UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of November, two thousand twenty-six.

PRESENT:

STEVEN J. MENASHI,
MARIA ARAÚJO KAHN,
MATTHEW A. SCHWARTZ,
Circuit Judges.

Paul McCartney, Craig Collopy, Jean Pierre Sylvestre, Joseph Trancho, Christopher Eckert,

Plaintiffs-Appellants,

v. **25-2535**

City of New York, Eric Adams, David Chokshi,

Defendants-Appellees.

FOR PLAINTIFFS-APPELLANTS: CHAD J. LAVEGLIA, Law Office of Chad J. LaVeglia PLLC,

Hauppauge, NY

FOR DEFENDANTS-APPELLEES: SUSAN PAULSON, (Richard P. Dearing, Melanie T. West, *on the brief*) Assistant Corporation Counsel, *for* Muriel Goode-Trufant, Corporation Counsel of the City of New York

Appeal from a judgment and order of the United States District Court for the Eastern District of New York (Nina R. Morrison, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the September 23, 2025 judgment of the District Court is **AFFIRMED**.

Paul McCartney, Craig Collopy, Jean Pierre Sylvestre, Joseph Trancho, and Christopher Eckert ("Plaintiffs") appeal from the District Court's judgment dismissing their complaint against the City of New York, former Mayor Eric Adams, and former Commissioner of the New York City Department of Health and Mental Hygiene David Chokshi ("Defendants"), alleging, as relevant, that Defendants violated the Equal Protection Clause of the United States Constitution by enforcing a COVID-19 vaccine mandate against City employees and contractors, but not against others who allegedly posed the same risk of transmission. We assume the parties' familiarity with the underlying facts and procedural history, to which we refer only as necessary to explain our decision to affirm.

I. Standard of Review

We review an order granting a motion to dismiss *de novo*. *Kellogg v. Nichols*, 170 F.4th 20, 24 (2d Cir. 2026) (*per curiam*). "A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Hu v. City of New York*, 927 F.3d 81, 88 (2d Cir. 2019) (citation modified).

II. Analysis

On October 20, 2021, New York City issued an order requiring COVID-19 vaccination for all City employees and some City contractors ("October Order"). The Order explained that City employees "provide services to all New Yorkers that are critical to the health, safety, and well-being of City residents," and that "a system of vaccination for individuals providing City services and working in City offices will potentially save lives, protect public health, and promote public safety." App'x at 100. The City provided an administrative process through which employees could apply for reasonable medical and religious accommodations. City employees who failed to comply and did not request and receive a valid exemption were placed on leave without pay and eventually terminated or forced to retire. A little less than two months later, the City promulgated a similar mandate for private sector employees. Plaintiffs allege that then-Mayor Adams never enforced that mandate, and a few months later he issued an executive order

amending it to exempt professional athletes and performers.

The five Plaintiffs in this case served New York City in two of the New York City Police Department's most elite units: the Bomb Squad and the Emergency Service Unit ("ESU"). McCartney served in the NYPD for seventeen years and in the ESU for ten, winning multiple awards for distinguished service. Collopy served in the NYPD for twenty-seven years and rose to be the third-most senior member of the Bomb Squad. Sylvestre served in the NYPD for twenty years—in the ESU and then the Bomb Squad. Trancho served in the NYPD for twenty-seven years and in the Bomb Squad for eighteen. And Eckert served in the NYPD for twenty years and in the ESU for eight. Each Plaintiff dedicated his career to rendering heroic and indispensable service to the City. But Plaintiffs refused to take the COVID-19 vaccine when the City issued its October Order, and so the City terminated their employment or forced them to retire.

Plaintiffs then sued Defendants under 42 U.S.C. § 1983, alleging, as relevant here, that the mandate constituted illegal selective enforcement under our decision in *LeClair v. Saunders*, 627 F.2d 606 (2d Cir. 1980). Plaintiffs do *not* bring any free exercise or Title VII claims asserting that compliance with the vaccine mandate violated a religious belief.[1]

[1] We have entertained such claims in the past. *See, e.g.*, *Gardner-Alfred v. Fed. Rsrv. Bank of New York*, 143 F.4th 51, 63–67 (2d Cir. 2025) (vacating summary judgment on plaintiff's First Amendment, Title VII, and RFRA-based objection to a COVID-19 vaccine mandate because plaintiff established genuine dispute of fact as to whether she held sincere religious beliefs in conflict with the requirement); *New Yorkers for Religious Liberty, Inc. v. City of New York*, 125 F.4th 319, 334–36 (2d Cir. 2025) (*per curiam*) (vacating dismissal of First Amendment as-applied claims where plaintiffs plausibly alleged the government

Nor, on appeal, do Plaintiffs pursue the more prototypical sort of equal protection or substantive due process claim based on interference with a fundamental right. Plaintiffs do not appear to have availed themselves of the City's administrative process for requesting a reasonable medical or religious accommodation before bringing suit in the district court. And Plaintiffs do not press their Takings Clause claim on appeal. So the only issue before us is whether Plaintiffs have plausibly pleaded a so-called "*LeClair* claim."

