No. 21A-_____

IN THE SUPREME COURT OF THE UNITED STATES

LLOYD J. AUSTIN, III, IN HIS OFFICIAL CAPACITY AS SECRETARY OF DEFENSE, ET AL., APPLICANTS

v.

U.S. NAVY SEALS 1-26, ET AL.

APPLICATION FOR A PARTIAL STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Lloyd J. Austin, III, in his official capacity as Secretary of Defense; the United States Department of Defense; and Carlos Del Toro, in his official capacity as Secretary of the Navy.*

Respondents (plaintiffs-appellees below) are U.S. Navy SEALs 1-26; U.S. Navy Special Warfare Combatant Craft Crewmen 1-5; U.S. Navy Explosive Ordnance Disposal Technician 1; and U.S. Navy Divers 1-3. Respondents are proceeding under pseudonyms pursuant to a protective order entered by the district court. See D. Ct. Doc. 34 (Dec. 2, 2021).

RELATED PROCEEDINGS

United States District Court (N.D. Tex.):

U.S. Navy SEALs 1-26 v. Biden, No. 21-cv-1236 (Jan. 3, 2022) (granting preliminary injunction)

United States Court of Appeals (5th Cir.):

U.S. Navy SEALs 1-26 v. Biden, No. 22-10077 (Feb. 28, 2022) (denying stay)

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* Respondents' original complaint also named as defendants Joseph R. Biden, Jr., in his official capacity as President of the United States of America, as well as Secretaries Austin and Del Toro in their individual capacities. Those former defendants are not covered by the preliminary injunction at issue here.

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APPLICATION FOR A PARTIAL STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of applicants Lloyd J. Austin, III, in his official capacity as Secretary of Defense, et al., respectfully applies for a partial stay of a preliminary injunction issued on January 3, 2022, by the United States District Court for the Northern District of Texas (App., infra, 31a-56a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the Fifth Circuit and, if the court of appeals affirms the injunction, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

This application seeks relief from a preliminary injunction that usurps the Navy's authority to decide which servicemembers should be deployed to execute some of the military's most sensitive and dangerous missions. Respondents are a group of SEALs and other

members of the elite Naval Special Warfare community. They assert that they are entitled to exemptions from the Navy's COVID-19 vaccination requirement under the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb et seq., and the Free Exercise Clause. And they insist that they are also entitled to an injunction forbidding their military commanders from making any changes to their military assignments -- including special-operations deployments -- to address the risks posed by their unvaccinated status.

The district court granted that extraordinary relief. The court's preliminary injunction not only prohibits the Navy from applying the COVID-19 vaccination requirement to respondents, but also requires the Navy to assign and deploy them without regard to their lack of vaccinations notwithstanding military leaders' judgment that doing so poses intolerable risks to safety and mission success. Indeed, the Navy has informed this Office that the injunction has already compelled it to send one respondent to Hawaii for duty on a submarine against its military judgment. Other respondents occupy positions that may require them to be "deploy[ed] anywhere in the world in the immediate future." App., infra, 118a.

In response to that extraordinary and unprecedented intrusion into core military affairs, the government moved for a partial stay pending appeal. It did not seek to stay the portion of the

injunction that protects respondents from discipline or discharge for remaining unvaccinated. Instead, the government sought a stay only insofar as the injunction "precludes the Navy from considering [respondents'] vaccination status in making deployment, assignment, and other operational decisions." App., infra, 14a (citation omitted). The lower courts denied even that modest relief. Id. at 29a, 66a. This Court should grant a partial stay for two reasons.

First, even if respondents' claims had merit, respondents would not be entitled to an injunction dictating the Navy's deployment, assignment, and operational decisions. RFRA authorizes a court to issue only "appropriate relief," 42 U.S.C. 2000bb-1(c), and respondents' Free Exercise claims likewise would support only relief that comports with "traditional principles of equity jurisdiction." Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 318-319 (1999) (citation omitted). An injunction that trenches on core Article II prerogatives concerning which military servicemembers are qualified for which missions is inconsistent with those traditional principles and has no precedent in our Nation's history.

Second, respondents' claims lack merit. SEALs and other members of the Special Warfare community can be called upon to deploy anywhere in the world on short notice; to complete high-risk missions under extreme conditions; and to operate in small teams and

close quarters for extended periods. App., infra, 107a. To take just one well-publicized example, in 2009 a team of SEALs flew 8000 miles to respond to the hijacking of a U.S.-flagged ship by Somali pirates and ultimately played a critical role in rescuing the ship's captain, who was being held hostage. Id. at 115a.

The Navy has an extraordinarily compelling interest in ensuring that the servicemembers who perform those missions are as physically and medically prepared as possible. That includes vaccinating them against COVID-19, which is the least restrictive means of achieving that interest. Admiral William K. Lescher, Vice Chief of Naval Operations and the second-highest uniformed officer in the Navy, explained that the illness of "even one member" of a small SEAL team due to COVID-19 could "compromise the mission." App., infra, 117a. And he emphasized that he would regard it as a "dereliction of duty" to order "unvaccinated personnel into an environment in which they endanger their lives," risk "the lives of others," and "compromise accomplishment of essential missions." Id. at 110a. The lower courts seriously erred by compelling such a dereliction of duty and failing to afford any deference to the "professional judgment" of Admiral Lescher and other military officers charged with our Nation's defense. Goldman v. Weinberger, 475 U.S. 503, 507 (1986).

STATEMENT

A. The Naval Special Warfare Community

This case involves the Naval Special Warfare community, which includes Navy SEALs and Naval Special Warfare combat support personnel. App., infra, 106a-107a. Members of the Special Warfare community are assigned to missions including special reconnaissance, counterterrorism, counterinsurgency, and hostage rescue. Id. at 106a-107a, 115a-116a. Those high-risk missions are "often conducted in hostile, austere or diplomatically sensitive environments." Id. at 107a. And Special Warfare personnel routinely operate in close quarters over long periods in units "as small as a squad of four." Id. at 111a; see id. at 107a.

Special Warfare duty "takes place in every part of the world under harsh conditions at the extremes of human physical capabilities." App., infra, 69a. Because it is "among the most physically and mentally demanding assignments in the U.S. military," Special Warfare duty is limited to "the most physically and mentally qualified personnel." Ibid. Any conditions that "impair the ability to safely and effectively work in the [special operations] environment," "increase potential for medical evacuation," or "caus[e] a significant potential for disruption of operations" are "disqualifying." Id. at 71a. The long list of disqualifying conditions includes, for example, certain forms of sleep apnea, severe allergies, dental issues requiring frequent care, and any condition requiring frequent medication. Id. at 71a, 75a-76a.

