

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ISRAEL ALVARDO, et al.,

Plaintiffs,

v.

**LLOYD AUSTIN, III, in his official capacity as
Secretary of Defense, et al.,**

Defendants.

Case No. 1:22-cv-00876-AJT-JFA

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
JOINDER**

Pursuant to Rule 20(a) of the Federal Rules of Civil Procedure, Plaintiffs move to join the following military chaplains as Plaintiffs in this proceeding: U.S. Navy Lieutenant Commander ("LCDR") Brenton C. Asbury, U.S. Army Captain Jordan Ballard, U.S. Army Captain Chad Booth, U.S. Army Captain Jeremiah Botello, U.S. Army Captain Jordan Dersch, U.S. Air Force Major Clayton Diltz, U.S. Army Lieutenant Colonel Michael Hart, U.S. Air Force Major William Howarth, U.S. Army Captain Jacob Lawrence, U.S. Air Force Major Lance Schrader, and U.S. Army Lieutenant Colonel Jonathan Zagdanski (collectively, "Prospective Plaintiffs"). Each of the Prospective Plaintiffs asserts a right to relief arising out of the same transaction, occurrence or series of occurrences as all other Plaintiffs, and questions of law and fact common to all Plaintiffs will arise in this action as discussed herein.

I. LEGAL STANDARD FOR JOINDER

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” (or “common question”) 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.” *Tinsley v. Streich*, 143 F.Supp.3d 450, 459 (W.D. Va. 2015) (quoting 7 Charles Alan Wright, *et al.*, FED. PROC. & PROC., § 1653 (3 ed. 2001)); *see also Saval v. BL Ltd.*, 710 F.2d 1027, 1031 (4th Cir. 1983). The transaction requirement is met where plaintiffs “allege[] a pattern of discriminatory and retaliatory conduct” by government agencies. *Brown v. Belt*, 2018 WL 1582469, at *1 (W.D. Va. Mar. 30, 2018) (“*Brown*”).

This is a “flexible test that allows for entertaining the broadest possible scope of action consistent with fairness to the parties,” which exists if “(1) the claims rest on the same set of facts, or (2) the facts on which one claim rests activate additional legal rights supporting the other claim.” 25 FED. PROC., L. ED. § 59:169. As noted above, the claims arise out of the DOD Mandate and the Army’s, Air Force’s and Navy’s implementation and application to the Joined Plaintiffs. The commonality requirement is met where plaintiffs allege a plan or policy to discriminate against them or similarly situated class members. *See, e.g., Coffin v. South Carolina Dept. of Social Servs.*, 562 F.Supp. 579, 592 (D.S.C. 1983) (“*Coffin*”). Plaintiffs’ Complaint shows that is the case here.

Claims arising from a common, discriminatory “pattern and practice” by the same corporate or governmental decision maker “satisfy both the ‘transaction’ and ‘common question’ requisites of Rule 20(a).” *King v. Ralston Purina Co.*, 97 F.R.D. 477, 480 (W.D.N.C. 1983) (“*Ralston Purina*”). Both Rule 20(a) requirements are also met where there is a “uniform policy” on discharging employees implemented through the “coordinated efforts” of corporate leadership. *Duke v. Uniroyal Inc.*, 928 F.2d 1413, 1420-21 (4th Cir. 1991) (“*Duke*”). That is also the case here,

where a uniform policy on discharging is an integral part of the challenged COVID Vaccine Mandate issued by the Sec. of Defense, Mr. Austin.

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 (1966). Accordingly, “the transaction and common questions requirements ... are to be liberally construed in the interest of convenience and judicial economy,” *Jonas v. Conrath*, 149 F.R.D. 520, 523 (S.D. W. Va. 1993) (*quoting Ralson Purina*, 97 F.R.D. at 479-80), and “in a manner that will ‘secure the just, speed, and inexpensive determination’ of this action.” *Jonas*, 149 F.R.D. at 523 (*quoting Fed.R.Civ.P.* 1).

