* At 16-17. Since writing this declaration, AMT2 Collins was issued a formal Intent to Discharge on August 16, 2022 and will be involuntarily discharged from the Coast Guard.

43. Plaintiff Jeff Daily is a Lieutenant Junior Grade (LTJG) in the U.S. Coast Guard domiciled in Marrero, Louisiana and stationed at Sector New Orleans. LTJG Daily enlisted in the Coast Guard in March 2011 before advancing to Officer Candidate School and being Commissioned in November 2020. Throughout his career, LTJG Daily has completed multiple search and rescue missions, saved numerous

lives, deployed to hurricane aftermath and been nominated and earned multiple awards including Sailor of the Quarter, Sailor of the Year, and Enlisted Person of the Year. *See* Ex. 24 Decl. Of LTJG Jeff Daily, USCG ¶4-5. In response to the Covid-19 vaccine mandate, LTJG Daily submitted a RAR on October 13, 2021. LTJG Daily's RAR was denied on February 9, 2022; LTJG Daily appealed this denial on February 25, 2022 and this appeal was denied on May 5, 2022. *Id.* at 6-8. On May 5, 2022, LTJG Daily was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine" of which none was available. *Id.* at 9. LTJG Daily was subsequently told by his commanding officer "it sounds like we are going to lose you" and was issued an additional negative CG-3307 on May 18, 2022 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 11-12. LTJG Daily is now facing involuntary discharge out of the Coast Guard and has been denied the opportunity for advancement. He has endured undue stress and hardship which has taken a toll on his mental health and otherwise healthy being. *Id.* at 14-15.

44. Plaintiff Adam DeLano is a Boatswain's Mate Second Class (BM2) in the U.S. Coast Guard domiciled in Lapeer, Michigan and stationed at Station Port Huron. BM2 DeLano enlisted in the Coast

Guard in December 2010, has achieved 7,376.6 underway hours, saved/assisted 90+ lives, conducted 200+ safety boardings, and been awarded numerous awards. *See* Ex. 25 Decl. of BM2 Adam DeLano, USCG ¶4-5. In response to the Covid-19 vaccine mandate, BM2 DeLano submitted a RAR on October 6, 2021. BM2 DeLano’s RAR was denied on February 14, 2022; BM2 DeLano appealed this denial on March 2, 2022 and this appeal was denied on May 6, 2022. *Id.* at 6-9. On May 18, 2022, BM2 DeLano was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On May 18, 2022 BM2 DeLano sought such a vaccine locally and was informed that no such vaccine was available. *Id.* at 10-11. On June 1, 2022 (dated May 25, 2022), BM2 DeLano received an additional CG-3307 for, *inter alia*, “failure to obey a lawful order” and was informed his advancement was being withheld. *Id.* at 13. BM2 DeLano has been treated poorly by his command as they attempted to coerce him into vaccinating, and he has faced discriminatory interpretations of Coast Guard policy. *Id.* at 14.

45. Plaintiff Richard Deleon is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in Kodiak, Alaska and stationed at Air Station Kodiak. AMT2 Deleon enlisted in the Coast Guard in February 2009 and has flown over 800

hours, been on multiple Bering Sea deployments, assisted multiple lives, and completed numerous search and rescue missions for which he has received awards. *See* Ex. 26 Decl. of AMT2 Richard Deleon, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AMT2 Deleon submitted a RAR on September 17, 2021. AMT2 Deleon’s RAR was denied in December 2021; AMT2 Deleon appealed this denial on February 11, 2022 and this appeal was denied in May, 2022. *Id.* at 7-9. On May 23, 2022, AMT2 Deleon was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine” of which none was available. *Id.* at 10. Throughout this process, AMT2 Deleon has been denied several opportunities for professional development which will have negative long-term effects on his career progression even if an injunction is issued. *Id.* at 13. Since writing this declaration, AMT2 Deleon was issued a formal Intent to Discharge on August 6, 2022 and will be involuntarily processed out of the Coast Guard.

46. Plaintiff Daniel DeRito is an Information Systems Technician First Class (IT1) in the U.S. Coast Guard domiciled in Aguadilla, Puerto Rico and stationed at ESD San Juan Ol-Borinquen in Aguadilla, Puerto Rico. IT1 DeRito enlisted in the Coast Guard in March 2008 and has provided critical IT support, completed countless

assistance requests, performed hundreds of time compliance orders, deployed for Operation Arctic Shield, and completed numerous other missions in his 14.5 years of service. *See Ex. 27 Decl. Of IT1 Daniel DeRito, USCG ¶4-5.* In response to the Covid-19 vaccine mandate, IT1 DeRito submitted a RAR on October 5, 2021. IT1 DeRito's RAR was denied on January 24, 2022; IT1 DeRito appealed this denial on February 8, 2022 and this appeal was denied on May 3, 2022. *Id.* at 6-8. On May 24, 2022, IT1 DeRito was issued official counseling (CG-3307) from his commanding officer to receive a "fully FDA approved COVID-19 vaccine." On May 26, 2022, IT1 DeRito sought such a vaccine from Base Detachment Borinquen Medical Clinic but was informed that no such vaccine was available. On June 7, 2022, IT1 DeRito was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." On August 8, 2022, IT1 DeRito was issued a notification of intent to discharge and will be involuntarily processed out of the Coast Guard. *Id.* at 9-12.

47. Plaintiff Maikalani Dias is a Boatswain's Mate Second Class (BM2) in the U.S. Coast Guard domiciled in Hilo, Hawaii and stationed at Cutter Midgett Honolulu, Hawaii. BM2 Dias enlisted in the Coast Guard in June 2014 and has served honorably for over 8 years. BM2 Dias

has completed multiple search and rescue and law enforcement operations and has received numerous awards with a perfect service record. *See* Ex. 28 Decl. Of BM2 Maikalani Dias, USCG ¶4-8. In response to the Covid-19 vaccine mandate, BM2 Dias submitted a RAR on October 20, 2021. BM2 Dias' RAR was subsequently denied, as was his appeal on May 10, 2022. *Id.* at 9-10. Throughout this process, BM2 Dias has not been allowed to advance, has lost orders, and has been threatened with removal from the Coast Guard for "disobeying a lawful order." *Id.* At 17-18.

48. Plaintiff Taylor Dickinson is a Gunner's Mate Second Class (GM2) in the U.S. Coast Guard domiciled in Homestead, Florida and stationed at Sector Miami, Florida. AMT2 Dickinson enlisted in the Coast Guard in January 2011 and has spent thousands of combined hours conducting small arms and weapon system maintenance, training members on firearm safety, completed numerous search and rescue, law enforcement, and counter-drug operations, and received numerous awards. *See* Ex. 29 Decl. of GM2 Taylor Dickinson, USCG ¶4-5. In response to the Covid-19 vaccine mandate, GM2 Dickinson submitted a RAR on September 30, 2021. GM2 Dickinson's RAR was denied on February 10, 2022. On February 28, 2022, GM2 Dickinson became aware that false claims and inaccuracies were sent in with his Religious

Accommodation package. *Id.* At 7-8. On March 1, 2022, GM2 Dickinson submitted an appeal to his RAR denial which was subsequently denied on May 30, 2022. *Id.* At 9.

49. On July 12, 2022, GM2 Dickinson was issued official counseling (CG-3307) from his commanding officer, ordering him to receive a “fully FDA approved COVID-19 vaccine” of which there are none available. *Id.* at 11. On August 8, 2022, GM2 Dickinson was issued two memos from his command informing him he will be discharged from the Coast Guard without an honorable discharge which will ultimately prejudice him in civilian life and he will lose his hard earned benefits. *Id.* at 12. Since writing his declaration, GM2 Dickinson was issued a formal Intent to Discharge on August 8, 2022 and will be involuntarily discharged from the Coast Guard.

50. Plaintiff Edward DiPierro is a Commander (CDR) in the U.S. Coast Guard domiciled in Medford, New Jersey and stationed at Air Station Atlantic City, New Jersey. CDR DiPierro was commissioned in the Coast Guard in June 2004 and is dual-mission qualified in advanced Search and Rescue and Rotary Wing Air Intercept (RWAI); he is also an Instructor Pilot/Flight Examiner on the MH-65D helicopter. Throughout his 18 year career, CDR DiPierro has flown over 3,000 flight hours, executed countless deployments, saved/assisted numerous lives, and

trained multiple aviators in SAR and RWAI missions. *See* Ex. 30 Decl. of CDR Edward DiPierro, USCG ¶4-5. In response to the Covid-19 vaccine mandate, CDR DiPierro submitted a RAR on September 9, 2021. CDR DiPierro's RAR was denied on December 14, 2021; CDR DiPierro appealed this denial on December 20, 2021 and this appeal was denied on May 9, 2022. *Id.* at 6-8.

51. On May 17, 2022, CDR DiPierro was issued official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On May 19, 2022, CDR DiPierro was issued an additional CG-3307 for, *inter alia*, violation of Articles 90 and 92 of the UCMJ. *Id.* at 9-11. Throughout this process, CDR DiPierro has been singled out and labeled as an "unvaxxer," given restrictive protocols, and denied the opportunity for advanced training. *Id.* at 12-13. Since writing his declaration, DiPierro has been informally told via verbal conversation from his supervisor that he will be discharged from the Coast Guard based on ALCOAST message 270/22.

52. Plaintiff Paul Dorpema is an Aviation Maintenance Technician Chief (AMTC) and Recruiter in the U.S. Coast Guard domiciled in Roseville, California and stationed at the Military Entrance Processing Station (MEPS) in Sacramento, California. AMTC Dorpema enlisted in the Coast Guard in May, 2003 and immediately began service

deployed in the Middle East. AMTC Dorpema has flown over 500 flight hours, executed multiple helicopter/shipboard deployments, saved dozens of lives on search and rescue missions, and received multiple awards including five Coast Guard Achievement awards. *See* Ex. 31 Decl. of AMTC Paul Dorpema, USCG ¶¶4-5. In response to the Covid-19 vaccine mandate, AMTC Dorpema submitted a RAR on September 28, 2021. AMTC Dorpema's RAR was denied on February 7, 2022; AMTC Dorpema appealed this denial on February 24, 2022 and this appeal was denied on May 4, 2022. *Id.* at 6-8.

53. On May 9, 2021, AMTC Dorpema was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." AETC Dorpema contacted multiple pharmacies and was informed that no such vaccine was available. *Id.* at 9. On May 12, 2022, AETC Dorpema requested a medical exemption based on a family history of heart problems and as of now, no further action has been taken. *Id.* at 10. On May 16, 2022, AETC Dorpema submitted a request for administrative exemption from the vaccine due to legal actions pending against the mandate and this request was denied on June 16, 2022. *Id.* at 11. On August 10, 2022, AETC Dorpema received official counseling (CG-3307) from his

command for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 12.

54. Plaintiff Lauren Emmons is a Boatswain’s Mate Chief (BMC) in the U.S. Coast Guard domiciled in Juneau, Alaska and stationed at the Seventeenth Coast Guard District Auxiliary Operations Program. BMC Emmons enlisted in the Coast Guard in August 2005 and has served multiple sea and land-based operations. *See* Ex. 32 Decl. of BMC Lauren Emmons, USCG ¶4. In response to the Covid-19 vaccine mandate, BMC Emmons submitted a RAR on September 27, 2021. BMC Emmons’ RAR was denied on February 1, 2022; BMC Emmons appealed this denial on February 12, 2022 and this appeal was denied on August 3, 2022. *Id.* at 5-9. On the same day as BMC Emmons received her denied appeal, she received official counseling (CG-3307) from her command ordering her to receive a “fully FDA approved COVID-19 vaccine.” On August 18, 2022, BMC Emmons received additional counseling for, *inter alia*, violation of Articles 90 and 902 of the UCMJ. *Id.* at 9-10. Also on August 18, 2022, BMC Emmons received her notification of intent to discharge “by reason of convenience of the government” and will now be involuntarily processed out of the Coast Guard. *Id.* at 11.

55. Plaintiff Jonathan Fassnacht is a Lieutenant Commander (LCDR) in the U.S. Coast Guard Reserves domiciled in St. Simons,

Georgia and stationed at Sector Miami. LCDR Fassnacht was commissioned in the Coast Guard in July 2009 and has attained extensive qualifications in the Marine Safety and Emergency Management Fields. LCDR Fassnacht has earned numerous individual and team awards and responded to multiple high priority deployments. *See* Ex. 33 Decl. of LCDR Jonathan Fassnacht, USCGR ¶¶4-5. In response to the Covid-19 vaccine mandate, LCDR Fassnacht submitted a RAR on April 12, 2022. LCDR Fassnacht's RAR has not been responded to as of the date he wrote his declaration (August 10, 2022). *Id.* at 6-7. Throughout this process, LCDR Fassnacht has been denied orders and the opportunity to promote. He has additionally received notice that he may be transferred to the Inactive Service List (ISL) even with a pending RAR. *Id.* at 10.

56. Plaintiff Jason Fields is an Aviation Electronics Technician First Class (AET1) and Diver in the U.S. Coast Guard domiciled in Moyock, North Carolina and stationed at Regional Dive Locker East (RDLE) Portsmouth, Virginia. AET1 Fields has served in the Coast Guard for over 18 years after enlisting in 2003 and has completed over 20 vessel boardings in the Bearing Sea, completed counter drug operations, accumulated over 250 flight hours and 500 hoisting evolutions, spent 24,075 minutes underwater as a diver, and received

multiple awards. *See* Ex. 34 Decl. of AET1 Fields, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AET1 Fields submitted a RAR on November 17, 2021. AET1 Fields' RAR was denied on January 25, 2022; AET1 Fields appealed this denial on February 7, 2022 and never received an approval or denial. *Id.* at 7-9. AET1 Fields still has a pending RAR appeal but has still received three official counseling forms (CG-3307) from his command stating he has refused the EUA vaccine and even stating he has refused to get "any" vaccine which is inherently false. *Id.* at 10. Since writing his declaration, AET1 Fields was issued a formal Intent to Discharge on August 18, 2022 and will be involuntarily discharged from the Coast Guard.

57. Plaintiff John Flores is a Maritime Enforcement Specialist First Class (ME1) in the U.S. Coast Guard Reserves domiciled in Philadelphia, Pennsylvania and stationed at Station Atlantic City, NJ. ME1 Flores enlisted in the Coast Guard in December 2010 and was deployed for Hurricane relief operations in Guantanamo Bay and has been awarded numerous awards including the Coast Guard Achievement Medal, and the Military Outstanding Volunteer Service Medal. *See* Ex. 35 Decl. of ME1 John Flores, USCGR ¶4-5. In response to the Covid-19 vaccine mandate, ME1 Flores submitted a RAR on October 10, 2021. ME1 Flores' RAR was denied on December 3, 2021;

ME1 Flores appealed this denial on February 16, 2022, and this appeal was denied on May 16, 2022. *Id.* at 6-8. On May 20, 2022, ME1 Flores was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On May 31, 2022, ME1 Flores sought such a vaccine from multiple pharmacies and was informed that no such vaccine was available. *Id.* at 9-10. On July 29, 2022, ME1 Flores was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 9-12. Since writing his declaration, ME1 Flores was issued a formal transfer to the Inactive Status List (ISL) on August 18, 2022 and will be involuntarily transferred out of the reserves and stripped of his benefits.

58. Plaintiff Stephen Fortin is a Chief Warrant Officer Journeyman Marine Inspector (CWO2) in the U.S. Coast Guard domiciled in Mandeville, Louisiana and stationed at Sector New Orleans. CWO2 Fortin enlisted in the Coast Guard in November 1999 and has maintained and repaired numerous vessels, been responsible for \$100,000s worth of parts, has over six years of sea-time, has been deployed twice and has received a multitude of awards. *See Ex. 36 Decl. of CWO2 Stephen Fortin, USCG ¶¶4-5.* In response to the Covid-19 vaccine mandate, CWO2 Fortin submitted a RAR on September 23, 2021.

CWO2 Fortin's RAR was denied on February 9, 2022; CWO2 Fortin appealed this denial, and the appeal was denied on February 24, 2022. *Id.* at 6-8. On May 26, 2022, CWO2 Fortin was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On June 8, 2022, CWO2 Fortin was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 9-10. Throughout this process, CWO2 Fortin has been forbidden to travel outside a 50-mile radius and forced to wear a mask in his office. He has also faced discriminatory interpretations of Coast Guard policy and missed family events. *Id.* at 12.

59. Plaintiff Carrie Gagnon is a Marine Science Technician Chief (MSTC) in the U.S. Coast Guard domiciled in Fall City, Washington and stationed at Sector Puget Sound. MSTC Gagnon enlisted in the Coast Guard in September 2002 and graduated boot camp as a honor graduate. MSTC Gagnon has been stationed overseas, conducted over 800 port state control exams, and has been awarded numerous awards including multiple Sailor of the Quarter and Sailor of the Year awards. *See* Ex. 37 Decl. of MSTC Carrie Gagnon, USCG ¶4-5. In response to the Covid-19 vaccine mandate, MSTC Gagnon submitted a RAR on October 26, 2021. MSTC Gagnon's RAR was denied on

February 7, 2022; MSTC Gagnon appealed this denial on March 10, 2022 and this appeal was denied on May 16, 2022. *Id.* at 7-9. On May 19, 2022, MSTC Gagnon was issued official counseling (CG-3307) from her commanding officer ordering her to receive a “fully FDA approved COVID-19 vaccine.” On May 26, 2022, MSTC Gagnon sought such a vaccine at Base Seattle and was informed no such vaccine was available. *Id.* at 10-11. On June 22, 2022, MSTC Gagnon was issued an additional CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 14. On August 22, 2022 MSTC Gagnon was suddenly involuntarily processed out of the Coast Guard and unable to retire. *Id.* at 27.

60. Plaintiff Joseph Garofalo is an Aviation Maintenance Technician First Class (AMT1) in the U.S. Coast Guard domiciled in Buckley, Michigan and stationed at Air Station Traverse City. AMT1 Garofalo enlisted in the Coast Guard in November 2006 and has since performed multiple search and rescue and law enforcement operations, maintenance on nautical aids to navigation, saved/assisted multiple lives, and been awarded numerous awards including the American Red Cross Maritime Rescue Award. *See* Ex. 38 Decl. of AMT1 Joseph Garofalo, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AMT1 Garofalo submitted a RAR in September 2021. AMT1 Garofalo’s

RAR was denied in February 2022; AMT1 Garofalo appealed this denial in February 2022 and this appeal was denied in May of 2022. *Id.* at 6-8. Immediately after his denial, AMT1 Garofalo was issued an official counseling (CG-3307) from his command ordering him to receive a “fully FDA approved COVID-19 vaccine” of which none was available. *Id.* At 9. Throughout this process, AMT1 Garofalo has been burdened with the uncertainty and fear of being discharged involuntarily. *Id.* at 14.

61. Plaintiff Alec Gaudin is a Yeoman First Class (YN1) in the U.S. Coast Guard domiciled in Slidell, Louisiana and stationed at the U.S. Coast Guard Pay and Personnel Center. YN1 Gaudin enlisted in the Coast Guard in 2010 and has been lead countless missions related to Coast Guard member’s pay and personnel issues and has received numerous awards for his service. *See* Ex. 39 Decl. of YN1 Alec Gaudin, USCG ¶4-6. In response to the Covid-19 vaccine mandate, YN1 Gaudin submitted a RAR on November 5, 2021. YN1 Gaudin’s RAR was denied on February 7, 2022; YN1 Gaudin appealed this denial on March 3, 2022, and this appeal was denied on May 10, 2022. *Id.* at 9-11. On May 31, 2022, YN1 Gaudin was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 15, 2022, YN1 Gaudin was issued an additional CG-3307 for, *inter alia*, “willfully disobeying a superior

commissioned officer” and “failure to obey a lawful order.” *Id.* at 12-13. Since writing his declaration, YN1 Gaudin was issued a formal Intent to Discharge on August 19, 2022 and will be involuntarily discharged from the Coast Guard.

62. Plaintiff Margarito Gonzales Jr. Is a Machinery Technician First Class (MK1) in the U.S. Coast Guard domiciled in Key West, Florida and stationed at Sector Key West. MK1 Gonzales enlisted in the Coast Guard in February 2007 after serving 4 years in the Marine Corps. Since joining the Coast Guard, MK1 Gonzales has completed multiple sea and land-based missions including illegal drug seizures and search and rescue operations. He has received numerous awards throughout his 19.5 years of service. *See* Ex. 40 Decl. of MK1 Margarito Gonzales Jr., USCG ¶4-5. In response to the Covid-19 vaccine mandate, MK1 Gonzales submitted a RAR on October 21, 2021. MK1 Gonzales’ RAR was denied on February 7, 2022; MK1 Gonzales appealed this denial on February 24, 2022, and this appeal was denied on May 12, 2022.

63. On May 16, 2022, MK1 Gonzales was on leave and received a text message from his command to return to the office to sign an official counseling (CG-3307). This CG-3307 ordered him to receive a “fully FDA approved COVID-19 vaccine.” On May 16, 2022, MK1 Gonzales sought such a vaccine from Sector Key West Clinic and was informed that no

such vaccine was available. On July 27, 2022, MK1 Gonzales submitted his retirement letter and was informed on August 15, 2022 that his retirement request was denied, and that he would be processed for discharge involuntarily. *Id.* at 10-13. Since writing his declaration, MK1 Gonzales was issued a formal Intent to Discharge on August 17, 2022 and will be involuntarily discharged from the Coast Guard.