B. The Navy's COVID-19 Vaccination Requirement

1. The U.S. military has relied on mandatory immunization since 1777, when George Washington directed the inoculation of the Continental Army against smallpox. Stanley Lemon et al., Protecting Our Forces: Improving Vaccine Acquisition and Availability in the U.S. Military 11-12 (2002), https://perma.cc/E545-TQ9G. As of 2021, nine vaccines were required for all servicemembers, including an annual influenza vaccine, and eight additional vaccines were required when certain risk factors are present. D. Ct. Doc. 44-1, at 63 (Dec. 10, 2021).

In August 2021, the day after the Food and Drug Administration (FDA) granted full approval to the first COVID-19 vaccine, the Secretary of Defense announced that vaccination against COVID-19 would be added to the required list. App., infra, 67a-68a. The Secretary of the Navy ordered active-duty members of the Navy to be vaccinated by November 28. Id. at 32a.

On September 24, 2021, the Commander of the Naval Special Warfare Command issued "Trident Order #12," which required Special Warfare personnel to receive the first dose of the vaccine or to request an exemption by October 17. App., infra, 79a-80a. The order stated that requests for exemptions would be handled under existing "service policies." Id. at 80a.

The Navy also issued two directives related to the COVID-19 vaccination requirement, which are referred to as "NAVADMIN 225/21" and "NAVADMIN 256/21." Those directives set forth proce-

dures for disciplining and ultimately separating servicemembers who refuse vaccination without an exemption. App., infra, 81a-85a (NAVADMIN 225/21), 86a-94a (NAVADMIN 256/21). They also provide that "service members who are not vaccinated, regardless of exemption status, may be temporarily reassigned" based on "operational readiness and mission requirements." Id. at 87a-88a.

2. Navy policies establish "two types of exemptions" from vaccination requirements: "medical and administrative." App., infra, 144a. Medical exemptions are granted by medical personnel for medical reasons and may be either temporary or permanent. Ibid. Most exemptions are granted for temporary conditions such as pregnancy. Id. at 99a; see Navy & Marine Corps COVID-19 Vaccination Requirements: Pregnant & Postpartum Service Members FAQ (Sept. 17, 2021), https://go.usa.gov/xzBcS. As of December 2021, out of roughly 350,000 active-duty servicemembers, the Navy had granted "10 permanent medical exemptions" and "259 temporary medical exemptions" from the COVID-19 vaccination requirement. App., infra, 7a; see U.S. Dep't of Def., Armed Forces Strength Figures (Jan. 31, 2022), https://go.usa.gov/xzZ4r. No member of the Special Warfare community has received a permanent medical exemption, and only a handful have temporary medical exemptions. App., infra, 7a.[1]

[1] The court of appeals stated that the Navy had granted at least 17 temporary medical exemptions to members of the Special

Administrative exemptions cover a variety of temporary situations, including a "pending separation or retirement" and "emergency leave." App., infra, 150a. Those exemptions last only as long as the condition occasioning the exemption. D. Ct. Doc. 130, at 43 (Feb. 23, 2022). As of December 2021, the Navy had granted 59 of this type of administrative exemption. App., infra, 7a.

Administrative exemptions also include permanent "religious accommodation[s]." App., infra, 150a. A servicemember seeking a religious accommodation must submit a request to his or her commanding officer. Ibid. Such requests are governed by longstanding Navy policies applicable to requests for religious accommodations. Those policies provide that each request for an accommodation, including from a vaccination requirement, is "evaluated on a case-by-case basis" considering factors including "military readiness, unit cohesion, good order, discipline, health, [and] safety." Id. at 152a. Servicemembers may appeal the denial of a religious accommodation to the Chief of Naval Operations. Ibid.

The COVID-19 vaccination requirement triggered an "unprecedented increase" in religious accommodation requests. App., in-

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Warfare community. App., infra, 7a. The Navy informs this Office that most of those exemptions have now expired; that there are now only four temporary medical exemptions among all Naval Special Operators; that all four of the recipients will get vaccinated when their temporary medical issue clears; and that, while the exemptions remain in effect, the recipients will not be deployed and will have their unvaccinated status taken into account in assignment and other operational decisions.

fra, 140a. Between 2015 and the summer of 2021, the Navy "adjudicated 83 religious accommodation requests for exemption from any required vaccination," granting one of those requests. Ibid. In the seven months since the COVID-19 vaccination was added as a mandatory immunization, the Navy has received more than 4000 requests for religious accommodations from that requirement. D. Ct. Doc. 121, at 59 (Feb. 15, 2022). As of February 3, 2022, only 81 of those requests had been fully adjudicated through appeal; more than 1200 appeals remained pending; and many requests that were denied after initial review could still be appealed. Ibid. Thus far, the Navy has granted one religious accommodation.[2]

3. An exemption to the vaccination requirement -- whether medical or religious -- does not by itself entitle a servicemember to be deployed because the Navy has a separate process for determining medical readiness for deployment. App., infra, 96a-97a. As relevant here, a servicemember who meets all medical requirements for "special operations" -- which include operations undertaken by the Special Warfare community -- is deemed "Physically Qualified," and one who does not is "Not Physically Qualified." Id. at 97a. Servicemembers found to be "Not Physically Qualified" are medically disqualified from special-operations duty unless

[2] The court of appeals believed that the Navy had not granted any religious accommodations because the grant, which involved a member of the Individual Ready Reserve, occurred after the preparation and filing of the government's stay declarations. App., infra, 7a; see D. Ct. Doc. 129, at 16 n.2 (Feb. 23, 2022).

they obtain a medical "Waiver to Physical Standards." Id. at 97a-98a.

Under a longstanding Navy policy, Special Warfare service-members who cannot be vaccinated for religious reasons are deemed not physically qualified. App., infra, 77a (MANMED art. 15-105(4)(n)(9)). That specific policy does not apply to service-members with "medical contraindications" to vaccination. Ibid. But other, more general Navy policies make clear that a service-member who is unvaccinated against COVID-19, "whether for religious or secular reasons," cannot be assigned to an operational unit and must obtain a separate medical waiver in order to be deployable. Id. at 98a; see D. Ct. Doc. 10, at 10 (Jan. 31, 2022) (NAVADMIN 07/22 ¶ 5.b). "These deployability determinations do not take into account whether a member is unvaccinated for secular or religious reasons; all unvaccinated service members are treated the same for purposes of determining whether they should receive a medical waiver that would render them fit for special operations duty." App., infra, 99a.