A plaintiff can raise a *LeClair* claim challenging selective enforcement of a facially lawful state regulation by pleading that (1) he, as "compared with others similarly situated, was selectively treated," and that (2) "the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or religion, to punish or inhibit the exercise of constitutional rights, or by a malicious or bad faith intent to injure the person." *FSK Drug Corp. v. Perales*, 960 F.2d 6, 10 (2d Cir. 1992); *LeClair*, 627 F.2d at 609–10. To satisfy the first prong, a plaintiff must allege that he "was similarly situated in all material respects to the individuals with whom" the plaintiff seeks to compare himself. *Hu*, 927 F.3d at 96 (quoting *Graham v. Long Island R.R.*, 230 F.3d 34, 39 (2d Cir. 2000)). To satisfy the second prong, a plaintiff must allege that "the disparate treatment was *caused by* [some] impermissible motivation." *Id.* at 91 (quoting

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denied accommodations based on improperly judging the nature of the religious objections raised).

Bizzarro v. Miranda, 394 F.3d 82, 87 (2d Cir. 2005)).

The District Court correctly dismissed Plaintiffs' *LeClair* claim at the first prong because Plaintiffs fail to identify a comparator similarly situated to themselves in all material respects. Plaintiffs assert that City employees, as human beings capable of catching and transmitting the virus, "are similarly situated in all material respect[s] to every other unvaccinated human being living and working in New York City," App'x at 50, and that requiring City employees, but not private employees, athletes, or entertainers, to be vaccinated constitutes selective enforcement. That is wrong on at least two fronts.

First, Plaintiffs do not assert that the City selectively enforced its October Order against them as opposed to other City employees. Instead, they assert that the very existence and enforcement of the October Order constitutes selective enforcement because the City declined to enforce a *separate* mandate for private employees and expressly exempted performers and athletes from that separate mandate when all pose an identical public health risk. *LeClair* claims, which trace their heritage to "selective prosecution" and "singl[ing] out" individuals for poor treatment, typically require a plaintiff to plead the "selective[] [government] enforce[ment]" of a generally applicable law or regulation "only against" one person or a small, defined group. *LeClair*, 627 F.2d at 609 (citation modified); *see also, e.g.*, *FSK Drug Corp.*, 960 F.2d at 10. The thrust of Plaintiffs' complaint, by contrast, is that the City's passing and enforcing of an order

against thousands of people is *itself* selective enforcement because the order targets only City employees. In substance, this claim is not a challenge to selective enforcement of a regulation, but rather a facial challenge to that mandate as underinclusive. Expanding *LeClair* to include Plaintiffs' claim would blur as-applied, selective enforcement challenges with facial challenges to entire statutes or regulations, potentially allowing thousands of people subject to a regulation to challenge that regulation as underinclusive under the rubric of a selective enforcement claim. And Plaintiffs' legal theory would allow claims against the government whenever the government requires something of its employees that it does not of others, even if doing so of others would be equally rational. But the "government has significantly greater leeway in its dealings with citizen employees than it does when it brings its sovereign power to bear on citizens at large." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 599 (2008). And in any case, "equal protection does not require that all evils of the same genus be eradicated or none at all." *LeClair*, 627 F.2d at 608 (citing *Railway Exp. Agency, Inc. v. New York*, 336 U.S. 106, 110 (1949)); *see id.* ("Mere failure to prosecute other[s] [] is not a basis for a finding of denial of equal protection.").

Second, even if we accepted Plaintiffs' premise that city employees were similarly situated to the public at large in terms of vulnerability to disease, the claim would still fail because the differential treatment of city employees and the public was not based on "impermissible considerations," *FSK Drug Corp.*, 960 F.2d at 10, but on cognizable

differences between City employees and everyone else working and living in New York City. Specifically, City employees occupy a unique role in New York City's infrastructure. As the October Order explained, they "provide services to all New Yorkers that are critical to the health, safety, and well-being of City residents[.]" App'x at 100. The City surely has a heightened interest in ensuring the health and safety of its workers, given that unhealthy employees risk undermining the City's ability to operate, and the City enjoys greater authority in regulating their conduct. This is particularly true of Plaintiffs, who were members of the New York City Police Department's Bomb Squad Unit and Emergency Service Unit and provided essential emergency services to City residents. *See Hu*, 927 F.3d at 96 (plaintiffs pleaded a *LeClair* claim by alleging that the City enforced the same regulations differently against similarly situated individuals based on race).

CONCLUSION

We have considered Plaintiffs' remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM** the September 23, 2025 judgment of the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court