64. Plaintiff Nicole Goodrich is a Machinery Technician First Class (MK1) in the U.S. Coast Guard domiciled in Lauderhill, Florida and stationed at Station Miami Beach, Florida. MK1 Goodrich enlisted in the Coast Guard in January 2004 and has sailed in the Bearing Sea, maintained ice breakers in the Arctic and Antarctic, volunteered at school career fairs, and is one of 200 women in the Coast Guard to hold a permanent Cutterman's pin. *See Ex. 41 Decl. of MK1 Nicole Goodrich, USCG ¶4-5.* In response to the Covid-19 vaccine mandate, MK1 Goodrich submitted a RAR on September 30, 2021. MK1 Goodrich's RAR was denied on January 11, 2022; MK1 Goodrich appealed this denial on January 27, 2022 and this appeal was denied on May 10, 2022. *Id.* at 10, 13-14 and 16. On May 19, 2022, MK1 Goodrich was issued an official counseling (CG-3307) from her commanding officer ordering her to receive a "fully FDA approved COVID-19 vaccine." *Id.* at 17. On June 16, 2022, MK1 Goodrich was issued an additional negative CG-3307 for,

*inter alia*, “failure to report to medical.” *Id.* at 26. On August 8, 2022, MK1 Goodrich was issued a notification of intent to discharge and is at risk for losing her retirement. *Id.* at 28.

65. Plaintiff Jentzen Green is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in Byron, Michigan and stationed at Recruiting Office Honolulu. AMT2 Green enlisted in the Coast Guard in August 2006, graduated in the top 20% of his class for AMT training, and has served honorably for 16 years. AMT2 Green has deployed to Guantanamo Bay, Cuba, and Dutch Harbor, AK to conduct search and rescue cases, and received numerous awards including the Captain Frank Erikson Award for Rescue of the Year. *See* Ex. 42 Decl. of AMT2 Jentzen Green, USCG ¶3 and 7-8. In response to the Covid-19 vaccine mandate, AMT2 Green submitted a RAR on September 26, 2021. AMT2 Green’s RAR was denied on February 3, 2022; AMT2 Green appealed this denial on March 4, 2022 after requesting extensions for receiving FOIA documents which he never received. This appeal was denied on May 11, 2022 but AMT2 Green did not receive the document until June 23, 2022. *Id.* at 9-12. The same day AMT2 Green received his appeal, he was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 24, 2022,

AMT2 Green sought such a vaccine from multiple civilian pharmacies and was informed no such vaccine was available. On September 10, 2022, AMT2 Green was issued an additional CG-3307 for, *inter alia*, “failure to report as ordered” though the dates listed on this CG-3307 were for February, before AMT2 even received his appeal denial and did not match the date given on his original CG-3307. *Id.* At 13-16.

66. Plaintiff Robert Haden is a Damage Controlman First Class (DC1) domiciled in Honolulu, Hawaii and stationed at Maritime Safety and Security Team Honolulu. DC1 Haden enlisted in the Coast Guard in 2008, graduated top of his class for Damage Controlman training, and completed multiple sea and land-based missions. DC1 Haden has received numerous awards including a Meritorious Unit Commendation. *See Ex. 43 Decl. of DC1 Haden, USCG ¶4-5.* In response to the Covid-19 vaccine mandate, DC1 Haden submitted a RAR on October 13, 2021. DC1 Haden’s RAR was denied on December 2, 2021; DC1 Haden appealed this denial on December 28, 2021 and this appeal was denied on May 17, 2022. *Id.* at 7-9. Throughout this process, DC1 Haden has been discriminated against for his beliefs, and undue stress has been placed upon him and his family as he is constantly threatened with losing his career of 14 years. *Id.* at 14.

67. Plaintiff Michael Hamaide is an Information Systems Technician Chief (ITC) in the U.S. Coast Guard domiciled in San Juan, Puerto Rico and stationed at Electronic Support Detachment San Juan. ITC Hamaide enlisted in the Coast Guard in February 1999 and has since served at seven units including two afloat units, receive multiple awards including the Commandant's Letter of Commendation for organizing and leading a community improvement effort. *See* Ex. 44 Decl. of ITC Michael Hamaide, USCG ¶4-5. In response to the Covid-19 vaccine mandate, ITC Hamaide submitted a RAR on September 28, 2021. ITC Hamaide's RAR was denied on February 11, 2022; ITC Hamaide appealed this denial on February 28, 2022 and this appeal was denied May 3, 2022. *Id.* at 6-8. On May 20, 2022, ITC Hamaide was issued an official counseling (CG-3307) from his command ordering him to receive a "fully FDA approved COVID-19 vaccine." On May 27, 2022 ITC Hamaide was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 9-10. ITC Hamaide has not been allowed to advance in paygrade and is at risk of being discharged. *Id.* at 11. Since writing his declaration, ITC Hamaide was issued a formal Intent to Discharge on August 24, 2022 and will be involuntarily discharged from the Coast Guard.

68. Plaintiff Robyn Hamilton is an Aviation Survival Technician (AST1) in the U.S. Coast Guard domiciled in Aguadilla, Puerto Rico and stationed at Air Station Borinquen. AST1 Hamilton enlisted in the Coast Guard in February 2004 and has flown over 1,950 flight hours, deployed for Hurricane Harvey and Port au Prince Haiti, saved/assisted dozens of lives, and received numerous awards for actions on and off duty. *See* Ex. 45 Decl. of AST1 Robyn Hamilton, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AST1 Hamilton submitted a RAR on September 17, 2021. AST1 Hamilton’s RAR was denied on December 28, 2021; AST1 Hamilton appealed this denial on January 13, 2022 and this appeal was denied on May 20, 2022. *Id.* at 6-8. On May 23, 2022 AST1 Hamilton was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On May 31, 2022 AST1 Hamilton sought such a vaccine from Base Detachment Borinquen Medical Clinic and was informed that no such vaccine was available. On June 9, 2022, AST1 Hamilton was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 9-11. Throughout this process, AST1 Hamilton has been harassed for his religious beliefs and endured a hostile work environment. *Id.* at 12. Since writing his declaration, AST1 Hamilton was issued a formal Intent to

Discharge on August 10, 2022 and will be involuntarily discharged from the Coast Guard.

69. Plaintiff Brooks Hargrove is a Boatswain's Mate Second Class (BM2) in the U.S. Coast Guard domiciled in Fleming Island, Florida and stationed at Station Golden Gate. BM2 Hargrove enlisted in the Coast Guard in June 2011 as a reservist and volunteered for active-duty orders to assist with the lack of manpower. He has received numerous awards including Enlisted Person of the Year and has amassed more than 2,100 underway hours. *See* Ex. 46 Decl. of BM2 Brooks Hargrove, USCG ¶4-5. In response to the Covid-19 vaccine mandate, BM2 Hargrove submitted a RAR on September 16, 2021. BM2 Hargrove's RAR was denied on December 16, 2021; BM2 Hargrove appealed this denial on December 29, 2021, and this appeal was denied on May 5, 2022. *Id.* at 6-8. In June 2022 BM2 Hargrove was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." BM2 Hargrove sought such a vaccine from TRACEN Petaluma Clinic and was informed that no such vaccine was available. BM2 Hargrove was informed that the EUA vaccine was to be used interchangeably and was then subsequently issued an additional CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful

order.” *Id.* at 9-12. BM2 Hargrove has been denied opportunity for professional development, restricted to 50 miles from home and station, and was informed that he would be discharged before even starting the RAR process. *Id.* at 14. Since writing his declaration, BM2 Hargrove was issued a formal CG-3307 stating that he has failed to “correct his behavior” and will be processed for discharge.

70. Plaintiff Matthew Heaton is a Fireman (FN) in the U.S. Coast Guard domiciled in Miami Beach, Florida and stationed at CGC Hudson in Miami Beach. FN Heaton enlisted in the Coast Guard in September 2018 and has completed numerous missions alongside a variety of rates and received multiple awards including a Letter of Commendation for outstanding initiative and commitment. *See* Ex. 47 Decl. of FN Matthew Heaton, USCG ¶4-5. In response to the Covid-19 vaccine mandate, FN Heaton submitted a RAR on September 28, 2021. FN Heaton’s RAR was denied on January 31, 2022; FN Heaton appealed this denial on February 17, 2022, and this appeal was denied on May 4, 2022. *Id.* at 6-8. On May 18, 2022, FN Heaton was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On May 19, 2022, FN Heaton sought such a vaccine from CVS as ordered and was informed that no such vaccine was available. *Id.* at 9-10. On May 31, 2022, FN

Heaton was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11. Throughout this process, FN Heaton has been denied the opportunity to attend training school or advance in his career and is being punished and discriminated against for his religious beliefs. *Id.* at 13.

71. Plaintiff Dylan Hennigan is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in Kodiak, Alaska and stationed at Air Station Kodiak. AMT2 Hennigan enlisted in the Coast Guard in March 2014 and has completed extensive Search and Rescue training, flown over 226.4 flight hours, and received 10 awards. *See* Ex. 48 Decl. of AMT2 Dylan Hennigan, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AMT2 Hennigan submitted a RAR on October 14, 2021. AMT2 Hennigan’s RAR was denied on January 24, 2022; AMT2 Hennigan appealed this denial on February 27, 2022 and his appeal was subsequently denied. *Id.* at 6-7. On May 18, 2022, AMT2 Hennigan was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On July 14, 2022, AMT2 Hennigan was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey other lawful order.”

*Id.* at 9. Unnecessary stress and fear have been placed on AMT2 Hennigan due to his potential inability to provide for his family during this process. *Id.* at 10. Since writing his declaration, AMT2 Hennigan was issued a formal Intent to Discharge on August 5, 2022 and will be involuntarily discharged from the Coast Guard.

72. Plaintiff Timothy Hicks is a Special Agent (IV1) with Coast Guard Investigative Services (CGIS) domiciled in Hingham, Massachusetts and stationed at Northeast Region. IV1 Hicks has been with the Coast Guard reserves for nearly 18 years after joining in December 2004 and has been deployed overseas in support of both Operation Enduring Freedom and Operation Iraqi Freedom. *See* Ex. 49 Decl. of IV1 Timothy Hicks, CGIS ¶4. In response to the Covid-19 vaccine mandate, IV1 Hicks submitted a RAR on September 13, 2021. IV1 Hicks' RAR was denied on February 7, 2022; IV1 Hicks appealed this denial on February 27, 2022 and this appeal was denied on May 10, 2022. *Id.* at 6-7. On May 17, 2022, IV1 Hicks was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On May 31, 2022, IV1 Hicks sought such a vaccine from Base Boston Clinic and was informed that no such vaccine was available. On June 14, 2022, IV1 Hicks was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior

commissioned officer” and “failure to obey a lawful order.” *Id.* at 9-11. On July 27, 2022, IV1 Hicks was issued informal communication via text message that he would be placed into the Inactive Service List (ISL) and not be allowed to continue his position. *Id.* at 14. Since writing his declaration, IV1 Hicks was issued a formal transfer to the Inactive Status List (ISL) on August 2, 2022 and will be involuntarily transferred out of the reserves and stripped of his benefits.

73. Plaintiff Thomas Higham is a Seaman (SN) in the U.S. Coast Guard domiciled in Goose Creek, South Carolina and stationed on the CGC Hamilton. SN Higham enlisted in the Coast Guard in June 2021 and was sent to ME training school in July 2021 but was kicked out prior to completing due to his vaccination status. After being stationed at the same base where he was kicked out of school, SN Higham has completed multiple deployments and all required qualifications to complete boarding and search and rescue related missions. *See Ex. 50 Decl. of SN Thomas Higham, USCG, ¶3-4.* In response to the Covid-19 vaccine mandate, SN Higham submitted a RAR on September 9, 2021. SN Higham’s RAR was denied on January 27, 2022; SN Higham appealed this denial on February 12, 2022 and this appeal was denied on May 10, 2022. *Id.* at 6-7. Throughout this process, SN Higham has been discriminated against for his beliefs and is now facing a general

discharge due to his vaccination status. *Id.* at 9-10. Since writing his declaration, SN Higham was issued a formal Intent to Discharge on August 2, 2022 and will be involuntarily discharged from the Coast Guard.

74. Plaintiff Justin Jerry is a Special Agent (IV1) with Coast Guard Investigative Services (CGIS) domiciled in Metairie, Louisiana and stationed at CGIS Gulf Region, New Orleans. IV1 Jerry is a military reservist who has served in the Coast Guard for over 16 years with an unblemished record and above average performance evaluations. IV1 Jerry has completed multiple mobilizations and operations including support of Operation Iraqi Freedom. *See Ex. 51 Decl. of IV1 Justin Jerry, CGIS ¶3-4.* In response to the Covid-19 vaccine mandate, IV1 Jerry submitted a RAR on November 23, 2021. IV1 Jerry's RAR was denied on February 2, 2022; IV1 Jerry appealed this denial on February 17, 2022 and this appeal was denied on May 11, 2022. *Id.* at 8-9. IV1 Jerry was encouraged to submit a request for medical exemption; while his medical exemption was pending, IV1 Jerry received official counseling stating he was ordered to receive a "fully FDA approved COVID-19 vaccine." IV1 Jerry's medical exemption was subsequently denied on June 13, 2022 and he has yet to hear back on his appeal. *Id.* at 10-11.

75. Plaintiff Carlton Kennedy III is an Operations Specialist Second Class (OS2) in the U.S. Coast Guard domiciled in Kodiak, Alaska and stationed at Air Station Kodiak. OS2 Kennedy enlisted in the Coast Guard in October 2010 and has since executed over 1,000 search and rescue cases, saved/assisted more than 6,000 lives, and received numerous awards including the Coast Guard Achievement medal. *See* Ex. 52 Decl. of OS2 Carlton Kennedy, USCG ¶4-5. In response to the Covid-19 vaccine mandate, OS2 Kennedy submitted a RAR on September 21, 2021. OS2 Kennedy’s RAR was denied on January 26, 2022; OS2 Kennedy appealed this denial on February 7, 2022 and this appeal was denied on May 11, 2022. *Id.* at 7-9. On June 1, 2022, OS2 Kennedy received official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 15, 2022, OS2 Kennedy sought such a vaccine from Rockmore King Clinic and was informed that no such vaccine was available. On June 23, 2022, OS2 Kennedy received an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 10-12. OS2 Kennedy is married member to member to Plaintiff Christine Kennedy and on August 9, 2022, OS2 Kennedy receive a memorandum of intent to discharge while on secondary caregiver leave. *Id.* at 13.

76. Plaintiff Christine Kennedy is a Health Services Technician First Class (HS1) in the U.S. Coast Guard domiciled in Kodiak, Alaska and stationed at Rockmore King Clinic Base Kodiak, Alaska. HS1 Kennedy enlisted in the Coast Guard in January 2011 and has completed multiple types of medical training as well as became the honor graduate of the Medical Education and Training Center. *See* Ex. 53 Decl. of HS1 Christine Kennedy, USCG ¶4. In response to the Covid-19 vaccine mandate, HS1 Kennedy submitted a RAR on September 25, 2021. HS1 Kennedy’s RAR was denied on February 15, 2022; HS1 Kennedy appealed this denial and this appeal was denied on May 31, 2022. *Id.* at 5-7. HS1 Kennedy was on primary caregiver leave after giving birth and requested a medical exemption which was also denied. *Id.* At 8. On July 28, 2022, HS1 Kennedy was issued an official counseling (CG-3307) from her commanding officer ordering her to receive a “fully FDA approved COVID-19 vaccine.”. On August 11, 2022, while still on primary caregiver leave, HS1 Kennedy was issued an additional CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 9-10. HS1 Kennedy received a notification of intent to discharge on August 16, 2022 even though she is still on primary caregiver leave and has just recently given birth. *Id.* at 11.

77. Plaintiff Andrew Kucharczyk is a Yeoman Second Class (YN2) in the U.S. Coast Guard domiciled in Hilton Head Island, South Carolina and stationed at Base Cleveland. YN2 Kucharczyk enlisted in the Coast Guard in September 2019 and has completed numerous Coast Guard missions while being responsible for the personal data records of over 200 Coast Guard members. *See* Ex. 54 Decl. of YN2 Andrew Kucharczyk, USCG ¶4. In response to the Covid-19 vaccine mandate, YN2 Kucharczyk was coerced into making the decision to take the vaccine on January 21, 2021 and received his first and second doses of the Moderna vaccine by February 24, 2021. *Id.* at 6. YN2 Kucharczyk was told the vaccine was FDA approved and that his job was at stake if he did not receive such a vaccine. On January 7, 2022, even though YN2 Kucharczyk was considered “fully vaccinated” he contracted Covid-19. *Id.* At 7 and 9.

78. Plaintiff Ian LeBlanc is a Gunner’s Mate Third Class (GM3) in the U.S. Coast Guard domiciled in New Orleans, Louisiana and stationed at Sector New Orleans. GM3 LeBlanc enlisted in the Coast Guard in April 2019 and has since participated in boarding team operations, search and rescue, firearms marksmanship coaching, and received awards such as Seaman of the Quarter. *See* Ex. 55 Decl. of GM3 Ian LeBlanc, USCG ¶4. In response to the Covid-19 vaccine mandate,

GM3 LeBlanc submitted a RAR on September 28, 2021. GM3 LeBlanc's RAR was denied on February 11, 2022; GM3 LeBlanc appealed this denial on February 23, 2022 and this appeal was denied on May 30, 2022. *Id.* At 5-7. On June 1, 2022, GM3 LeBlanc was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On June 15, 2022, GM3 LeBlanc was issued an additional negative CG-3307 stating he was in violation of article 90 and 90 of the UCMJ. *Id.* At 8-9.

79. Plaintiff Natalie Little is a Boatswain's Mate Third Class (BM3) in the U.S. Coast Guard domiciled in Jacksonville, Florida and stationed at Station Mayport. BM3 Little enlisted in the Coast Guard in July 2020 and was recommended by her commanding officer for Officer Candidate School but was unable to attend due to her vaccination status. *See* Ex. 56 Decl. of BM3 Natalie Little, USCG ¶4. In response to the Covid-19 vaccine mandate, BM3 Little submitted a RAR on October 1, 2021. BM3 Little's RAR was denied on January 27, 2022; BM3 Little appealed this denial on February 22, 2022 and this appeal was denied on May 31, 2022. *Id.* at 6-8. On June 6, 2022, BM3 Little was issued official counseling (CG-3307) from her command ordering her to receive a "fully FDA approved COVID-19 vaccine" even though no FDA approved vaccines were available for administration. *Id.* at 9.

80. Plaintiff Brett Mangiaracina is a Damage Controlman Chief (DCC) in the U.S. Coast Guard Reserve domiciled in Dade City, Florida and stationed at Air Station Clearwater, Florida. DCC Mangiaracina enlisted in the Coast Guard in May 1998 and throughout his career has conducted aids to navigation missions during hurricane season, seized illegal drugs, saved lives, and received numerous awards and recognitions. *See* Ex. 57 Decl. Of DCC Brett Mangiaracina, USCGR ¶4. In response to the Covid-19 vaccine mandate, DCC Mangiaracina submitted a RAR on September 30, 2021. DCC Mangiaracina's RAR was denied on December 2, 2021; DCC Mangiaracina appealed this denial on December 16, 2021 and this appeal was denied on May 23, 2022. *Id.* at 6-8. On June 10, 2022 DCC Mangiaracina was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On June 12, 2022, DCC Mangiaracina sought such a vaccine from Air Station Clearwater and was informed no such vaccine was available. *Id.* at 9-10. On July 25, 2022, DCC Mangiaracina was informed he will be placed on the Inactive Status List (ISL) which effectively ends his enlistment as he cannot promote, will not be paid, does not receive medical benefits, and cannot earn for retirement. *Id.* at 12.

81. Plaintiff Ken Marks is an Operations Specialist Second Class (OS2) in the U.S. Coast Guard domiciled in Concord, California and stationed at Sector San Francisco. OS2 Marks enlisted in the Coast Guard in April 2015 and has since conducted multiple search and rescue cases at one of the busiest Sectors in the Coast Guard. *See Ex. 58 Decl. Of OS2 Ken Marks, USCG ¶4.* In response to the Covid-19 vaccine mandate, OS2 Marks submitted a RAR on September 15, 2021. OS2 Marks' RAR was denied on February 10, 2022; OS2 Marks appealed this denial on February 24, 2022 and this appeal was denied on May 12, 2022. Throughout this process, OS2 Marks has endured a hostile work environment where he is continuously reminded that he is in jeopardy of losing his career. *Id.* at 5-8. Since writing his declaration, OS2 Marks was issued a formal Intent to Discharge on August 19, 2022 and will be involuntarily discharged from the Coast Guard.

82. Plaintiff Taylor McDevitt is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in Aguadilla, Puerto Rico and stationed at Air Station Borinquen. AMT2 McDevitt enlisted in the Coast Guard in August 2014 and has since performed numerous fishery and law enforcement boardings, search and rescue cases, and saved/assisted multiple lives. *See Ex. 59 Decl. of AMT2 Taylor McDevitt, USCG ¶4-5.* In response to the Covid-19 vaccine

mandate, AMT2 McDevitt submitted a RAR on September 20, 2021. AMT2 McDevitt's RAR was denied on December 27, 2021; AMT2 McDevitt appealed this denial on January 13, 2022 and this appeal was denied on May 27, 2022. *Id.* at 6-8.