C. The Present Controversy

1. Respondents are 35 Navy servicemembers assigned to the Naval Special Warfare Command, including 26 Navy SEALs. They brought this putative class action under pseudonyms in the United States District Court for the Northern District of Texas. The operative complaint alleges that respondents' religious beliefs

forbid them from receiving the COVID-19 vaccine. Am. Compl. ¶¶ 27-31. Respondents further allege that the Navy either has already denied or will deny their requests for religious exemptions. Id. ¶¶ 49-53. The operative complaint asserts violations of RFRA and the Free Exercise Clause. See id. ¶¶ 64-134.

The district court granted respondents' motion for a preliminary injunction. App., infra, 31a-56a. The court first found their claims justiciable under Fifth Circuit precedent. Id. at 36a-47a. On the merits, the court determined that respondents are likely to succeed on their RFRA claims because it believed that the Navy lacks a compelling interest in requiring them to be vaccinated. Id. at 48a-51a. The court reasoned that respondents had "safely carried out their jobs during the pandemic," id. at 49a; that allowing respondents to remain unvaccinated would not prevent the Navy from achieving "herd immunity," given its high overall vaccination rate, id. at 50a; and that the Navy grants "exemptions for non-religious reasons," ibid. The court found a likelihood of success under the First Amendment because it believed the Navy treats a servicemember's inability to be vaccinated for secular (medical) reasons more favorably than a servicemember's inability to be vaccinated for religious reasons. Id. at 51a-52a.[3]

[3] The district court retreated from that conclusion after the government submitted a declaration explaining that the court had erred in stating that servicemembers with medical exemptions are treated more favorably than those with religious exemptions. App.,

The district court preliminarily enjoined the Navy from enforcing the policies described above -- specifically, NAVADMIN 225/21, NAVADMIN 256/21, Trident Order #12, and MANMED art. 15-105(4)(n)(9) -- with respect to respondents. App., infra, 56a.[4] The injunction also states that the Navy is "enjoined from taking any adverse action against [respondents] on the basis of [their] requests for religious accommodation." Ibid.

2. The government asked the district court for a partial stay of the injunction pending appeal, "to the extent the order precludes [the Navy] from making the assignment and reassignment decisions that the military deems appropriate, taking into account [respondents'] vaccination status, including with respect to deployment and training." App., infra, 58a (citation omitted). The court denied the motion. Id. at 58a-66a. It stated that its injunction does not require the Navy "to make any particular personnel assignments," such as "requir[ing] the Navy to place a particular SEAL in a particular training program." Id. at 60a. But the court made clear that the injunction does forbid the Navy from making assignment and deployment decisions based on respondents' vaccination status, such as "blocking [them] from a training program [they] would otherwise attend." Ibid.

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infra, 62a. The court thus made clear that its subsequent denial of a stay rested solely on respondents' RFRA claims, not their First Amendment claims. Id. at 63a.

[4] The injunction refers to MANMED art. 15-105(3)(n)(9) rather than art. 15-105(4)(n)(9), but that is a scrivener's error.

3. The court of appeals denied the government's motion for a partial stay of the injunction. App., infra, 1a-29a. Like the district court, the court of appeals found the dispute justiciable under circuit precedent. Id. at 14a-22a. On the merits, the court determined that respondents are likely to succeed on their RFRA claims. Id. at 22a-27a. The court emphasized that 99.4% of Navy servicemembers are vaccinated, which it viewed as undercutting any compelling interest in ensuring that respondents are vaccinated. Id. at 24a-25a. The court also suggested that the Navy lacks a compelling interest in mitigating the risks of COVID-19 because SEALs face other hazards -- including "everything from gunshot wounds" to "parachute accidents" -- that "may create risks of equal or greater magnitude than the virus." Id. at 25a.

The court of appeals also believed that the Navy's vaccine requirement was "underinclusive" because the Navy had "granted temporary medical exemptions to 17 Special Warfare members" and the court saw no basis for "differentiating those service members from [respondents]." App., infra, 26a (citation omitted). The court criticized the Navy's broader religious-accommodation practices, questioning Navy officers' representations that they were making individualized determinations on exemption requests and asserting that RFRA would require the Navy to grant accommodations to servicemembers who (unlike respondents) "work[] from desks, warehouses, or remote locations." Id. at 27a; see id. at 6a-7a & n.3.

Finally, the court of appeals rejected the government's equitable arguments, including that the injunction is an improper intrusion into military decisionmaking. App., infra, 27a-29a. The court stated that the government had failed to establish a likelihood of irreparable harm "during the pendency of the appeal." Id. at 27a (citation and emphasis omitted). And the court added that because it had concluded that the vaccine requirement violates respondents' religious freedom, "[n]o further showing is necessary for [respondents] to demonstrate that even partially staying the injunction would irreparably harm them." Id. at 28a.[5]

4. Following the entry of the preliminary injunction, litigation has continued in the district court. Respondents have moved for class certification and a classwide preliminary injunction extending relief to all of the thousands of Navy servicemembers who have sought religious exemptions. App., infra, 14a n.7. Respondents have also filed a contempt motion asserting that the preliminary injunction entitles them to immediate transfer to operational units; to be assigned or reassigned to specific military duties, including leadership positions; to have military equipment issued to them; or to train and deploy with operational units. D. Ct. Doc. 96, at 5-9 (Jan. 31, 2022).

[5] Because the court of appeals concluded that respondents were likely to succeed on their RFRA claims, it did not address their Free Exercise claims. App., infra, 13a n.6.

ARGUMENT

The government respectfully requests a partial stay of the district court's preliminary injunction pending completion of further proceedings in the court of appeals and, if necessary, this Court. Specifically, the injunction should be stayed insofar as it precludes the Navy from considering respondents' vaccination status in making deployment, assignment, and other operational decisions. A stay pending the disposition of a petition for a writ of certiorari is appropriate if there is (1) "a 'reasonable probability' that four Justices will consider the issue sufficiently meritorious to grant certiorari"; (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and (3) "a likelihood that 'irreparable harm will result from the denial of a stay.'" Conkright v. Frommert, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers) (brackets and citation omitted). Those requirements are satisfied here.

