

No. 23-717

**In the Supreme Court of the United States**

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ISRAEL ALVARADO, *ET. AL.*,  
*Petitioners,*

v.

LLOYD AUSTIN, III, *ET. AL.*,  
*Respondents.*

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**APPENDIX TO PETITIONERS' APPLICATION FOR A WRIT OF  
INJUNCTION FOR INTERIM RELIEF**

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BRANDON JOHNSON  
DEFENDING THE REPUBLIC  
2911 Turtle Creek Blvd.  
Suite 300  
Dallas, Texas 75219  
(214) 707-1775  
bcj@defendingtherepublic.org

ARTHUR A. SCHULCZ, SR.  
*Counsel of Record*  
CHAPLAINS COUNSEL, PLLC  
21043 Honeycreeper Place  
Leesburg, Virginia 20175  
(703) 645-4010  
art@chaplainscounsel.com

J. ANDREW MEYER  
FINN LAW GROUP, P.A.  
8380 Bay Pines Blvd.  
St. Petersburg, Florida 33709  
(727) 709-7668  
ameyer@finnlawgroup.com

*Counsel for Petitioners*

**TABLE OF CONTENTS TO APPENDIX**

Class Action Complaint for Declaratory and Injunctive Relief ..... 1a-126a

Declaration of Lt Israel Alvarado ..... 127a-139a

Declaration of Ch Lt Col Steven Weyman Barfield ..... 140a-146a

Declaration of Ch 1LT Walter Domino Brobst ..... 147a-153a

Declaration of Justin Elisha Brown ..... 154a-164a

Declaration of Captain David Andrew Calger ..... 165a-167a

Declaration of CDR Mark D. Cox..... 168a-186a

Declaration of CDR John Jacob Ismach-Easman ..... 187a-195a

Declaration of Ch Maj Thomas E. Fussell Jr ..... 196a-204a

Declaration of LT Nathanael A. Gentilhomme ..... 205a-211a

Declaration of Ch (CPT) Doyle G. Harris ..... 212a-224a

Declaration of Ch CAPT Jeremiah Henderson..... 225a-230a

Declaration of Chaplain (CPT) Andrew Hirko ..... 231a-236a

Declaration of Ch Maj Krista Danielle Ingram ..... 237a-242a

Declaration of Ch Captain Ryan Peter Jackson..... 243a-252a

Declaration of Ch (COL) James B. Lee..... 253a-265a

Declaration of Ch (COL) Brad P. Lewis..... 266a-272a

Declaration of Captain Robert J Nelson ..... 273a-278a

Declaration of Major Rick Hyok Pak ..... 279a-283a

Declaration of Ch (MAJ) Randy Gene Pogue ..... 284a-289a

Declaration of Chaplain Captain Gerardo Rodriguez ..... 290a-293a

Declaration of CH (CPT) Parker Schnetz ..... 294a-302a

Declaration of Lieutenant Richard Shaffer ..... 303a-306a

Declaration of LT Jonathan C. Shour..... 307a-320a

Declaration of Major Jeremiah Douglas Snyder ..... 321a-332a

Declaration of CH (CPT) David H. Troyer..... 333a-340a

Declaration of CH (1LT) Seth J. Weaver ..... 341a-343a

Declaration of CH Captain Justin Ronald Wine .....	344a-348a
Declaration of CH (MAJ) Thomas John S. Withers .....	349a-353a
Declaration of CCPO Mathew Brandon Wronski.....	354a-358a
Declaration of Chaplain (MAJ) Jerry B. Young .....	359a-383a
DoD Instruction 1300.17 Religious Liberty in the Military Services .....	384a-402a
Declaration of Colonel Kevin J. Mahoney .....	403a-419a
Declaration of William Merz .....	420a-449a
Declaration of David J. Furness.....	450a-474a
Declaration of Chaplain Major Matthew J. Streett .....	475a-482a
U.S. Army COVID-19 Vaccination Data.....	483a