83. On June 8, 2022, AMT2 McDevitt was issued official counseling (CG-3307) from his command ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 16, 2022 AMT2 McDevitt sought such a vaccine from Air Station Borinquen Clinic and was informed that no such vaccine was available. *Id.* at 9-10. On July 6, 2022, AMT2 Mazingo was issued an additional negative CG-3307 where the language was replaced with ordering him to receive “the COVID-19 vaccine” and for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11. On July 7, 2022, AMT2 McDevitt called the same clinic and inquired about the FDA approved vaccines he was told were going to arrive. The clinic staff initially told him all the vaccines were FDA approved before admitting that the vials were EUA labeled. He was then denied the opportunity to review and inspect the vials. *Id.* at 12. Since writing his declaration, AMT2 McDevitt was issued a formal Intent to Discharge on August 10, 2022. Barring a change from the USCG, Plaintiff McDevitt

will be involuntarily discharged from the Coast Guard in the immediate future.

84. Plaintiff Jason Mozingo is a Chief Warrant Officer Weapons Specialty (CWO2) in the U.S. Coast Guard domiciled in Kingsland, Georgia and stationed at Maritime Force Protection Unit Kings Bay, Georgia. CWO2 Mozingo enlisted in the Coast Guard in February 2004 and quickly became a Gunner's Mate 3<sup>rd</sup> class in 2005. He went on to become a Firearms Instructor, received multiple awards including Enlisted Person of the Year before becoming a Chief Warrant Officer. CWO2 Mozingo's career has spanned a broad range of missions, qualifications, certifications, awards, and leadership positions. *See* Ex. 60 Decl. Of CWO2 Jason Mozingo, USCG ¶4-5. In response to the Covid-19 vaccine mandate, CWO2 Mozingo submitted a RAR on September 22, 2021. CWO2 Mozingo's RAR was denied on February 4, 2022; CWO2 Mozingo appealed this denial on February 23, 2022 and this appeal was denied on May 31, 2022. *Id.* at 6-9.

85. On June 9, 2022, CWO2 Mozingo was issued official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On June 10, 2022, CWO2 Mozingo sought such a vaccine from Naval Submarine Base Kings Bay Health Clinic and was informed no such vaccine was available. On

June 10, 2022 immediately after reporting to the clinic, CWO2 Mozingo was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11-12. CWO2 Mozingo has been denied the opportunity for professional development and is facing less than honorable discharge for his service. *Id.* at 13 and 15.

86. Plaintiff Joshua Muhlenbeck is an Electronics Technician Chief (ETC) in the U.S. Coast Guard Reserve domiciled in Oakland Township, Michigan and stationed at U.S. Coast Guard Electronics Support Detachment Detroit, Michigan. ETC Muhlenbeck enlisted in the Coast Guard Reserve in August 2004 and has since worked multiple missions including deploying to Guantanamo Bay and received awards to include the Coast Guard Achievement Medal. *See Ex. 61 Decl. Of ETC Muhlenbeck, USCGR ¶4-6.* In response to the Covid-19 vaccine mandate, ETC Muhlenbeck submitted a RAR on October 21, 2021. ETC Muhlenbeck’s RAR was denied on February 9, 2022; ETC Muhlenbeck appealed this denial on February 24, 2022 and this appeal was denied on May 24, 2022. *Id.* at 8-12. On June 15, 2022, ETC Muhlenbeck was ordered to receive a “fully FDA approved vaccine.” On June 28, 2022, ETC Muhlenbeck was issued an official counseling (CG-3307) stating he was in violation of UCMJ Articles 90 & 92. *Id.* at 13-14. Throughout this

process, ETC Muhlenbeck has had his orders canceled by the Coast Guard and is now facing other than honorable discharge for his service. *Id.* at 15 and 17.

87. Plaintiff Christopher Musgrave is a Boatswain's Mate Second Class (BM2) in the U.S. Coast Guard domiciled in La Marque, Texas and stationed at ANT Galveston. BM2 Musgrave enlisted in the Coast Guard in July 2007 and throughout his service has conducted missions both as an Information Systems Technician, and Boatswain's Mate for search and rescue related cases. *See* Ex. 62 Decl. of BM2 Christopher Musgrave, USCG ¶4. In response to the Covid-19 vaccine mandate, BM2 Musgrave submitted a RAR on October 6, 2021. BM2 Musgrave's RAR was denied on February 2, 2022; BM2 Musgrave appealed this denial on February 16, 2022 and this appeal was denied on May 27, 2022. *Id.* at 5-7. In June of 2022, BM2 Musgrave was issued official counseling (CG-3307) and ordered to receive a "fully FDA approved COVID-19 vaccine." On June 15, 2022, BM2 Musgrave received an additional negative counseling CG-3307 for "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order.". *Id.* at 8-9. Throughout this process, BM2 Musgrave has been treated poorly by his command as they attempt to coerce him into vaccinating, been denied opportunities for professional development,

and faced discriminatory interpretation of Coast Guard policy. *Id.* at 11-12.

88. Plaintiff Timothy Navarro is an Aviation Survival Technician Second Class (AST2) in the U.S. Coast Guard domiciled in Fort Lauderdale, Florida and stationed at Air Station Miami. AST2 Navarro enlisted in the Coast Guard in August 2004 and rapidly advanced through processes and training to become a member of the elite as a rescue swimmer. AST2 Navarro has completed numerous search and rescue missions and received multiple awards for his service. *See Ex. 63 Decl. of AST2 Timothy Navarro, USCG ¶4.* In response to the Covid-19 vaccine mandate, AST2 Navarro submitted a RAR on November 16, 2021. AST2 Navarro's RAR was denied on January 12, 2022; SK2 Navarro appealed this denial on February 1, 2022 and this appeal was denied on May 30, 2022. *Id.* at 6-8. On June 7, 2022, AST2 Navarro was issued official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On June 13, 2022, AST2 Navarro sought such a vaccine and was informed that no such vaccine was available. On June 16, 2022, AST2 Navarro was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 9-12. Since writing this declaration, AST2 Navarro was

issued a formal Intent to Discharge on August 12, 2022 and will be involuntarily processed out of the Coast Guard. He is currently on terminal leave.

89. Plaintiff Haley Nix is a Machinery Technician Chief (MKC) in the U.S. Coast Guard Reserve domiciled in Plymouth, Massachusetts and stationed at Port Security Unit in Buzzards Bay, Massachusetts. MKC Nix enlisted in the Coast Guard in 2008 and completed multiple land and sea-based missions as an active-duty member before transferring to the reserves in 2013. *See* Ex. 64 Decl. of MKC Haley Nix, USCGR ¶4. In response to the Covid-19 vaccine mandate, MKC Nix submitted a RAR in November 2021. MKC Nix’s RAR was denied in December 2021; MKC Nix appealed this denial in January, 2022 and this appeal was denied in May, 2022. After this denial, MKC Nix was ordered to receive a “fully FDA-approved vaccine” even though she was in the process of receiving a letter from her physician for a medical exemption due to her pregnancy. On August 16, 2022, MKC Nix received a involuntary separation packet to be transferred to the Inactive Select List (ISL) for the reserves effectively completely halting her career and losing her medical benefits. *Id.* at 8-10.

90. Plaintiff Isaak Olson is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in Sitka, Alaska

and stationed at Air Station Sitka. AMT2 Olson enlisted in the Coast Guard in June 2010 and has since completed multiple sea and air-based missions, saved/assisted more than 13 lives, and received numerous awards including the Sikorsky Lifesaving Award for a high-risk search and rescue case. See Ex. 65 Decl. Of AMT2 Isaak Olson, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AMT2 Olson submitted a RAR on September 30, 2021. AMT2 Olson’s RAR was denied on February 16, 2022; AMT2 Olson appealed this denial on March 3, 2022 and this appeal was denied on June 21, 2022. *Id.* at 6-8. On June 27, 2022, AMT2 Olson was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On July 22, 2022, AMT2 Olson received an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” AMT2 Olson is now at risk of being involuntarily processed out of the Coast Guard. *Id.* at 9-12.

91. Plaintiff Caleb Peacock is a Lieutenant Commander (LCDR) in the U.S. Coast Guard domiciled in Chesapeake, Virginia and stationed in Portsmouth, Virginia. LCDR Peacock enlisted in the Coast Guard in 2006 before being commissioned as an officer in December 2008. LCDR Peacock has completed over 2300 flight hours, executed POTUS security flights, and received numerous awards including the Air Medal during

his time in service. *See* Ex. 66 Decl. of LCDR Caleb Peacock, USCG, ¶¶4-5. In response to the Covid-19 vaccine mandate, LCDR Peacock submitted a RAR on September 15, 2021. LCDR Peacock's RAR was denied on December 28, 2021; LCDR Peacock appealed this denial on January 13, 2022 and this appeal was denied on May 24, 2022. *Id.* at 6-8. On May 25, 2022, LCDR Peacock was issued official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On May 31, 2022, LCDR Peacock sought such a vaccine from Base Detachment Borinquen Clinic and was informed no such vaccine was available. On June 15, 2022, LCDR Peacock was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 9-11. LCDR Peacock has faced discriminatory interpretations of Coast Guard Policy and been restricted to within 50 miles of travel. *Id.* at 12.

92. Plaintiff Stephen Prevatt is a Chief Warrant Officer Aeronautical Engineering Maintenance Officer (CWO3) in the U.S. Coast Guard domiciled in Kodiak, Alaska and stationed at Air Station Kodiak. CWO3 Prevatt enlisted in the Coast Guard in July 1998 and in his 24-year career has completed a large list of sea and land-based missions, resulting in numerous awards, and countless lives saved. *See*

Ex. 67 Decl. of CWO3 Stephen Prevatt, USCG ¶4-5. In response to the Covid-19 vaccine mandate, CWO3 Prevatt submitted a RAR on October 2, 2021. CWO3 Prevatt's RAR was denied on January 21, 2022; CWO3 Prevatt appealed this denial on February 9, 2022 and this appeal was denied on May 24, 2022. *Id.* at 6-8. On May 25, 2022, CWO3 Prevatt was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On June 30, 2022, CWO3 Prevatt was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 9-10. Through this process, CWO3 Prevatt has experienced persecution for his sincerely held religious beliefs leading to a negative workplace environment. *Id.* at 12.

93. Plaintiff Dion Purcell is a Lieutenant (LT) in the U.S. Coast Guard domiciled in Lorton, Virginia and stationed at C51 Service Center Washington, DC. LT Purcell enlisted in the Coast Guard in 2005 and completed multiple enlisted missions before being commissioned as an officer in December 2014. LT Purcell has completed multiple helicopter and shipboard deployments, saved/assisted more than 80 lives, and been awarded numerous awards throughout his service. *See* Ex. 68 Decl. Of LT Dion Purcell, USCG ¶4-5. In response to the Covid-19 vaccine mandate, LT Purcell submitted a RAR on September 28, 2021. LT

Purcell's RAR was denied on February 2, 2022; LT Purcell submitted an appeal to this denial on February 28, 2022 and this appeal was denied on May 6, 2022. *Id.* at 6-8.

94. On June 2, 2022, LT Purcell was issued official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On May 19, 2022 LT Purcell sought such a vaccine from Base NCR Clinic and was informed that no such vaccine was available. On May 26, 2022, LT Purcell was issued an additional negative CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 9-11. Throughout this process, LT Purcell has been treated poorly by his command who admitted to attempting to coerce him into vaccinating and is at risk of being involuntarily processed out of the Coast Guard. *Id.* at 13-14. Since writing his declaration, LT Purcell has been informed he will be given a Special Action Board to be involuntarily discharged from the Coast Guard.

95. Plaintiff Carlos Quintero is a Lieutenant (LT) in the U.S. Coast Guard domiciled in Issaquah, Washington and stated at Sector Puget Sound. LT Quintero was commissioned in the Coast Guard in May 2015 and has completed numerous missions and received the position of Apprentice Marine Inspector leading 9 inspectors which is a highly

competitive position. *See* Ex. 69 Decl. of LT Carlos Quintero, USCG ¶13. In response to the Covid-19 vaccine mandate, LT Quintero submitted a RAR on September 20, 2021. LT Quintero’s RAR was denied on February 6, 2022; LT Quintero appealed this denial on March 7, 2022, and this appeal was denied on May 27, 2022. *Id.* at 4-6. On June 2, 2022 LT Quintero was issued official counseling (CG-3307) from his command ordering him to receive a “fully FDA approved COVID-19 vaccine” and continue to appeal his denial to higher authority. On June 16, 2022, LT Quintero was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 8-11. Throughout this process, LT Quintero has been discriminated against and treated poorly for his religious beliefs and is continuously reminded that he is in jeopardy of losing his career. *Id.* at 13.

96. Plaintiff Blake Rausch is a Storekeeper Senior Chief (SKCS) in the U.S. Coast Guard domiciled in Cheboygan, Michigan and stationed at Sector Sault Sainte Marie. SKCS Rausch enlisted in the Coast Guard in September 2004 and has since completed multiple missions including deploying to Patrol Forces Southwest Asia in Manama, Bahrain. SKCS Rausch has volunteered to serve for Operation Iraqi Freedom and Operation Enduring Freedom and has served

honorably for nearly 18 years. *See* Ex. 70 Decl. of SKCS Blake Rausch, USCG ¶4-5. In response to the Covid-19 vaccine mandate, SKCS Rausch submitted a RAR on October 14, 2021. SKCS Rausch’s RAR was denied on February 24, 2022; SKCS Rausch appealed this denial on March 2, 2022 and this appeal was denied May 12, 2022. Throughout this process, SKCS Rausch has been treated poorly by his command and discriminated against for his religious beliefs by being called “anti-vaxxer” and referred to as a “petri dish.” *Id.* at 5.

97. Plaintiff Robert Rendon is an Aviation Survival Technician First Class (AST1) in the U.S. Coast Guard domiciled in Joshau, Texas and stationed at Air Station Corpus Christi, Texas. AST1 Rendon enlisted in the Coast Guard in February 2006 and progressed rapidly to AST School becoming an AST3 by March of 2007 which is a process that normally takes 3-4 years. AST1 Rendon has since saved/assisted countless lives, completed multiple hurricane deployments and has been awarded numerous awards. *See* Ex. 71 Decl. Of AST1 Robert Rendon, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AST1 Rendon submitted a medical exemption in October of 2021, which was denied on June 13, 2022. AST1 Rendon then submitted a RAR on July 25, 2022 and was told by his command upon submission that it was pointless to submit a RAR as it would inevitably be denied. *Id.* at

6-7. Throughout this process, AST1 Rendon has been treated poorly by his command, and denied several critical opportunities for professional development. *Id.* at 9.

98. Plaintiff Stephen Ricardo is a Machinery Technician Second Class (MK2) in the U.S. Coast Guard domiciled in Plymouth, Massachusetts and stationed at Station Chatham. MK2 Ricardo enlisted in the Coast Guard in November 2009 and has since completed 300 vessel boardings, more than 50 search and rescue cases, saved/assisted 115 lives, and been awarded numerous awards. *See Ex. 72 Decl. of MK2 Stephen Ricardo, USCG ¶¶4-5.* In response to the Covid-19 vaccine mandate, MK2 Ricardo submitted a RAR on October 22, 2021. MK2 Ricardo's RAR was denied on February 9, 2021; MK2 Ricardo appealed this denial on February 22, 2022 and this appeal was denied on May 24, 2022. *Id.* at 6-8. On June 16, 2022, MK2 Ricardo was issued an official counseling (CG-3307) by his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." on June 16, 2022, MK2 Ricardo sought such a vaccine from Kaehler Memorial Clinic and was informed that no such vaccine was available. *Id.* at 9-10. On June 17, 2022, MK2 Ricardo was issued an additional negative counseling CG-3307 for, *inter alia*, "willfully disobeying a superior commissioned officer" and "failure to obey a lawful order." *Id.* at 11. Throughout this process,

MK2 Ricardo has been treated poorly by his command, and on June 29, 2022 was issued a memorandum stating that he was being processed for discharge. *Id.* at 13-14.

99. Plaintiff Adam Rieck is an Aviation Maintenance Technician Second Class (AMT2) in the U.S. Coast Guard domiciled in East Sandwich, Massachusetts and stationed at Air Station Cape Cod. AMT2 Rieck enlisted in the Coast Guard in February 2007 and has since saved multiple lives, conducted search and rescue missions, executed over 20 helicopter deployments, and received numerous awards including the Coast Guard Achievement medal for risking his life during many high-risk search and rescue cases. *See* Ex. 73 Decl. of AMT2 Adam Rieck, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AMT2 Rieck submitted a RAR on November 19, 2021. AMT2 Rieck's RAR was denied on December 29, 2021; AMT2 Rieck appealed this denial on January 20, 2022 and this appeal was denied on May 12, 2022. *Id.* at 6-8.

100. On May 12, 2022, AMT2 Rieck was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a "fully FDA approved COVID-19 vaccine." On May 19, 2022, AMT2 Rieck sought such a vaccine from Kaehler Memorial Clinic and was informed that no such vaccine was available. *Id.* at 9-10. AMT2 Rieck was then issued an additional negative CG-3307 for, *inter alia*,

“willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 10-12. Throughout this process, AMT2 has been discriminated against by the Coast Guard, restricted to travel only within 50 miles from home, and denied required training to maintain current qualifications. *Id.* at 14-15. Since writing his declaration, AMT2 Rieck has been issued a formal Intent to Discharge and will be involuntarily discharged from the Coast Guard.

101. Plaintiff Angel Rios is a Gunners Mate First Class (GM1) and Recruiter in the U.S. Coast Guard domiciled in Clermont, Florida and stationed at Recruiting Office Orlando, Florida. GM1 Rios enlisted in the Coast Guard on March 8, 2005 and has since conducted search and rescue and law enforcement operations in one of the busiest parts of the Coast Guard’s area of responsibility. GM1 Rios has stopped drug smuggling, human trafficking, saved lives, and enforced federal laws before moving on to being a top recruiter in his office. *See* Ex. 74 Decl. of GM1 Angel Rios, USCG ¶4-5. In response to the Covid-19 vaccine mandate, GM1 Rios submitted a RAR on September 27, 2021. GM1 Rios’ RAR was denied on February 28, 2022; GM1 Rios appealed this denial on March 11, 2022 and this appeal was denied on May 12, 2022. *Id.* at 6-8. On May 19, 2022, GM1 Rios was issued official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA

approved COVID-19 vaccine.”. GM1 Rios signed this form and annotated is was signed under duress. On August 8, 2022, GM1 Rios received an additional negative CG-3307 stating that he would be subject to violating Article 90 and 90 of the UCMJ. *Id.* at 9-10.

102. Plaintiff Andrew Ross is a Machinery Technician First Class (MK1) in the U.S. Coast Guard domiciled in Fort Myers, Florida and stationed at USCG Special Missions Training Center Camp Lejeune, North Carolina. MK1 Ross enlisted in the Coast Guard in March 2009 and throughout his career has conducted search and rescue and law enforcement missions, as well as receiving numerous awards. *See Ex. 75 Decl. Of MK1 Andrew Ross, USCG ¶4-5.* In response to the Covid-19 vaccine mandate, MK1 Ross submitted a RAR on October 4, 2021. MK1 Ross’ RAR was denied on February 14, 2022; MK1 Ross appealed this denial on February 25, 2022 and this appeal was denied on May 24, 2022. *Id.* at 7-9. On May 26, 2022, MK1 Ross was issued official counseling from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 1, 2022 MK1 Ross received an additional CG-3307 official counseling for, *inter alia* “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.”. *Id.* at 10-11. MK1 Ross has been subjected to restrictive policies and

restricted from attending training for professional development throughout this process. *Id.* at 13.

103. Plaintiff Jason Ruffenach is a Boatswain's Mate First Class (BM1) in the U.S. Coast Guard Reserve domiciled in North Cape May, New Jersey and stationed in Atlantic City, New Jersey. BM1 Ruffenach enlisted in the Coast Guard in March 2006 and has completed numerous missions including out of rate positions. He has served honorably for over 16 years completing search and rescue cases, underway patrols, and trained thousands of Coast Guard members. *See* Ex. 76 Decl. of BM1 Jason Ruffenach, USCGR ¶4-5. In response to the Covid-19 vaccine mandate, BM1 Ruffenach submitted a RAR on October 10, 2021. BM1 Ruffenach's RAR was denied on February 9, 2022; BM1 Ruffenach appealed this denial on February 25, 2022 and this appeal was denied on May 12, 2022. *Id.* at 6-8. Since writing his declaration, BM1 Ruffenach was issued a formal transfer to the Inactive Status List (ISL) on August 18, 2022 and will be involuntarily transferred out of the reserves and stripped of his benefits.

104. On May 23, 2022, AMT1 Schweinsberg was issued official counseling from his commanding officer to receive a "fully FDA approved COVID-19 vaccine." On June 2, 2022, AMT1 Schweinsberg sought such a vaccine from TRACEN Cape May Clinic and was informed that no such

vaccine was available but was instead offered an expired vaccine labeled for emergency use authorization. *Id.* at 9-10. On August 1, 2022 AMT1 Schweinsberg was issued an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior Commissioned Officer” and “failure to obey a lawful order.” *Id.* at 12. Throughout this process, AMT1 Schweinsberg has been treated poorly by his command who have attempted to coerce him into vaccinating and discriminated against for his beliefs. *Id.* at 13.