I. THIS COURT WOULD LIKELY GRANT REVIEW IF THE COURT OF APPEALS AFFIRMED THE DISTRICT COURT'S INJUNCTION

If the court of appeals affirmed the district court's unprecedented injunction, there is at minimum a "reasonable probability" that this Court would grant a petition for a writ of certiorari. Conkright, 556 U.S. at 1402 (citation omitted). The Secretary of Defense has determined, as an exercise of his military judgment, that vaccination against COVID-19 is necessary to protect servicemembers and defend the American people. See App., infra, 67a ("To

defend this Nation, we need a healthy and ready force."). As multiple senior military officers attested, the Navy has a particularly compelling interest in vaccinating members of the Special Warfare community because of the importance, sensitivity, and dangerousness of their missions, which could be disrupted or derailed by even a single sick servicemember. See pp. 24-26, infra. The district court's terse RFRA analysis failed even to acknowledge those expert military judgments. If the court of appeals affirmed, that stark departure from long-settled principles of military deference would warrant this Court's review.[6]

Even if respondents' RFRA claims had merit, moreover, the propriety of the district court's extraordinary injunction would itself be an important question warranting certiorari. The district court did not just enjoin the Navy from enforcing its COVID-19 vaccination requirement against respondents. The court also enjoined the Navy from "taking any adverse action against [respondents] on the basis of [their] requests for religious accom-

[6] Other district courts have correctly declined to enjoin the military's COVID-19 vaccination requirement. E.g., Short v. Berger, No. 22-cv-1151 (C.D. Cal. Mar. 3, 2022) (Doc. 25); Robert v. Austin, No. 21-cv-2228, 2022 WL 103374 (D. Colo. Jan. 11, 2022); Church v. Biden, No. 21-cv-2815, 2021 WL 5179215 (D.D.C. Nov. 8, 2021). A district court in Florida, however, has granted a preliminary injunction barring the Navy and the Marine Corps from reassigning two senior officers. Navy SEAL 1 v. Austin, No. 21-cv-2429, 2022 WL 534459, at *20 (M.D. Fla. Feb. 18, 2022). The government's application to stay that injunction is pending in the Eleventh Circuit. See Navy SEAL 1 v. President of the United States, No. 22-10645.

modation," App., infra, 56a, and made clear that "adverse action" would include measures such as changing respondents' duties or reassigning them from their units, see id. at 53a. When the government advised the court that it understood that language to prohibit the Navy from taking into account respondents' unvaccinated status when making assignment and deployment decisions and requested a partial stay of that aspect of the injunction, the court denied relief. Id. at 60a. The court of appeals likewise refused that partial stay of the injunction. Id. at 28a-29a.

Neither respondents nor the lower courts identified any prior injunction dictating military assignments in that fashion. If affirmed on appeal, that severe and unprecedented intrusion into the operation of our Nation's armed forces would plainly warrant this Court's review. See Department of the Navy v. Egan, 484 U.S. 518, 520 (1988) (explaining that the Court granted certiorari to address interference with Executive Branch determinations of "importance * * * to national security concerns"); see also, e.g., Trump v. Hawaii, 138 S. Ct. 2392, 2423 (2018); Winter v. NRDC, Inc., 555 U.S. 7, 12 (2008).

II. THE GOVERNMENT IS LIKELY TO SUCCEED IN REVERSING OR NARROWING THE INJUNCTION

If this Court granted a writ of certiorari, there is a "fair prospect" that it would reverse or narrow the preliminary injunction. Conkright, 556 U.S. at 1402 (citation omitted). The injunction intrudes on core Article II military decisionmaking by

precluding the Navy from considering respondents' vaccination status in making deployment, assignment, and other operational decisions. And the government is likely to succeed in its defense against respondents' RFRA and Free Exercise claims because the Navy has a compelling interest in requiring Navy SEALs and other Special Warfare personnel to be as physically ready for their missions as possible, and because compliance with the neutral and generally applicable vaccination requirement is the least restrictive means of achieving that interest.

A. An Injunction Dictating Military Deployment, Assignment, And Other Operational Decisions Is Not An Appropriate Remedy

Because the government seeks only a partial stay of the district court's injunction, the relevant question for likelihood-of-success purposes is whether the government is likely to succeed in reversing the portion of the injunction prohibiting the Navy from considering respondents' vaccination status in making deployment, assignment, and other operational decisions. It is.

1. "[J]udges are not given the task of running the Army" or the Navy, and it is the Executive officials charged with protecting our national security and defending our borders -- not courts -- who have authority to determine servicemembers' fitness for duty and assignments. Orloff v. Willoughby, 345 U.S. 83, 93 (1953); see id. at 92-93. For that reason, "courts traditionally have been reluctant to intrude upon the authority of the Executive in

military and national security affairs." Egan, 484 U.S. at 530. Indeed, "[j]udicial inquiry into the national-security realm raises 'concerns for the separation of powers in trenching on matters committed to the other branches.'" Ziglar v. Abbasi, 137 S. Ct. 1843, 1861 (2017) (citation omitted). "It is this power of oversight and control of military force by elected representatives and officials which underlies our entire constitutional system." Gilligan v. Morgan, 413 U.S. 1, 10 (1973).

The problems with judicial intervention in military affairs are not limited to formal separation-of-powers concerns, but include practical ones, too. "The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments." Gilligan, 413 U.S. at 10. Accordingly, "it is difficult to conceive of an area of governmental activity in which the courts have less competence." Ibid.; cf. Bryant v. Gates, 532 F.3d 888, 899 (D.C. Cir. 2008) (Kavanaugh, J., concurring) ("[M]ilitary decisions and assessments of morale, discipline, and unit cohesion * * * are well beyond the competence of judges.").

