

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

JAMES RODDEN, et al.

Plaintiffs,

v.

ANTHONY FAUCI, Chief COVID
Response Director of the National
Institute of Allergy and Infectious
Diseases, et al.

Defendants.

Civil Action No. 3:21-cv-00317

**MOTION FOR A TEMPORARY
RESTRAINING ORDER**

MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Carole LeAnn Mezzacapo, John Luff, and April Hanson (“Plaintiffs”) by and through undersigned counsel, file this Motion for a Temporary Restraining Order against the Department of Homeland Security, United States Immigration and Customs Enforcement, and Alejandro Mayorkas, Secretary of the Department of Homeland Security; Department of Interior, Bureau of Reclamation, and Camille Touton, Commissioner of the Bureau of Reclamation; and the United States Coast Guard, and Karl L. Schultz, Commander of the US Coast Guard, to enjoin the enforcement of the mandatory vaccination provisions issued by the

Defendants, and President Biden’s Executive Order 14043 (“E.O. 14043”) (collectively, “Vaccine Mandate”). Plaintiffs make this motion to prevent violations of their bodily integrity and constitutional and statutory rights to informed consent as a result of unlawful pressure wielded upon them by Defendants in this action, and without which they will be irreparably harmed before the case can be adjudicated.

As set forth in the accompanying Memorandum in Support, along with the Amended Complaint and the Court’s ruling on the previously adjudicated motion for a preliminary injunction, Plaintiffs have met their burden for this motion:

First, they have established a likelihood of success on the merits because the Vaccination Mandate conflicts with the federal Emergency Use Authorization (EUA) Statute, and violates Plaintiffs’ bodily integrity and right to decline medical treatment. It also should be set aside under the APA as arbitrary and capricious.

Second, Plaintiffs have shown that, absent an injunction, they will suffer irreparable harm as a result of ongoing violations of their constitutional and statutory rights to informed consent, and because, if they cave and get the vaccine, such action cannot be undone.

Third, as the prospective injury to Plaintiffs outweighs any damage the proposed injunction may cause Defendants (which is none, because there is no evidence at all that those with naturally acquired immunity spread COVID-19 and certainly not at higher rates than the vaccinated), the balance of equities strongly favors an injunction. Likewise, Defendants have no legitimate interest in enforcing an unconstitutional act.

For these reasons and those set forth in detail in the accompanying Memorandum in Support, the Court should issue a TRO enjoining Defendants from enforcing the Vaccine Mandate.

Respectfully submitted,

/s/ John J. Vecchione

John J. Vecchione
Senior Litigation Counsel
New Civil Liberties Alliance
John.Vecchione@ncla.legal
Senior Litigation Counsel
Admitted Pro Hac Vice

/s/ Jenin Younes

Jenin Younes*
Litigation Counsel
Jenin.Younes@ncla.legal
Admitted Pro Hac Vice
* Admitted only in New York. DC practice limited to matters and proceedings before United States courts and agencies. Practicing under members of the District of Columbia Bar.

/s/ Harriet Hageman

Harriet Hageman
Senior Litigation Counsel
Harriet.Hageman@ncla.legal
Admitted Pro Hac Vice

NEW CIVIL LIBERTIES ALLIANCE
1225 19th Street NW, Suite 450
Washington, DC 20036
Telephone: (202) 869-5210
Facsimile: (202) 869-5238

/s/ Robert Henneke

ROBERT HENNEKE
Texas Bar No. 24046058
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, TX 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728
rhenneke@texaspolicy.com

Attorneys for Plaintiff

**PLAINTFFS' MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

As employees of the Federal Government, Plaintiffs, all of whom have recovered from COVID-19 and demonstrated their naturally acquired immunity to the coronavirus through serological testing, must nonetheless receive a COVID-19 vaccine pursuant to the Biden Administration's Executive Order. While the President instructed agencies not to begin disciplinary proceedings until after the new year, three Plaintiffs (representatives in the class action lawsuit) have already received notifications threatening imminent discipline if they do not comply with the vaccine mandate. One of the Plaintiffs was given a deadline of January 7, and so is already one week past the date upon which disciplinary proceedings may commence.

Only the intervention of this Court can prevent the irreparable harm of effectively forced vaccination, without informed consent, before the Court can rule on the lawfulness

of this unprecedented Government and Agency overreach. Indeed, this Court has previously acknowledged that any Plaintiff who is not seeking a medical or religious exemption and faces imminent threat of discipline due to failure to comply with the mandate—as is the case for the three Plaintiffs here—has established irreparable harm. *See Rodden v. Fauci*, __F.3d__, 2021 WL 5545234 (S. D. Tex. 2021) (denying preliminary injunction).

FACTS

I. THE REPRESENTATIVE PLAINTIFFS

Plaintiff Carole LeAnn Mezzacapo is a resident of Louisiana, and a civilian employee of U.S. Immigration and Customs Enforcement, where she works as an Enforcement and Removal Assistant. She has worked for the agency for 22 years. She has naturally acquired immunity to COVID-19 and seeks to preserve her rights to bodily integrity and to make medical decisions through informed consent. *See* 1/12/22 Declaration of Carole Mezzacapo in Support of TRO (“Mezzacapo Decl.”) ¶¶ 1-17 (Exhibit 1).

On January 10, 2022, Ms. Mezzacapo received a letter of reprimand from ICE (Attachment A to her letter), the first step of disciplinary action, stating that she was not in compliance with the vaccine requirement and, as she had not sought a religious or medical exemption, has a mere 7 days from the date of the letter to begin the course of COVID-19 vaccination. *Id.* at ¶ 7. The letter warns her that failure to follow these instructions “may result in further disciplinary action against you, up to and including your removal from federal service.” *Id.* at ¶ 8.

By sending such a letter, ICE is not following the process that even the Biden Executive Order and Task Force Guidance require. They have instructed agencies to work with unions and honor employment contracts. According to her contract, she has 10 days from receipt of the letter of reprimand to file a statement of disagreement, after which commences a grievance procedure. *Id.* at ¶¶ 10-11. Ms. Mezzacapo will suffer irreparable harm if forced to take a vaccine before her rights are adjudicated. *Id.* at ¶¶ 16-17.

Plaintiff John Luff is a marine inspector, employed by the United States Coast Guard under the Department of Homeland Security, and has been a civilian employee of the federal government for 8.5 years. *See* 1/12/22 Declaration of John Luff in Support of TRO (“Luff Decl.”) ¶¶ 1-2 (Exhibit 2). He resides in New Orleans, Louisiana. *Id.* ¶ 1. He has naturally acquired immunity to COVID-19 and seeks to preserve his rights to bodily integrity and to make medical decisions through informed consent. *Id.* at ¶¶ 3-13.