105. Plaintiff Joshua Schweinsberg is an Aviation Maintenance Technician First Class (AMT1) in the U.S Coast Guard domiciled in Haslet, Texas and Stationed at Recruiting Office Dallas, Texas. AMT1 Schweinsberg enlisted in the Coast Guard in April 2005 and completed numerous humanitarian missions, as well as search and rescue and law enforcement operations, and has received numerous awards. AMT1 Schweinsberg has completed national security missions worldwide and now is intricately involved in selecting the next generation of the Coast Guard while leading a top three recruiting office. *See* Ex. 77 Decl. of AMT1 Joshua Schweinsberg, USCG ¶4-5. In response to the Covid-19 vaccine mandate, AMT1 Schweinsberg submitted a RAR on October 22, 2021. AMT1 Schweinsberg’s RAR was denied on February 7, 2022; AMT1 Schweinsberg appealed this denial on March 11, 2022 and this appeal

was denied on May 31, 2022. On June 22, 2022, AMT1 Schweinsberg was issued official counseling (CG-3307) from his commanding officer to receive a “fully FDA approved COVID-19 vaccine.” On this counseling form, AMT1 Schweinsberg stated his religious convictions have not changed and he is unable to receive the vaccine. *Id.* at 9. AMT1 Schweinsberg has been denied several opportunities for professional development and treated poorly by his command throughout this process in their attempt to coerce him into vaccinating. *Id.* at 11-12.

106. Plaintiff Richard Sheill is a Damage Controlman Second Class (DC2) in the U.S. Coast Guard domiciled in Forks, Washington and stationed at Station Neah Bay. DC2 Sheill enlisted in the Coast Guard in 2008 and has completed multiple deployments, counter narcotics missions, sailed countless hours aboard Coast Guard and Navy ships and received over 20 awards. *See* Ex. 78 Decl. of DC2 Richard Sheill, USCG ¶4-5. In response to the Covid-19 vaccine mandate, DC2 Sheill submitted a RAR on September 20, 2021. DC2 Sheill’s RAR was denied on February 11, 2022; DC2 Sheill appealed this denial on February 23, 2022 and the appeal was denied on May 6, 2022. *Id.* At 6-8. On May 12, 2022, DC2 Sheill was issued official counseling from his commanding officers to receive a “fully FDA approved COVID-19 vaccine.” On May 26, 2022 DC2 Sheill was issued an additional official counseling (CG-3307) for, *inter*

*alia*, “willfully disobeying a superior commissioned officer” and “failure to obey other lawful order.” *Id.* at 9-10. Throughout this process, DC2 Sheill has been treated poorly by his command as they attempted to coerce him into vaccinating and on August 2, 2022 he was issued a notice of intent to discharge from the Coast Guard for “convenience of the government.” *Id.* at 13-14.

107. Plaintiff Matthew Shelton was a Marine Science Technician First Class (MST1) in the U.S. Coast Guard Reserve domiciled in Kingston, Washington and serving in Seattle, Washington until his discharge on July 25, 2022. *See* Ex. 79 Decl. of MST1 Matthew Shelton, USCGR ¶3. In response to the Covid-19 vaccine mandate, MST1 Shelton submitted a RAR on November 20, 2021 and then went on to complete all reserve drill requirements by January 14, 2022 and placed his request to retire. MST1 Shelton’s RAR was denied on February 22, 2022. MST1 Shelton appealed this denial on March 7, 2022. *Id.* at 4-8. On March 16, 2022, MST1 Shelton was informed that his retirement date was approved and that he would need to request an extension of enlistment to reach his retirement date, which he completed on April 10, 2022. *Id.* at 9-10. On June 4, 2022, MST1 Shelton was informed that his RAR appeal was denied and that his previously approved retirement had now been pulled and denied. MST1 Shelton was discharged on July 25, 2022

losing his retirement after 19.6 years of service to the Coast Guard. *Id.* At 12-13.

108. Plaintiff Jason Shiflett is a Damage Controlman Second Class (DC2) in the U.S. Coast Guard, domiciled in New Haven, Connecticut and stationed at Sector Long Island Sound New Haven. DC2 Shiflett enlisted in the Coast Guard in January 2005 and has since completed many sea and land-based missions during his over 17-year career. *See* Ex. 80 Decl. of DC2 Jason Shiflett, USCG ¶4. In response to the Covid-19 vaccination mandate, DC2 Shiflett submitted a RAR on September 14, 2021. DC2 Shiflett’s RAR was denied on February 9, 2022; DC2 Shiflett appealed this denial on February 23, 2022, and the appeal was denied on May 6, 2022. *Id.* at 5-7. On May 12, 2022, DC2 Shiflett was issued an official counseling (CG-3307) from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine”. On May 19, 2022, DC2 Shiflett was issued an additional negative counseling CG-3307 stating he failed to report to the clinic as ordered even though the vaccine was against his sincerely held religious beliefs. *Id.* at 8-9. Since being denied accommodation for his sincerely held religious beliefs, DC2 Shiflett has now received a notification of intent to discharge and is being threatened with discharge. *Id.* at 9-11.

109. Plaintiff Kathleen Smith is a Storekeeper Chief (SKC) in the U.S. Coast Guard Reserve domiciled in Owings, Maryland and stationed at MSU Baltimore, Maryland. SKC Smith enlisted in the Coast Guard in January 2003 and has completed numerous sea and land-based missions. *See* Ex. 81 Decl. of SKC Kathleen Smith, USCGR ¶4. In response to the Covid-19 vaccination mandate, SKC Smith submitted a RAR on October 28, 2021. SKC Smith’s RAR was denied on February 15, 2022; SKC Smith appealed this denial on February 28, 2022 and the appeal was denied on June 13, 2022. *Id.* at 5-7. On June 16, 2022, SKC Smith was issued an official counseling (CG-3307) from her commanding officer ordering her to receive a “fully FDA approved COVID-19 vaccine.” On July 28, 2022, SKC Smith had a medical appointment on base to discuss being given a waiver for the vaccine due to going through IVF and was provided one but was then told that only her fertility doctor could write the letter. *Id.* at 8-9. Throughout this process, SKC Smith has been treated poorly by her command who admitted to attempting to coerce her into vaccinating. *Id.* At 11.

110. Plaintiff Brittney Sonnier is a Boatswain’s Mate Chief (BMC) in the U.S. Coast Guard Reserve domiciled in Orange, Texas and stationed at Port O’Connor, Texas. BMC Sonnier enlisted in the Coast Guard in April 2005 and has since responded to several hurricanes,

completed active duty orders, acted as a Senior Enlisted Reserve Advisor, and has received numerous awards. *See* Ex. 82 Decl. of BMC Brittney Sonnier, USCGR ¶4-5. In response to the Covid-19 vaccine mandate, BMC Sonnier submitted a RAR on September 11, 2021. BMC Sonnier also requested a medical waiver. BMC Sonnier’s RAR was denied on February 8, 2022 and her medical waiver was denied on March 28, 2022. BMC Sonnier appealed the denied RAR on April 10, 2022 which was subsequently denied. *Id.* at 6-12. BMC Sonnier has been deemed ineligible to sit for exams to advance and has been treated poorly by her command, including being told that “You can’t fight Big Coast Guard and survive. It just doesn’t happen.” *Id.* At 14. Since writing her declaration, BMC Sonnier was issued an additional negative CG-3307 from her command on August 30, 2022 for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.”

111. Plaintiff Eason Spinelli is a Maritime Enforcement Specialist First Class (ME1) in the U.S. Coast Guard domiciled in Hoboken, New Jersey and stationed at Station New York, New York. ME1 Spinelli enlisted in the Coast Guard in 2006 and has completed numerous law enforcement related missions over the last nearly 16 years including deploying five times to assist the Canadian Navy, US Navy, and other Coast Guard assets for Counter Drug and Counter-

Transnational Organized Crime missions. *See* Ex. 83 Decl. of ME1 Eason Spinelli, USCG ¶4-6. In response to the Covid-19 vaccine mandate, ME1 Spinelli submitted a RAR that was then subsequently denied on February 4, 2022. ME1 Spinelli appealed the denial on February 23, 2022 and the appeal was denied on May 25, 2022. *Id.* at 9-12.

112. Plaintiff Stephen Spotts is a Lieutenant (LT) in the U.S. Coast Guard domiciled in Egg Harbor Township, New Jersey and stationed in Atlantic City, New Jersey. LT Spotts was commissioned in the Coast Guard in May 2012 and has held numerous leadership positions including the Assistant Supply Department Head, Scheduling Division Officer, and in 2019 was hand-selected to become a Mission Commander for the Aviation Special Missions Division. LT Spotts has executed countless Search and Rescue cases and has always been noted as a strong performer. *See* Ex. 84 Decl. of LT Stephen Spotts, USCG ¶4-5. In response to the Covid-19 vaccine mandate, LT Spotts submitted a RAR on September 22, 2021. LT Spotts' RAR was denied on December 22, 2021; LT Spotts appealed this decision on January 13, 2022 and the appeal was denied on May 4, 2022. *Id.* at 6-8.

113. On May 9, 2022, LT Spotts was issued official counseling (CG-3307) from his commanding officers to receive a "fully FDA approved COVID-19 vaccine." LT Spotts refused to sign this form and

was issued an additional negative CG-3307 on May 12, 2022 stating that he was in violation of Articles 90 and 90 of the UCMJ. LT Spotts refused to sign this as well as this order was unlawful because no fully FDA approved Covid-19 vaccine exists. *Id.* at 10-11. Throughout this process, LT Spotts has been denied for promotion even with high endorsement from his command and has faced discrimination and restrictions due to his vaccination status. *Id.* at 12-14. Since writing his declaration, LT Spotts was issued a formal notice he would receive a Special Action Board and be involuntarily discharged from the Coast Guard.

114. Plaintiff Timothy Stamm is a Boatswain's Mate Chief (BMC) in the U.S. Coast Guard domiciled and stationed in Kodiak, Alaska. BMC Stamm has served honorably for 16 years and 9 months with a spotless record and many awards and recognitions for outstanding service. *See* Ex. 85 Decl. of BMC Timothy Stamm, USCG ¶9. In response to the Covid-19 vaccine mandate, BMC Stamm submitted a RAR on September 10, 2021. BMC Stamm's RAR was denied on February 7, 2022; BMC Stamm appealed this denial on February 22, 2022 and the appeal was denied on May 31, 2022. *Id.* at 3. On April 2, 2022 BMC Stamm filed an EEO complaint for religious discrimination which was subsequently dismissed procedurally on April 15, 2022. On June 2, 2022, BMC Stamm was issued official counseling (CG-3307) by his commanding officer

ordering him to receive a “fully FDA approved COVID-19 vaccine.” On July 1, 2022, after requesting an extension and being denied, BMC Stamm receive an additional negative CG-3307 stating he is in violation of Article 90 and Article 92 of the UCMJ. *Id.* at 5-7. On August 3, 2022, BMC Stamm was informed he was being processed for discharge and would be removed from the service. *Id.* at 8. On August 10, 2022 BMC Stamm was issued a formal Intent to Discharge and will be involuntarily discharged from the Coast Guard.

115. Plaintiff Jacob Stonecipher is a Storekeeper First Class (SK1) in the U.S. Coast Guard domiciled in Corpus Christi, Texas and stationed at Sector Sault Ste Marie, Michigan. SK1 Stonecipher enlisted in the Coast Guard in June 2015 and rapidly advanced in rank making First Class Petty Officer in under seven years. SK1 Stonecipher has received numerous awards throughout his time in service. *See* Ex. 86 Decl. of SK1 Jacob Stonecipher, USCG ¶4-5. In response to the Covid-19 vaccine mandate, SK1 Stonecipher submitted a RAR on October 5, 2021. SK1 Stonecipher’s RAR was denied on February 8, 2022; SK1 Stonecipher appealed this denial on February 22, 2022 and the appeal was denied on May 31, 2022. *Id.* at 6-8. On August 8, 2022, SK1 Stonecipher filed an EEO formal complaint for religious discrimination and on August 12, 2022, his complaint was dismissed stating failure to

state a claim. *Id.* at 10-11. SK1 Stonecipher has been restricted to within 50 miles of his home and been harassed for his religious beliefs throughout this process. *Id.* at 12.

116. Plaintiff Benaia Stowell is a Lieutenant Junior Grade (LTJG) in the U.S. Coast Guard Reserve domiciled in Corpus Christi, Texas and stationed at Sector Miami. LTJG Stowell enlisted in the Coast Guard in February 2009 and received the “honor graduate” and “manual of arms” awards as a recruit. She completed numerous sea and land-based operations and missions before being accepted to and graduating from the Selected Reserve Direct Commission Program. *See* Ex. 87 Decl. of LTJG Benaia Stowell, USCGR ¶4. In response to the Covid-19 vaccine mandate, LTJG Stowell submitted a RAR on December 21, 2021. LTJG Stowell never received a denial for her RAR but has experienced less than favorable conditions at her duty station and counseled due to alleged and undocumented non-performance of which no proof was provided. *Id.* at 6-8.

117. Plaintiff Jeremiah Strombeck is an Aviation Electronics Technician First Class (AET1) in the U.S. Coast Guard domiciled in Kitty Hawk, North Carolina and stationed at Air Station Elizabeth City, North Carolina. AET1 Strombeck enlisted in the Coast Guard in 2007, has completed numerous search and rescue missions resulted in saving

33 lives, and has seized \$500 million dollars of deadly and dangerous narcotics. *See* Ex. 88 Decl. of AET1 Jeremiah Strombeck, USCG ¶3-4. In response to the Covid-19 vaccine mandate, AET1 Strombeck submitted a RAR on September 14, 2021. AET1 Strombeck’s RAR was denied on December 27, 2021; AET1 Strombeck appealed this decision on January 25, 2022 and the appeal was denied on May 25, 2022. *Id.* at 5-8. On June 2, 2022, AET1 Strombeck was issued official counseling from his commanding officer ordering him to receive a “fully FDA approved COVID-19 vaccine.” On June 10, 2022, AET1 Strombeck reported to the clinic as ordered and stood on his religious beliefs and refused to receive any COVID-19 vaccine. On June 10, 2022, AET1 Strombeck was issued an additional negative CG-3307 administrative form for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 9-11. AET1 Strombeck has endured constant pressure and discrimination due to his religious beliefs and is constantly reminded he may lose his career. *Id.* at 16.

118. Plaintiff Daniel Szuba is an Intelligence Specialist Third Class (IS3) in the U.S. Coast Guard domiciled in White Lake, Michigan and stationed in Sterling, Virginia. IT3 Szuba enlisted in the Coast Guard in November 2019 and has completed various missions involving potential terrorists traveling to the United States. IT3 Szuba maintains

a Top-Secret Security Clearance and has been given numerous awards throughout his service. *See* Ex. 89 Decl. of IS3 Daniel Szuba, USCG ¶4-5. In response to the Covid-19 vaccine mandate, IT3 Szuba submitted a RAR on August 9, 2022. IT3 Szuba’s RAR was denied on February 3, 2022; IT3 Szuba appealed this denial on February 16, 2022 and the appeal was denied on May 25, 2022.

119. On June 6, 2022, IT3 Szuba was issued official counseling from his commanding officers to receive a “fully FDA approved COVID-19 vaccine.” On June 10, 2022, IT3 Szuba submitted a memo to his chain of command stating he was unable to follow the order as there were no FDA approved vaccines available as documented by the Navy Office in charge of all Covid-19 vaccines in the National Capital Region. On June 27, 2022, IT3 Szuba was issued a negative remark on a CG-3307 counseling document for *inter alia*, “willfully disobeying a superior Commissioned Officer” and “failure to obey a lawful order.” *Id.* at 9-11. Throughout this process, IT3 Szuba has been treated poorly by his command and even forced to quarantine locked in a room for nine days with multiple negative tests. *Id.* at 13.

120. Plaintiff Melinda Thibodeau is a Lieutenant Commander (LCDR) in the U.S. Coast Guard Reserve domiciled in North Fort Myers, Florida and stationed at District Seven. LCDR Thibodeau was

commissioned in the Coast Guard in May 2004 and has completed Military Outload operations such as the Deepwater Horizon oil spill, Hurricane Matthew, Hurricane Florence, Hurricane Dorian, and for the COVID-19 pandemic. *See* Ex. 90 Decl. of LCDR Melinda Thibodeau, USCGR ¶4-5. In response to the Covid-19 vaccine mandate, LCDR Thibodeau submitted a RAR on December 2, 2021. LCDR Thibodeau's RAR was denied on February 4, 2022; LCDR Thibodeau appealed this decision on February 11, 2022 and the appeal was denied on May 16, 2022. *Id.* at 6-8. On May 18, 2022, LCDR Thibodeau was issued official counseling from her commanding officers to receive a "fully FDA approved COVID-19 vaccine." On May 31, 2022 LCDR Thibodeau was issued an additional negative administrative form CG-3307 for failing to report to the nearest vaccine location even though she was not actively drilling. LCDR Thibodeau has now been formally issued transfer orders to the inactive Status List which will result in her losing all benefits associated with being a reservist for the Coast Guard. *Id.* at 9-12.

121. Plaintiff Jeremy Troyer is an Information Systems Technician Chief (ITC) in the U.S. Coast Guard domiciled in Madison County, Virginia and stationed at Alexandria, Virginia. ITC Troyer enlisted in the Coast Guard in November 2001 and has completed multiple communication and disaster-based missions, as well as received

numerous awards including six Good Conduct medals. *See* Ex. 91 Decl. of ITC Jeremy Troyer, USCG ¶4-5. In response to the Covid-19 vaccine mandate, ITC Troyer submitted a RAR on October 6, 2021. ITC Troyer's RAR was denied on January 31, 2022; ITC Troyer appealed this denial on February 15, 2022 and this appeal was denied on May 17, 2022. *Id.* at 6-8.

122. On May 18, 2022, ITC Troyer was issued an official counseling form (CG-3307) from his commanding officer ordering him to report to receive a "fully FDA-approved COVID-19 vaccine." On May 19, 2022, ITC Troyer reported to Base National Capitol Region Clinic and sought such a vaccine but was informed that no such vaccine was available. ITC Troyer's command stated he could find the "FDA approved" vaccine on his own and gave him 24 hours to do so. This order could not be complied with as there is no fully FDA approved vaccine available. *Id.* at 9-11. Throughout this process, ITC Troyer has been removed from the eligibility list for promotion and treated poorly by his command. *Id.* at 12.

123. Plaintiff Simon Truman is a Machinery Technician Third Class (MK3) in the U.S. Coast Guard Reserve domiciled in Santa Rosa, Texas and stationed at South Padre Island, Texas. MK3 Truman completed the Direct Entry Petty Office Training program in June 2019

and has completed multiple sea and land-based missions. *See* Ex. 92 Decl. of MK3 Simon Truman, USCG ¶4. In response to the Covid-19 mandate, MK3 Truman submitted a RAR on October 1, 2021. MK3 Truman’s RAR was denied on February 15, 2022; MK3 Truman appealed this decision on February 28, 2022, and the appeal was denied on May 31, 2022. On June 21, 2022, Truman was issued official counseling from his commanding officers to receive a “fully FDA approved COVID-19 vaccine.” *Id.* at 5-10. Throughout this process, MK3 Truman has been treated poorly by his command, and denied the DHS outstanding unit award because of his vaccination status. Since writing his declaration, MK3 Truman was only given an email on August 26, 2022 stating he will be involuntarily transferred to the Inactive Status List (ISL) and stripped of his benefits.

124. Plaintiff Robert Turner is a Storekeeper Second Class (SK2) in the U.S. Coast Guard Reserve domiciled in Cape May Court House, New Jersey and stationed at Sector New York in Staten Island, NY. SK2 Turner enlisted in the Coast guard in March 2016 and as a reservist has taken multiple active-duty assignments and received multiple awards. *See* Ex. 93 Decl. of SK2 Robert Turner, USCGR ¶4-5. In response to the Covid-19 vaccine mandate, SK2 Turner submitted a RAR In October of 2021. SK2 Turner’s RAR was denied in February 2022; SK2 Turner

appealed this decision on February 2, 2022, and the appeal was denied on May 17, 2022.

125. On June 16, 2022, SK2 Vargas was issued official counseling from his commanding officers to receive a “fully FDA approved Covid-19 vaccine.” On June 16, 2022, SK2 Vargas sought such a vaccine from CG Headquarters Clinic and was informed that no such vaccine was available. *Id.* at 9-10. On July 18, 2022, Turner received a negative remark on a CG-3307 document (administrative remark entry) for, *inter alia*, “willfully disobeying a superior commissioned officer” and “failure to obey a lawful order.” *Id.* at 11. Throughout this time, Turner has been treated poorly by his command and discriminate against for his religious beliefs. *Id.* at 13.

126. Plaintiff Pedro Vargas is an Electricians Mate Second Class (EM2) in the U.S. Coast Guard Reserve domiciled in Flourtown, Pennsylvania and stationed at the Atlantic Strike Team. EM2 Vargas enlisted in the Coast Guard in May, 2006 and has completed numerous missions including responding to a train derailment that released 23,000 gallons of toxic vinyl chloride in New Jersey. *See* Ex. 94 Decl. of EM2 Pedro Vargas, USCG ¶4. In response to the Covid-19 vaccine mandate, EM2 Vargas submitted a RAR on November 19, 2021. EM2 Vargas’ RAR was denied on December 27, 2021; EM2 Vargas appealed this decision

on January 8, 2022, and the appeal was denied on May 25, 2022. On June 16, 2022, EM2 Vargas was issued official counseling from his commanding officer to receive a “fully FDA approved COVID-19 vaccine.” *Id.* at 8. Throughout this process, EM2 Vargas has been pulled from training and ordered to return home due to his vaccination status and has been denied several opportunities for professional development. On August 11, 2022, EM2 Vargas was issued a notice of intent to discharge from the Coast Guard due to his vaccination status. *Id.* at 10-12.