DAF COVID-19 Statistics - June 28, 2022 .....	484a-488a
United States Marine Corps Monthly COVID-19 Update .....	489a-490a
U.S. Navy COVID-19 Updates .....	491a-508a
Order Transferring Case .....	509a
Declaration of Chaplain Major Darrel Lance Schrader .....	510a-539a
Plaintiffs' Memorandum of Law in Support of Their Motion for a Preliminary Injunction .....	540a-585a
Secretary of Defense August 24, 2021 Memorandum .....	586a-587a
Army Regulation 40-562.....	588a-628a
Table - Plaintiffs' Injuries, Harms and § 533 Negative Personnel Actions .....	629a-630a
Table - Plaintiffs' First Amendment Injuries, Irreparable Harm.....	631a-633a
Declaration of Chaplain (RET) Steve Brown.....	634a-638a
Exhibit 10 - COVID-19 Mandatory Vaccination Implementation Guidance for DAF Service Members .....	639a-669a
Inspector General Info Memo June 2, 2022.....	670a-671a
Secretary of Defense - Memorandum for Under Secretary of Defense for Personnel and Readiness Sept 2 2022 .....	672a
News Article - The Navy Needs More Chaplains May 15, 2023.....	673a-675a

<i>Science</i> - Abortion Opponents Protest COVID-19 Vaccines' Use of Fetal Cells .....	676a-682a
News Article - The Complex Role and Diverse Array of Chaplains in the Military .....	683a-693a
Press Release - Secretary of Defense Austin Issues Guidance for Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, April 21, 2021 .....	694a-695a
Letter to the Honorable Mike D. Rogers from Under Secretary of Defense Feb 27 2023 .....	696a-699a
Letter to the Honorable Jim Banks from Under Secretary of Defense Feb 27 2023 .....	700a-703a
Secretary of Defense Feb 24 2023 Memorandum.....	704a-705a
Order of Dismissal - United States Court of Appeals for the Fourth Circuit.....	706a-707a
Declaration of Chaplain David Andrew Calger.....	708a-711a
Supplemental Declaration of CDR John J.I. Eastman .....	712a-713a
Supplemental Declaration of Chaplain MAJ Darrel Lance Schrader.....	714a-728a
Supplemental Declaration of CH (MAJ) Jerry Barton Young .....	729a-737a
Defendants-Appellees' Motion to Dismiss Appeal as Moot,USCA4 Appeal: 23-1419 Doc: 10-1 .....	738a-754a

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

ISRAEL ALVARADO, STEVEN )  
BARFIELD, WALTER BROBST, )  
JUSTIN BROWN, DAVID CALGER, )  
MARK COX, JACOB EASTMAN, )  
THOMAS FUSSELL, NATHANAEL )  
GENTILHOMME, DOYLE HARRIS, )  
JEREMIAH HENDERSON, ANDREW )  
HIRKO, KRISTA INGRAM, RYAN )  
JACKSON, JOSHUA LAYFIELD, )  
JAMES LEE, BRAD LEWIS, ROBERT )  
NELSON, RICK PAK, RANDY POGUE, )  
GERARDO RODRIGUEZ, PARKER )  
SCHNETZ, RICHARD SHAFFER, )  
JONATHAN SHOUR, JEREMIAH )  
SNYDER, DAVID TROYER, SETH )  
WEAVER, THOMAS WITHERS, )  
JUSTIN WINE, MATTHEW WRONSKI, )  
and JERRY YOUNG, )

Plaintiffs,

vs.

LLOYD AUSTIN, III, in his official )  
capacity as Secretary of Defense, U.S. )  
U.S. DEPARTMENT OF DEFENSE, )

FRANK KENDALL, in his official )  
capacity as Secretary of the Air )  
Force, DEPARTMENT OF THE AIR )  
FORCE, )

CARLOS DEL TORO, in his official )  
capacity as Secretary of the Navy, )  
DEPARTMENT OF THE NAVY, and )

CASE NO.