On December 6, 2021, Mr. Luff received a letter (Attachment A of his declaration) warning him that he was not in compliance with the vaccine mandate, noting that he had not sought an exemption, and ordering him to get vaccinated as soon as practically possible. *Id.* at ¶7. He will suffer irreparable harm if forced to take a vaccine before his rights are adjudicated. *Id.* at ¶¶ 12-13.

Plaintiff April Hanson is a civilian employee of the of the Bureau of Land Reclamation under the Department of the Interior, where she has been employed for 9 years. 1/11/22 Declaration of April Hanson in support of TRO (“Hanson Decl.”) ¶¶ 1-2 (Exhibit 3). She resides in Casper, Wyoming. *Id.* at ¶ 1. She has naturally acquired immunity to COVID-19, and seeks to preserve her rights to bodily integrity and to make

medical decisions through informed consent. *Id.* at ¶¶ 11-13. On January 3, Ms. Hanson received a letter warning her that she was not in compliance with the vaccine mandate, had not sought a religious, medical, or other accommodation, and ordering her to receive at least one dose of a COVID-19 vaccine by January 7, 2022. *Id.* at ¶ 7 (Attachment A of her declaration). She will suffer irreparable harm if forced to take a vaccine before her rights are adjudicated. *Id.* at ¶¶ 11-13.

II. PROCEDURAL HISTORY AND THE COURT’S RULING ON THE PRELIMINARY INJUNCTION

Plaintiffs filed a complaint on November 5, 2021, and a motion for a preliminary injunction the same day. Brief for Plaintiffs in Support of Motion for Preliminary Injunction and First Amended Complaint, Dkts. ## 1, 3, *Rodden v. Fauci*, No. 3:21-cv-317 (S. D. Texas 2021).

On November 27, 2021, this Court denied Plaintiffs’ motion for a preliminary injunction. One of the reasons was that all of the Plaintiffs had exemption requests pending, except one. *See Rodden*, Dkt. #30 Case No. 3:21-cv-317 (order) at 5. Those who had sought exemptions were not facing the prospect of irreparable harm. Although Plaintiff Mezzacapo had “established likely irreparable harm,” she had “not sought relief that would actually redress her injury.” *Id.* at 5. Rather than enjoining the Task Force, Plaintiffs should have sued the individual agencies., the Court also held. *Id.* at 5-9.

The Court concluded that “the constitutional questions this case raises are serious and concerning. But because the individual plaintiffs have either failed to show the likelihood of imminent and irreparable harm or have failed to sue any defendant the court

could enjoin to actually prevent such harm, the court cannot issue the requested preliminary injunction.” *Id.*

Plaintiffs filed an amended complaint, *inter alia* addressing the concerns raised in the order denying the preliminary injunction. Plaintiffs named the agencies in question as defendants and added several Plaintiffs who were not seeking exemptions. *See* First Amended Complaint, Dkts. #35, *Rodden v. Fauci*, No. 3:21-cv-317 (S. D. Texas 2021).

III. ADDITIONAL FACTS

Plaintiffs’ First Amended Complaint and Preliminary Injunction both contain detailed factual background with respect to COVID-19, the vaccines, naturally acquired immunity, and the EUA statute. *See* Brief for Plaintiffs in Support of Motion for Preliminary Injunction and First Amended Complaint, Dkts. ## 3, 35, *Rodden v. Fauci*, No. 3:21-cv-317 (S. D. Texas 2021). Facts that are included in these filings will not be repeated here.

However, some new and relevant facts have emerged since both the Preliminary Injunction and Amended Complaint were filed. Plaintiffs discussed the risk of myocarditis in the Amended Complaint, but a very recent study released by Kaiser Permanente concluded that “[t]he true incidence of myopericarditis is markedly higher than the incidence reported to US advisory committees.” *See* Katie A Sharff et al, “Risk of Myopericarditis following COVID-19 mRNA vaccination,” *Medrxiv* (Dec. 27, 2021), *available at* bit.ly/3ncLwhN (last visited Jan. 11, 2022). CDC and FDA have done their very best to downplay this issue, but as Dr. Koka explains, “vaccine related myocarditis is

a potentially serious medical condition that can lead to fibrosis in heart muscle. Fibrosis and scarring found within the heart muscle has been associated with long term complications . . . and even sudden cardiac death.” 12/20/21 Declaration of Dr. Anish Koka, Attachment E of FAC, ¶ 17.

In a similar vein, mere days ago, a study confirmed reports that the COVID-19 vaccines may cause temporary changes to women’s menstrual cycles. *See* Alison Edelman, et al, “Association Between Menstrual Cycle Length and Coronavirus Disease 2019 Vaccination,” *Obstetrics and Gynecology* (Jan. 5, 2022), *available at* https://journals.lww.com/greenjournal/Fulltext/9900/Association_Between_Menstrual_Cycle_Length_and.357.aspx (last visited Jan. 11, 2022). While there have been many attempts to downplay this potential health issue, the point must be made that mere months ago public health authorities claimed that there was no evidence to support women’s anecdotal reports. This underscores the fact that again, there are many unknowns with respect to the vaccines, and the insistence that there cannot possibly be unanticipated or unknown long-term harms by those advocating legal mandates is demonstrably false, as becomes more evident every day.

It also is worth noting that the European Union has voiced concern about repeated boosters, saying they could “eventually weaken the immune response.” *See* “Frequent Boosters spur Warning on Immune Response,” *Bloomberg Law* (Jan. 12, 2022), *available at* <https://news.bloomberglaw.com/coronavirus/repeat-booster-shots-spur-europe-warning-on-immune-system-risks> (last visited Jan. 13, 2022). While overall the vaccines appear to be safe, they are not without risk, and whether or not to take that risk should be

entirely the choice of Plaintiffs, *especially* given their naturally acquired immunity. *See* 1/12/2022 Declaration of Sam Pappas (“Pappas Decl.”) (Exhibit 4).

ARGUMENT

Plaintiffs, and the class they represent, have met all of the prerequisites for a temporary restraining order. A plaintiff seeking such an order must establish the following: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury in the absence of an injunction; (3) that the threatened injury to the movant outweighs damage the proposed injunction may cause the opposing party; and (4) that granting the injunction is not adverse to the public interest. *Dialysis Patient Citizens v. Burwell*, 2017 WL 365271 *2 (E.D. Tex. Jan. 25, 2017) (citing *Canal Aut. Of the State of Fla. v. Callaway*, 489 f.2d 567, 572 (5th Cir. 1974)). The Court may employ a “sliding scale” approach, issuing the injunction upon a lesser showing of harm when the likelihood of success on the merits is especially high, or vice versa. *Fla. Med. Ass’n v. U.S. Dep’t of Health, Ed. & Welfare*, 601 F.2d 199, 203 n. 2 (5th Cir. 1979).