II. THE PROSPECTIVE PLAINTIFFS

Each new Plaintiffs’ basic information as to residence and duty status, information on submission and/or denial of religious accommodation requests (“RARs”) is provided below. The new Plaintiffs’ declarations providing specific allegations of violations of their rights and other injuries and claims are provided in Exhibits A through K corresponding with the Plaintiff’s paragraph number below. Exhibit L identifies each new Plaintiff’s specific injuries as listed in the Complaint by reference to the paragraph in each Plaintiff’s declaration.

A. U.S. Navy LCDR Brenton C. Asbury

Plaintiff Chaplain Brenton C. Asbury is a LCDR in the U.S. Navy with 16 years of active service including his time in the U.S. Air Force (1989-1993) as an enlisted man. He is currently stationed in the Navy District, Washington, DC, at Joint Base Bowling Air Force Base and is a resident of Crescent City, Florida. He submitted his request for a religious accommodation

(“RAR”) October 7, 2021 which was denied on November 29, 2021, the same day he was diagnosed with COVID-19. He submitted his appeal for his RAR denial December 15, 2021, which is still pending. He submitted an addendum/amendment to that appeal on July 25, 2022. It is significant to note he and his wife of a special needs child living with them and the threatened discharge and its loss of benefits would cause significant hardship on he and his family.

B. U.S. Army Captain Jordan Ballard

Plaintiff Chaplain Jordan Ballard is a Captain in the U.S. Army with almost 1 year of service. He is domiciled and resides in Coopers Cove, Texas. He is currently stationed at Fort Hood, Texas, where he is assigned to the 4th Battalion, 5th Air Defense Artillery Regiment. Chaplain Ballard submitted a request for a medical exemption at Fort Jackson on October 5, 2021, because he had Covid in mid- March 2021 and a serologic test on September 3, 2021 showed he had antibodies against the COVID-19 spike protein. His medical exemption was denied on October 19, 2021; he submitted an appeal on October 20, 2021 which was denied December 1, 2021.

Chaplain Ballard submitted his COVID Religious Accommodation Requests (“RAR”) October 20, 2021, requesting he be excused from the vaccine mandate based on sincerely held religious beliefs. His RAR was denied on February 23, 2022 and he received a copy on March 16, 2022. He appealed the denial of his RAR on March 23, 2022 and that request is still pending approval or denial. On October 12, 2021, Chaplain Ballard was ordered to take a FDA approved COVID-19 vaccine. Chaplain Ballard inquired and established that there was no FDA approved vaccine on Fort Hood and the only FDA approved Covid-19 vaccine would not be available until 2023. He cannot deploy with his unit, he cannot attend his annual capital endorser conference, and is threatened with a discharge characterization that will effectively destroy his ability to pursue ministry, deny him veterans’ benefits and cause grave hardship for his wife and five children.

C. U.S. Army Captain Chad Booth

Plaintiff Chaplain Chad Booth is a Captain in the U.S. Army with nearly 15 years of service. He is domiciled in Kannapolis, North Carolina, and currently stationed at Joint Base Langley Eustis, Hampton City County, Virginia. Captain Booth's initial religious accommodation request was denied on May 12, 2022. He submitted his RAR appeal on May 26, 2022, which is still pending. While his appeal was still pending, he was informed he will likely receive a general discharge for misconduct, which will likely prevent him from obtaining future employment as a chaplain, pastor and/or other ministry related jobs. This discharge will deny him many, if not all, veteran benefits. Captain Booth had orders to PCS (Permanent Change of Station) to move to his next duty station in Fort Jackson, South Carolina for the Chaplain Captains Career Course, which started July 18, 2022. Despite his pending RAR appeal, he was not be permitted to move or attend—without an exception to policy (“ETP”) that he requested on March 31, 2022, and is still pending—nor can he and his family stay in their current residence or obtain other Army housing. This has resulted in the extreme hardship of indefinite family separation unrelated to an overseas deployment or mission requirements; he has had to move his family to North Carolina, while he remains in limbo in in Virginia until his ETP and RAR appeal are resolved.

