UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

BRITTANY BONGIOVANNI, *et al.*,

Plaintiffs,

v. **NO. 3:22-CV-00237-MMH-MCR**

LLOYD AUSTIN, III, *et al.*

Defendants.

PLAINTIFFS' SUPPLEMENTAL BRIEF

Pursuant to the Court's April 14, 2022 order, ECF 40, Plaintiffs submit this supplemental brief on the severance and venue issues addressed in the hearing held before the Court that same day ("April 14 Hearing"). Plaintiffs urge this Court to reject Defendants' arguments alleging misjoinder and improper venue. These arguments are part of Defendants' overall strategy to mischaracterize Plaintiffs' claims—which challenge Secretary Austin's generally applicable directives applied uniformly by each Armed Service Defendant to expel tens of thousands of service members—as a series of unrelated individual grievances or personnel actions. If accepted, Defendants' arguments will deprive federal courts of jurisdiction and Plaintiffs of any opportunity for judicial review of, and relief from, Defendants' systematic violation of their statutory and constitutional rights. Moreover, they would frustrate the purpose of the first and foremost of the Federal Rules of Civil

Procedure ("FRCP") of securing the "just, speedy, and inexpensive determination of every action and proceeding." FRCP 1.

With respect to severance, all Plaintiffs and claims are properly joined in the operative complaint. ECF 15. Plaintiffs' claims easily meet the transaction and commonality requirements for joinder under Federal Rule of Civil Procedure ("FRCP") Rule 20(a)(1), and the factors considered for severance under FRCP Rule 20(b) or Rule 21 all weigh against severance. However, if the Court in its discretion determines that severance is appropriate, then severance should be made on a service-wide, rather than individual, basis.

With respect to venue, venue is proper in the U.S. District Court for the Middle District of Florida ("Middle District") because all but one Plaintiff resides and/or is domiciled in the Middle District. The Complaint was properly filed under Local Rule 1.04 in the Jacksonville Division because a plurality of Plaintiffs (including one or more members of the Air Force, Coast Guard and Navy) reside and/or are domiciled in the Jacksonville Division. If the Court severs the Plaintiffs on a service-wide basis, venue would still be proper in the Jacksonville division because this is "division to which the action is most directly connected" and "in which the action is most conveniently advanced." Local Rule 1.04.

I. SEVERANCE

A. Legal Standards for Joinder and Severance

Under FRCP Rule 18, a party may assert "as many claims as it has against an opposing party." Under FRCP Rule 20(a)(1), multiple persons may join as plaintiffs in a single action if:

> (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
>
> (B) any question of law or fact common to all plaintiffs will arise in the action.

These are frequently referred to as the "transaction" and "commonality" requirements.

With respect to the transaction requirement, a "series of transactions or occurrences" includes "all 'logically related' events entitling a person to institute a legal action." *Alexander v. Fulton County,* 207 F.3d 1303, 1323 (11th Cir. 2000) ("*Alexander*") (citation omitted), *overruled other grounds, Manders v. Lee,* 338 F.3d 1304 (11th Cir. 2003). The Eleventh Circuit has found that "allegations of a 'pattern or practice' of discrimination" satisfy the transaction requirement. *Alexander,* 338 F.3d at 1323.[1] The Eleventh Circuit has found

[1] *See also M.K. v. Tenet*, 216 F.R.D. 133, 142 (D.D.C. 2002) ("*Tenet*") ("The court agrees with the plaintiffs' assertion that logically related events may consist of an alleged consistent pattern of obstruction of security-cleared counsel by the defendants.") (citations omitted) (cleaned up).

that "that that the question of the discriminatory character of a defendant's conduct can satisfy the commonality requirement of Rule 20." *Alexander*, 207 F.3d at 1324 (citations omitted). Both requirements are satisfied where, as here, a single governmental decision-maker implements a uniform and discriminatory policy applied to the plaintiffs in question. *See Gittens v. School Bd. of Lee Cty., Fla.*, 2018 WL 839242, at *3 (M.D. Fla. Feb. 13, 2018) ("*Gittens*").