127. Plaintiff Leonardo Vega is an Electricians Mate First Class (EM1) in the U.S. Coast Guard Reserve domiciled in Pomona, California and stationed at Sector San Diego, California. EM1 Vega enlisted in the Coast Guard in 2004 and has conducted multiple operations including providing humanitarian assistance for the Southwest Border Operations in 2019 and assisting FEMA in 2020. EM1 Vega has received numerous awards including the Commandant’s Letter of Commendation for his dedication to transitioning the Coast Guard’s contact tracing system. *See* Ex. 95 Decl. of EM1 Leonardo Vega ¶4-5. In response to the Covid-19 vaccine mandate, EM1 Vega submitted a RAR on November 14, 2021. EM1 Vega’s RAR was denied on February 10, 2022, EM1 Vega appealed this decision on March 7, 2022, and the appeal was denied on May 26, 2022. On June 8, 2022, EM1 Vega was issued official counseling

on administrative form CG-3307 ordering him to receive a “fully FDA approved COVID-19 vaccine.” On July 1, 2022, EM1 Vega received an additional negative CG-3307 for, *inter alia*, “willfully disobeying a superior Commissioned Officer” and “failure to obey a lawful order.” *Id.* at 6-10.

128. Plaintiff Brett Watts is an Aviation Maintenance Technician First Class (AMT1) in the U.S. Coast Guard domiciled in Kodiak Alaska and stationed at Air Station Kodiak. AMT1 Watts joined the Coast Guard in 2005 and has received numerous awards including the Coast Guard Achievement Medal for risking his life and is currently being considered for a Silver Life Saving Medal, one of the most prestigious awards for off-duty heroism. *See* Ex. 96 Decl. of AMT1 Brett Watts, USCG ¶ 4-5. In response to the Covid-19 vaccine mandate, AMT1 Watts submitted a RAR on October 11, 2021. AMT1 Watts’ RAR was denied in December, 2021; AMT1 Watts appealed this decision on February 9, 2022, and the appeal was denied on May 4, 2022. *Id.* at 6-8. On May 18, 2022, AMT1 Watts was issued an official counseling form (CG-3307) from his commanding officer ordering him to report to Base Kodiak Clinic to receive a “fully FDA approved COVID-19 vaccine.” which he was unable to do. *Id.* at 9. Since writing his declaration, ATM1 Watts was issued a

formal Intent to Discharge on August 5, 2022 and will be involuntarily discharged from the Coast Guard.

129. Plaintiff Christiane Weber is a Commander (CDR) in the U.S. Coast Guard domiciled in Dublin, California and serving as the Executive Officer of Civil Engineering at the Civil Engineer Unit in Oakland, California. CDR Weber was commissioned in the Coast Guard in May 2004, has served honorably at multiple sea and shore-based units and received numerous awards. *See Ex. 97 Decl. of CDR Christiane Weber, USCG ¶4-6.* In response to the Covid-19 vaccine mandate, CDR Weber submitted a RAR on November 3, 2021. CDR Weber's RAR was denied on February 10, 2022; CDR Weber appealed this decision on February 25, 2022, and the appeal was denied on May 13, 2022. *Id.* at 8-10. Due to the coercion and fear CDR Weber has experienced throughout this process, she filed a voluntary retirement request on July 6, 2022 and to date has yet to receive a response. *Id.* at 14.

130. Plaintiff Mitchell Weimann is a Machinery Technician Second Class (MK2) in the U.S. Coast Guard domiciled in East Falmouth, Massachusetts and stationed at Base Cape Cod. MK2 Wiemann enlisted in the Coast Guard on January 31, 2017. Throughout his career, MK2 Weimann has received multiple awards to include Enlisted Person of the Quarter for January to March 2021 and has

constantly received above average administrative evaluations as well as recommendations for advancement. *See* Ex. 98 Decl. of MK2 Mitchell Weimann, USCG ¶4-5. In response to the Covid-19 vaccine mandate, MK2 Weimann submitted a RAR on October 14, 2021. MK2 Weimann’s RAR was denied on February 3, 2022; MK2 Weimann appealed this decision on February 21, 2022, and the appeal was denied on June 30, 2022. *Id.* at 10-12.

131. On July 1, 2022, MK2 Weimann was issued official counseling from his commanding officers to receive a “fully FDA approved COVID-19 vaccine.” On July 7, 2022, MK2 Weimann sought such a vaccine from Base Cape Cod Kahler Memorial Clinic and was unable to receive such a vaccine. *Id.* at 14. On July 15, 2022, MK2 Weimann received a negative remark on a CG-3307 document (administrative remark entry) for, *inter alia*, “willfully disobeying a superior Commissioned Officer” and “Failure to obey a lawful order.” On August 8, 2022, MK2 Weimann was informally counseled by his command with no official written paperwork stating they had every intent of routing him for involuntary separation. *Id.* at 16. On July 15, 2022, MK2 Weimann was issued an additional negative CG-3307 stating he was in violation of Article 90 and Article 92 of the UCMJ. *Id.* at 17. Throughout this time, MK2 Weimann was treated differently by his

command, denied opportunities for advancement, and discriminated against for his beliefs. *Id.* at 19-20. Since writing his declaration, MK2 Weimann was issued a formal Intent to Discharge on August 23, 2022 and will be involuntarily discharged from the Coast Guard.

132. Plaintiff Paul Winchell is Chief Warrant Officer Naval Engineer, (CWO4) in the U.S. Coast Guard domiciled in Chesapeake, Virginia and stationed at Surface Forces Logistics Center in Norfolk, VA. CWO4 Winchell enlisted in the Coast Guard June 19, 1996, and continued through his enlisted career serving at various sea and land-based units, acted as Engineering Petty Officer, achieved multiple awards including 2 Global War on Terror Expeditionary Medals and Iraqi Campaign Medals after deploying to Iraq, Kuwait, Bahrain, and Africa on anti-terrorism/piracy operations. *See* Ex. 99 Decl. of CWO4 Paul Winchell, USCG ¶4-5. In response to the Covid-19 vaccine mandate, CWO4 Winchell submitted a RAR on October 18, 2021. CWO4 Winchell's RAR was denied on February 14, 2022; CWO4 Winchell appealed this decision on February 25, 2022, and the appeal was denied on May 25, 2022.

133. On August 4, 2022, CWO4 was issued official counseling from his commanding officers to receive a “fully FDA approved COVID-19 vaccine” at Base Portsmouth Clinic in Virginia by August 11, 2022

which was an impossible order to complete as he was on temporary orders to Base Key West, Florida. Throughout the RAR process, CWO4 Winchell has been discriminated against by his command, forced to remain in a 50-mile radius of work, and denied a separation board even though Coast Guard policy requires this. *Id.* at 9-13.

134. Plaintiff Benjamin Wolhaupter is a Lieutenant (LT) in the Coast Guard domiciled in Kodiak, Alaska and stationed at Air Station Kodiak. LT Wolhaupter was commissioned in the Coast Guard in May 2014 and assigned to Naval Flight Training. LT Wolhaupter conducts search and rescue and law enforcement operations including national security missions and was selected for the prestigious Coast Guard Flight Safety Officer Program. *See* Ex. 100, Decl. of LT. Benjamin Wolhaupter, USCG ¶4. In response to the Covid-19 vaccine mandate, LT Wolhaupter submitted a RAR on October 7, 2021. LT Wolhaupter's RAR was denied on January 25, 2022; Lt Wolhaupter appealed this decision on February 9, 2022, and the appeal was denied on 6 May, 2022. *Id.* at 6-8.

135. On May 31, 2022, LT Wolhaupter was issued official counseling from his commanding officers to receive an "FDA approved COVID-19 vaccine." On June 15, 2022, LT Wolhaupter sought such a vaccine from Rockmore-King Clinic and was informed that no such

vaccine was available. *Id.* at 9. On July 7, 2022, Wolhaupter received a negative remark on a CG-3307 document (administrative remark entry) for, *inter alia*, “willfully disobeying a superior Commissioned Officer” and “failure to report to the clinic as ordered.” even though it is documented that he did not have the means to execute this order. *Id.* at 12. Throughout this time, Wolhaupter was treated differently than other USCG members, including several attempts to coerce him into receiving the vaccine, and being denied several opportunities for professional development. *Id.* at 14-15. Since writing his declaration, LT Wolhaupter was issued a Special Action Board and will be involuntarily discharged from the Coast Guard.

136. Plaintiff Clay Yancey is an Aviation Maintenance Technician First Class (AMT1) in the U.S. Coast Guard domiciled in Elizabeth City, North Carolina and stationed at Aviation Technical Training Center Elizabeth City. AMT1 Yancey enlisted in the Coast Guard in 2005 and completed 2 years aboard WTB Coast Guard Cutter Chock before going to Aviation school. *See* Ex. 101, Decl. of AMT1 Clay Yancey, USCG, ¶4. AMT1 Yancey received the Perchard award and “seat swine” award for having flown the most hours during one year, and additionally received an Enlisted Petty Officer of the Quarter award. *Id.* at 4. In response to the Covid-19 vaccine mandate, AMT1 Yancey

submitted a RAR on September 28, 2021. AMT1 Yancey's RAR was denied in March of 2022; AMT1 Yancey appealed this decision which was subsequently denied.

137. On June 2, 2022, AMT1 Yancey was issued official counseling from his commanding officers to receive a "fully FDA approved COVID-19 vaccine." On May 27, 2022 AMT1 Yancey sought such a vaccine from Stephen C. Pugh Clinic and was informed that no such vaccine was available. *Id.* at ¶9-10. On June 1, 2022, Yancey received a negative remark on a CG-3308 document (administrative remark entry) for *inter alia*, "failing to report to the clinic as ordered" and "willfully disobeying a superior Commissioned Officer" even though he had provided the command with a memo and witness signatures documenting that no FDA approved vaccine was available when he reported to the clinic as ordered. *Id.* At 11. AMT1 was treated poorly by his command who admitted to attempting to coerce him into vaccinating and he was denied several opportunities for professional development. *Id.* at 13-14. Since writing his declaration, AMT1 Yancey was issued a formal Intent to Discharge on August 22, 2022 and will be involuntarily discharged from the Coast Guard.

138. Plaintiff Matthew Yee is an Aviation Survival Technician First Class (AST1) in the Coast Guard domiciled in Santa Maria,

California, currently stationed in Kodiak, Alaska, on active duty. AST1 Yee enlisted in the Coast Guard in November 2011 and was assigned to the Coast Guard Cutter Steadfast in Astoria, Oregon before completing AST Airman Program and graduating AST “A” School in October 2012. See Ex. 102, Decl. of AST1 Matthew Yee, USCG, ¶4. AST1 Yee has flown 1500 hours, completed 1 shipboard deployment, 2 land based deployments, saved over 50 lives, and has earned several awards for Search and Rescue cases and overall performance. *Id.* at 5. In response to the Covid-19 vaccine mandate, AST1 Yee submitted an RAR on September 30, 2021. AST1 Yee’s RAR was denied on February 23, 2022; AST1 Yee appealed this decision on March 9, 2022, and the appeal was denied on May 13, 2022. *Id.* At 6-8.

139. On May 18, 2022, AST1 Yee was issued official counseling from his commanding officer to receive a “fully FDA approved COVID-19 vaccine.” On June 22, 2022, AST1 Yee received a negative remark on a CG-3307 (administrative remark entry) for, *inter alia*, “failure to receive the first dose of the COVID-19 vaccine.” *Id.* at 9-11. On August 8, 2022, AST1 Yee was issued a notification of intent to be discharged from the Coast Guard by his command with the reason for the discharge as “convenience of the government.” *Id.* at 12. Since writing his declaration,

AST1 Yee was issued a formal Intent to Discharge on August 8, 2022 and will be involuntarily discharged from the Coast Guard.

140. Plaintiff Christy York is a Command Senior Enlisted Leader in the United States Coast Guard Reserve, domiciled in Mt. Pleasant, South Carolina, currently serving at Sector Charleston, SC. MCPO York enlisted in the Coast Guard Reserve in June 1994, completing multiple sea and shore tours, including becoming the Administrative Supervisor for Military Outload Operations and then advancing to Senior Enlisted Reserve Advisor for Station Charleston, SC after being recalled to active duty in 2004. MCPO York also deployed to Portugal with Port Security Unit 308, was activated multiple times in support of 9-11, completed Military Outload Operations, hurricane responses, COVID-19 responses, and filled various personnel shortfalls. *See* Ex. 103, Decl. of MCPO Christy York, USCGR, ¶¶4-5. In response to the Covid-19 vaccine mandate, October 8, 2021, MCPO York submitted a RAR on October 8, 2021. MCPO York’s RAR was denied on January 6, 2022; MCPO York appealed this decision on January 31, 2022, and the appeal was denied on May 28, 2022. *Id.* at ¶¶6-8

141. On June 3, 2022, MCPO York was issued official counseling from her commanding officers to receive a “fully FDA approved COVID-

19 vaccine.” On June 8, 2022, MCPO York sought such a vaccine from local pharmacies, the immunization clinic at Naval Health Clinic Charleston (NHCC) and the Joint Base Charleston Medical Office and was informed that no such vaccine was available. *Id.* at ¶¶9-10. On June 11, 2022, MCPO York received a negative remark on a CG-3307 document (administrative remark entry) for *inter alia* “willfully disobeying a superior Commissioned Officer” and “Failure to obey a lawful order.” *Id.* At 11. MCPO York was denied the opportunity to submit her previously fully endorsed Command Senior Enlisted Leader package on July 27, 2022 and was subsequently ordered to turn in a retirement request. *Id.* At 13. On August 11, 2022, MCPO York received a Coast Guard memo for Temporary Relief for Cause from her commanding officer who stated, “If you just get the vaccine, this will all go away and everything will be back how it was.” *Id.* at 17. MCPO York has now been relieved of positions and title and been reassigned to Base Charleston pending CG final decision of permanent relief, which means she will never be reinstated to her prior hard-earned position *Id.* at 17. Since writing her declaration, MCPO York received an official Permanent Release for Cause on August 19, 2022 and has been permanently stripped of her position.

142. Of the 103 Intervenor Plaintiffs, 2 have not filed for religious accommodation: Intervenors Andrew Kucharczyk and Brett Barker. These intervenors rely upon secular reasons, including informed consent rights and the military's own orders and regulations for their refusal to be injected under the Defendants' ongoing mandate.

143. Defendant DOD is an agency of the United States Government. It is led by Secretary of Defense Lloyd Austin, III who is sued in his official capacity.

144. Defendant DHS is an agency of the United States Government. It is led by DHS Secretary Alejandro Mayorkas, who is sued in his official capacity.

145. Defendant USCG is an agency of the United States Government. It is led by USCG Commandant, Linda Fagan, who is sued in her official capacity.

146. Defendant FDA is an agency of the United States Government. It is led by Janet Woodcock, who is sued in her official capacity.

### **JURISDICTION AND VENUE**

147. This case arises under federal law, namely, the First and Fifth Amendments of the United States Constitution, U.S. Const. Amends. I & V; RFRA, 42 U.S.C. §2000bb-1, *et seq.*; the APA, 5 U.S.C.

§ 551, *et. seq.*; 10 U.S.C. § 1107a; 21 U.S.C. § 360bbb-3; and 42 U.S.C. § 262.

148. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the United States Constitution and federal law; 28 U.S.C. § 1346 because this is a civil action against the United States; 8 U.S.C. § 1361 to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff; and 42 U.S.C. § 2000bb-1(c) because Plaintiffs' religious exercise has been burdened by Defendants.

149. This Court has authority to award the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 & 2202; the requested injunctive relief pursuant to 28 U.S.C. § 2202; and costs and attorneys' fees pursuant to 28 U.S.C. § 2412 and 42 U.S.C. § 1988(b).

150. The challenged agency actions (*i.e.*, DOD Mandate, Coast Guard Mandate, DOD Interchangeability Directives, and No Accommodation Policy) are final agency actions, as they mark the consummation of the agency's decision-making process with respect to the DOD's imposition of a vaccine mandate to which Plaintiffs are subject. The DOD Mandate, Coast Guard Mandate, and DOD Interchangeability Directive are *ultra vires* actions in violation of Plaintiffs' federal statutory rights, and to the extent these statutes do

not create a right of action, Defendants' actions are agency actions for which there is no other adequate remedy in a court and thus are brought pursuant to the APA. 5 U.S.C. § 704.

151. Venue is proper in this Court pursuant to 28 U.S.C. §1391(e)(1) and §1402(a)(1) because a number of the Plaintiffs are domiciled or stationed in the Southern District of Texas. Other members of the plaintiff class are aboard both Defendant DOD and DHS reservations, stations, and ships in the court's district subject to the DOD and Coast Guard Mandates, and all members are directly affected by and subject to its mandate to take experimental, EUA shots.

## **STATEMENT OF FACTS**

### **I. COVID-19 VACCINE MANDATES**

#### **A. COVID-19 Discovery and Public Health Emergency**

152. On January 29, 2020, the White House Coronavirus Task Force was established to oversee and coordinate the Trump Administration's response to COVID-19. On January 31, 2020, as a result of confirmed cases of COVID-19, HHS Secretary Azar determined that a public health emergency existed as of January 27, 2020, pursuant to Section 319 of the PHS Act, 42 U.S.C. § 247d *et seq.*

## B. DOD MANDATE

152. On August 24, 2021, SECDEF issued the DOD Mandate, directing the Secretaries of the Military Departments “to immediately begin full vaccination of all members of the Armed Forces ... who are not fully vaccinated against COVID-19.” ECF #1-6, DOD Mandate, at 1. The Secretary further directed that mandatory vaccination “will only use COVID-19 vaccines that receive full licensure from the [FDA], in accordance with FDA labeling and guidance,” and that vaccination requirements are “to be implemented consistent with DoD Instruction 6205.02.” *Id.* The SECDEF Memo does not mention EUA or “BLA-compliant” vaccines at all, much less mandate the administration of such vaccines pursuant to the mandate.

153. The only service members expressly exempted are those “actively participating” in vaccine trials, while “[t]hose with previous COVID-19 infection are not considered fully vaccinated” and thus are not exempted. *Id.*

154. On September 14, 2021, Assistant Secretary of Defense for Health Affairs, Ms. Terry Adirim, directed the Surgeon Generals of the Air Force, Army and Navy that, with respect to the Pfizer/BioNTech COVID-19 vaccine, “health care providers should use doses distributed under the EUA to administer the vaccination as if the doses were the

licensed [Comirnaty] vaccine.” ECF #1-7, September 14, 2021 Adirim Memo, at 1. On May 3, 2022, the DOD issued the same directive that EUA Moderna COVID-19 vaccines were to be used interchangeably with, and “as if,” they were the FDA-licensed and labeled Moderna Spikevax vaccine. *See* ECF #1-8, May 3, 2022 Adirim Memo, at 1.

### **C. Coast Guard Mandate**

155. On August 26, 2021, Commandant issued the Coast Guard Mandate in ALCOAST Message 305/21, subject “MANDATING COVID-19 VACCINATION FOR MILITARY MEMBERS” (the “Coast Guard Mandate” or “ALCOAST 305/21”). *See* ECF #1-9. The Coast Guard Mandate incorporates the provisions of the DOD Mandate.

156. The Coast Guard Vaccine Mandate (incorrectly) claims that “[t]he Pfizer-BioNTech COVID-19 was granted license by the Food and Drug Administration (FDA) on 23 Aug 2021.” *Id.* The Coast Guard Mandate directed all U.S. active-duty and Reserve personnel to become “fully vaccinated” and claimed that “[v]accines are readily available at Coast Guard clinics, military treatment facilities, and civilian healthcare providers.” *Id.*

### **D. Medical and Administrative Exemptions**

157. Commandant Instruction (COMDTINST) 6230.4 (series) Immunizations and Chemoprophylaxis, establishes Coast Guard policy

and quality standards for immunization and chemoprophylaxis. *See* ECF #1-10 (“AR 40-562” or “COMDTINST 6230.4”). Paragraph 2-6 provides for two types of exemptions from immunization requirements: medical and administrative. Among the numerous medical exemptions available to service members, “evidence of immunity based on serologic tests, documented infection, or similar circumstances” provide a basis for medical exemption. The administrative exemptions available to service members include those who are within 180 days of their separation or retirement date and those who seek religious accommodation.

**E. Disciplinary Actions for Vaccine Refusal**

158. The Coast Guard Mandate states that “Commanding Officers and leaders shall not commence administrative action or disciplinary action based solely on a Service member’s decision to decline vaccination until such implementing guidance is promulgated.” ALCOAST 305/21, ¶7.

159. Defendant USCG followed with ALCOAST 315/21 on Sep. 7, 2021. This order made the claim that “[g]iven the need to safeguard the workforce, and maintain readiness, the coast Guard will determine additional measures to mitigate health risks to members of the Service and our communities *posed by those who are not yet vaccinated*. These measures may include additional restrictions on official travel, liberty,

and leave, as well as cancellation of “A” and “C” school orders,” See ECF #1-11, ALCOAST 315/21, ¶3 (emphasis added).