D. U.S. Army CPT Jeremiah Botello

Plaintiff Chaplain Jeremiah Botello is a Captain in the U.S. Army with over 15 years of service, initially in the Regular Army and Special Forces, and then as a chaplain since 2020. He is domiciled in Phoenix, Arizona, and he is assigned to the Arizona Army National Guard in Glendale, Arizona. Captain Botello submitted his initial RAR on October 27, 2021, which is still pending more after nearly 10 months, despite DOD regulations setting forth a 90-day deadline for review. He has also filed official complaints with the DOD, the Department of the Army, and the Arizona National Guard for religious discrimination and reprisals.. While his RAR has been pending, Captain Botello has been informed that, due to his religious beliefs, he is not fit to serve in the

Arizona National Guard and verbally threatened with separation from the Army, denial of promotions, a General Letter of Reprimand, and with negative career-ending evaluations. In addition, Captain Botello was prohibited from conducting RAR interviews or participating in RAR reviews; removed from his position and been denied assignments; has been subject to travel restrictions; and denied pay and drill time. Captain Botello also requested authorization to take a vaccine with no ties to aborted fetal cells; his request was not only denied, but he was further informed that the Army would deny medical coverage for any adverse effects from other vaccines.

E. U.S. Army Captain Jordan Dersch

Plaintiff Chaplain Jordan Dersch is a Captain in the U.S. Army with seven years of service. He is domiciled in Prattville, Alabama, and he is stationed and resides in Monterrey, California. Captain Dersch's initial RAR was denied on March 11, 2022. He submitted his RAR appeal on March 21, 2022, which is still pending. His unit leader informed him that all RARs would be denied and that none would be approved. While his RAR and/or appeal have been pending, he has been denied permission for travel to attend Army schools and training; restricted from new assignments; been subjected to a bizarre and outrageous mandatory training session on the "7 Tenants of Satanism" and child sacrifice; and had his command initiate a full-fledged investigation of himself and a service member he counseled who declined vaccination.

F. U.S. Air Force Major Clayton Diltz

Plaintiff Chaplain Clayton Diltz is a Major in the U.S. Air Force with over 18 years of service. He is domiciled in Visalia, California, and he is assigned as a chaplain to a U.S. Air Force National Guard ("ANG") unit in Fresno, California, where he also works as the Chaplain for the California Department of Veterans Affairs in a Veterans Home for aged and disabled veterans. Major Diltz's initial RAR was denied on July 7, 2022, and he submitted his RAR appeal on July 17, 2022, which is still pending; by contrast, his religious exemption for the California Department

of Veterans Affairs was approved. Major Diltz has natural immunity from a previous documented infection in July 2021, and he continued to test positive for antibodies as recently as July 2022. In stark contrast to the uniform hostility to religion, coercion, and denials of RARs by U.S. Air Force and California State ANG leadership, the leadership of his wing has supported and recommended approval of service members' RARs and permitted Major Diltz to participate in the RAR interview and review process.

G. U.S. Army Lieutenant Colonel Michael Hart

Plaintiff Chaplain Michael Hart is a Lieutenant Colonel in the U.S. Army with just under 20 years of service. Lieutenant Colonel Hart is domiciled in Killen, Texas, and he is stationed in Fort Hood, Texas. Lieutenant Colonel Hart submitted his initial RAR on September 13, 2021, which is still pending after eleven months. He has been informed that once his RAR is denied, he will be coded for separation regardless of the outcome of his appeal. Lieutenant Colonel Hart has natural immunity from a previous documented infection in May 2022. While his RAR has been pending, Lieutenant Colonel Hart has been barred from official travel to attend trainings or perform other duties; has been effectively demoted from Garrison Chaplain to Deputy Garrison Chaplain, a retaliatory, negative and prejudicial employment action; and he has been barred from PCS to his next duty station in Alaska (where he served prior to his current assignment in Texas), which has resulted in severe hardship due to family separation; his family is in Alaska and had expected him to join them this Summer as was previously planned and coordinated.