Where the requirements of FRCP Rule 20(a)(1) are met, "[j]oinder of parties is generally encouraged in the interest of judicial economy." *Gittens*, 2018 WL 839242, at *2. The *Gittens* court went on to explain:

> Plainly, the central purpose of Rule 20 is to promote trial convenience and expedite the resolution of disputes, thereby eliminating unnecessary lawsuits. … The Supreme Court has instructed the lower courts to employ a ***liberal approach*** to permissive joinder of claims and parties in the interest of judicial economy: 'Under the Rules, the impulse is towards entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.' *United Mine Workers v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 1137, 16 L.Ed.2d 218 (1966).

Gittens, 2018 WL 839242, at *2 (*quoting Alexander*, 207 F.3d at 1323) (emphasis added).

FRCP Rule 20(b) provides that a district court may sever a party to "protect a party against embarrassment, delay, expense, or other prejudice." But "[i]t is ultimately within the court's discretion to sever a party or claim to

proceed separately from the main action." *Clay v. AIG Aerospace Ins. Services, Inc.*, 61 F.Supp.3d 1255, 1271 (M.D. Fla. 2014). When deciding whether severance is appropriate, the court must look to "whether the interests of efficiency and judicial economy would be advanced by allowing the claims to travel together, and whether any party would be prejudiced if they did." *Fisher v. Ciba Specialty Chemicals Corp.*, 245 F.R.D. 539, 542 (S.D.Ala.2007).

In ruling on a motion to sever under FRCP Rule 21, courts consider the following factors:

> (1) the interest of avoiding prejudice and delay; (2) ensuring judicial economy; (3) safeguarding principles of fundamental fairness; and (4) whether different witnesses and documentary proof would be required for plaintiffs' claims.

Walters v. BMW of North America, 2019 WL 6251366, at *2 (M.D. Fla. Nov. 22, 2019) ("*Walters*") (*quoting Torres v. Bank of America*, 2017 WL 10398671, at *1 (M.D. Fla. Oct. 6, 2017) ("*Torres*")). Other factors considered by courts include: (1) the commonality of facts and questions of law; (2) the burden on the parties; (3) Plaintiffs' interest in pursuing their claims, weighed against Defendants' interest in avoiding aggravation; (4) delay; and (5) whether defendants will assert different defenses. *See Malibu Media, LLC v. Doe*, 923 F. Supp. 2d 1339, 1345 (M.D. Fla. 2013) ("*Malibu Media*").

Courts in the Eleventh Circuit routinely find that the requirements for joinder are met and/or deny motions to sever where, as here, there is evidence

of a common discriminatory or fraudulent pattern, practice, or policy by Defendants.[2] Such severance motions have been granted in cases where, unlike here, the Plaintiffs' claims involve different sets of operative facts; each involve independent transactions with independent, non-party actors; each claim would require separate analyses, different witnesses and documentary proof; and/or each claim would require separate trial.[3]

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[2] *See, e.g., Gittens*, 2018 WL 839242, at *3; *Gonzalez v. Batmasian*, 320 F.R.D. 580 (S.D. Fla. 2017); *Wimby v. Outback Steakhouse Int'l, L.P.*, 2008 WL 11319916 (N.D. Ga. Oct. 3, 2008) (granting leave to amend complaint to add party based on discriminatory pattern or practice); *Gilead Sciences, Inc. v. Alliance Med. Ctr., Inc.*, 2021 WL 2580415 (S.D. Fla. Apr. 20, 2021) (denying motion to sever where common scheme to defraud alleged); *Brown v. Vivint Solar, Inc.*, 2020 WL 2309869 (M.D. Fla. May 8, 2020) ("*Brown*") (denying motion to sever and for separate trials based on claims of fraudulent corporate policy). In employment discrimination cases, courts will also consider whether different supervisors engaged in the alleged discriminatory conduct or made the alleged discriminatory decisions. *See Gittens*, 2018 WL 839242, at *3. As discussed below, this factor does not apply here because the ultimate decisions, and orders were issued by, Secretary Austin, or in the case of religious accommodations, the ultimate appeal authority is a three-star or four-star general or admiral who answers directly to Secretary Austin.

