



Written by [Veronika Kyrylenko](#) on March 28, 2022

## SCOTUS Rules Against Navy SEALs in Vax Mandate Case

The United States Supreme Court ruled Friday that the Navy can make its own decisions on whether to deploy sailors, including SEALs, who refuse to receive a Covid shot.

The Supreme Court's decision reverses the decisions of a district judge in Texas, where a case brought by 35 special warfare service members (26 of whom were SEALs) was [originally filed](#), and the [Fifth Circuit Court of Appeals](#).

Judge Reed O'Connor of the U.S. District Court for the Northern District of Texas issued a preliminary injunction in early January saying that the Navy must allow members of the elite special operations community to opt out of the vaccination mandate if they have religious objections. The injunction also prohibited commanders from making any changes to the SEALs' military assignments based on a refusal to be vaccinated.

In late February, the Fifth Circuit Court of Appeals denied an emergency stay of a preliminary injunction filed by the Department of Defense, arguing,

The Navy has not accommodated any religious request to abstain from any vaccination in seven years, and to date it has denied all religiously based claims for exemption from COVID-19.... But evidence ... suggests that the Navy has effectively stacked the deck against even those exemptions supported by Plaintiffs' immediate commanding officers and military chaplains.

Secretary of Defense Lloyd Austin, who ordered all troops to get vaccinated against Covid back in August 2021, had [urged](#) the nation's highest court to remedy what he claimed was "an extraordinary and unprecedented intrusion into core military affairs."

A sworn declaration in the case was filed by Vice Chief of Naval Operations Admiral William K. Lescher. According to [NPR](#), Lescher claimed "that the illness of even one member of a small SEAL team due to COVID-19 could compromise a mission." He added that it would be a dereliction of duty "to allow unvaccinated personnel into an environment in which they ... risk the lives of others."

Notably, the DOD did not seek to block the part of the federal judge's ruling that said service members cannot be disciplined or discharged as a result of refusing the Covid shot.

Still, the [SCOTUS listened](#), with three justices — Samuel Alito, Neil Gorsuch, and Clarence Thomas —



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dissenting.

Justice Brett Kavanaugh issued a concurring opinion in which he said, “Under Article II of the Constitution, the President of the United States, not any federal judge, is the Commander in Chief of the Armed Forces.” The justice concluded there was “no basis in this case for employing the judicial power in a manner that military commanders believe would impair the military of the United States as it defends the American people.”

Echoing the Biden administration’s narrative on the dangers associated with being unvaccinated, Kavanaugh also argued that “ordering unvaccinated personnel into an environment in which they endanger their lives, the lives of others, and compromise accomplishment of essential missions,” is, basically, a “dereliction of duty.”

In a dissenting opinion, Justices Alito and Gorsuch wrote that the court “does a great injustice to the 35 respondents” who “appear to have been treated shabbily by the Navy.”

The SCOTUS “essentially gives the Navy carte blanche to warehouse respondents for the duration of the appellate process, which may take years” by issuing a “partial stay” on the lower court’s order and by using the “language proposed by the government,” wrote the justices. They assumed that this decision would be “career-ending” for the plaintiffs.

To succeed, the administration must show that it can defeat the servicemen’s rights granted by the Religious Freedom Restoration Act (RFRA) and their free-exercise claims. Yet, “it cannot make that showing,” argued Alito and Gorsuch.

The justices pointed out that “all the evidence available at this stage suggests that the Navy gave no real consideration to respondents’ requests, and the Navy had no compelling need to proceed in that fashion.” They described how the Navy established a 50-step exemption procedure, and

Only at step 35 was someone in this chain [of reviewers] told to read the exemption requests, but it appears that this individual was not given an opportunity to recommend that a request be granted.... Instead, this person’s sole task was to record pertinent information on a spreadsheet and send the package on to the vice admiral.

The result of such a procedure was “not surprising,” said Alito and Gorsuch. “Although more than 4,000 exemption requests had been submitted by February 15, 2022, not a single one had been approved when the complaint in this case was filed.”

[Military.com](#) notes that the SCOTUS’s Friday decision will likely impact other legal challenges against the Defense Department over the Covid vaccine mandate, “including a potential class-action suit filed in Florida by 30 unnamed officers and service members seeking relief from the order.” In that case, the judge [ruled](#) in early March that the Navy could not remove one of the plaintiffs, a destroyer commander, for refusing the shot.

In mid-February, a federal judge in Georgia issued [similar hold](#) for an Air Force officer, arguing that the officer’s constitutional and statutory religious rights should be respected.

According to the Navy’s official [website](#), 4,462 active component and 3,265 Ready Reserve service members remained unvaccinated as of March 23.

So far, the service has granted a total of 13 permanent medical exemptions and 220 temporary medical



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exemptions, while also granting zero permanent religious exemptions and nine temporary religious exemptions.

The deadline for active-duty Navy service members to be fully vaccinated was November 28, 2021. Ready Reserve Navy service members were given until December 28, 2021.

The Navy has already booted 652 servicemen for refusing the Covid shot.

According to [USA Today](#), at least 98.5 percent of the Navy's active and reserve members have been immunized against Covid.





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