I. SUCCESS ON THE MERITS

Plaintiffs will not reiterate the arguments with respect to the chance of success on the merits, since those are included in prior briefings and the Court has ruled on them, except to explain that their case is yet stronger in light of the evidence that has very recently emerged about adverse side effects of the vaccines and the precedent that has piled up just since this Court’s decision less than two months ago. Additionally, the vaccines appear relatively ineffective at preventing transmission of COVID-19, particularly in the era of

Omicron. Even CDC director Rochelle Walensky admitted mere days ago COVID-19 vaccines can no longer prevent transmission. *See* “CDC Director: Covid vaccines can’t prevent transmission anymore,” *MSN Health* (Jan. 10, 2022), available at <https://www.msn.com/en-us/health/medical/cdc-director-covid-vaccines-cant-prevent-transmission-anymore/ar-AASDndg> (last visited Jan. 14, 2022). This renders the justification for vaccine mandates all the more tenuous. *See Missouri v. Biden*, __F.Supp.3d__, 2021 WL 5564501 (E.D. Mo. Nov. 29, 2021) (quoting CMS’s own statements acknowledging that “the effectiveness of the vaccine to prevent disease transmission by those vaccinated [is] not currently known.”), *overruled on other grounds by Missouri v. Biden*, 595 U.S. __, Nos. 21A240 & 21A241 (January 13, 2022) (reversing stays of CMS mandate upheld by Fifth and Eighth Circuits). That is particularly true in light of the robust naturally acquired immunity that Plaintiffs possess.

This Court has already found that the case raises serious constitutional questions, a reason alone to grant the request for a temporary restraining order. Further precedent as noted below only buttresses that ruling.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM SHOULD THE TRO NOT BE GRANTED

Plaintiffs’ declarations in this case demonstrate that they will suffer irreparable harm in the absence of an injunction. Their constitutional rights to remain free from unwanted medical treatment and their bodily autonomy are infringed every minute that the Mandate remains in effect. “[W]hen ‘the threatened harm is *more than de minimis*, it is not so much the *magnitude* but the *irreparability* that counts for purposes of a preliminary injunction.’”

Dennis Melancon, Inc. v. City of New Orleans, 703 F.3d 262, 279 (5th Cir. 2012) (quoting *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985)) (emphases added). Here, Plaintiffs' injury stems from both the constitutional injury this Order inflicts and the unrecoverable financial damages that are likely to result.

First, should they give in and get the vaccine due to financial pressure or other concerns that accompany loss of a job, they will also suffer irreparable harm. The Supreme Court recognized the permanent nature of vaccination just yesterday in its order granting a stay of the OSHA vaccine mandate in *National Federation of Independent Business, et al. v. Department of Labor*, Nos. 21A244 and 21A247 (Jan. 13, 2022). Holding that a vaccine mandate is qualitatively different than other workplace regulations that OSHA has imposed, the Court explained that “[a] vaccination, after all, “cannot be undone at the end of the workday.” *Id.* at 7. *See also In re: MCP No. 165, Occupational Safety & Health Admin. Rule on COVID-19 Vaccination and Testing*, Nos. 21-7000 et al. (December 17, 2021) (Larsen, J., dissenting) (“[a] vaccine may not be taken off when the workday ends; and its effects, unlike this rule, will not expire in six months”); *BST Holdings*, No. 21-60845 * 18 (granting preliminary injunction because being forced to choose between vaccination and employment entailed a loss of constitutional freedoms, *even though* masking and testing was offered as an alternative to vaccination); *Louisiana v. Becerra*, No. 3:21-cv-03970 (“The Plaintiff States’ citizens will suffer irreparable injury by having a substantial burden placed on their liberty interests because they will have to choose between losing their jobs or taking the vaccine.”), *overruled by Missouri v. Biden*, Nos. 21A240 & 21A241; *Missouri v. Biden*, 2021 WL 5564501 (granting Plaintiffs’ motion to

preliminarily enjoin CMS mandate); *Fraternal Order of Police Chicago Lodge No. 7, et. al v. City of Chicago*, Case No. 2021 CH 5276, at 3 (Circuit Court of Cook County, Ill.) (Nov. 1, 2021)(internal citations omitted), available at <https://news.wttw.com/sites/default/files/article/file-attachments/FOP%20v.%20City%20of%20Chicago%2011.1.21%20Order.pdf> (last visited Nov. 3, 2021) (granting preliminary injunction because “[a]n award of back pay or reinstatement cannot undo a vaccine. Nothing can.”).

Second, the violation of constitutional limitations, standing alone, is sufficient to establish irreparable harm. See *Deerfield Med. Ctr. v. Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). As discussed above, the Mandate unequivocally tramples on these rights. Accordingly, if this Court concludes – as it did in its November 27 Order -- that Plaintiffs have a reasonable likelihood of success on the merits of their constitutional claims, then irreparable harm is likewise established. 11A C. Wright, A. Miller, & Mary Kay Kane, *Federal Practice and Procedure*, § 2948.1 at 161 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

III. THE THREATENED INJURY OUTWEIGHS ANY HARM TO DEFENDANTS FROM GRANT OF THE TRO.

The third factor that must be considered is whether “the threatened injury outweighs any damage that the injunction might cause the defendant.” *Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014). That factor also cuts in Plaintiffs’ favor. As noted above, if this request is not granted, Plaintiffs’ injuries will be significant and

irreparable. By contrast, Defendants' injury is largely limited to being unable to enforce an unconstitutional (and arbitrary) executive and administrative action. While the government generally has an interest in having its laws enforced, when a law "is likely unconstitutional, [government's] interests do not outweigh [Plaintiffs'] in having [their] constitutional rights protected." *Awad v. Ziriox*, 670 F.3d 1111, 1131-32 (10th Cir. 2012); *Coalition for Economic Equity v. Wilson*, 122 F.3d 692, 699 (9th Cir. 1997). Importantly, we are not even dealing with *a law*, we are dealing with an executive action imposed *outside of the legislative process*.

Any argument that the Government has an interest in curbing the spread of SARS-CoV-2 is vitiated by the ample evidence that those with natural immunity neither spread Covid-19 nor suffer adverse effects with greater frequency than the vaccinated. That is particularly true given that the Mandate permits employees to receive inferior foreign vaccines that operate at an efficacy of no greater than fifty percent.

Moreover, as Judge Larsen recognized in her dissent, which position prevailed in the Supreme Court in *National Federation*, "The purpose of the mandate is to protect unvaccinated people. The rule's premise is that vaccines work. And so, OSHA has explained that the rule is not about protecting the vaccinated; they do not face "grave danger" from working with those who are not vaccinated." *In re: MCP No. 165*, Nos. 21-7000 et al. (Larsen, J., dissenting). Both vaccines and natural immunity "work" in that they provide protection from the severity of Covid-19 but as vaccination does not stop transmission of Covid-19 the unvaccinated are not more dangerous to other workers.