H. U.S. Air Force Major William Howarth

Plaintiff Chaplain William Howarth is a Major in the U.S. Air Force with over 12 years of service. He is domiciled in Boise, Idaho, where he also serves as an Idaho ANG Chaplain. Major Howarth submitted his RAR on October 28, 2021, but as of the date of this filing, his RAR package has not been submitted by his wing up the chain of command for review; despite the lack of any

higher-level review required by DOD and Air Force regulations, he has been informed that his RAR has been denied. The DoD Mandate has been an extreme hardship for his family, all of whom serve or sought to serve in the Air Force: his wife resigned her commission as a public health officer rather than submit an RAR because the National Guard Bureau Surgeon General regularly informed public health officers that no RARs would be granted; his son in the Active Guard Reserve was denied the opportunity to submit an RAR and is now being discharged; and his daughter who had recently enlisted was not allowed to submit an RAR or attend basic training, and she is now awaiting discharge.

I. U.S. Army Captain Jacob Lawrence

Plaintiff Chaplain Jacob Lawrence is a Captain in the U.S. Army with over 18 years of service. He is domiciled in Washougal, Washington, and he is stationed at Fort Shafter, Hawaii with the 8th Theater Sustainment Command. Captain Lawrence submitted his RAR in August 2021, which is still pending nearly one year later. He has been informed by his command that his request will not be approved; that “none of these [RARs] are being approved; that his religious objections are based on “misinformation”; and that his submission of an RAR is a “serious discriminator” that will prevent any hope for promotion, despite stellar evaluations. Captain Lawrence’s unit manages Army Logistical Support Vessels with crews all over the world and his position requires extensive travel. As a result of his submission of an RAR, he is prohibited from traveling, having had to cancel at least five trips to date, which prohibits him from performing his duties and supporting Army units and personnel for whom he is responsible.

J. U.S. Air Force Major Lance Schrader

Plaintiff Chaplain Lance Schrader is a Major in the U.S. Air Force with 14 years of service in the U.S. Air Force and the Arizona ANG. He is domiciled in Phoenix, Arizona, and he is stationed at the Air Force Chaplain Corps College in Montgomery, Alabama. Major Schrader’s initial

RAR was denied on November 1, 2021, and his RAR appeal was denied on December 1, 2022. Major Schrader has natural immunity from a previous documented infection in January 2022.

Major Shrader submitted a FOIA request to obtain records related to his RAR denial, and he filed a complaint with the Military Equal Opportunity office in June 2022, which was dismissed based on the determination by Lieutenant General James Hecker that Major Schrader's religious beliefs conflict with his duties as an officer. The FOIA documents included a fraudulent power-point "template" used to deny his request that, among other things, listed two nonexistent commanders as having disapproved his request. The denial letter also incorrectly described his current position as an instructor, and listed duties that he does not perform.

Major Schrader's command routinely singled him and other objectors out for public ridicule and discriminatory treatment; directed him and other chaplains to argue against service members' religious objections, to persuade them that "moral" objections were not "religious" objections, and, contrary to law, that an individual's religious objections are not valid or sincere if they differ from those of religious leaders in that faith group; and helped to weaponize the Chaplain Corps against its own core function of supporting service members' free exercise of religion. Due to his submission of an RAR, he has been informed by his command that his religious beliefs are not compatible with service as an Air Force Chaplain and that he should resign his commission. Major Schrader is the Air Force whistleblower referenced in the Complaint with respect to the October 2021 CORONA Conference where Secretary of the Air Force gave the directive not to grant any RARs. *See* Compl., ¶¶ 100-101.