[3] In *Walters*, the Court determined that each Plaintiff's claim against the Defendant car manufacturer claim would require "a separate analysis of the year, make, model, and mileage, and maintenance history" for the car because each of the 41 Plaintiffs had purchased different models of cars from different non-party dealers, at different times and locations, and/or had their cars serviced by different non-party dealers. *Walters*, 2019 WL 6251366, at *2. In *Torres*, the court severed Plaintiffs' claims because they involved "different sets of operative facts," set forth in a complaint of "332 pages and 1,521 paragraphs," and because each of the 75 plaintiffs would require a separate three-day trial (or 225 trial days total). *Torres*, 2017 WL 10398671, at *2. The *Torres* court also indicated that plaintiffs had failed to meet the pleading standards in FRCP Rule 8(a) and Rule 9(b). *Id.* Plaintiffs' claims can be resolved in a single trial or single summary judgment motion.

B. Plaintiffs Meet the Requirements for Joinder.

Each Plaintiff (with the exception of Harwood) raises two sets of claims, and each set of claims meets the transaction and commonality requirements under FRCP Rule 20(a)(1). First, Each Plaintiff (except Freincle) challenges the unlawful and unconstitutional denial of their requests for religious accommodation and alleges that the Defendants Department of Defense ("DOD) and the respective Armed Service in which they serve violated: (1) the Religious Freedom Restoration Act ("RFRA"), *see* ECF 15, ¶¶ 94-110; (2) the First Amendment Free Exercise Clause, *see id.* ¶¶ 111-120; and (3) the Fifth Amendment Due Process Clause, *see id.*, ¶¶ 121-127 (collectively, "Religious Liberty Claims"). Second, each Plaintiff[4] challenges the lawfulness of DOD COVID-19 vaccine mandate ("DOD Mandate") and alleges that the Defendants DOD and the respective Armed Service in which they serve violated: (4) the federal laws requiring informed consent and prohibiting the mandatory administration of a vaccine subject to an emergency use authorization ("EUA"), *see id.*, ¶¶ 128-138; and (5) provisions of the Administrative Procedure Act ("APA"), *see id.*, ¶¶ 139-146 (collectively, the "Informed Consent Claims").[5]

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[4] Plaintiff Harwood does not assert these claims in this proceeding, but he does in these claims and several others against the FDA in the separate proceeding in *Coker v. Austin*, No. 3:21-cv-1211-AW-HTC (N.D. Fla.).

[5] Plaintiffs note that Plaintiffs' March 8, 2022 motion for preliminary injunction, ECF 13, and the April 14 Hearing addressed only Plaintiffs' Religious Liberty Claims. At the April 14 Hearing, the Court's instruction appeared limited to potential severance

Plaintiffs' Religious Liberty Claims and Informed Consent Claims each separately meet the transaction requirement. The Informed Consent Claims arise from Secretary Austin's August 24, 2021 memorandum ("August 24 Memo") promulgating the DOD Mandate, ECF 1-2, and Defendant Armed Services' unlawful implementation of the Secretary's directive by, among other things, unlawfully mandating an unapproved EUA vaccine. The Religious Liberty Claims arise from the DOD and Armed Services' policy (whether formal or informal) that has resulted in the denial of all (or nearly all)[6] religious accommodation requests and appeals that have been decided to date. For these claims, the key "transactions or occurrences" include the adoption of the uniform DOD-wide policy not to grant any religious accommodations and the application of this policy to each Plaintiff who has had their initial request denied, and the nine Plaintiffs whose appeals have been denied.

Plaintiffs' Informed Consent and Religious Liberty Claims also meet the commonality requirement. With respect to the Informed Consent claims, each Plaintiff: is a military service member who is subject to the DOD Mandate; must take an unlicensed EUA vaccine in order to comply with the DOD

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of Plaintiffs, rather than severance of claims. Accordingly, for purposes of severance, Plaintiffs briefing will address both sets of Plaintiffs' claims asserted in the Complaint.

[6] The small number of initial requests or appeals that have been granted by Defendants appear to have in fact been administrative exemptions for service members on terminal leave or eligible for retirement. *See* ECF 33 at 4-5.

Mandate (*i.e.*, because no FDA-licensed Comirnaty or Spikevax is currently available); challenges the lawfulness of the DOD Mandate; and faces discipline or discharge for failure to comply with what is a facially unlawful order to take an unlicensed EUA vaccine.