IV. THE GRANT OF A TRO WILL SERVE THE PUBLIC INTEREST

If the Court finds that Plaintiffs have demonstrated a substantial likelihood of success on the merits of their constitutional claims, it should grant the temporary restraining order because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (citation omitted) (quoting *Awad*, 670 F.3d at 1132; *N.Y. Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (“[T]he Government does not have an interest in the enforcement of an unconstitutional law.”) (cleaned up).

But even if the Court finds that Plaintiffs only have a substantial likelihood of success on the statutory claims, those statutes demonstrate a strong public policy in favor of informed consent with respect to medical procedures and in opposition to arbitrary and capricious administrative action.

CONCLUSION

The Court should issue a TRO enjoining Defendants: Department of Homeland Security, United States Immigration and Customs Enforcement, and Alejandro Mayorkas, Secretary of the Department of Homeland Security; Department of Interior, Bureau of Reclamation, and Camille Touton, Commissioner of the Bureau of Reclamation; and the United States Coast Guard, and Karl L. Schultz, Commander of the US Coast Guard, from enforcing the Vaccine Mandate against Plaintiffs and those similarly situated. A form of Order is submitted herewith.

/s/ John J. Vecchione

John J. Vecchione
Senior Litigation Counsel
Virginia Bar # 73828
John.Vecchione@ncla.legal
Admitted Pro Hac Vice

/s/ Jenin Younes

Jenin Younes*
Litigation Counsel
New York Bar # 5020847
Jenin.Younes@ncla.legal
Admitted Pro Hac Vice

* Admitted only in New York. DC practice limited to matters and proceedings before United States courts and agencies. Practicing under members of the District of Columbia Bar.

/s/ Harriet Hageman

Harriet Hageman
Senior Litigation Counsel
Wyoming Bar # 5-2656
Harriet.Hageman@ncla.legal
Admitted Pro Hac Vice

NEW CIVIL LIBERTIES ALLIANCE
1225 19th Street NW, Suite 450
Washington, DC 20036
Telephone: (202) 869-5210
Facsimile: (202) 869-5238

/s/ Robert Henneke

ROBERT HENNEKE
Texas Bar No. 24046058
TEXAS PUBLIC POLICY
FOUNDATION

901 Congress Avenue
Austin, TX 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728
rhenneke@texaspolicy.com

Attorneys for Plaintiff

Exhibit 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

JAMES RODDEN, et al.

Plaintiffs,

v.

ANTHONY FAUCI, Chief COVID
Response Director of the National Institute of
Allergy and Infectious Diseases, et al.

Defendants.

Civil Action No. 3:21-cv-00317

DECLARATION OF CAROLE LEANN MEZZACAPO

1. I, Carole LeAnn Mezzacapo, a resident of Louisiana and of legal age, make this declaration on personal knowledge.

2. I am a civilian employee of the United States Immigration and Customs Enforcement (ICE) and work as an Enforcement and Removal Assistant. I have been working for the Federal Government for 22 years.

3. I am long term Covid-19 antibody positive (blood tested) and I was confirmed positive of infection and symptomatic on May 20, 2021 via PCR testing.

4. I have taken antibody tests and been confirmed as having natural immunity.

5. My employer, ICE, has stated pursuant to Presidential Executive Order and follow-on rules that I must receive a COVID-19 vaccine in order to remain employed.

6. Although I was initially told I must comply with this policy by November 22, 2021, federal employees were given until after the holidays pursuant to executive decree.

7. I then received a letter of reprimand, the first step of disciplinary action, on January 10, 2022, stating that I was not in compliance with the vaccine requirement and that I had seven (7) days to begin a course of COVID-19 vaccination (*see* Attachment A).

8. The letter states that “failure to follow these additional, mandatory instructions may result in further disciplinary action against you, up to and including your removal from federal service.”

9. By giving me only seven days to begin a course of vaccination, ICE is violating Biden’s Executive Order, the Task Force Guidance, and my collective bargaining agreement, all of which require the agency to work with the union.

10. According to my contract, I have ten days from receipt of the letter of reprimand to file a statement of disagreement. A grievance procedure then commences.

11. ICE is thus not following the requisite process by sending this reprimand letter threatening me with discipline if I do not receive at least one dose of a COVID-19 vaccine by January 17, 2022.

12. I wish to make my own medial choices and am fearful of a government employer declaring this attack on my bodily integrity with no reasonable cause.

13. It is my belief based on evidence that I am neither in danger nor am I a danger to others.

14. Putting aside the uselessness of a vaccine to someone with natural immunity and the safety of the various emergency use vaccines long term, a common side effect of the vaccines is a sore arm and mild fatigue.

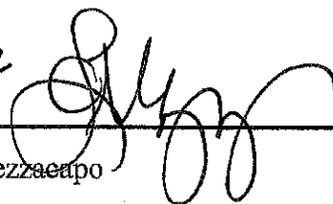
15. I do not believe my employer can, nor do I want, it to be able to force me to accept the equivalent of a punch in the arm whenever it likes on pain of termination for no known improvement of the safety of others.

16. Taking the vaccine, which for me is a medically useless act, would irreparably harm me in my person and in my control over my life and body.

17. Even should I prevail in some separate forum after threatened termination the time out of the labor force, effect on my psyche and well-being would never be recovered.

I declare under penalty of perjury the foregoing is true and correct.

Date: 01/12/22



Carole LeAnn Mezzaepo

Attachment A

Enforcement and Removal Operations

U.S. Department of Homeland Security
1010 East Whatley Road
Oakdale, LA 71463



**Homeland
Security**

Carole L. Mezzacapo
Enforcement and Removal Assistant, GS 8, 1802
Enforcement and Removal Operations
New Orleans, LA

SUBJECT: **Written Reprimand and Additional Mandatory Instructions**

DATE: January 10, 2021

The purpose of this letter is to reprimand you for failure to follow instructions.

Executive Order 14043, which was issued by the President on September 9, 2021, requires COVID-19 vaccination for all federal employees, subject to such exceptions as required by law.¹ On December 8, 2021, you were issued a Memorandum of Counseling.² In the Memorandum of Counseling, you were instructed that by seven days from receipt of the memorandum of counseling, December 15, 2021, you must have either (1) submitted documentation demonstrating that you have completed or begun the COVID-19 vaccination process by receiving at least one dose of a COVID-19 vaccine; or (2) submitted a request for a medical or religious exception from COVID-19 vaccination, if applicable to you. You were provided with instructions on how to submit the required vaccination documentation and on how to submit a request for a medical or religious exception from vaccination.³

Despite these instructions, as of December 29, 2021, you have failed to submit the required vaccination documentation or submit a request for a medical or religious exception from COVID-19 vaccination. You have not provided any explanation for your failure to follow these instructions. Accordingly, you are receiving this written reprimand for your failure to follow instructions.