In Reaves v. Ainsworth, 219 U.S. 296 (1911), for example, this Court refused to second-guess the military's determination of a servicemember's "fitness for promotion." Id. at 298. In Orloff, the Court emphasized that it had "found no case where this Court ha[d] assumed to revise duty orders as to one lawfully in the

service." 345 U.S. at 94. Lower courts likewise have -- at least until now -- uniformly declined to second-guess military judgments regarding fitness for duty and assignments. See, e.g., Harkness v. Secretary of the Navy, 858 F.3d 437, 443-445 (6th Cir. 2017), cert. denied, 138 S. Ct. 2648 (2018); Antonellis v. United States, 723 F.3d 1328, 1336 (Fed. Cir. 2013); Sebra v. Neville, 801 F.2d 1135, 1141-1142 (9th Cir. 1986). And that hesitance has extended even to constitutional challenges. See, e.g., Orloff, 345 U.S. at 93-94 (Fifth Amendment); Harkness, 858 F.3d at 443-445 (First Amendment); see also, e.g., United States v. Webster, 65 M.J. 936, 946-948 (Army Ct. Crim. App. 2008) (rejecting argument that RFRA entitled Muslim servicemember to challenge his deployment to Iraq).

2. The preliminary injunction here flouts those principles. By requiring the Navy to deploy and assign respondents without regard for their vaccination status, the district court effectively inserted itself into the Navy's chain of command, overriding military commanders' "professional military judgments" about operational needs and requirements. Gilligan, 413 U.S. at 10; see Chappell v. Wallace, 462 U.S. 296, 300 (1983) (warning against suits that "tamper with the established relationship between enlisted military personnel and their superior officers"). That extraordinary intrusion is neither "appropriate relief" under RFRA, 42 U.S.C. 2000bb-1(c), nor consonant with the "traditional

principles of equity jurisdiction," Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 318-319 (1999) (citation omitted), that constrain the available relief on respondents' Free Exercise claims, see Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320, 327-328 (2015).

The court of appeals sought to justify that intrusion on the circular ground that "generals don't make good judges." App., infra, 22a (brackets and citation omitted). The district court, for its part, asserted that its injunction would not interfere with military discretion because "[w]hether denying religious accommodations violates the First Amendment is a distinct legal question" that "requires neither 'military expertise [n]or discretion.'" Id. at 46a (citation omitted).

That misses the point. The problem with the scope of the injunction is not that it rests on a determination about the merits of respondents' RFRA or First Amendment claims (though in reaching that determination, the lower courts seriously erred by refusing to afford any deference to military judgments about military needs, see pp. 23-31, infra). The problem is that in crafting a remedy, the district court countermanded the Navy's determination that vaccination against COVID-19 is necessary to field an effective Special Warfare fighting force -- a quintessential matter of military expertise and discretion. Cf. Winter, 555 U.S. at 24 (courts must "give great deference" to "professional military judgments"

about what is needed to ensure military readiness) (citations omitted).

A partial stay would eliminate that intrusion -- and the resulting threat to military operations and national security -- while still protecting respondents from discipline or discharge. Respondents would be free to stay unvaccinated and remain in the Navy. They simply would not be entitled to be assigned to or deployed on missions that their commanding officers have determined would be jeopardized by their lack of vaccination.

B. Respondents' RFRA Claims Lack Merit

In addition to authorizing unprecedented and overbroad relief, the court of appeals erred in finding that respondents were likely to succeed on their RFRA claims. RFRA provides that the federal government "shall not substantially burden a person's exercise of religion" unless the government "demonstrates that application of the burden to the person -- (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000bb-1(a) and (b). The application of the COVID-19 vaccination requirement to respondents satisfies those requirements.

1. "Stemming the spread of COVID-19 is unquestionably a compelling interest." Roman Catholic Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 67 (2020) (per curiam). It is all the more compelling in the military, given the "vital interest" of maintaining

a fighting force "that functions with maximum efficiency and is capable of easily and quickly responding to continually changing circumstances." United States v. O'Brien, 391 U.S. 367, 381 (1968). And "when evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." Goldman v. Weinberger, 475 U.S. 503, 507 (1986).

RFRA did not displace those longstanding principles. To the contrary, Congress specifically emphasized when it enacted RFRA that "[t]he courts have always recognized the compelling nature of the military's interest" in "good order, discipline, and security" and have "always extended to military authorities significant deference in effectuating those interests." S. Rep. No. 111, 103d Cong., 1st Sess. 12 (1993). Congress "intend[ed] and expect[ed] that such deference w[ould] continue under [RFRA]." Ibid.; see H.R. Rep. No. 88, 103d Cong., 1st Sess. 8 (1993).

2. Here, the Navy extensively justified its military judgment that it has a compelling interest in vaccinating members of the Special Warfare community, including respondents. See App., infra, 95a-188a (reproducing declarations of six high-ranking Navy officers submitted to the district court). Navy personnel routinely operate for extended periods of time in confined spaces

that are ripe breeding grounds for respiratory illnesses, where mitigation measures such as distancing are impractical or impossible. A SEAL who falls ill not only cannot complete his or her own mission, but risks infecting others as well, particularly in close quarters, including on submarines. A severe illness could require impractical or impossible evacuation and could jeopardize mission success. The Navy has a compelling interest in avoiding those foreseeable risks, especially given the transmissibility and virulence of COVID-19.

Admiral Lescher explained, for example, that "[u]nvaccinated or partially vaccinated service members are at higher risk to contract COVID-19, and to develop severe symptoms requiring hospitalizations that remove them from their units and impact mission execution." App., infra, 103a. He added that "[t]he environment in which Navy personnel operate -- in close quarters for extended periods of time -- make[s] them particularly susceptible to contagious respiratory diseases such as COVID-19 and renders mitigation measures such as social distancing unrealistic." Id. at 110a. He observed that many ships are staffed with limited medical personnel, meaning that crewmembers who develop severe symptoms "would require a return to port or an emergency medical evacuation by helicopter," which "is not always viable." Id. at 111a. Accordingly, "[r]estriction of the Navy's ability to reassign unvaccinated personnel in order to mitigate COVID-19 related risks

to units preparing to deploy, or that are deployed, will cause direct and immediate impact to mission execution." Id. at 103a.

Admiral Lescher emphasized that those risks are particularly acute in the Special Warfare and Special Operations Forces groups (including Navy SEALs) to which respondents belong. App., infra, 106a. Those servicemembers "routinely" deploy in units of as few as four, so the loss of even one servicemember would "degrade the effectiveness of [the] unit[] and may compromise the mission." Id. at 117a. Their operations "are often conducted in hostile, austere or diplomatically sensitive environments," and require servicemembers "to work in close quarters where social distancing is not possible," such as by sitting "shoulder-to-shoulder" for "an extended duration" on "boats, submersibles, helicopters, aircraft, or other vehicles that are less than six feet across, and/or which have limited ventilation." Id. at 107a. "Additionally, members may be required to operate in subsea environments and may have to share diving rebreather devices and inhale one another's exhalation." Id. at 108a.