With respect to the Religious Liberty Claims, every Plaintiff (except Freincle) has had their initial religious accommodation request denied and at least half have now had their final appeal denied as well. Further, each of these denials has been made pursuant to a DOD-wide religious exemption process governed by DODI 1300.17 (with limited differences among the services), with the same pre-determined outcome, resulting in zero or near zero approvals that has been described as "theater," *Air Force Officer v. Austin*, 2022 WL 468799, at *10 (M.D. Ga. Feb. 15, 2022) ("*Air Force Officer*"). The form and content of the denials are largely identical insofar as each denial consists of a form letter that uniformly fails to provide the individualized assessment and "to the person" analysis required by RFRA; justifies the denial based on a rote recitation of "magic words," *Navy SEAL 1 v. Austin,* --- F.Supp.3d ---, 2022 WL 534459, at *18 (M.D. Fla. Feb. 18, 2022) ("*Navy SEAL 1*"), *stay denied pending appeal* No. 22-10645 (11th Cir. Mar. 30, 2022); and relies on impermissible broadly formulated interests, conclusory or speculative statements, and categorical bans of alternatives; and fails to mention, much less give serious

consideration to, any less restrictive alternatives proposed by the Plaintiff. *See generally* ECF 13 at 14-18 & cases cited therein.

Plaintiffs thus easily satisfy the requirements of Rule 20(a)(1) for both the Religious Liberty Claims and the Informed Consent Claims, each of which is based on a "logically related" series of transactions involving an unlawful or discriminatory pattern or practice instituted by a single governmental decision-maker. *See, e.g., Gittens*, 2018 WL 839242, at *3. The alleged violations are the result of top-down directives from Secretary Austin that have been uniformly applied by each Armed Services Defendant. Secretary Austin and the DOD set uniform immunization policies for each of the Armed Services.[7] The DOD Mandate was promulgated by Secretary Austin in the August 24 Memo, and its requirements apply uniformly to all Armed Services and service members,[8] including each Plaintiff. The directive that EUA

[7] Defendants acknowledge that the "immunization program is governed by DoD Instruction ("DoDI") 62.05.02." ECF 31 at 5. The DOD, and thus each of the Armed Services, align their "immunization requirements and eligibility determinations for service members with recommendations from the CDC and its Advisory Committee on Immunization Practices." *Id.*

[8] There is no dispute that the military is a unique governmental actor with a strict hierarchy—with the President and Secretary of Defense at the top—whose members are compelled by honor, duty and the Uniform Code of Military Justice to comply with the directives of their chain of command. It is no accident that military organizations are frequently and favorably compared to machines because in war they must operate like one, with each branch and component working synchronously to execute the strategy set from the top. While this ideal is not always realized in practice, it has been for the DOD Mandate. Secretary Austin issued an order: all service members will be vaccinated with no exceptions for religious belief with zero tolerance for deviations or exercise of discretion. This message has been clearly transmitted to the

vaccines and FDA-licensed vaccines "should be used interchangeably" originated in the DOD. ECF 1-11 at 1. The rules governing religious accommodation are also set by the DOD.[9] While Defendants have wisely not made public the order or directives not to grant any religious accommodations,[10] the "predetermined" results of the process, *U.S. Navy SEALs 1-26 v. Biden*, --- F.Supp.3d. ---, 2022 WL 34443, at *6 (N.D. Tex. Jan. 3, 2022) ("*Navy SEALs 1-26*), *stay denied,* --- F.4th ---, 2022 WL 594375 (5th Cir. Feb. 28, 2022), provide sufficient evidence to meet the requirements of FRCP Rule 20(a)(1) and to defeat severance. This is confirmed by the publicly available statistics on grants and denials, *see, e.g.,* ECF 13 at 8-9 & Table 1, and the form denial letters.

Services, then amplified down through the chain of command with flawless execution to achieve the desired result (*i.e.*, nearly 99% vaccination rate with zero religious accommodations granted). For this reason, it is irrelevant whose name appears on the denial letters or vaccination orders, because the ultimate decision was made, and the outcome pre-determined, by Secretary Austin months ago when he issued his directives.

[9] *See generally* ECF 33-5, DODI DOD Instruction 1300.17, *Religious Liberty in the Military Services*, ¶ 3.2.g.1(Sept. 1, 2020).