Hopefully, this disciplinary action will impress upon you the importance of following instructions and complying with the vaccination requirement established by Executive Order 14043. Any further misconduct by you, ***including any failure by you to follow the additional, mandatory instructions set forth below***, may result in further disciplinary action, up to and including your removal from federal service.

¹ Executive Order 14043 is attached as Attachment No. 1.

² The Letter of Counseling is attached as Attachment No. 2.

³ These instructions are attached as Attachment No. 3.

A copy of this reprimand will be placed in your electronic Official Personnel Folder (eOPF) for a period not exceeding two years from the date you receive this letter.

Additional Mandatory Instructions

In Executive Order 14043, the President stated that “it is necessary to require COVID-19 vaccination for all Federal employees” in order “to promote the health and safety of the Federal workforce and the efficiency of the civil service.” And, as explained in Executive Order 14043, “COVID–19 vaccines are widely available in the United States.”

You are, therefore, receiving additional, *mandatory* instructions that by seven days from receipt of this written reprimand, you *must* submit the required documentation demonstrating that you have initiated the COVID-19 vaccination process by receiving at least one dose of the COVID-19 vaccines that are currently available within the United States (*i.e.*, the Pfizer-BioNTech COVID-19 Vaccine, which has been approved by the U.S. Food and Drug Administration (FDA); the Moderna COVID-19 Vaccine, which has been authorized by the FDA for emergency use; or the Janssen COVID-19 Vaccine, which has also been authorized by the FDA for emergency use) using the procedures explained to you on October 12, 2021 and October 18, 2021 and contained within Attachment No. 3. Alternatively, if applicable to you, you may submit a request for a medical or religious exception from the government-wide COVID-19 vaccination requirement using the procedures explained to you on November 3, 2021, and contained within Attachment No. 3.

As explained above, your failure to follow these additional, mandatory instructions may result in further disciplinary action against you, up to and including your removal from federal service.

Questions

If you have any questions about these instructions, you must contact Scott G. Ladwig, Assistant Field Office Director, Enforcement and Removal Operations, New Orleans Field Office by telephone at (612) 490-5687 or by electronic mail at Scott.G.Ladwig@ice.dhs.gov, immediately upon your receipt of this memorandum. Your failure to seek clarifying information in a timely manner will not exempt you from these mandatory instructions.

If you have any questions about COVID-19 vaccinations generally and the various benefits available to federal employees as they receive their vaccinations, you may go to <https://www.vaccines.gov/>.

EMPLOYEE RIGHTS

Pursuant to the practices prescribed by Article 31(H) (2) of *Agreement 2000*, the collective bargaining agreement, you have the right to prepare and submit a concise Statement of Disagreement (SOD) to this reprimand. The submission of any such statement must be limited to no more than two (2) pages and must be submitted within ten (10) calendar days following the date you receive this LOR (exclusive of the day of delivery). If you choose to submit a SOD, it must be directed to me using the following address:

Scott G. Ladwig
Assistant Field Office Director
Enforcement and Removal Operations
New Orleans Field Office/ Detained Docket Unit
1010 East Whatley Road
Oakdale, LA 71463

After consideration of any such submission, should I determine to modify or withdraw this LOR, you will be notified. If the LOR is not withdrawn, the SOD will be maintained with a copy of this LOR in your OPF for the two-year period in which the LOR is maintained.

You have the right to contest this reprimand by filing a grievance, an EEO complaint, or by contacting the Office of Special Counsel (OSC). You may select only one (1) avenue (unless otherwise indicated below) and your election will be considered final on the date any appeal, dispute, or complaint is filed.

1. **Negotiated Grievance Procedure.** Per Article 31(J)(1) of *Agreement 2000*, the grievance process shall begin at Step III of Article 47E. The Step III grievance should be filed with:

Nikita M. Baker
Acting Deputy Assistant Director
Field Operations - East
Enforcement and Removal Operations
500 12th Street SW
Washington, DC 20536
Nikita.M.Baker@ice.dhs.gov

To be considered, the grievance shall: (1) be in writing; (2) be personally delivered or post marked within 22 workdays following receipt of the official reprimand; (3) specifically set forth the reasons for your dissatisfaction; (4) state the specific corrective action desired; (5) identify your personal representative, if any; and (6) contain your signature. Furthermore, if a statement of disagreement was submitted, a copy should be included with the filing of the Step III Grievance, along with either a copy of any modification notice, or a statement that no such notice was received. Any other documentation in support of your grievance position must also be included in the submission package filed with the Step III official. Please be advised that the time frame for the filing of a grievance and letter of disagreement runs concurrently. Therefore, the filing of a letter of disagreement does not stop, stay, or suspend the time frame for the filing of a Step III grievance.

2. **Equal Employment Opportunity Rights.** If you believe that unlawful discrimination based upon age, disability, genetic information, national origin, race, color, religion, sex (including pregnancy status, sexual orientation, and gender identity), parental status, or prior participation in protected EEO activity motivated this action, then you may contact the Immigration and Customs Enforcement's Office of Diversity and Civil Rights by telephone at 202-732-0192 or by electronic mail at EEO-ADR-ICE@ice.dhs.gov to obtain more information about your EEO rights. It is important to understand that if you

choose to pursue an EEO complaint, then you must contact an EEO counselor in the Immigration and Customs Enforcement's Office of Diversity and Civil Rights within forty-five (45) calendar days of the effective date of this action.

3. **Whistleblower and Prohibited Personnel Practices Rights.** If you believe that any prohibited personnel practices, as identified in section 2302(b) of title 5 of the U.S. Code, motivated this action, including unlawful whistleblower retaliation, then you may contact the U.S. Office of Special Counsel by telephone at 202-804-7000 or by electronic mail at info@osc.gov to obtain more information about your rights. You may seek corrective action through OSC, and, if you choose to pursue a whistleblower complaint, then you may have the additional right to seek corrective action through an individual right of action appeal before the U.S. Merit Systems Protection Board. Additional information about the complaint process may be obtained at www.osc.gov.

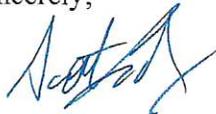
EMPLOYEE ASSISTANCE PROGRAM

If you are experiencing personal problems that are affecting, or have affected, your actions or job performance, then you are encouraged to consider contacting the ICE Employee Assistance Program. EAP is a voluntary, confidential, short-term counseling program that is provided to employees at no cost to them. If needed, EAP can also refer employees to other professional services and resources within their communities. You may contact EAP services any day and at any time by telephone at 800-222-0364. You may also access EAP services online at www.foh4you.com. Additional information regarding the ICE EAP may be found on DHS Connect.

QUESTIONS

If you have any questions concerning your rights or the procedures governing this action, you may contact by electronic mail at ICEemployeerelations@ice.dhs.gov.