At the same time, those elite forces "must be fully medically ready and at peak fitness given that their training and missions are physically demanding and arduous" and given that they "must be ready to respond to contingencies and crises around the world" on "short notice." App., infra, 114a-115a. For example, "SEALs conduct insertions and extractions by sea, air, or land; they

capture high-value enemy personnel and terrorists around the world, carry out small-unit direct-action missions against military targets[,] and perform underwater reconnaissance and strategic sabotage." Id. at 118a. In those circumstances, "[m]edical conditions or illness[es] create risk, both medical and operational, not only for the service member afflicted, but for other members of the unit. As a result, unvaccinated personnel in a unit degrade the force health protection conditions in the unit, placing personnel in the unit at risk and degrading the unit's ability to safely conduct operations." Id. at 115a.

Admiral Lescher explained that empirical data supported the "judgment of each of the Military Services" that "vaccines are the most effective tool the Armed Forces have to keep our personnel safe, fully mission capable[,] and prepared to execute the Commander-in-Chief's orders to protect vital United States' national interests." App., infra, 109a. He observed that all but two of the servicemembers across the Armed Forces who have died of COVID-19 were unvaccinated. Ibid. Conversely, "there have only been six active duty personnel who have received a booster and had a breakthrough COVID-19 infection that required hospitalization." Ibid. And "[a]mong Reserve and National Guard service members, 97% of those hospitalized with COVID were unvaccinated or partially vaccinated." Ibid. Admiral Lescher compared the April 2020 COVID-19 outbreak on the U.S.S. Theodore Roosevelt -- which resulted in

"more than 4,000 crew removed from the ship and a 51-day loss of mission" -- to the December 2021 outbreak on the U.S.S. Milwaukee, whose fully vaccinated crew "were asymptomatic or had mild symptoms" and which resulted in only a "minor deployment delay" of an additional week in port. Id. at 111a; see id. at 110a-111a.

Admiral Lescher thus concluded that "[v]accination against COVID-19 has proven to be essential in keeping Navy units on mission" and that "[f]ully vaccinated naval forces are required to ensure readiness to carry out Navy missions throughout the world." App., infra, 103a. He summarized his view in stark terms:

> Sending ships into combat without maximizing the crew's odds of success, such as would be the case with ship deficiencies in ordnance, radar, working weapons or the means to reliably accomplish the mission, is dereliction of duty. The same applies to ordering unvaccinated personnel into an environment in which they endanger their lives, the lives of others and compromise accomplishment of essential missions.

Id. at 110a. Other high-ranking Navy officers -- including the Chief of Staff of U.S. Naval Special Warfare Command and the Deputy Chief of Naval Operations -- provided similar assessments. Id. at 95a-101a, 121a-188a. And the Secretary of Defense himself determined, after "consultation with medical experts and military leadership," that "mandatory vaccination against [COVID-19] is necessary to protect the Force and defend the American people," and that "vaccination of the Force will save lives." Id. at 67a-68a.

3. Requiring respondents to be vaccinated against COVID-19 is the least restrictive means of furthering the Navy's compelling

interests in ensuring that members of the Special Warfare community are as physically prepared as possible to execute their demanding missions and in minimizing avoidable risks to mission success. Vaccines are singularly effective at preventing COVID-19 infection and reducing the severity of illness in the case of a breakthrough infection. And neither respondents nor the lower courts identified any viable less restrictive means of furthering the Navy's compelling interest. To the contrary, they candidly acknowledged that they believe the Navy must simply tolerate the added risks posed by deploying unvaccinated personnel on special-operations missions.[7]

4. The court of appeals erred in holding that the Navy lacks a compelling interest in "vaccinating these 35 [respondents] against COVID-19." App., infra, 25a. It is true that the government must demonstrate a compelling interest in denying an exemption to respondents. See Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 726-727 (2014). But the Navy has done that here, demonstrating that it has a compelling interest in ensuring that all SEALs and other members of the Special Warfare community who

[7] Even in non-military settings, courts have held in contexts where preventing transmission is particularly important that a uniform practice of vaccination may be the least restrictive means of furthering the government's compelling interest in preventing the spread of infectious diseases in a workforce. See, e.g., Does 1-6 v. Mills, 16 F.4th 20 (1st Cir. 2021), cert. denied, No. 21-717 (Feb. 22, 2022); We the Patriots USA, Inc. v. Hochul, 17 F.4th 266 (2d Cir. 2021) (per curiam), petition for cert. pending, No. 21-1143 (filed Feb. 14, 2022).

are deployed are vaccinated, given the dire consequences if even a single one of them falls ill on a mission: "Every member" of a Special Warfare team is "vital," so "if any one of them were to contract COVID-19, it would necessarily have an adverse impact to the mission and to his fellow team members." App., infra, 136a. The court did not even acknowledge -- much less engage with -- the thorough declarations from senior Navy officers. It thus failed to fulfill its obligation to "give great deference to the professional judgment of military authorities." Goldman, 475 U.S. at 507. And in making its own unguided judgment about military needs, the court committed a series of errors.

First, the court of appeals suggested that the Navy cannot have a compelling interest in protecting Special Warfare personnel from COVID-19 because they are exposed to "gunshot wounds, blast injuries, parachute accidents," and other similar dangers. App., infra, 25a. That is a non sequitur. The risks the court identified are inherent in the dangerous missions on which members of the Special Warfare community are deployed; in contrast, the harmful effects of COVID-19 are substantially preventable with vaccination. The Navy has a compelling interest in reducing or eliminating preventable risks to health, safety, and mission integrity wherever it can. Id. at 137a.

Second, the court of appeals observed that some servicemembers, including some respondents, have successfully deployed with-

out being vaccinated. App., infra, 26a. But others have not been so fortunate; before vaccines were available, the pandemic severely disrupted the Armed Forces, causing more than 2000 hospitalizations and 82 deaths. Id. at 109a. In any event, past good fortune is no guarantee of future success. That vaccines were not previously available, or that the Navy did not require them until after full FDA approval, does not mean the Navy lacks a compelling interest in preventing COVID-19 infections among servicemembers going forward.