[10] Plaintiffs have alleged that such a policy exists, *see, e.g.,* ECF 15, ¶¶ 3 & 125, and intend to seek documentary evidence and witness testimony regarding this policy through the discovery process. It is premature to find that resolution of Plaintiffs' Religious Liberty Claims would require different documentary evidence or witnesses. Accordingly, the Court should defer any ruling on severance until the Defendants have produced the relevant administrative records and the Plaintiffs have been allowed to conduct discovery regarding the Defendants' common policy not to grant any religious accommodations.

Plaintiffs also satisfy the other factors discussed in *Walters* and *Malibu Media* militating against severance. Judicial economy is served by joinder of all Plaintiffs both because they meet the requirements of Rule 20(a)(1) and because proof of their claims will be based on the same documentary proof and witness testimony. The Informed Consent Claims are APA claims. Accordingly, judicial review of Defendant agencies' actions will be based largely (if not exclusively) on a single administrative record, *i.e.*, the record supporting Secretary Austin's issuance of the DOD Mandate.[11] The central issues—whether an unlicensed EUA vaccine may be mandated or if an EUA-labeled vaccine may be treated as interchangeable with an FDA-licensed vaccine—are arguably purely legal issues that will turn on questions of statutory interpretation that will not vary based on the Plaintiffs' individual circumstances or Defendants' implementation of the DOD Mandate. Accordingly, the Informed Consent Claims can and should be resolved in a single trial or a single summary judgment motion.

The Religious Liberty Claims will be largely (if not exclusively) based on the same documentary evidence and witness testimony because the cross-

[11] While each Armed Service has a separate administrative record for implementation of the DOD Mandate, there is no indication that there is any material difference between the individual services' implementation of the mandate that bears on the resolution of Plaintiffs' claims or the lawfulness of the underlying directive that originated from Secretary Austin.

service commonality of the policies and implementation of the religious exemption process outweigh the differences among the services. In any case, consideration of severance is premature until Defendants have produced all of the relevant administrative records and Plaintiffs have had the opportunity to pursue discovery of documentary evidence and witness testimony to substantiate their allegations of a common DOD-wide policy, directed by Secretary Austin, to systematically deny religious accommodations.

The other factors also weigh against severance of Plaintiffs. Apart from issues related to ripeness and standing, Defendants will assert the same defenses without regard to this Court's decision on severance. The equitable factors—avoiding prejudice and delay and fundamental fairness—also weigh against severance of Plaintiffs. These factors will be addressed in greater detail below in the discussion of service-wide vs. individual severance.

C. Service-Wide Severance

If the Court in its discretion determines that severance is appropriate, then it should do so on a service-wide basis. Plaintiffs' arguments demonstrating that their Informed Consent and Religious Liberty Claims each satisfy the transaction and commonality requirements apply *a fortiori* with respect to the individual services. Defendants' admission that the religious accommodation written procedures have slight difference "across the Services," ECF 31 at 6, support this approach. Further, four of the five district court

decisions granting injunctive relief for RFRA claims have done so, at least in part, based on the specific policies adopted by the Navy in *Navy SEALs 1-26*, and the Air Force in multiple cases.[12] Plaintiffs would note that each of these cases addressed Plaintiff(s) from a single service, and that the fifth case and only one from this District, *Navy SEAL 1*, did not sever Plaintiffs by their branch of service. *See generally Navy SEAL 1*, 2022 WL 534459.

Judicial economy and the public interest more generally would also be better served with severance based on the branch of the Armed Services, rather than individual severance. Individual severance risks, if not guarantees, many different conclusions on the issues of law presented in this matter. Such a result would be a disservice to the public. *See Def. Distributed v. Bruck*, 30 F.4th 414, 2022 WL 984870 *9 (5th Cir. 2022) ("the public interest in achieving a single court's ruling on Plaintiffs' First Amendment claims cannot be overstated").