K. U.S. Army Lieutenant Colonel Jonathan Zagdanski

Plaintiff Chaplain Jonathan Zagdanski is a Lieutenant Colonel in the U.S. Army with 25 years of service, including nearly 14 years as an Army Ranger before joining the Army Chaplaincy in 2010. He is domiciled in Israel, and his duty station is in Staten Island, New York. Lieutenant

Colonel Zagdanski submitted his initial RAR on February 1, 2022, which is still pending. As a result of submitting his RAR, he was removed from command, has been prevented from transferring or receiving a new assignment, and has been effectively inactive with no role in his organization for the six months that his RAR has been pending.

III. THE PROSPECTIVE PLAINTIFFS MEET THE STANDARD FOR JOINDER.

Each of the Prospective Plaintiffs easily meet or exceed the transaction and commonality requirements for joinder under FRCP Rule 20(a). Joinder of the Prospective Plaintiffs is also in the interest of convenience, judicial economy, and other purposes underlying the Federal Rules.

Prospective Plaintiffs' each meet the transaction requirement because they each arise from the same transaction, or series of transactions, as Plaintiffs. Specifically, each Prospective Plaintiffs' claims arise from: (1) Secretary Austin's August 24, 2021 COVID-19 vaccine mandate ("DoD Mandate"); (2) the DoD and Armed Services policy in response to and in support of Sec. Austin's COVID Vaccine Mandate by uniformly refusing to grant any RARs ("No Accommodation Policy" or "Categorical RA Ban") in violation of the Religious Freedom Restoration Act ("RFRA"); the First Amendment's Free Exercise and Establishment Clauses; DoD Instruction 1300.17, *see* ECF 1-4, and the Services' implementing regulation; and § 533's protections; (3) Defendant Department of Health and Human Services ("HHS") and Centers for Disease Control and Prevention ("CDC") September 1, 2021 redefinition of "vaccine" and "vaccination" ("HHS/CDC Vaccine Redefinition"); (4) the DoD and Armed Services elimination of entire categories of medical exemption, in particular for those with previous documented infections (or natural immunity) ("Categorical ME Ban"); (5) DoD's and the Armed Services' failure to implement § 533 and their systematic violations of chaplains' rights thereunder; (6) DoD's and Armed Services' systematic violations of religious liberties, campaigns of retaliation and intimidation against chaplains and people of faith, their message of hostility to religion and conscience

as formed by religious belief, and establishment of a religious test in violation of the First Amendment's Establishment and Free Speech Clauses and the No Religious Test Clause; and (7) the other violations of federal statutes and agency regulations identified in the Complaint.

Each of these actions are "logically related" because: (1) all the actions by the DoD and the Armed Services were directed from the top-down by a single government decision-maker, Secretary Austin. His purpose, in whole or in part, was and remains depriving service members of their religious liberties and to purge serious and committed religious believers who follow their conscience from public service; and (2) for the purpose of enabling and implementing the Biden Administration's unlawful federal vaccine mandates in excess of Defendant agencies' authority and in violation of their own regulations.

The Prospective Plaintiffs' claims also meet the commonality requirement. Each Prospective Plaintiff has submitted an RAR, four of the nine have had their initial RAR denied, and Major Schrader has had his appeal denied. Several others have been verbally informed that their RARs will be denied and/or that all RARs will be denied, and/or have suffered targeted punishment for submitting an RAR. *See* Ex. 2. Further, each of these denials has been made pursuant the DoD's same pre-determined negative 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 I v. Austin*, --- F.Supp.3d ---, 2022 WL 534459, at *18 (M.D. Fla. Feb. 18, 2022) ("*Navy SEAL I*"), *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 31 at 32-37 & cases cited therein. Further, each current Plaintiff and each of the Prospective Plaintiffs seeks the same declaratory and injunctive relief with respect to the foregoing common issues of law and fact.