Sincerely,



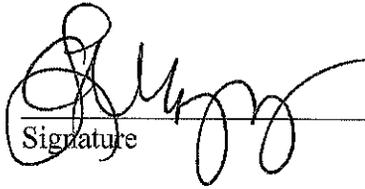
Scott G. Ladwig
Assistant Field Office Director
Enforcement and Removal Operations
New Orleans Field Office

ATTACHMENTS

- Attachment No. 1: Executive Order 14043
- Attachment No. 2: Memorandum of Counseling
- Attachment No. 3: October 12, 2021, October 18, 2021, November 3, 2021, Instructions

Acknowledgment

Please sign below to acknowledge your receipt of this document.


Signature _____

1/10/22
Date

Exhibit 2

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

JAMES RODDEN, et al.

Plaintiffs,

v.

ANTHONY FAUCI, Chief COVID
Response Director of the National Institute of
Allergy and Infectious Diseases, et al.

Defendants.

Civil Action No. 3:21-cv-00317

DECLARATION OF JOHN LUFF

1. I, John Luff, a resident of Louisiana and of legal age, make this declaration on personal knowledge.
2. I am a civilian employee of the United States Coast Guard (USCG) and work as a Marine Inspector. I have been working as a civilian employee of the Federal Government for 8.5 years.
3. I am long term Covid-19 antibody positive (blood tested) and I was confirmed positive of infection and symptomatic on September 14, 2021 via PCR testing.
4. I have taken antibody tests and been confirmed as having natural immunity!
5. My employer, USCG, has stated pursuant to Presidential Executive Order and follow-on rules that I must receive a COVID-19 vaccine in order to remain employed.
6. Although I was initially told I must comply with this policy by November 22, 2021, federal employees were given until after the holidays pursuant to executive decree.

7. I received a letter on December 6, 2021, 2022, stating that I was not in compliance with the vaccine requirement and that I had ten (10) days to begin a course of COVID-19 vaccination (*see* Attachment A).

8. It is my belief based on evidence that I am neither in danger nor am I a danger to others.

9. I wish to make my own medial choices and am fearful of a government employer declaring this attack on my bodily integrity with no reasonable cause.

10. Putting aside the uselessness of a vaccine to someone with natural immunity and the safety of the various emergency use vaccines long term, a common side effect of the vaccines is a sore arm and mild fatigue.

11. I do not believe my employer can, nor do I want, it to be able to force me to accept the equivalent of a punch in the arm whenever it likes on pain of termination for no known improvement of the safety of others.

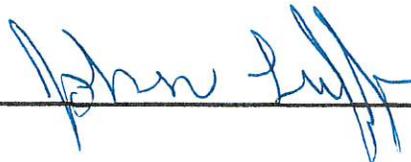
12. Taking the vaccine, which for me is a medically useless act, would irreparably harm me in my person and in my control over my life and body.

13. Even should I prevail in some separate forum after threatened termination the time out of the labor force, effect on my psyche and well-being would never be recovered.

I declare under penalty of perjury the foregoing is true and correct.

Date:

12 JAN 2022



John Luff

Attachment A



United States Coast Guard
Office of Civilian Human Resources
Workforce Relations

2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593
Code: CG-124

12750
December 6, 2021

MEMORANDUM

SMITH, RYAN, MICH
AEL.1074085888

Digitally signed by
SMITH, RYAN, MICH, AEL.1074085888
Date: 2021.12.06 09:10:16 -0500

From: Ryan M. Smith, Supervisory HR Specialist, CG-124
To: JOHN LUFF, GS-1801-12, SR MARINE INSP/PSCO-JRNYMAN
Subj: LETTER OF ADVISEMENT
Ref: (a) DHS Update on Compliance with EO on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, dated 25 October 2021
(b) Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, dated 9 Sept. 2021

1. According to agency records, as of December 6, 2021, it appears that you may not have fully updated the Vaccination Status System (VSS) with the required documentation and information outlined in References (a) and (b). If this is an error, please accept my apology and contact Edward McKenzie, HR Specialist (Employee & Labor Relations), at (206) 220-7052 or via email at Edward.B.McKenzie@uscg.mil with the correct information immediately upon your receipt of this memorandum.

2. If this is not an error, there is still time to comply. It is necessary to require COVID-19 vaccination for all Federal employees in order to promote the health and safety of the Federal workforce and the efficiency of the civil service. Per the Center for Disease Control and Prevention (CDC), it is not possible to get COVID-19 from vaccines. The COVID-19 vaccines activate the immune system so the body can fight the virus. COVID-19 vaccines are widely available in the United States. You can find more information from the CDC about safety measures, clinical trials, and monitoring systems at the below:

- [Understanding Different COVID-19 Vaccine Types](#)
- [Ensuring COVID-19 Vaccine Safety in the U.S.](#)
- [Ask COVID-19 Questions](#) (or call 1-800-CDC-INFO or 1-800-232-4636)

3. To be compliant, with the instructions in Reference (a), you **must** complete one of the following options **within ten (10) calendar days of receipt of this notice**:

Subj: LETTER OF ADVISEMENT

12750

- a. Receive at least one dose of the COVID-19 vaccines that have been approved, or authorized for emergency use, by the U.S Food and Drug Administration (FDA) and/or the World Health Organization (WHO)¹ *and* document such in [VSS](#); *or*
- b. Submit a request for a medical or religious exception from the government-wide COVID-19 vaccination requirements using the Accessibility Compliance Management System ([ACMS](#)) *and* document such in [VSS](#).

4. It is imperative that you take *immediate* steps using the procedures established in Reference (a). Failure to timely complete one of the options above may result in disciplinary action against you, up to and including your potential removal from federal service. Disciplinary action is deferred for employees that:

- a. Provide notice and a date of retirement or resignation that is no later than January 31, 2022;
- b. Continue to be on extended leave greater than 30 days;
- c. Submit a request for an exemption in ACMS and are awaiting approval; *or*
- d. Provide proof of initiation of the vaccination process in VSS.

5. If you have any questions about this letter, please contact Edward McKenzie, HR Specialist (Employee & Labor Relations), at (206) 220-7052 or via email at Edward.B.McKenzie@uscg.mil, immediately upon your receipt of this memorandum so you are provided clarifying information in a timely manner as to help you meet the *ten calendar day* deadline specified above. If you have any questions about VSS, please visit the [DHS VSS Connect page](#) or email DHS_VSS_Support@hq.dhs.gov. If you have any questions about COVID-19 vaccinations generally and the various benefits available to federal employees as they receive their vaccinations, please visit the [COVID-19 resources webpage](#).

6. If you are experiencing personal problems that are affecting, or have affected, your actions or job performance, I encourage you to contact the Coast Guard's Employee Assistance Program (EAP), CGSUPRT, at 1-855-247-8778. CGSUPRT is a voluntary, confidential, counseling, assessment and referral service provided for employees and their family members who desire help with personal, family, or job-related problems that may be affecting performance or work-related conduct.