D. The Court Should Not Sever All Parties.

The severance of all Plaintiffs, each to have their own respective case, is not appropriate because it would violate the "policy underlying Rule 20, which is to promote trial convenience, expedite the final determination of disputes,

[12] *See generally Air Force Officer*, 2022 WL 468799; *Poffenbarger v. Kendall*, No. 3:22-cv-1, 2022 WL 594810 (S.D. Oh. Feb. 28, 2022) ("*Poffenbarger*"); *Doster v. Kendall*, --- F.Supp.3d ---, 2022 WL 982299 (S.D. Ohio Mar. 31, 2022) ("*Doster*")

and prevent multiple lawsuits." *Tenet*, 216 F.R.D. at 143. Moreover, if this Court were to require individual severance it would contravene the cardinal rule of the Federal Rules of Civil Procedure, which requires these rules to be construed, administered and employed by the Court and the Parties "to secure the just, speedy, and inexpensive determination of every action and proceeding." FRCP 1. They would increase expense such that Plaintiffs and thousands of others could be deprived of access to federal courts, or delay access such that justice would be denied. Further, each of the factors identified in *Walters* and *Malibu Media* weigh against individual severance, in particular the equitable factors of avoiding prejudice and delay and fundamental fairness.

Perhaps the strongest factor weighing against individual severance is fundamental fairness to the Plaintiffs followed closely by the risk of prejudice and delay to Plaintiffs. Plaintiffs' Religious Liberty Claims are meritorious and they are likely to succeed on the merits, as evidenced by the decisions of five separate district courts granting preliminary injunctions for essentially identical claims (including a class-wide injunction for Navy personnel), based on identical conduct by Defendants DOD, Air Force, Marine Corps and Navy as alleged by Plaintiffs.

To put it simply, Defendants know that their policies cannot withstand judicial review on the merits. But Defendants also know that service members like Plaintiffs facing expulsion from the military do not have the resources to

challenge these actions in courts, and instead must rely on the limited number of attorneys with public interest organizations providing representation on a *pro bono* basis like Defending the Republic, Liberty Counsel (*Navy SEAL 1*), or First Liberty (*Navy SEALs 1-26*), who cannot pursue more than a handful of cases.[13] Defendants, rather than addressing the merits, would rather pursue a battle of attrition by splitting each Plaintiff into a separate case, because that is a battle that they can win with their effectively unlimited resources and manpower. If individual severance is granted here, and used as a precedent to sever other challenges around the country, it will likely deny Plaintiffs and thousands of others access to the courts.

[13] Defending the Republic and similar organizations are inundated with requests for assistance from thousands of service members seeking representation for clearly meritorious claims, most of which they must turn away. By contrast, the other organizations that traditional seek to defend constitutional rights and have the expertise and resources to assist such constitutional challenges in a meaningful way, in particular, national law firms and national civil liberties organizations, appear to have chosen not to. These same organizations have been more than willing to represent and protect the constitutional rights of terrorists and Guantanamo Bay detainees who seek to—and frequently succeeded in—killing U.S. soldiers and citizens, and they received accolades for doing so and at least one of those lawyers doing so was recently confirmed to the Supreme Court. Yet when it comes to defending the constitutional rights of our military service members who make our freedoms possible, these attorneys and organizations are nowhere to be found. U.S. service members do not have a union to defend their rights, the private bar and non-government organizations are indifferent at best, and the U.S. government that they have loyally served wants to expel and punish them using a facially unconstitutional process, while trying to bar their access to the only remaining avenue of relief available. Fundamental fairness demands that this Court reject Defendants' request for individual severance.

Individual severance will deny Plaintiffs of their day in court both as a practical matter, and potentially as a matter of law. In the Eleventh Circuit, challenges to generally applicable military regulations or policies are justiciable, while challenges to individual personnel actions are not. *See Speigner v. Alexander*, 248 F.3d 1292, 1296-1298 (11th Cir. 2001). Plaintiffs challenge a generally applicable military regulation, *see* ECF 13 at 6, but individual severance plays into Defendants' strategy to mischaracterize their claims as individual grievances or personnel actions, which would deprive the federal courts of jurisdiction to hear Plaintiffs' claims.

This is a case where justice delayed will likely result in justice denied. Plaintiffs are in various stages of the discharge and disciplinary process and face imminent and irreparable harm. Individual severance will necessarily result in additional delay that will effectively deny them any chance of injunctive relief, and likely any ability to challenge the Defendants' unlawful orders and unconstitutional policies on the merits. Plaintiffs also remind the Court that the harm they face for living in accordance with their religious beliefs is ongoing: "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673 (1976) (plurality opinion). Severance of each Plaintiff would only cause the final determination of these disputes to be

delayed, thus burdening Plaintiffs' interest in pursuing their time-sensitive claims and prolonging the injuries Plaintiffs currently experience.