Third, the court of appeals asserted that the Navy's compelling interest is undermined by the fact that it has "granted temporary medical exemptions to 17 Special Warfare members" because the court saw no basis for "differentiating those service members from [respondents]." App., infra, 26a. But respondents demand permanent religious exemptions and an entitlement to continue their duties without modification. A Special Warfare member with a temporary medical exemption generally would not be eligible to deploy while the exemption was in place, id. at 99a-100a, and would have to be vaccinated once it ended. In fact, that is just what has happened: The number of temporary medical exemptions for Special Warfare Operators has dwindled to four. See p. 7 n.1, supra. And no member of the Special Warfare community has received a permanent medical exemption. App., infra, 99a.

Fourth, the court of appeals suggested that the Navy's otherwise high vaccination rate eliminates its compelling interest in having these 35 respondents be vaccinated. App., infra, 20a-21a. But the relevant interest here is not simply achieving "herd immunity." Id. at 51a. Even one SEAL who falls ill -- as an unvaccinated individual is far more likely to do -- can jeopardize an entire mission. That is why the Navy has long gone to such lengths to ensure that every SEAL and member of the Special Warfare community is as physically prepared as possible. Moreover, the risks cannot be cabined to these 35 respondents: As the court of appeals acknowledged, more than 4000 Navy servicemembers have requested religious exemptions. Respondents have sought a classwide preliminary injunction that would extend the same relief to all of those servicemembers. And a district court in Florida has granted a parallel injunction barring the Navy and the Marine Corps from reassigning two senior officers whose unvaccinated status compromises the availability of their current and prospective commands -- including an entire guided-missile destroyer. Navy SEAL 1 v. Austin, No. 21-cv-2429, 2022 WL 534459, at *20 (M.D. Fla. Feb. 18, 2022), application for stay pending, No. 22-10645 (11th Cir.).[8]

[8] The court of appeals objected that the letters denying respondents' requests for religious accommodations failed to "articulate [respondent]-specific reasons." App., infra, 26a. But each of the letters to which the court referred explains that the Deputy Chief of Naval Personnel considered the specific facts reflected in the materials provided to him by the particular re-

C. Respondents' Free Exercise Claims Lack Merit

The court of appeals did not address respondents' Free Exercise claims, and the district court disclaimed reliance on those claims in declining to stay the injunction. App., infra, 63a. Moreover, respondents' Free Exercise claims add little to their RFRA claims: Because the Navy's vaccination requirement satisfies strict scrutiny under RFRA, see pp. 22-31, supra, it necessarily complies with the most stringent standard that could apply under the Free Exercise Clause, see Tandon v. Newsom, 141 S. Ct. 1294, 1296 (2021) (per curiam). In other words, if respondents cannot prevail under RFRA, they cannot prevail under the Free Exercise Clause. That said, we respond briefly to the lower courts' incorrect suggestion that the Navy's vaccination requirement treats "secular activity more favorably than religious exercise." App., infra, 51a (citation omitted).

First, the court of appeals mistakenly thought that servicemembers with medical exemptions were necessarily eligible to be deployed. App., infra, 20a, 26a. In reality, a "service member who receives an exemption or accommodation from the COVID-19 vaccination requirement, whether for religious or secular reasons, is

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spondent's commander and made an individualized determination that denial of an exemption is the least restrictive means to secure the Navy's compelling interests in ensuring that its Special Warfare personnel are fit for duty. See, e.g., C.A. ROA 3302-3303, 3349-3350, 3359-3360 (sealed). Those determinations are entitled to a presumption of regularity. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415 (1971).

not [physically qualified]" for duty -- and thus not deployable -- "unless he or she obtains separate medical clearance." Id. at 98a (emphasis added); see id. at 80a (Trident Order #12) (same, for special-operations forces). And that "separate" clearance or waiver process "do[es] not take into account whether a member is unvaccinated for secular or religious reasons; all unvaccinated service members are treated the same for purposes of determining whether they should receive a medical waiver that would render them fit for special operations duty." Id. at 98a-99a.

Moreover, those with temporary medical exemptions generally are not deployable by virtue of the very condition (e.g., pregnancy) warranting the exemption, and must get vaccinated when the temporary condition no longer exists. App., infra, 99a. And "all requests for permanent medical exemptions from COVID-19 vaccination for personnel falling under [Special Warfare] authority have been denied." Ibid.

In addition, the Navy's goal in requiring vaccination is to ensure a maximally healthy force. App., infra, 110a. Vaccinating someone for whom a vaccine is temporarily medically contraindicated would undermine, not further, that goal. See Doe v. San Diego Unified School Dist., 19 F.4th 1173, 1178 (9th Cir. 2021); We the Patriots USA, Inc. v. Hochul, 17 F.4th 266, 285 (2d Cir. 2021), petition for cert. pending, No. 21-1143 (filed Feb. 14, 2022); Does 1-6 v. Mills, 16 F.4th 20, 30-31 (1st Cir. 2021), cert.

denied, No. 21-717 (Feb. 22, 2022). Temporary medical exemptions are thus categorically different from the permanent religious exemptions respondents seek.

Second, the district court observed (App., infra, 51a-52a) that servicemembers participating in vaccine clinical trials are exempt from any requirement to take that vaccine. But respondents have not identified any Navy servicemember who has received an exemption based on participation in a clinical trial, and the Force Medical Officer of the U.S. Naval Special Warfare Command is unaware of any Special Warfare "personnel participating in clinical research trials concerning COVID-19 vaccines." Id. at 100a. In addition, the court erred in asserting that servicemembers participating in clinical trials "are immediately deployable." Id. at 52a. As noted above, that is incorrect; such servicemembers "would very likely be found [not physically qualified]," id. at 101a, and thus (just like those with religious exemptions) would have to seek and obtain a medical waiver first. In any event, the exemption available to a participant in a clinical trial is temporary; a religious exemption, by contrast, is effectively permanent. That defeats any claim that comparable secular activity is treated more favorably. Cf. Doe, 19 F.4th at 1179 (concluding that due to its "temporary duration," a 30-day exception from a COVID-19 vaccination mandate did not "undermine a school dis-

trict's interests in student health and safety the way a religious exception would").

III. THE EQUITIES OVERWHELMINGLY FAVOR A PARTIAL STAY

The remaining equitable factors overwhelmingly favor granting the limited partial stay the government seeks here. In its current form, the district court's injunction causes direct, irreparable injury to the interests of the United States and the public, which "merge" here. Nken v. Holder, 556 U.S. 418, 435 (2009). By requiring the Navy to ignore respondents' unvaccinated status in making deployment, assignment, and other operational decisions, the injunction impermissibly intrudes on the Navy's military judgments and threatens the national defense. And respondents would suffer no irreparable harm from a partial stay that would allow them to remain unvaccinated without risk of discipline or discharge.