#

ACKNOWLEDGEMENT OF RECEIPT:

Please sign below verifying your receipt of this letter. Your signature does not mean that you agree with the contents of the letter; nor by signing, are you forfeiting any rights:

¹ Links to the COVID-19 vaccines that have been approved, or authorized for emergency use, by the FDA and the WHO may be found at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines> and <https://extranet.who.int/pqweb/vaccines/vaccinescovid-19-vaccine-eul-issued> .

Subj: LETTER OF ADVISEMENT

12750

Employee Signature: _____ Date: _____

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

JAMES RODDEN, et al.

Plaintiffs,

v.

Civil Action No. 3:21-cv-00317

ANTHONY FAUCI, Chief COVID
Response Director of the National Institute of
Allergy and Infectious Diseases, et al.

Defendants.

DECLARATION OF APRIL HANSON

1. I, April Hanson, a resident of Wyoming and of legal age, make this declaration on personal knowledge.
2. I am a civilian employee of the Department of Interior, Bureau of Reclamation. I have been working for the Federal Government for 9 years.
3. I am long term Covid-19 antibody positive (blood tested) and I was confirmed positive of infection and symptomatic on November 19, 2021 via PCR testing.
4. I have taken antibody tests and been confirmed as having natural immunity.
5. My employer, BOR, has stated pursuant to Presidential Executive Order and follow-on rules that I must receive a COVID-19 vaccine in order to remain employed.
6. Although I was initially told I must comply with this policy by November 22, 2021, federal employees were given until after the holidays pursuant to executive decree.

7. I received a letter on January 3, 2022, stating that I was not in compliance with the vaccine requirement and that I had until January 7, 2022 to receive at least one dose of a COVID-19 vaccine (see Attachment A).

8. It is my belief based on evidence that I am neither in danger nor am I a danger to others.

9. I wish to make my own medical choices and am fearful of a government employer declaring this attack on my bodily integrity with no reasonable cause.

10. Putting aside the uselessness of a vaccine to someone with natural immunity and the safety of the various emergency use vaccines long term, a common side effect of the vaccines is a sore arm and mild fatigue.

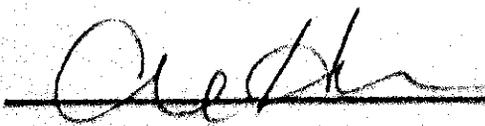
11. I do not believe my employer can, nor do I want, it to be able to force me to accept the equivalent of a punch in the arm whenever it likes on pain of termination for no known improvement of the safety of others.

12. Taking the vaccine, which for me is a medically useless act, would irreparably harm me in my person and in my control over my life and body.

13. Even should I prevail in some separate forum after threatened termination the time out of the labor force, effect on my psyche and well-being would never be recovered.

I declare under penalty of perjury the foregoing is true and correct.

Date: 1/11/2021



April Hanson

Attachment A



United States Department of the Interior

BUREAU OF RECLAMATION
P.O. Box 36900
Billings, MT 59107-6900



IN REPLY REFER TO:

MB-1250
1.2.04

January 3, 2022

MEMORANDUM: ADMINISTRATIVELY RESTRICTED

To: **April R. Hanson**
Maintenance Management System Coordinator
Wyoming Area Office

From: **Ronald O. Spangler**
Supervisory General Engineer
Wyoming Area Office

RONALD SPANGLER
Digitally signed by
RONALD SPANGLER
Date: 2022.01.05
13:35:14 -07'00'

Date: **January 3, 2022**

Subject: **Supervisory Directive and Instructions Regarding Compliance with COVID-19 Vaccination Requirement, Subject to Exceptions as Required by Law**

On September 9, 2021, the President signed Executive Order No. 14043, which requires all federal employees to be vaccinated against COVID-19 with limited exceptions as required by law. Guidance from the Safer Federal Workforce Task Force clarified that all federal civil service employees should have become fully vaccinated and should have submitted proof of vaccination by November 22, 2021, except in limited circumstances where a medical necessity required an extension of time to become vaccinated or a reasonable accommodation required an exception to the vaccination requirement. Following the President's Order and government-wide rules, DOI developed processes (which all DOI employees were and remain obligated to follow) requiring DOI employees either to upload their proof of vaccination into the Safety Management Information System ("SMIS") or to request extensions based on medical necessity or exceptions based on the need for reasonable accommodations.

DOI issued multiple all-employee notices emphasizing the importance of compliance with the vaccination requirement and explaining that failure to comply with and failure to follow a Presidential Order, government-wide rules, Departmental policy, and supervisory instructions are types of misconduct that may result in disciplinary action, up to and including removal.

- On October 4, 2021, the Department issued an all-employee e-mail reminding DOI employees of the importance of providing proof of vaccination against COVID-19 by November 22, 2021.

INTERIOR REGION 5 • MISSOURI BASIN

KANSAS, MONTANA*, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA

* PARTIAL

- On October 19, 2021, the Department issued another all-employee message that warned that “[e]mployees who fail to provide proof that they are fully vaccinated in compliance with the requirements of Executive Order No. 14043, in the absence of an exception as required by law, may be subject to discipline, up to and including ... removal from federal service.”
- On November 18, 2021, the Department again issued an all-employee message warning that “[u]nexcused employees who fail to comply with the requirements of Executive Order No. 14043 will be subject to disciplinary action, up to and including removal from federal service.”
- On November 22, 2021, the Department sent another message to all DOI employees and urged immediate action because “[u]nexcused employees who fail to comply with the requirements of Executive Order No. 14043 will be subject to disciplinary action, up to and including removal from federal service.”

After the November 22, 2021 deadline for compliance, I determined that you had neither uploaded your proof of COVID-19 vaccination status into SMIS nor requested either a medical extension or a reasonable accommodation. Consequently, I issued you a memorandum, *Notice Regarding Noncompliance and Potential Disciplinary Action*, to inform you that your failure to comply with the COVID-19 vaccination requirement is a form of misconduct that may result in discipline, up to and including removal from federal service. Through that memorandum, I invited you to work with me to correct your noncompliance and avoid discipline. However, as of today, you have neither complied with the COVID-19 vaccination requirement by uploading your proof of vaccination against COVID-19 into SMIS nor requested an exception to the vaccination requirement through a reasonable accommodation.

Therefore, through this memorandum, I **DIRECT** you to comply with Departmental policy, which requires you either to upload your proof of vaccination into SMIS or to request an extension based on medical necessity or an exception based on a need for reasonable accommodation. As your supervisor, I order you to follow these instructions: either 1) upload into SMIS, by or before January 7, 2022, proof that you have received a dose of an FDA-approved or FDA-authorized COVID-19 vaccine; or 2) request, by or before January 7, 2022, an extension based on medical necessity or an exception based on a need for reasonable accommodation. If you fail to comply with my directive and/or fail to follow my instructions, you may be subject to disciplinary action, up to an including removal from federal service.