Moreover, each of the Prospective Plaintiffs has suffered or is threatened with serious adverse employment and/or disciplinary action as a result of submitting an RAR and/or expressing religious objections to the vaccine while their RAR or RAR was pending in violation of RFRA, § 533, and one or more provisions of the First Amendment. Moreover, each Prospective Plaintiff has been subjected to a systematic message of government hostility to their religious beliefs and stigmatization. Exhibit 2 hereto is a table summarizing these violations and other restrictions or retaliations faced by Prospective Plaintiffs. Finally, each faces discharge when their RAR and/or RAR appeal is inevitably denied.

Like the current Plaintiffs, the Prospective Plaintiffs have alleged a common pattern or practice of discriminatory or retaliatory conduct by governmental actors to deprive them of their religious liberties protected by statute or the First Amendment. These allegations meet the transaction requirement under *Brown*, the commonality requirement under *Coffin*, and both requirements under cases like *Ralston Purina* and *Duke*. As explained above, each of these actions are “logically related” to the others as part common policy or pattern or practice of unlawful discriminatory or retaliatory conduct instituted by a single governmental decision-maker and was adopted to enable and implement the Biden Administration’s unlawful federal vaccine mandates. The common policy therefore raises common issues of law and fact as applied to each of the Plaintiffs and

Prospective Plaintiffs, each of whom has been subjected to a sham RAR process and suffered similar violations and injuries due to Defendants' religious discrimination and hostility to religion.¹

While Defendants have wisely not made public the order or directives not to grant any religious accommodations,² 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). This is confirmed by the publicly available statistics on grants and denials, *see, e.g.*, Compl., ¶ 109 & Tables 1 & 2; ECF 41 at 10 & Table, and the form denial letters.

Judicial economy and convenience of the Parties are served by joinder of the Prospective Plaintiffs because proof of their claims will be based on the same documentary proof and witness testimony. The Religious Liberty Claims will be largely (if not exclusively) based on the same

¹ 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 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.

² Plaintiffs have alleged that such a policy exists and that the Service Secretaries or Chaplain Corps leadership have directed that no RARs may be granted. *See* Compl., ¶¶ 97-101 (Air Force Secretary and Chief of Army Chaplain Corps); *Navy SEALs 1-26*, 2022 WL 34443 (detailing 50-step process used by Navy to deny all RARs). Plaintiffs and Prospective Plaintiffs intend to seek documentary evidence and witness testimony regarding this policy through the discovery process regarding the Defendants' common policy not to grant any religious accommodations.

documentary evidence and witness testimony because the cross-service commonality of the policies and implementation of the religious exemption process outweigh the differences among the services or individual Plaintiffs. Joinder will facilitate discovery of documentary evidence and witness testimony to substantiate their allegations of the common DOD-wide policies, directed by Secretary Austin, to systematically deny religious accommodation, discriminate against religion, send a message of overt hostility to religion, and establish a prohibited religious test. In fact, Plaintiffs' motion to transfer this case to this District—which Defendants did not oppose and Judge Jung granted—was largely based on precisely these concerns of convenience, judicial economy, and the availability of key documentary evidence and decisionmakers in this District. *See* ECF 46. Thus, the same factors that favored transfer also favor joinder of Prospective Plaintiffs to this case.

IV. CONCLUSION

In conclusion, and for these reasons, Plaintiffs respectfully request grant the relief requested herein and join the Prospective Plaintiffs to this proceeding.

Dated: August 15, 2022

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Pro Hac Vice Motion Pending

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Certificate of Conference

I hereby certify that on August 12, 2022, I conferred with counsel for Defendants regarding this filing and whether Defendants would oppose or not oppose this motion. Defendants' counsel stated that the Government has not yet taken a position and reserves the right to respond or oppose. It will file a notice with the Court if it decides not to oppose.

/s/ Arthur A. Schulcz, Sr.
Attorney for Plaintiffs

Certificate of Service

I hereby certify that on August 15, 2022, I electronically filed the foregoing memorandum with the Clerk of the Court by using the CM/ECF system, which will notify all attorneys of record of the filing.

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