160. There is no evidence now, nor was there at the time of the issuance of the order, that unvaccinated servicemembers posed any higher threat of transmission of Covid-19 to their communities or co-workers than their “vaccinated” counterparts.

161. Defendant USCG’s message also asserted the following: “This message constitutes a lawful general order. Failure to comply with its provisions is a failure to obey a lawful order punishable under Article 92 of the Uniform Code of Military Justice (UCMJ). It may result in punitive and/or administrative action, including the initiation of discharge proceedings.” *Id.*, at ¶7.

## **II. RELIGIOUS ACCOMMODATIONS AND SECULAR EXEMPTIONS FROM DOD MANDATE & USCG MANDATE**

### **A. Defendants’ Religious Accommodation Request Rules and Procedures.**

162. The DOD and the Coast Guard have adopted guidance, procedures, and evaluation criteria for religious accommodation requests. *See generally* ECF #1-12, DOD Instruction 1300.17, “Religious Liberty in the Military Services” (Sept. 1, 2020) (“DODI 1300.17”)(DOD-wide procedures). DODI 1300.17 provides that it is DoD policy that “[s]ervice members have the right to observe the tenets of their religion

or to observe no religion at all, as provided in this issuance.” *Id.* DODI 1300.17 further provides that, “DoD Components will accommodate individual expressions of sincerely held beliefs ... which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety. A Service member’s expression of such beliefs may not, in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.” *Id.*, ¶1.2.b. DODI 1300.17 further provides that, “[i]n accordance with RFRA,” if a military policy “substantially burdens a Service member’s exercise of religion, accommodation can only be denied if” the policy “(1) ... is in furtherance of a compelling governmental interest, and “(2) It is the least restrictive means in furtherance of that compelling governmental interest.” *Id.*, ¶ 1.2.e. With respect to appeals, DODI 1300.17 requires RAR appeals to be submitted and routed through the chain of command. *See* DODI 1300.17, ¶ 3.2.f. Delegations outside of the chain of command are not authorized.

163. The Coast Guard implemented RFRA and DODI 1300.17 through COMDTINST 1000.15, Military Religious Accommodation, (“COMDTINST 1000.15”). *See* ECF #1-13. The USCG published COMDTINST 1000.15 for the first time four days *after* it issued the

Coast Guard Mandate on August 30, 2021. COMDTINST 1000.15 provides that the Coast Guard’s policy “is to provide reasonable accommodations to the observances of the religious faith practiced by individual members when these doctrines or observances will not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety, discipline, or mission accomplishment.” *Id.*, ¶11.a.

164. The instruction also provides that “[a]ll requests for accommodation must be reviewed and acted upon by the appropriate approval authority and during the timelines outlines in Enclosure (1), insofar as practicable and as operations allow.” *Id.*, ¶ 11.a.(2).

165. The Coast Guard’s actual procedures applied to evaluate RARs for COVID-19 vaccines differ from the published rules, based on the experiences of the 101 Plaintiffs who have submitted RARs in this case.

166. The Coast Guard timeline for completion of the RAR states that it will be returned to the member within 30 days. *Id.*, at Encl 1.

After receiving a denial, the process is supposed to be, as follows:

- (1) Unit commanders must inform the requesting member of the right to appeal the decision. Any notice of denial must inform members that they have the right to file an Equal Opportunity complaint by contacting a Civil Rights Service Provider within 45 calendar days of any denial.

(2) A member who has been denied a religious accommodation, in whole or in part, may submit a written appeal to the official in the chain of command or chain of supervision one level above the officer or official who took the final action on the request. The appeal must be routed through the officer or official who denied the request. The appeal must include the specific basis on which the member believes the initial denial was in error.

(3) The appellate authority will either overturn or uphold the contested decision, in part or in full, within 30 days of the date of appeal for cases arising within the continental United States, and within 60 days for all other cases, if practicable and as operations allow.

*Id.*, ¶12.j.

167. Almost every Plaintiff that filed an RAR received their response within the required 30-day deadline. Of those that took an administrative appeal, none have received a response within the 30 days required for the appeal; indeed, most waited for a response to their initial RARs and appeals for more than 4 months, and some are still awaiting a response to their appeal.

#### **B. Religious Accommodation Requests & Appeals.**

168. This is largely in keeping with the same process that has been observed throughout the military during the DoD Vaccine Mandate. Evidence submitted in a related proceeding in another District, *Navy SEAL 1 v. Biden*, No. 8:21-cv-02429-SDM-TGW (M.D. Fla.) (“*Navy SEAL 1* Proceeding”), conclusively demonstrates that the Armed

Services have systematically and willfully violated service members’ free exercise rights under RFRA and the First Amendment. The Coast Guard does not appear to have published up-to-date statistics on religious accommodations requests, denials, and appeals. Accordingly, the Table below presents statistics provided by Defendants and the other Armed Services in the *Navy SEAL 1* Proceeding as of February 2022. See ECF #1-14, *Navy SEAL 1 v. Austin*, No. 8:21-cv-2429-SDM-TGW (M.D. Fla. Feb. 4, 2022), “Third Notice of Compliance,” February 4, 2022 Compliance Notice.

**Table 1: Religious Accommodation Requests & Appeals**

Armed Service	Initial RA Requests			RA Appeals		
	Filed	Denied	Approved	Appeals	Denied	Approved
<b>Air Force</b>	12,623	3,180	5	2,221	443	1
<b>Army</b>	3,523	391	0	55	0	0
<b>USCG</b>	1,308	578	0	224	0	0
<b>USCMC</b>	3,539	3,458	0	1,150	119	3
<b>Navy</b>	4,095	3,728	0	1,222	81	0
<b>Total</b>	<b>25,008</b>	<b>11,335</b>	<b>5</b>	<b>4,872</b>	<b>643</b>	<b>4</b>

169. Courts elsewhere have concluded that the Defendant DOD’s religious exemption process appears to be a “sham,” *Navy SEAL 1 v. Biden*, No. 8:21-cv-2429, 2021 WL 5448970 (M.D. Fla. Nov. 22, 2021), and a “quixotic quest” that amounts to little more than “theater.” *Air*

*Force Officer v. Austin*, --- F.Supp.3d ---, 2022 WL 468799, at \*1 (M.D. Ga. Feb. 15, 2022) (“*Air Force Officer*”) (citation omitted). In other proceedings, other Armed Services have acknowledged that religious accommodations granted were only for those service members who were imminently leaving service and/or who would otherwise qualify for administrative exemption.<sup>3</sup>

170. Zero – not a single RAR has been approved of the 118 Intervening Plaintiffs who have requested one.

### **III. COMPARISON OF EUA TREATMENTS WITH FDA-LICENSED AND LABELED COVID-19 TREATMENTS**

#### **A. FDA Emergency Use Authorization**

171. The Food, Drug and Cosmetic Act (“FDCA”) authorizes the FDA to issue an EUA for a medical drug, device, or biologic, where certain conditions have been met. The conditions include a declaration by the Secretary of Health and Human Services of a public health emergency that justifies the use of an EUA, 21 U.S.C. § 360bbb-3(b)(1), and a finding by the FDA that “there is no [1] adequate, [2] approved,

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<sup>3</sup> See *Navy SEAL 1 v. Austin*, --- F.Supp.3d ---, 2022 WL 534459, at \*19 (M.D. Fla. Feb. 18, 2022) (“*Navy SEAL 1*”) (finding that Marine Corps RAR approvals only granted to those on terminal leave). See also *Poffenbarger v. Kendall*, 2022 WL 594810, at \*13 n.6 (S.D. Oh. Feb. 28, 2022) (“*Poffenbarger*”).

and [3] available alternative to the product for diagnosing, preventing, or treating” the disease in question. 21 U.S.C. § 360bbb-3(c)(3).

172. There are significant differences between licensed vaccines and those subject to EUA that render them “legally distinct.” ECF #1-15, August 23, 2021 Pfizer/BioNTech EUA Re-Issuance Letter, at 2 n.8. First, the requirements for efficacy are much lower for EUA products than for licensed products. Rather than requiring an applicant to prove that a vaccine is safe and effective (or potent) based on well-controlled clinical trials, mere speculation is sufficient to grant an EUA. EUAs require only a showing that, based on scientific evidence “if available,” “it is reasonable to believe,” the product “may be effective” in treating or preventing the disease. 21 U.S.C. §360bbb-3(c)(2)(A). Second, the safety requirements are minimal, requiring only that the FDA conclude that the “known and potential benefits ... outweigh the known and potential risks” of the product, considering the risks of the disease. 21 U.S.C. §360bbb-3(c)(2)(B). Third, EUA products are exempt from certain manufacturing and marketing standards, enjoy broader product liability protections, and cannot be mandated due to informed consent laws and regulations.

## **B. Informed Consent Requirements for EUA Products**

173. The FDA’s grant of an EUA is subject to statutorily mandated informed consent requirements to “ensure that individuals to whom the product is administered are informed” that they have “the option to accept or refuse administration of the product.” 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III). For the COVID-19 vaccines, FDA implemented the “option to accept or refuse” condition in each letter granting the EUA by requiring that FDA’s “Fact Sheet for Recipients and Caregivers” be made available to every potential vaccine recipient. *See, e.g.*, FDA, “Fact Sheet for Health Care Providers Administering Vaccine (Vaccination Providers),” (Pfizer/BioNTech COVID-19 vaccine) at 14 (Aug. 23, 2021, revised July 8, 2022) (“Pfizer/BioNTech Fact Sheet”), *available at*: <https://www.fda.gov/media/153713/download> (last visited July 11, 2022).

## **C. FDA Vaccine Licensing and Approval**

174. The FDCA generally prohibits anyone from introducing or delivering for introduction into interstate commerce any “new drug,” which includes “biological product” unless and until the FDA has approved the drug or biological product as safe and effective for its intended use. 21 U.S.C. §§ 331(a), 355(a).

175. Pursuant to Section 351(a) of the PHSA, 42 U.S.C. § 262(a), the FDA has the authority to approve the sale and manufacture of vaccines and other biologics like the Comirnaty and Spikevax vaccines. The biologics application addresses not only the safety and efficacy of the product, but also covers specific labeling and manufacturing requirements, including the manufacturing location, process, and storage requirements.

176. The PHSA expressly prohibits the sale of any “biological product” in interstate commerce “unless a biologics license application [“BLA”] ... is in effect for the biological product,” 42 U.S.C. § 262(a)(1)(A), and the package is “plainly marked with” “the proper name of the biological product,” (*e.g.*, Comirnaty or Spikevax) and “the name, address and applicable license number of the manufacturer.” 42 U.S.C. § 262(a)(1)(B)(i)-(ii). These labeling requirements are mandatory, not discretionary. *See* 21 C.F.R. § 610.60(a)(1)(2) (directing that the “proper name” and “license number” “shall appear on the label” of biological product); *see also* 21 C.F.R. § 207.37(a)(2) (a product is “deemed ... misbranded” if labeling codes used to “denote or imply FDA approval of [an unapproved] drug”). EUA products, by contrast, must be marked as such, and cannot include the license number.

#### **D. Comirnaty Approval and EUA Re-Issuances**

177. On August 23, 2021, the FDA approved the May 18, 2021, Comirnaty application for individuals 16 years or older. The Comirnaty Approval Letter approves the sale of Comirnaty Vaccine, as well as the specific manufacturing facilities, processes, ingredients, storage, and distribution requirements that were not addressed in the EUA reissuances.

178. Also on August 23, 2021, the FDA re-issued the EUA for the Pfizer/BioNTech Vaccine for individuals 16 years or older and for children aged 12 to 15 years. The FDA extended and expanded the existing EUA because Comirnaty was not available. *Id.*, at 5 n.9. In subsequent EUA re-issuances, the FDA has stated that the multiple, distinct formulations of the licensed and EUA vaccines may be used interchangeably because they are “analytically comparable.”<sup>4</sup>

179. On September 13, 2021, the National Institutes of Health (“NIH”) posted an announcement by Pfizer that Pfizer “does not plan to produce any product with these new [Comirnaty] NDCs and labels over the next few months while the EUA authorized product is still available

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<sup>4</sup> See, e.g., FDA, Pfizer BioNTech EUA Re-Issuance Letter, at 16-17 (July 8, 2022) (“July 8, 2022 Pfizer/BioNTech EUA Re-issuance”), *available at*: <https://www.fda.gov/media/150386/download> (last visited July 11, 2022).

and being made available for U.S. distribution.” See ECF #1-16, NIH-Pfizer Announcement of Comirnaty Unavailability. The FDA has subsequently confirmed that Comirnaty remains unavailable in the United States and the EUAs for both Moderna and Pfizer remain in effect.<sup>5</sup>

**E. Spikevax Approval and EUA Re-Issuance**

180. On January 31, 2022, the FDA approved Moderna’s BLA for Spikevax. Also on the same date, the FDA re-issued the EUA for the Moderna COVID-19 vaccine, once again asserting that the “legally distinct” EUA and licensed versions “can be used interchangeably” because they have the “same formulation.”<sup>6</sup> And once again, as with Comirnaty, the FDA noted that “there is not sufficient approved vaccine available” for the eligible population. *Id.* at 8 n.13.

**F. Legal Differences Between EUA and Licensed Vaccines**

181. Defendants assert that licensed and EUA vaccines are legally interchangeable for the purposes of the DOD Mandate, *i.e.*, that

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<sup>5</sup> See, e.g., FDA, Summary Basis for Regulatory Action – COMIRNATY, at 5 (Nov. 8, 2021) (“Nov. 8, 2021 Comirnaty SBRA”), available at: <https://www.fda.gov/media/151733/download> (last visited July 11, 2022); July 8, 2022 Pfizer/BioNTech EUA Re-issuance at 12 & n 23.

<sup>6</sup> See FDA, Moderna EUA Reissuance Letter at 16 (June 17, 2022) (“June 17, 2022 EUA Re-Issuance”), available at: <https://www.fda.gov/media/144636/download> (last visited July 11, 2022).

EUA vaccines may be legally mandated, notwithstanding the express prohibition in 10 U.S.C. § 1107a.

182. The FDA has never asserted that the EUA and licensed versions are legally interchangeable. The FDA’s EUA reissuance letters have consistently acknowledged that the two vaccines are “legally distinct.” *See, e.g.*, ECF #1-15, Aug. 23, 2021 EUA Re-Issuance Letter, at 2 n.8. The FDA’s witness in this proceeding confirmed that the FDA has not made any “statutory interchangeability determination” and instead described the products as only “medically interchangeable.” ECF #1-17, Marks Decl., ¶¶ 10-11. This simply means that one dose of an EUA vaccine and one dose of a licensed vaccine may be used to administer a two-dose vaccine regimen. *See, e.g.*, ECF #1-18, Congressional Research Service, *FDA Approval of the Pfizer-BioNTech COVID-19 Vaccine: Frequently Asked Questions* at 5 (Updated Sept. 29, 2021) (“CRS Report”).

183. The EUA is a “distinct regulatory pathway” under 21 U.S.C. § 360bbb-3 from FDA licensing under the PHSA. *Id.*, CRS Report, at 1. For FDA licensure under the PHSA, the applicant must satisfy the distinct and higher statutory requirements regarding safety, purity, and potency (or effectiveness), as well as distinct requirements for FDA approval of biologics manufacturing and labeling that are not required

for EUA products. Accordingly, even if the EUA and licensed product had the “same formulation” – and as discussed below there is evidence in the record that they do not – the EUA version “is legally distinct and can be manufactured, marketed, distributed and administered only pursuant to the EUA.” *Id.* at 5. One of these key “legal distinctions” is that an FDA-approved vaccine may be mandated, while an EUA vaccine may not be without a signed Presidential authorization, which Defendant Austin has neither requested nor received.

184. The publicly available information indicates that there are differences in the composition of the EUA and licensed products. *See, e.g., Doe#1-#14 v. Austin*, 2021 WL 5816632, at \*3 n.5 (N.D. Fla. Nov. 12, 2021) (“*Austin*”). There is also no dispute that the FDA EUA did not address manufacturing processes or locations, which are solely addressed in the Comirnaty licensure. In any case, the FDA documents severely understate the complexities of the novel mRNA vaccines and nanolipid delivery systems, which Pfizer has stated include “more than 280 materials,” rather than 10 or 11 disclosed in FDA filings, “made by suppliers in 19 countries.”<sup>7</sup>

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<sup>7</sup> Stephanie Baker & Vernon Silver, *Pfizer Fights to Control Secret of \$36 Billion Covid Vaccine Recipe*, Bloomberg (Nov. 14, 2021), available at: <https://www.bloomberg.com/graphics/2021-pfizer-secret-to-whats-in-the-covid-vaccine/> (last visited July 11, 2022).

#### **IV. SCIENTIFIC EVIDENCE AND ADMINISTRATIVE ACTIONS FOR COVID-19 MRNA “VACCINES”**

##### **A. Novel Technology with Insufficient Clinical Trial Data**

185. The Pfizer-BioNTech and Moderna COVID-19 treatments employ novel technology, namely, mRNA delivered by nanolipids. These products are considered “genetic vaccines” or “or vaccines produced from gene therapy molecular platforms.” ECF #1-19, McCullough Decl., ¶ 17. As Dr. McCullough explains, the mRNA “vaccines” “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 .... This is *unlike all other vaccines* where there is a set amount of antigen or live-attenuated virus.” *Id.* (emphasis added).

##### **B. COVID-19 Vaccines Do Not Prevent Spread of Omicron.**

186. None of the COVID-19 vaccines has “demonstrated in a conclusive, randomized, placebo-controlled trial” that they “reduce the risk of Omicron infection or any of its complications.” ECF #1-20, McCullough Supp. Decl., ¶ 8. Further, “COVID-19 vaccinations do not impede the chances that a person will transmit the [Omicron variant] to another person.” *Id.*, ¶ 9. This is because the spike protein produced by the vaccines, which was developed using the original Alpha variant, has long since become “obsolete” with the emergence of the Delta variant and

Omicron variants. *See* ECF #1-19, McCullough Decl., ¶ 18 (Delta variant); *see also* ECF #1-20, McCullough Supp. Decl., ¶ 10 (Omicron variant).

### **C. Vaccine Injuries and Side Effects**

187. The VAERS data reveal unprecedented levels of death and other adverse events since the FDA issued EUAs for the three COVID vaccines. The total safety reports in VAERS for all vaccines per year up to 2019 was 16,320. By comparison, the total VAERS safety reports for COVID-19 Vaccines “alone through October 1, 2021, is 778,683.” ECF #1-19, McCullough Decl., ¶ 27. Through April 2022, COVID-19 vaccination “has led to more than 12,000 deaths and more than 13,000 permanently disabled Americans.” ECF #1-20, McCullough Supp. Decl., ¶ 17.

188. The COVID-19 vaccines pose a particular risk of myocarditis (heart inflammation) to those who are in the prime ages for military service. ECF #1-19, McCullough Decl., ¶ 30. Due to these risks, in Dr. McCullough’s expert medical opinion, “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.*, ¶ 32. *See also* ECF #1-20, McCullough Supp. Decl., ¶ 12 (discussing FDA myocarditis warnings).

**D. Superiority of Natural Immunity to Vaccination and Risks of Vaccination to Those with Naturally Immunity.**

189. Numerous studies demonstrate the superiority of natural immunity over vaccine-induced immunity. *See generally* ECF #1-19, McCullough Decl., ¶¶ 52-57 & studies cited therein. In Dr. McCullough’s expert opinion, “SARS-CoV-2 causes an infection in humans that results in robust, complete, and durable immunity, and is superior to vaccine immunity.” *Id.*, ¶ 53. Further, “there are no randomized placebo-controlled ... trials of COVID-19 vaccination ... demonstrating any clinical benefit” for those who have recovered from a previous infection. ECF #1-20, McCullough Supp. Decl., ¶ 12. There is, however, significant evidence that those with previous infections face greater risks of adverse reactions from the vaccines, as well as a greater rate and severity of subsequent COVID-19 infections than those with previous infections who remained unvaccinated. *See id.*, ¶ 12 & studies cited therein; *see also* ECF #1-19, McCullough Decl., ¶¶ 49-51 & studies cited therein. Thus, in his expert opinion, “COVID-19 vaccination is contraindicated in COVID-19 survivors.” ECF #1-20, McCullough Supp. Decl., ¶ 12.

**V. PLAINTIFFS RELIGIOUS ACCOMMODATION REQUESTS**

**A. Plaintiffs’ Sincerely Held Religious Beliefs**

190. In their religious accommodation requests, Plaintiffs have

set forth the sincerely held religious beliefs that compel them to oppose the mandate. The primary reason cited is the refusal to participate in abortion. *See, e.g., See Ex. 102, Decl. of AST1 Matthew Yee, USCG, ¶ 6.*

**B. COVID-19 Vaccines Are Critically Dependent on, and Could Not Exist but for, the Use of Aborted Fetal Cell Tissue.**

191. It is undisputed that HEK-293 and PER.C6 fetal cell lines were used in the development and testing of the three (3) available COVID-19 vaccines. 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.”<sup>8</sup> 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.”<sup>9</sup>

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<sup>8</sup> *See* North Dakota Health, *COVID-19 Vaccines & Fetal Cell Lines* (Oct. 5, 2021) (“NDH FAQ”), available at: [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (last visited July 11, 2022).