In addition, individual severance would not serve judicial economy. Not only would it risk contrary rulings by different courts on the same policy, but it would require a number of separate trials on the same claims and facts and law, relying on the same evidence and many of the same witnesses. "Judicial economy would not be facilitated by holding separate trials on Plaintiffs' related claims that they will attempt to prove using overlapping witnesses and documentary evidence." *Brown* 2020 WL 2309869, at *2; *see also Sparks Construction, Inc. v Hartzell Hardwoods, Inc.*, 2015 WL 7075964, at *5 (E.D. Mo. Nov. 13, 2015) (judicial economy would not be served where "separate trials would be duplicative of time and costs, not to mention duplicative of the evidence presented"). For these same reasons, Defendants would not be burdened by service-wide severance, nor would they assert any different defenses. Individual severance would, however, impose a crushing burden on each Plaintiff that might foreclose their access to court.

II. VENUE IS PROPER FOR ALL PLAINTIFFS.

Defendants allege Plaintiffs "have improperly joined their claims collectively in this proceeding when they cannot demonstrate that their individual claims belong before this Court." ECF 31 at 18. For the most part, they make this argument by citing to those Plaintiffs who reside in this district

but not in this division, such as Freincle and Nykun (Hillsborough County) and Harwood (Volusia County). *Id*. To the extent that Defendants assert that Plaintiffs do not satisfy the requirement for "divisional venue," Plaintiffs would remind Defendants that Congress repealed divisional venue as a statutory requirement in 1988. *See, e.g.,* 14D Charles A. Wright, *et al.*, *Federal Practice and Procedure* § 3809 (4th ed. 2019) (discussing repeal of divisional venue requirement in 28 U.S.C. § 1393).

"A civil action may be brought in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C.A. § 1391(b)(2). As to which division a case must be filed, and where a court is to transfer a case, Local Rule 1.04(b) provides the answer:

> A party must begin an action in the division to which the action is most directly connected or in which the action is most conveniently advanced. The judge must transfer the action to the division most consistent with the purpose of this rule.

Similar guidance is provided by 28 U.S.C. § 1404(a), which states "a district court may transfer any civil action to any other district or division where it might have been brought."

Many of the same factors Plaintiffs present in their severance argument are applicable to their venue analysis, including judicial economy, commonality of facts, the burden of separate trials, and the need for consistent rulings. These factors would be relevant to a court considering where "the

action is most conveniently advanced" under Local Rule 1.04(b), and they support the conclusion that this case should remain in this Division. *See Hirshberg v. Lyman Products Corp.*, No. 2:20-CV-593-JLB-MRM (M.D. Fla. Sept. 8, 2020) (transferring venue pursuant to Local Rule 1.04(b) where transfer "will avoid duplication in the prosecution and resolution of this case"); *see also ON Semiconductor Corporation v. Micro Processing Technology, Inc.*, No. 8-17-CV-322-T-33JSS (M.D. Fla. Feb. 9, 2017) (explaining that case was transferred so that the litigation "may be resolved together in a logical order and efficient manner") (citation omitted).

In the event that this Court orders severance on a service-wide basis, Plaintiffs note that filing in this district is appropriate for Air Force, Coast Guard, and Navy Plaintiffs because at least one Plaintiff from each service resides or is domiciled in this District. For the Air Force, Plaintiff Singletary is domiciled in Nassau County. For the Coast Guard, Plaintiffs Mathis and Poehler are stationed or domiciled in Duval County. For the Navy, Plaintiffs Bongiovanni, Kins, and Macie are stationed and/or domiciled in Duval County, while Plaintiff Montoya is domiciled in Nassau County.

III. CONCLUSION

For the reasons discussed above, this Court should find that all Plaintiffs and claims are properly joined, that no Plaintiff should be severed (or in the

alternative, that any severance should be on a service-wide, rather than an individual, basis), and that venue is proper for all Plaintiffs.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have on this day e-filed the foregoing Plaintiffs' Reply Brief using the CM/ECF system.

Dated: April 22, 2022

Respectfully Submitted,

/s/ Brandon Johnson
Brandon Johnson