As mentioned above, your noncompliance with this requirement is a form of misconduct that may result in discipline, up to and including removal from federal service. I am very concerned because I value you and your contributions to the team. I want to work with you to correct your noncompliance now because I want to avoid the imposition of discipline against you. If you are in need of an extension due to medical conditions or a reasonable accommodation based upon a disability or a sincerely held religious belief, observation, or practice, please contact me immediately. I value you and your contributions to this team, so it is really important that we find time to talk about what you need to comply with the President's Executive Order. Please respond as soon as possible because this is a high priority. I am available to discuss any concerns or questions you may have regarding this important matter. I look forward to working with you to ensure you are in compliance with the requirements of Executive Order No. 14043 and

Departmental policy. This memorandum is not a disciplinary action and will not be filed in your electronic Official Personnel Folder (eOPF), but it will be retained as notice that you have been informed of the consequences of noncompliance with the requirements of Executive Order No. 14043.

Exhibit 4

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

JAMES RODDEN, *et. al.*,

Plaintiffs,

v.

ANTHONY FAUCI, *et. al.*,

Defendants,

Civil Action No.: 3 :21-cv-00317

DECLARATION OF SAM PAPPAS SUPPORTING PLAINTIFFS

I, Dr. Sam Pappas, declare as follows:

1. I am an adult of sound mind and make this statement voluntarily, based upon my own personal knowledge, education, and experience.
2. Based on my training and experience, I have formed an opinion on the reasonableness of the requested accommodations and on the possibility of other accommodations not listed to a reasonable degree of scientific certainty.

EXPERIENCE & CREDENTIALS

3. I am a doctor of internal medicine in Vienna Virginia, where I run my own practice.
4. I went to medical school at Pennsylvania State College of Medicine from 1991 to 1995 and completed my residency in Internal Medicine from University Hospitals/Case Western Reserve in 1999.
5. I then worked as an Assistant Program Director for an Internal Medicine Residency Program at Saint Barnabas Hospital in Livingston, NJ from 1999 until 2003 and then at UMDNJ-

Newark in Newark, NJ from 2003 until 2004. From 2004 until 2012 I was a partner in a large Internal Medicine Practice in Arlington, VA.

6. In 2012, I formed the Primary Care McLean Group under the leadership of Virginia Hospital Center, for which I was chosen as lead physician and where I practiced until the summer of 2016.

7. After that, I opened my own practice, Pappas Health, because I sought to offer a greater variety of services and more meaningfully connect with patients.

8. I am receiving no compensation for my assistance with this case.

9. I have routinely over my 20 + years of practice in the field of Internal Medicine been involved in the care of patients with a variety of infectious diseases and regularly order and assess laboratory testing to help diagnose and treat them.

10. I have reviewed the SARS-CoV-2 specific antibody lab results of the following Plaintiffs in this case:

- a. Michelle Ruth Morton
- b. Waddie Burt Jones
- c. Isaac Lee McLaughlin
- d. Gabriel Escoto
- e. James Joseph Rodden
- f. Ryan Charles Biggers
- g. Carole LeAnn Mazzacapo
- h. Edward Bryan Surgeon
- i. Susan Reynolds
- j. Roy Kenneth Egbert, II

- k. George Gammon
- l. Steven Hanley
- m. April Hanson
- n. John Luff
- o. Doris Forshee

11. In my professional opinion, there is no doubt that, based on recent testing, the abovenamed Plaintiffs show evidence of positive SARS-CoV-2 antibodies to both the spike protein and the nucleocapsid protein.

12. The latter is not found in vaccinated individuals, but rather only in those who have previously been infected with the SARS-CoV-2 virus. The existing clinical literature overwhelmingly indicates that the protection afforded to the individual and community from natural immunity is as effective and durable as the efficacy levels of the most effective vaccines to date.

13. From the point of view of Plaintiffs' personal health, there is no good reason that they should be vaccinated.

14. I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge, the foregoing is true and correct this **12th Day of January, 2022**, at Vienna, Virginia.

Respectfully submitted,



Dr. Sam Pappas, M.D.
Doctor of Internal Medicine

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

JAMES RODDEN, et al.

Plaintiffs,

v.

ANTHONY FAUCI, Chief COVID
Response Director of the National
Institute of Allergy and Infectious
Diseases, et al.

Defendants.

Civil Action No. 3:21-cv-00317

**MOTION FOR A TEMPORARY
RESTRAINING ORDER**

[PROPOSED] ORDER

Upon Consideration of the Motion for a Temporary Restraining Order filed by Plaintiffs, on behalf of themselves and others similarly situated, and in accordance with Rule 65(b) of the Federal Rules of Civil Procedure, the Court concludes that the Motion should be granted and remain in effect for 30 days, without prejudice to an extension on good cause shown, with conversion to a Preliminary Injunction should the Court so direct.

Defendants have instituted a Federal Employees Vaccine Mandate (“the Vaccine Mandate”) requiring all employees to have received full COVID-19 vaccination by November 22, 2021 unless they obtain a medical or religious exemption. Failure to comply with the Vaccine Mandate subjects employees to potential disciplinary action, including termination of

employment. The Biden Administration directed agencies not to discipline noncompliant employees until after the holidays. Plaintiffs received letters (at the beginning of January in the cases of Plaintiffs Mezzacapo and Hanson, and beginning of December in the case of Plaintiff Luff) threatening them with discipline for noncompliance.

Plaintiffs and those similarly situated have demonstrable, naturally acquired immunity to COVID-19. On these grounds, Plaintiffs allege that requiring them to receive a COVID-19 vaccine infringes upon their rights to bodily autonomy and to decline medical interventions under the Fifth, Ninth and Fourteenth Amendments to the United States Constitution. Plaintiffs also contend that the Vaccine Mandate violates the federal Emergency Use Authorization (EUA) statute, and is arbitrary and capricious under Administrative Procedure Act Review.

The Court finds that Plaintiffs have demonstrated that they and others similarly situated will suffer irreparable harm if this motion is not granted because the Vaccine Mandate violates their constitutional and statutory rights and they have been threatened with imminent disciplinary action, including termination of employment. Neither Defendants nor the community will be put at risk if the TRO remains in effect, especially since Plaintiffs have naturally acquired immunity.

IT IS THEREFORE ORDERED THAT:

- (1) Defendants in their official capacities, or anyone acting on Defendants' behalf, are hereby prohibited from applying the Vaccine Mandate to employees who have natural immunity to COVID-19 that they can demonstrate through antibody tests;
- (2) This Order shall remain in effect for 30 days (one month), until the Court has can allow the parties an opportunity to fully brief and argue the Motion for a Preliminary Injunction.

THUS DONE AND SIGNED this _____ day of _____, 2022 at the hour of __
[am or pm] on this day. in _____, Texas.

JUDGE Jeffrey V. Brown
Southern District of Texas (Galveston Div.)