<sup>9</sup> La. Dept. of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 21, 2020), available at: [https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You\\_Have\\_Qs\\_COVID-19\\_Vaccine\\_FAQ.pdf](https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf) (last visited July 11, 2022)

192. 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 id.* The North Dakota Department of Health likewise confirms: “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.” *See* NDH FAQ. Multiple Pfizer executives have confirmed both that aborted fetal cells were critical for development, while at the same time trying to cover this up this essential fact.<sup>10</sup>

**C. Plaintiffs’ RARs and Appeals Have Been Denied with “Magic Words,” Rather Than Individualized Assessments.**

193. Every Plaintiff has had their initial RAR request denied with Defendants “rubber stamping” denials on Plaintiffs’ RAR requests and/or appeals using the same “magic words,” formulaic language, and theoretical speculation, without any individualized evaluation “to the person” required by RFRA or consideration of mission impact required

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<sup>10</sup> See Project Veritas, 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’, (Oct. 6, 2021), available at: [www.projectveritas.com/news/pfizer-leaks-whistleblower-goes-on-record-reveals-internal-emails-from-chief/](http://www.projectveritas.com/news/pfizer-leaks-whistleblower-goes-on-record-reveals-internal-emails-from-chief/) (last visited Feb. 8, 2022).

by service regulations.

194. That is for those who receive their RAR denial; many, get nothing more than an email telling them that their RAR has been denied and that they will have to request their RAR. In fact, some Plaintiffs, including Plaintiff Green, have reverted to using the Freedom of Information Act (FOIA) process to obtain their records, which they are often unable to obtain.<sup>11</sup> *See, e.g., supra* ¶65; *See also* ECF #1, ¶¶20-22.

195. The Coast Guard's RAR appeal denial letters are nearly identical form letters. Multiple Plaintiffs (from different commands) have compared their letters and found the same form denials.

196. No person's individual circumstances were "taken into consideration" in any meaningful sense. The appeals are being categorically denied without any particularized review, as required by RFRA and the First Amendment. These form letters end the careers of Coast Guardsmen who have devoted their adult lives to serving the United States. They deserve better, and at a minimum what the law requires.

197. Regarding the government Defendant's burden to consider the least restrictive means to accomplish their "compelling government

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<sup>11</sup> It is Plaintiffs' legal position that Defendant's refusal to provide their own RAR paperwork is also illegal and an egregious abuse of the FOIA process.

interest,” Defendant’s ALCOAST orders specifically ignore Plaintiffs with previous documented infections and all of the massive data and scientific evidence supporting “natural immunity,” either on its own or in combination with other alternative restrictions (*e.g.*, testing & quarantine, masking, social distancing) that would provide a less restrictive means of achieving the Coast Guard’s compelling government interests.

198. Defendants’ dismissive treatment of Plaintiffs request to accommodate their sincerely held religious beliefs is consistent with their treatment of tens of thousands of other service members. The Plaintiffs’ experience as a cohort, and the Defendant’s own record of denials, demonstrate that it has granted, at most, a few dozen (and significantly less than 1%) of RARs—though the number of actual religious accommodation requests approved (*i.e.*, rather than administrative exemptions that are mischaracterized as religious accommodations) appears to be zero—while denying thousands. *See supra* ¶¶ 168-169. These statistics demonstrate that (1) submissions of religious accommodation requests are futile and (2) that the DOD and Coast guard are systematically denying these requests, in violation of their statutory obligations and the constitutional rights of Plaintiffs.

199. Plaintiffs note that the Air Force and Marine Corps purport

to have granted a handful of requests and appeals, however, these RARs appear to have been granted to those on terminal leave or conditioned upon their separation from the military. *See Navy SEAL 1*, 2022 WL 534459, at \*19 (Marine Corps approvals); *Poffenbarger*, 2021 WL 594810, at \*13 n.6 (Air Force approvals). Thus, even the exceptions to the general policy of denying them all demonstrate that the process is a sham because the result is that no service member will be granted any accommodation and allowed to continue their service.

## **VI. PLAINTIFFS WILL SUFFER CONCRETE AND PARTICULARIZED HARM FROM DEFENDANTS' ACTIONS**

200. Plaintiffs have real, substantial, and legitimate concerns about taking experimental COVID-19 treatments in light of, and the potential for, short- and long-term side effects and adverse reactions.

201. **Involuntary Separation & Forced Retirement.** Each Plaintiff has suffered severe adverse employment, administrative, and disciplinary actions. Plaintiffs are in the process of involuntary separation, forced retirement (or constructive discharge), or dismissal and will soon face a Board of Inquiry or Administrative Separation Board to determine their discharge status, or other disciplinary proceedings.

202. **Removal from Senior or Leadership Positions.** Due to their vaccination status and/or vaccination status, some Plaintiffs have

been relieved of senior or leadership positions. *See* Ex. 103, Decl. of MCPO Christy York, USCGR, ¶¶15, 17; *See also, See* Ex. 14 Decl. of LCDR Mary Bender, USCG ¶ 14, who was removed from Senior Leadership Transition Course that she was approved to attend in February 2022.

**203. Duty, Promotion & PCS Restrictions.** Plaintiffs are restricted from travel, training to maintain qualifications for their current positions, qualifying for promotion (LCDR Bleicken, LCDR Fassnacht, LT Spotts, and ITC Troyer have each been denied a promotion), taking new assignments and permanent change of station (“PCS”) (*i.e.*, moving to new duty stations). Many Plaintiffs are being subjected to the proverbial administrative “soft kill” by removing them from operational/deploying commands/units. While it has been determined the court cannot tell the Navy or DOD who is or is not deployable, the actions taking place remain punitive to the Plaintiffs as these are milestone billets in their careers that must be completed to be competitive in advancement and selection boards. Defendants have yet to provide a plan of action to prevent such negative actions against the servicemembers who have refused the unlawful orders and are to be protected under the class action injunction of *Navy SEALs 1-26*.

**204. Letters of Reprimand or Counseling.** Plaintiffs have

received one or more letters of reprimand, negative counseling, and other paperwork that will adversely affect their discharge status, which in turn has a cascade of effects for veterans benefits previously used (such as the Post-9/11 GI Bill) or passed along to family members.

**205. Loss of Pay and Benefits.** Plaintiffs will also face substantial financial losses in terms of lost pay and benefits due to separation, dismissal and early retirement. ETI Barker has been informed that the USCG is seeking over \$10,000 in repayment of enlistment bonuses. This is no mere minor inconvenience – discharge includes a loss of healthcare for the Plaintiffs *and their families*, including children and spouses who have medical conditions that need constant supervision, follow-up, or monitoring. Discharge paperwork with a “misconduct” finding or adverse re-enlistment code is a significant hindrance to even obtaining healthcare for themselves, given that the U.S. government has largely forced access to health insurance through one’s employer.

**206. Adverse Actions for Refusal to Take EUA Vaccines.** Further, Plaintiffs have objected to the mandate based on the unavailability of any FDA-licensed vaccines, the subsequent requirement to take a non-FDA-licensed EUA vaccines, and/or the fraudulent misrepresentation of non-FDA-licensed EUA vaccines as

FDA-licensed vaccines. As a result, they received disciplinary action as precursor to involuntary separation for their refusal to take a non-FDA-licensed vaccine. In addition, the Coast Guard has mandated weekly nasal swab testing (with EUA products!) for some Plaintiffs, without regard to health status or symptoms and in contradiction to the CDC recommendation that tests should only be used once symptoms are present.

207. Defendants have a long history of ignoring and violating service members' informed consent rights as they seek to do here, and it is the role of federal courts to protect service members' rights just as the protect ours: "the United States cannot demand that members of the armed forces also serve as guinea pigs for experimental drugs." *John Doe #1 v. Rumsfeld*, 297 F.Supp.2d 119, 135 (D.D.C. 2003) ("*Rumsfeld I*"). The injury is exacerbated by the fact that the government not only seeks to deprive them of their informed consent rights, both through deception and coercion, but also to take their freedom and livelihoods for having the temerity to exercise the rights granted to them by statute and the U.S. Constitution and courage to fulfill their duty to disobey unlawful orders.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF RELIGIOUS FREEDOM RESTORATION ACT**  
**42 U.S.C. § 2000bbb, et seq.**

208. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 12-150, Section I (§§ 0-161), Section II (§§ 162-170), Section IV (§§ 185-189), Section V (§§ 190-199), and Section VI (§§ 200-207).

209. RFRA was enacted “in order to provide very broad protection for religious liberty.” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2760 (2014) (“*Burwell*”). “Congress mandated that this concept 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.’” *Burwell*, 134 S. Ct. at 2762 (quoting 42 U.S.C. § 2000cc-3(g)).

210. RFRA states 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). The government burdens religion when it “put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs,” *Thomas v. Rev. Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 718 (1981), or “prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief.” *Davila v. Gladden*, 777 F.3d 1198, 1204 (11th Cir. 2015) (citation

and quotation omitted). “That is especially true when the government imposes a choice between one’s job and one’s religious belief,” *Navy SEALs 1-26*, at \*9 (citing *Sherbert v. Verner*, 374 U.S. 398 (1963)).

211. If the Government substantially burdens a person’s exercise of religion, it can do so only if it “demonstrates that application of the burden *to the person* – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(b) (emphasis added). This means that strict scrutiny must be satisfied both for the “the asserted harm of granting specific exemption to particular religious claimants,” and of “the marginal interest in enforcing the challenged government action in that particular context.” *Burwell*, 573 U.S. at 726-27. *See also O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 430 (2006) (“*O Centro*”) (the Government must “demonstrate that the compelling interest is satisfied through the application of the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened”).

212. “RFRA expressly creates a remedy in district court,” *Navy SEAL 1*, 2022 WL 534459, at \*13, granting a “person whose religious exercise has been burdened in violation of” RFRA to “assert that

violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government.” 42 U.S.C. § 2000bb-1(c).

213. RFRA applies to Defendants, as they constitute a “branch, department, agency, instrumentality, and official of the United States.” 42 U.S.C. § 2000bb-2(1). Further, “RFRA includes no administrative exhaustion requirement and imposes no jurisdictional threshold. No exemption, whether ... express or implied, insulates the military from review in the district court.” *Navy SEAL 1*, at \*13.

214. Defendants have substantially burdened Plaintiffs’ free exercise rights because the mandate forces Plaintiffs to “decide whether to lose their livelihoods or violate sincerely held religious beliefs.” *Navy SEALs 1-26*, at \*9. “By pitting their consciences against their livelihoods, the vaccine requirements would crush Plaintiffs’ free exercise of religion.” *Navy SEALs 1-26 Stay Order*, 2022 WL 594375, at \*9.

215. Defendants’ religious exemption regulation, and implementation thereof, is neither neutral nor generally applicable because it treats comparable secular activity—medical and administrative exemptions—more favorably than religious exemptions. While the Coast Guard does not publish up-to-date statistics, they have not granted a single one of 123 Plaintiffs’ RARs, and the statistics available indicate that Defendants have refused to grant any religious

accommodations for those who will continue to serve. *See supra* ¶¶ 168-169 & Table 1.

216. Plaintiffs have presented *prima facie*—and undisputable—evidence that Defendants have substantially burdened their exercise of religion, which triggers strict scrutiny where the government bears the burden of proving that its policies satisfy strict scrutiny. *O Centro*, 546 U.S. at 429. “Because the mandate treats those with secular exemptions more favorably than those seeking religious exemptions, strict scrutiny is triggered.” *Navy SEALs 1-26*, at \*9. RFRA thus presents a “high bar” to justify substantially burdening free exercise, and “[t]his already high bar is raised even higher [w]here a regulation already provides an exception from the law for a particular group.” *Navy SEALs 1-26* Stay Order, at \*10 (citations and internal quotations omitted). Defendants fail to meet this high bar for either of the two prongs of the strict scrutiny analysis.

217. While “[s]temming the spread of COVID-19 is unquestionably a compelling interest,” *Cuomo*, 141 S. Ct. at 67, “its limits are finite.” *Navy SEALs 1-26*, at \*10. The government cannot rely on “broadly formulated interests,” like “public health” or “military readiness,” and must justify its decision by “scrutinize[ing] the asserted

harm of granting specific exemptions to particular religious claimants.”  
*Hobby Lobby*, 573 U.S. at 726-27.

218. Moreover, the actions taken against the unvaccinated bear no relation to the asserted goal. The unvaccinated with natural immunity are far less likely to transmit the virus, or to be reinfected, yet the Defendant’s continue to ignore this and parrot demonstrably false data as the basis for ignoring the Plaintiffs’ claims and rights.

219. Defendants’ “broadly formulated interest in national security,” *Navy SEALs 1-26*, at \*10, will not suffice. Nor will simply invoking “magic words” like “military readiness and health of the force.” *Navy SEAL 1*, at \*17 (quoting *Davila*, 777 F.3d at 1206). Instead, Defendants must produce “record material demonstrating that the military considered both the marginal increase, if any, in the risk of contagion incurred by granting the requested exemption and the marginal detrimental effect, if any, on military readiness and the health of the force flowing from the ... denial” of the specific Plaintiff’s exemption request. *Navy SEAL 1*, at \*15.

220. As in *Navy SEAL 1*, Defendants have manifestly failed to demonstrate that they have a compelling governmental interest in denying Plaintiffs’ RARs and appeals. Instead, they have relied on “magic words” to “rubber stamp,” see *Navy SEAL 1*, \*18, in their blanket

denials of Plaintiffs' RAR and appeal denial letters, *see supra* ¶¶ 195-200 (summarizing formulaic and deficient analysis in Plaintiffs' RAR and appeal denial letters), just as they have tens of thousands of other service members.

221. Nor have Defendants demonstrated that their blanket denials of Plaintiffs' religious exemptions are the least restrictive means of furthering that interest. These letters both ignore Defendants' own successful use of alternatives to vaccination over the past two years (*e.g.*, masking, testing, quarantine, social distancing), but also those proposed by Plaintiffs that are specifically adapted to their specific role, unit, vessel, or mission and the evidence presented that these measures have enabled them to successfully perform their missions and roles without vaccination.

222. Of the 101/103 Intervening Plaintiffs who sought a Religious Accommodation, many Plaintiffs have a documented previous COVID-19 infection from which they have fully recovered – in many cases, quite recently. Such natural immunity from previous infections provides stronger and longer-lasting protection than the vaccines. *See supra* ¶ 189.

223. Yet the Defendant's denial letters dismiss natural immunity—"reaching disputed medical conclusions without evaluation

or citation of medical or legal authority,” *Navy SEAL 1*, at \*16 & n.10—combined with Plaintiffs’ proposed less restrictive alternatives that have been successfully employed in the past without acknowledgement or discussion. *See id.* at \*18-19. Just as in *Air Force Officer*, Defendants’ conclusory assertions fail to show that “COVID-19 vaccine[s] ... provide more sufficient protection” than Plaintiffs’ “natural immunity coupled with other preventive measures,” nor have they shown “vaccination is actually necessary by comparison to alternative measures, since the curtailment of free [exercise] must be actually necessary to the solution.” *Air Force Officer*, 2022 WL 468799, at \*10 (citation and quotation omitted).

224. Finally, Defendants cannot satisfy either prong of strict scrutiny—compelling government interest or least restrictive means—by mandating 100% vaccination with a vaccine that is known to be ineffective and obsolete. The government’s strict scrutiny analysis is highly fact intensive, and the individualized assessment prescribed by *Burwell* and *Navy SEAL 1*, requires the government to perform a marginal cost vs. benefit analysis that considers the current costs and benefits from granting specific exemptions.

225. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by

Defendants' violation of their right under RFRA to the free exercise of religion.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF FIRST AMENDMENT FREE EXERCISE CLAUSE**  
**U.S. CONST. AMEND. I**

226. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 12-150, Section I (¶¶ 0-161), Section II (¶¶ 162-170), Section IV (¶¶ 185-189), Section V (¶¶ 190-199), and Section VI (¶¶ 200-207).

227. The First Amendment's Free Exercise Clause provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. CONST. AMEND. I.

228. "Government is not free to disregard the First Amendment in times of crisis." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 69 (2020) ("*Cuomo*") (Gorsuch, J., concurring). "Even in a pandemic, the Constitution cannot be put away and forgotten." *Cuomo*, 141 S. Ct. at 68 (per curiam). Just as "[t]here is no COVID-19 exception to the First Amendment," there is "no military exclusion from our Constitution." *Navy SEALs 1-26*, at \*1.

229. Governmental regulations that are not neutral or generally applicable "trigger strict scrutiny" when "they treat *any* comparable

secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (emphasis in original) (citing *Cuomo*, 141 S. Ct. at 67-68). “A law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.” *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1877 (2021).

230. Plaintiffs submitted religious exemption requests, stating that their religious beliefs prohibited them from receiving the available COVID-19 vaccines because of their sincerely held religious beliefs that, among other things, abortion is an abomination and because the aborted fetal cells were critical to the development of the vaccines, they refuse to participate or support this evil.

231. Defendants have denied the RAR of each and every Plaintiff, who asked for one. The same has been true for every appeal received. In issuing these denials, Defendants unlawfully denied Plaintiffs’ requests for accommodation of their sincerely held religious beliefs.

232. Defendants’ No Accommodation Policy is neither neutral nor generally applicable because they “single out ... for harsh[er] treatment,” *Cuomo*, 141 S. Ct. at 66, those who choose to remain unvaccinated for religious reasons than those who seek to remain unvaccinated for secular reasons. The Coast Guard’s statistics on the number of exemptions

granted – ZERO – speaks for itself. “No matter how small the number of secular exemptions by comparison, *any* favorable treatment ... defeats neutrality.” *Navy SEALs 1-26*, at \* 11 (emphasis in original).

233. Having established that Defendants’ policies are not neutral and substantially burden Plaintiffs’ exercise of religion by treating those seeking exemption from vaccination based on sincerely held religious beliefs less favorably than those seeking exemption for secular reasons, the burden of proof switches to Defendants who must demonstrate that their policies satisfy strict scrutiny, meaning that they must be (1) “narrowly tailored” (2) “to serve a compelling [government] interest.” *Cuomo*, 141 S. Ct. at 67 (citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)).

234. Defendants’ religious exemption policies fail to satisfy strict scrutiny under the First Amendment for largely the same reasons they fail strict scrutiny under RFRA. *See, e.g., Navy SEALs 1-26*, at \*11; *Air Force Officer*, at \* 11-12. The DOD Mandate, as a policy and as applied to Plaintiffs, fails to accommodate Plaintiffs’ sincerely held religious beliefs. There is no interest, compelling or otherwise, for Defendants to deny Plaintiffs’ religious exemptions or threaten not to accommodate Plaintiffs’ sincerely held religious beliefs. Nor have Defendants chosen the least restrictive means of achieving any compelling governmental

interest and, in fact, have dismissed and uniformly denied Plaintiffs' alternative, less restrictive mitigation measures. Accordingly, the DOD Mandate, and the Defendants' religious accommodation policies and procedures, cannot survive strict scrutiny.

235. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by Defendants' violation of their First Amendment right to the free exercise of religion.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**  
**U.S. CONST. AMEND. V**

236. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 12-150, Section I (§§ 0-161), Section II (§§ 162-170), Section IV (§§ 185-189), Section V (§§ 190-199), and Section VI (§§ 200-207).

237. **Substantive Due Process.** The military “vaccine” mandate violates the liberty protected by the Fifth Amendment to the Constitution, which includes rights of personal autonomy, self-determination, bodily integrity and the right to reject medical treatment.

238. The ability to decide whether to accept or refuse medical treatment is a fundamental right. Accordingly, Defendants’ “Vaccine”

Mandate violates Plaintiffs’ constitutional rights with regard to medical treatment.

239. Because the injections are treatments, and not vaccines, strict scrutiny applies. The U.S. Supreme Court has recognized a “general liberty interest in refusing medical treatment.” *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 278, 110 S. Ct. 2841, 2851, 111 L.Ed.2d 224, 242 (1990). It has also recognized that the forcible injection of medication into a nonconsenting person’s body represents a substantial interference with that person’s liberty. *Washington v. Harper*, 494 U.S. 210, 229, 110 S. Ct. 1028, 1041, 108 L.Ed.2d 178, 203 (1990), see also *id.* at 223 (further acknowledging in dicta that, outside of the prison context, the right to refuse treatment would be a “fundamental right” subject to strict scrutiny).<sup>12</sup>

240. Because mandated medical treatments are a substantial burden, Defendants must prove that the Vaccine Mandate is narrowly tailored to meet a compelling interest. Where the government burdens a person’s liberty interest in bodily integrity, the government must: (1)

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<sup>12</sup> Although *Cruzan* was decided under the due process clause of the Fourteenth Amendment, the Supreme Court has long held that the same substantive due process analysis applied to the states under the due process clause of the Fourteenth Amendment also applies to the federal government under the due process clause of the Fifth Amendment. See, e.g., *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954).

“adequately demonstrate a compelling need for the intrusion,” (2) “a lack of reasonable alternatives,” and (3) appropriate “procedural and medical safeguards.” *Planned Parenthood Southwest Ohio Region v. DeWine*, 696 F.3d 490, 506 (6th Cir. 2012) (discussing *Riggins v. Nevada*, 504 U.S. 127, 135-36, 112 S.Ct. 1810 (1992)).

241. No such compelling interest exists because, as alleged above, the injections are not effective against the now dominant Omicron variant of SARS-CoV-2 in that they do not prevent the recipient from becoming infected, getting reinfected, or transmitting SARS-CoV-2 to others. *See supra* ¶¶ 186.