A. Admiral Lescher's declaration explains at length why and how the current injunction "will degrade" the "mission readiness" of special-operations forces; "break[] down good order and discipline"; "unnecessarily limit the Navy's ability to conduct daily operations and operational missions"; and risk "mission failure in contingencies and crises that cause harm to national security." App., infra, 114a. Forbidding the Navy from considering respondents' unvaccinated status in making deployment decisions or other assignments will jeopardize the success of any missions to which

they are assigned, see id. at 109a-110a, as well as the health and safety of respondents themselves and the other sailors with whom they serve, see id. at 116a-117a.

The court of appeals erred in disregarding Admiral Lescher's assessment. App., infra, 27a-28a. The court stated that the government has not demonstrated that the harms described above will occur "during the pendency of the appeal." Id. at 27a (citation omitted). But a crisis requiring deployment of SEALs and other Naval Special Warfare personnel could arise at any time. More than half of respondents are assigned to commands that "may deploy anywhere in the world in the immediate future." Id. at 118a. And the injunction is already forcing the Navy to deploy one of the respondents on a submarine -- an environment ripe for the spread of a contagious respiratory virus -- against its military judgment. See p. 2, supra.

The possibility of such deployments is why the Navy considers it "vital that all members of the [Special Warfare] force be medically fit to * * * deploy on short notice." App., infra, 114a. For example, when Somali pirates boarded a U.S.-flagged container ship in the Indian Ocean on April 8, 2009, taking the crew of U.S. citizens hostage, the Navy deployed a SEAL team from the United States (8000 miles away) on short notice, and the SEAL team was instrumental in eliminating the threat days later and freeing the last remaining hostage, Captain Richard Phillips. Id. at 115a-

116a. Admiral Lescher warned that if a similar crisis arose tomorrow, the injunction would require the Navy to ignore the unvaccinated status of respondents in making deployment decisions, thus potentially placing the mission in jeopardy. Id. at 116a.

The court of appeals also discounted the possibility of irreparable harm on the theory that the district court had "clarified" that the injunction only "'prohibits adverse action against [respondents] based on their requests for religious accommodation,'" leaving the Navy free to "make decisions based on other neutral factors." App., infra, 28a (citation omitted). But that purported clarification came in the context of the district court's order declining to stay its injunction insofar as it forbids taking into account respondents' vaccination status in deploying and assigning them. Id. at 60a. And respondents themselves have already sought to enforce the injunction through contempt proceedings, asserting that it entitles them to immediate transfer to operational units; to be assigned or reassigned to particular military duties; or to train and deploy with operational units. D. Ct. Doc. 96, at 5-9.

The government has complied with the injunction in good faith at all times, and respondents' contempt motion, which remains pending, lacks merit. See D. Ct. Doc. 110, at 6-13 (Feb. 7, 2022) (government opposition). But that motion's very existence vividly illustrates the intolerable situation the injunction has imposed

on the Navy: Military commanders' assignment decisions must be made on pain of contempt, and officers are being forced to explain and justify those decisions to the district court in sworn declarations. D. Ct. Doc. 111, at 4-74 (declarations from seven officers). Those compliance and contempt matters are made all the more burdensome because the district court has -- over the government's objection -- allowed respondents to proceed under pseudonyms, which means that their status as plaintiffs covered by the injunction is subject to a protective order and thus cannot be disclosed to the "dozens, if not hundreds, of servicemembers" throughout the Navy who may be called upon to make decisions about matters potentially covered by the injunction. Id. at 9.

B. On the other side of the ledger, respondents would not suffer any irreparable harm if a partial stay were granted. In seeking the injunction, respondents relied largely on employment-based harms, such as alleged loss of "pay and advancement opportunities." App., infra, 53a. As even the district court recognized, those alleged harms could be fully remedied at final judgment because respondents "could be compensated for their losses" -- e.g., through reinstatement and backpay. Id. at 54a; see, e.g., 10 U.S.C. 1552(a)(1) (authorizing military departments to "correct any military record" to "correct an error or remove an injustice"); App., infra, 161a-162a (describing additional remedies available through intramilitary processes). The availability of such "ade-

quate compensatory or other corrective relief * * * weighs heavily against a claim of irreparable harm." Sampson v. Murray, 415 U.S. 61, 90 (1974) (citation omitted).

In any event, the only question at this juncture is whether respondents would suffer any irreparable harm from the partial stay the government is seeking. Consistent with the injunction, the Navy will not discharge or discipline respondents based on their religious exemption requests during the pending appeal. But neither respondents nor the lower courts have identified any irreparable harm that respondents would face if the Navy were permitted, during the appeal, to take into account their unvaccinated status in making military judgments about deployments and other assignments -- as the Navy does for every other servicemember, including those who receive exemptions from a vaccination requirement for nonreligious reasons.

The court of appeals effectively excused respondents from demonstrating such irreparable harm, stating that "[n]o further showing is necessary" in light of respondents' allegations that the Navy's policies violate their "First Amendment freedoms." App., infra, 28a. But the limited stay the government requests here would not result in any "loss of First Amendment freedoms, for even minimal periods of time," Elrod v. Burns, 427 U.S. 347, 373 (1976), because respondents would remain free to adhere to their stated religious beliefs by declining to become vaccinated

without being discharged or otherwise disciplined. And to the extent the partial stay were to result in any lost training or promotional opportunities, respondents could be granted relief if they ultimately prevail.

Finally, the court of appeals identified no legitimate public interest in denying the partial stay the government seeks here. The court stated that "injunctions protecting First Amendment freedoms are always in the public interest." App., infra, 29a (citation omitted). But that reasoning was entirely derivative of the court's unsound view of the merits of respondents' claims. And whatever the merits of respondents' challenges, the public has no interest in an injunction that requires the Navy to subordinate its professional judgment that vaccination is necessary for military readiness to the lower courts' contrary views.

CONCLUSION

This Court should partially stay the district court's preliminary injunction pending the completion of further proceedings in the court of appeals and, if necessary, this Court. Specifically, the injunction should be stayed insofar as it precludes the Navy from considering respondents' vaccination status in making deployment, assignment, and other operational decisions.

Respectfully submitted.

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MARCH 2022