242. By Defendant FDA’s own standards, the current EUA shots only demonstrate that they *may* have been effective against the original SARS-CoV-2 Alpha variant, but that strain has come and gone, and the injections—designed to fight yesterday’s threat—are simply “obsolete” against the current variant. *See* ECF #1-20, McCullough Supp. Decl., ¶ 12.

243. Since the injections are ineffective against the currently prevalent Omicron variants and sub-variants, and the original variant has been supplanted, there can be no compelling interest to mandate their use.

244. Even if there were a compelling interest in mandating the

injections, the Defendant DoD's mandate is not narrowly tailored to achieve such an interest.

245. Defendants also entirely disregard whether Plaintiffs have already obtained natural immunity despite the fact that natural immunity does actually provide immunity whereas the injections do not. All members of the Natural Immunity Sub-Class have a documented previous infection from which they have fully recovered, in most cases a quite recent infection by the Omicron variant, thus have stronger and more durable immunity from reinfection than they would acquire from vaccination.

246. Treating all servicemembers the same, regardless of their individual medical status, risk factors, and natural immunity status is not narrowly tailored.

247. Moreover, the Vaccine Mandate fails entirely to consider other existing treatment options beyond the injections as part of a more narrowly tailored approach.

248. Given these facts, the Vaccine Mandate has no real or substantial relation to Force Protection and is, instead, a public health policy backed by force, turning the entire program into a plain, palpable invasion of rights secured by the fundamental law.

#### **FOURTH CAUSE OF ACTION**

**VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE  
U.S. CONST. AMEND. V**

249. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 12-150, Section I (§§ 0-161), Section II (§§ 162-170), Section IV (§§ 185-189), Section V (§§ 190-199), and Section VI (§§ 200-207).

250. **Procedural Due Process.** The DOD Mandate requires Plaintiffs to take a vaccine without their consent and threatens to deprive Plaintiffs of constitutionally protected life, liberty and property interests without due process of law.

251. The DOD Mandate “threatens to substantially burden the liberty interests” of Plaintiffs “put to a choice between their job(s) and their job(s).” *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021) (“*OSHA*”). Plaintiffs face not only the loss of the current employment, but also will be barred from other federal or private employment due to their vaccination and discharge status.

252. The DOD Mandate, and its treatment of religious accommodation requests, also burdens other fundamental rights—in particular, the free exercise of religion protected by the First Amendment. *See id.*, at \*8 n.21 (citations omitted).

253. The Defendants’ policy of systematic and uniform denial of

100% of RARs is just as much a deprivation of their Fifth Amendment Due Process rights, U.S. CONST. AMEND. V, as it is of First Amendment Free Exercise rights. Due process requires not only notice and an opportunity to be heard, but also an impartial decisionmaker where, unlike here, the outcome is not “predetermined.” *See, e.g., McCarthy v. Madigan*, 503 U.S. 140, 148 (1992).

254. The near-zero approval rate shows that the Coast Guard has “predetermined the denial of the religious accommodations.” *Navy SEALs 1-26*, at \*6. This is no accident, but the intended result of a process designed to deny Plaintiffs’ free exercise rights; their fate has been sealed before the process begins.

255. Vaccine refusal may also result in deprivation of protected property interests. Disciplinary action or discharge status will cause Plaintiffs to lose retirement, veterans, access to healthcare and health insurance, and other governmental benefits to which they are entitled. Loss of pay and benefits amount to hundreds of thousands or even millions of dollars in many cases. *See supra* ¶ 206 (summarizing estimated lost pay and benefits). As a result of the Defendants’ unlawful and unconstitutional actions, Plaintiffs face deprivation of their rights to life, liberty and property without due process or fair notice. Plaintiffs seek declaratory and injunctive relief because they have no adequate

remedy at law to prevent future injury caused by Defendants' violation of their Fifth Amendment rights to due process.

**FIFTH CAUSE OF ACTION**  
**VIOLATIONS OF INFORMED CONSENT LAWS & PHS**  
**10 U.S.C. § 1107A, 21 U.S.C. 360BBB-3 & 42 U.S.C. § 262**

256. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 12-150, Section I (¶¶ 0-161), Section II (¶¶ 162-170), Section IV (¶¶ 185-189), Section V (¶¶ 190-199), and Section VI (¶¶ 200-207).

257. The DOD Mandate states that *only* FDA-licensed vaccines, labeled in accordance with FDA requirements, are mandated. *See supra* ECF #1-6, DOD Mandate, at 1. However, due to the fact that such vaccines were not available to Defendants, Defendants instead have ordered Plaintiffs and all other service members to receive unlicensed, EUA vaccines “as if” they were FDA-licensed vaccines. *See supra* Sections I.B & I.C.

258. The Informed Consent Laws expressly prohibit the mandatory administration of EUA products, whether to service members or anyone else. *See* 10 U.S.C. § 1107a and 21 U.S.C. § 360bbb-3. The statutory informed consent rights are expressly stated in the fact sheet that the FDA requires to be included in every package of EUA vaccines,

confirming that the recipient has the “option to accept or refuse” the EUA product. *See supra* ¶ 173, Pfizer/BioNTech Fact Sheet, at 14.

259. The DoD Mandate and the Coast Guard Mandate violate these Informed Consent Laws to the extent that the DoD and/or the Coast Guard have mandated the unlicensed EUA Pfizer/BioNTech or Moderna vaccines, and/or direct DoD healthcare providers or military treatment facilities to administer the unlicensed EUA vaccine pursuant to the DoD Mandate. While the DoD Mandate itself states that only FDA-licensed vaccines may be mandated, *see* ECF #1-6, DOD Mandate, at 1, Defendants DoD and Coast Guard are in fact mandating EUA vaccines. *See Austin*, 2021 WL 5816632, at \*5.

260. The DoD and the Coast Guard are departments and agencies of the United States Government. As such, they are agencies created by statute, and “it is axiomatic that an administrative agency’s power to promulgate legislative regulations,” like the DoD Mandate, “is limited to the authority delegated by Congress.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 109 S. Ct. 468, L.Ed.2d 493 (1988); *see also La. Pub. Serv. Comm’n v. FERC*, 476 U.S. 355, 375, 106 S. Ct. 1890, 90 L.Ed.2d 369 (1986) (“an agency literally has no power to act, ..., unless and until Congress confers power on it.”).

261. While Congress and the President have delegated broad

authority to the DoD and the Secretary of Defense in military matters, in 10 U.S.C. § 1107a they expressly prohibited Secretary Austin from issuing the order at issue here mandating the administration of an EUA product, without the express Presidential authorization that Secretary Austin has neither requested nor received. Accordingly, the DoD Mandate and the Navy Mandate implementation of it are “in excess of statutory jurisdiction [and] authority.” 5 U.S.C. § 706(2)(C).

262. The Informed Consent Laws do not provide a private right of action. Accordingly, Plaintiffs’ claims for Defendants’ *ultra vires* actions in excess of their statutory authority, and in violation of Plaintiff’s rights under the Informed Consent Laws, are brought under the APA. *See, e.g., Austin*, 2021 WL 5816632, at \*2 & \*7 n.12 (violations of Informed Consent Laws are “APA claims”). It is well-settled that, where a statute does not expressly provide a cause of action, plaintiffs may enforce agency violations of the statute’s substantive requirements through the judicial review provisions of the APA. *See, e.g., Dunn-McCampbell Royalty Int., Inc. v. Nat’l Park Serv.*, 112 F.3d 1283, 1286 (5th Cir. 1997).

263. It is further undisputed that the Pfizer/BioNTech and Moderna EUA COVID-19 vaccines are “legally distinct” from the licensed vaccines, Comirnaty and Spikevax. The EUA COVID-19 vaccines are

subject to the laws governing EUA products, including the right to informed consent and to refuse mandatory administration, while Comirnaty and Spikevax are subject to the heightened safety and efficacy requirements governing FDA-licensed products, as well as the PHSA and FDA's requirements governing manufacturing and labeling of licensed products. Defendants have directed that all EUA-labeled COVID-19 vaccines by Pfizer/BioNTech or Moderna are legally interchangeable with these manufacturers' FDA-licensed vaccines (*i.e.*, Comirnaty and Spikevax), such that all EUA-labeled vaccines may be mandated. This directive erases the “legal[] distinct[ions] acknowledged by the FDA, and treats the FDA's determination that they are “medically interchangeable” as if the FDA has made a “statutory interchangeability determination,” despite the fact that the FDA has expressly disclaimed having done so. *See supra* (discussing ECF #1-17, Marks Decl., ¶¶ 10-11).

264. In other legal challenges to the DOD Mandate, Defendants' counsel has asserted the affirmative defense that the DoD Mandate, and the scope of interchangeability, is limited to EUA-labeled, “BLA-compliant” vaccines (*i.e.*, vaccines manufactured in accordance with the Comirnaty BLA). *See generally Austin*, 2021 WL 5616632, at \*5-6. But the DoD Mandate and the Coast Guard orders never use the term “BLA-

compliant,” or suggest any such limitation, and the publicly available documents assert that any and all EUA-labeled vaccines are legally interchangeable with the licensed vaccines, without any limitation to “BLA-compliant” lots. The purported limitation of the mandate to “BLA-compliant” lots was announced in the first instance by agency defense counsel in court filings and is entirely unsupported in the record. Courts may not accept “counsel’s *post hoc* rationalization” as prime authority “for agency action.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983) (“*State Farm*”); *see also Univ. of Tex. M.D. Anderson Cancer Ctr. v. HHS*, 985 F.3d 472, 475 (5th Cir. 2021) (“*Post hoc* rationalizations offered by the Government’s counsel are irrelevant.”).

265. Moreover, the DoD administrative records submitted and other filings in the *Coker* proceeding, which will be submitted separately in this proceeding, confirm that: (1) all references to interchangeability in the record indicate that ***all*** unlicensed EUA-labeled COVID-19 vaccines (*i.e.*, without limitation to EUA-labeled, BLA-compliant lots) are deemed to be interchangeable with the licensed version; and (2) that there is no discussion of interchangeability with respect to “BLA-compliant” lots, nor is there any policy, directive, or guidance limiting the DoD Mandate to EUA-labeled, “BLA-compliant” lots. *See also Austin*,

2021 WL 5616632, at \*6 (“the DoD concedes that ... its current [EUA-labeled] vials are not BLA-compliant, and that there is no policy to ensure that servicemembers get only BLA-compliant vaccines.”). Accordingly, Defendants are barred by the “record rule” from asserting any defense for which there is no support in the record and that was asserted only by agency defense counsel.

266. As a result of Defendants’ unlawful actions, Plaintiffs are required either to take an unlicensed, EUA vaccine or else face the serious disciplinary consequences outlined above that will result in the loss of his or her livelihood, veterans and other governmental benefits, and fundamental rights. The DoD Mandate and the Coast Guard Mandate must therefore be declared unlawful, and enjoined or vacated, to the extent they require the mandatory administration of an EUA COVID-19 vaccine. *See generally John Doe #1 v Rumsfeld*, 341 F. Supp. 2d 1 (D.D.C. 2004) (“*Rumsfeld I*”), *modified sub nom.* 2005 WL 774857 (D.D.C. 2005) (“*Rumsfeld II*”) (expanding injunction against mandated EUA anthrax vaccine).

**SIXTH CAUSE OF ACTION**  
**VIOLATIONS OF ADMINISTRATIVE PROCEDURE ACT,**  
**5 U.S.C. § 706(2)(A), § 706(2)(C) & § 706(2)(E)**

267. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 12-150, Section I (¶¶ 0-161), Section II (¶¶ 162-170),

Section IV (§§ 185-189), Section V (§§ 190-199), and Section VI (§§ 200-207).

268. The DoD Mandate and the Coast Guard Mandate must be set aside as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(A). The entirety of the DOD Mandate is a two-page memorandum from the Secretary of Defense that cites no statute, regulation, executive order or other legal authority. It also compels compliance with an impossible on the date it was issued: i.e. there were no vaccines with “full FDA approval” because Comirnaty’s U.S. marketing end date was the exact same day it was approved – Aug. 23, 2021.

269. The DoD Mandate is arbitrary and capricious insofar as it imposes an entirely *new* mandate on over two million active duty and reserve service members without any explanation, justification, legal basis or authority by adding an unapproved, never-before used gene-therapy to vault from unlicensed status right to the list of required vaccines, without any findings of facts or analysis (cost-benefit or otherwise) supporting the directive; any meaningful consideration of alternatives to 100% vaccination; any acknowledgement or explanation for the elimination of the currently and pre-existing exemptions for service members who have recovered from a previous documented

infection; or any consideration of the heightened risks and lack of any compensating benefits of vaccination for service members with documented previous infections.

270. The DOD Mandate and Armed Services' guidance are *ultra vires* actions "in excess of statutory jurisdiction [and] authority," 5 U.S.C. § 706(2)(C), for the reasons set forth under the Fourth Cause of Action above. The DOD and the Armed Services are departments and agencies of the United States Government. As such, they are agencies created by statute, and "it is axiomatic that an administrative agency's power to promulgate legislative regulations," like the DOD Mandate, "is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 109 S. Ct. 468, L.Ed.2d 493 (1988); *see also La. Pub. Serv. Comm'n v. FERC*, 476 U.S. 355, 375, 106 S. Ct. 1890, 90 L.Ed.2d 369 (1986) ("an agency literally has no power to act, ..., unless and until Congress confers power on it."). While Congress and the President have delegated the Secretary of Defense broad authority, they have expressly withheld the authority to mandate an EUA vaccine without Presidential waiver, which Secretary Austin has neither received nor requested.

271. The DOD Mandate is arbitrary and capricious insofar as its sole justification or explanation is a conclusory statement that the

Secretary has “determined that mandatory vaccination against [COVID-19] is necessary to protect the Force and defend the American people.” ECF #1-6, DOD Mandate, at 1. Given that the DOD Mandate was issued on the very next day after FDA Comirnaty Approval, it is apparent the DoD either blindly relied on the FDA approval and out-of-context FDA statements regarding interchangeability or was fully involved in a scheme to commit fraud upon members of the Armed Forces by denying them their Constitutional and statutory rights and obviate the Congressional requirements of 10 U.S.C §1107a.

272. Defendants also purport to rely on the CDC’s recommendations in adopting the two-dose regimen, but have ignored the CDC’s unanimous recommendation that all eligible adults should receive a third booster shot. *See CDC, CDC Expands Eligibility for COVID-19 Booster Shots to All Adults*, CDC Media Statement (Nov. 19, 2021), available at: <https://www.cdc.gov/media/releases/2021/s1119-booster-shots.html>. Such selective picking and choosing of which recommendations to follow, without any explanation, is the essence of arbitrary and capricious decision-making.

273. The DOD Mandate is also arbitrary and capricious because it constitutes an unannounced and unexplained departure from a prior policy. As the Fifth Circuit recently noted in issuing a Preliminary

Injunction against the OSHA vaccine mandate:

Because it is generally “arbitrary or capricious” to “depart from a prior policy *sub silentio*,” agencies must typically provide a “detailed explanation” for contradicting a prior policy, particularly when the “prior policy has engendered serious reliance interests.” OSHA’s reversal here strains credulity, as does its pretextual basis. Such shortcomings are all hallmarks of unlawful agency actions.

*OSHA*, 17 F.4th at 614.

274. The first vaccine that Defendant FDA ever granted EUA status to was the anthrax vaccine in 2005 – and it is directly relevant because in that prior case, both the Defendants DoD and FDA took the exact *opposite* legal position on the record than that which they are taking right now.

275. After the D.C. District Court enjoined the Defendant DoD’s anthrax vaccine program in 2003 in *Rumsfeld I*, the defendant DoD and FDA both took various actions to continue Secretary Cohen’s 1998 anthrax vaccine mandate. After being enjoined again, and facing a permanent injunction, the Defendant DoD filed an emergency motion with that court to Modify the Injunction because Defendant FDA had reclassified the anthrax vaccine as an EUA product – the first time any vaccine had ever been granted that status:

Defendants have now filed an Emergency Motion to Modify the Injunction, seeking clarification that there exists a third option - an alternative to informed consent or a Presidential waiver - by

which defendants can administer AVA to service members even in the absence of FDA approval of the drug: that is, pursuant to an Emergency Use Authorization (“EUA”) under the Project BioShield Act of 2004, 21 U.S.C.A. § 360bbb-3.

*John Doe #1 v Rumsfeld*, 2005 WL 774857 (D.D.C. 2005) (enjoining mandatory administration of EUA anthrax vaccine).

276. The FDA placed several conditions on granting the EUA, but only one is important to this litigation. Noting that 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) contains not only an informed consent requirement, but also a requirement that individuals to whom the product is administered be informed of the option to accept or refuse administration of the product, the FDA determined that an option to refuse vaccination meant that DOD’s AVIP could not be mandatory, and that there could be no disciplinary or other punitive measures taken against service members, civilian employees, or civilian contractors who refused the shot.

With respect to condition (3), above, relating to the option to accept or refuse administration of AVA, the AVIP will be revised to give personnel the option to refuse vaccination. Individuals who refuse anthrax vaccination will not be punished. Refusal may not be grounds for any disciplinary action under the Uniform Code of Military Justice. Refusal may not be grounds for any adverse personnel action. Nor would either military or civilian personnel be considered non-deployable or processed for separation based on refusal of anthrax vaccination. There may be no penalty or loss of entitlement for refusing anthrax vaccination.

70 Fed Reg. 5452, 5455 (Feb.2, 2005)(emphasis added).

277. In other words, in circumstances identical to those presented here—and contemporaneously with the enactment of the 10 U.S.C. § 1107a—the FDA determined that the statutory requirement of an option to refuse a mandatory EUA vaccination meant that there can be no punitive action against someone who does not want the shot. This requirement applied to both military members and civilian employees and contractors, all of whom were subject to the anthrax vaccination program in its original form.

278. The Defendant FDA's actions are also part and parcel of the arbitrary and capricious actions, to including its intentional withholding and non-enforcement of the mandatory provisions of the Public Health Service Act (42 U.S.C. § 262) regarding biosimilar or bioequivalent products. The Defendant FDA is allowing Defendant DOD to make claims of bioequivalency for products for which there has been no such determination made, with concomitant (and rampant) mislabeling, while Defendant FDA aids in the fraud with its non-enforcement, cleverly-placed footnotes, and burying of relevant information regarding EUA products.

279. The DoD administrative record provides further confirmation that Defendants acted arbitrarily and capriciously in

enacting the mandate because Defendants failed altogether to consider any alternatives to 100% vaccination, including measures that had been effectively employed over the previous 18 months prior to the mandate (e.g., masking, social distancing, testing, quarantine, etc.). Nor did Defendants provide any explanation in the record as to why these alternatives were inadequate or consider the relative costs and benefits of alternative measures. This is confirmed by the findings of the five U.S. district courts in the RFRA context that the DOD and other Armed Services failed to consider any alternative less restrictive measures. *See, e.g., Navy SEAL 1*, 2022 WL 534459, at \*18; *Air Force Officer v. Austin*, 2022 WL 468799, \*10 (M.D. Ga. Feb. 15, 2022) (“*Air Force Officer*”). Where an agency like DOD “provide[d] little or no explanation for the [its] choices,” “omit[s] explanation for rejecting alternatives,” and did “not address alternative (or supplementary) requirements,” its order is arbitrary and capricious and must be vacated. *Health Freedom Def. Fund v. Biden*, 2022 WL 1134138, at \*18-19 (M.D. Fla. Apr. 18, 2022).

280. Finally, the DOD Mandate and Armed Services Guidance are arbitrary and capricious, and unsupported by substantial evidence, insofar as they categorically eliminated existing exemptions for previous documented infections under AR 40-562, ignore their own definition for what constitutes a “vaccine” in DoD Instruction 6205.02, or to consider

natural immunity in its religious exemption decisions. *See, e.g., Navy SEAL 1*, at \*16 & n.10; *Navy SEALs 1-26*, at \*10; *Air Force Officer*, at \*10. In doing so, Defendants have “entirely failed to consider an important aspect of the problem.” *State Farm*, 463 U.S. at 43.

281. As a result of the Defendants’ unlawful actions, the Plaintiffs have suffered damages, including being required to take an unlicensed drug of unknown long-term safety profile; being subject to or threatened with disciplinary action under the Uniform Code of Military Justice (UCMJ), and including adverse administrative action that would discharge the Plaintiffs for “misconduct” and characterize their voluntary service as “other than honorable.”

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully ask this Court to:

- A. Declare the DoD Mandate and the Coast Guard Mandate to be unlawful and unconstitutional and to vacate these orders;
- B. Declare that the Defendants’ No Accommodation Policy violates services members’ rights under RFRA, the First Amendment Free Exercise Clause, and the Fifth Amendment Due Process Clause;
- C. Enjoin the implementation or enforcement of the DOD Mandate and the Coast Guard Mandate by the Defendants with respect to the Plaintiffs and similarly situated Coast Guard members; and
- D. Enjoin any adverse or retaliatory action against the Plaintiffs as a result of, arising from, or in conjunction with the Plaintiffs’ RAR requests or denials, or for pursuing this action, or any other action for relief from Defendants’ constitutional, statutory, or regulatory violations.

- E. Award plaintiffs' costs and attorneys' fees, damages for the violations of their rights, and any other relief this Court may find appropriate.

Dated: September 1, 2022

Respectfully submitted,

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