CLASS ACTION  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

CHRISTINE WORMUTH, in her )  
official capacity as Secretary of the )  
Army, DEPARTMENT OF THE ARMY, )  
) )  
XAVIER BECERRA, in his official )  
capacity as Secretary )  
U.S. DEPARTMENT OF HEALTH )  
AND HUMAN SERVICES, )  
) )  
JANET WOODCOCK, in her official )  
capacity as Acting Commissioner of )  
the U.S. FOOD AND DRUG )  
ADMINISTRATION, and )  
) )  
ROCHELLE WALENSKY, in her )  
official capacity as Director, )  
CENTERS FOR DISEASE CONTROL )  
AND PREVENTION, )

**Defendants.**

**INTRODUCTION**

“If even a chaplain cannot practice his or her faith in the military, who can?”

-- Chaplain Captain Ryan Jackson, US Air Force

“Without religious freedom, the chaplaincy could become irrelevant, our sacred US Constitution could lose its cornerstone, and our Army and nation could become ripe for attack. What makes America great is not our technology or vast resources, but our Constitution which has been dearly fought for, for the sake of our people and our freedoms.”

-- Chaplain Major Jerry Young, US Army

1. This Complaint initiates a class action by military chaplains, including chaplain candidates (“Military Chaplains”). Plaintiff Military Chaplains serve as chaplains in the Departments of the Army, Navy and Air

Force (collectively, the “Services”), whether on active-duty or in the Reserves or National Guard, and they represent many faiths. They challenge Department of Defense (“DoD”) Secretary Lloyd Austin, III’s (“the Secretary”) COVID-19 vaccination mandate (“Mandate”), as executed by the Services (together with DoD, the “Military Defendants”), and the Military Defendants’ policy of uniformly denying religious accommodations (“No Accommodation Directive”). The Mandate is enforced by threat of disciplinary action for refusing an order to take the COVID-19 vaccine followed by what for chaplains is a punitive discharge.

2. Plaintiffs allege that the Mandate and Military Defendants’ No Accommodation Directive is unconstitutional because these directives violate: (a) the express statutory rights allowing Military Chaplains to follow their conscience as formed by their faith; and (b) statutory protection for chaplains from retaliation and adverse personnel actions related to their decisions based on their conscience. Section 533 of the fiscal year (“FY”) FY 2013 National Defense Authorization Act (“NDAA”), Pub. L. 112-239, § 533, 126 Stat. 1632 (“2013 NDAA Amendments”), as amended by section 532 of the FY 2014 NDAA, Pub. L. 113-66, § 532, 127 Stat. 672 (“2014 NDAA Amendment,” and collectively “Section 533” or “§ 533”) states:

(a) Protection of rights of conscience.

(1) Accommodation. Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

(2) Disciplinary or administrative action. – Nothing in paragraph (1) precludes disciplinary or administrative action for conduct that is proscribed by chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) [10 U.S.C.A. § 801 et seq.], including actions and speech that threaten good order and discipline.

(b) Protection of chaplain decisions relating to conscience, moral principles, or religious beliefs.- No member of the Armed Forces may—

(1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or

(2) discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1).

3. Military Defendants' directives and policies also violate Plaintiffs' religious liberties protected by the First Amendment and the Religious Freedom Restoration Act ("RFRA"). 42 U.S.C. § 2000bb-1, *et seq.* Further, the Defendants' actions violate the Fifth Amendment Due Process Clause, the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*, and the Military Defendants' own rules and regulations and governing religious and medical exemptions.

### **Military Chaplains' Unique Constitutional Role & Protections**

4. Chaplains are “unique” military officers “involving simultaneous service as clergy or a ‘professional representative[]’ of a particular religious denomination and as a commissioned ... officer.” *In re England*, 375 F.3d. 1169, 1171 (D.C. Cir. 2004), *cert denied*, 543 U.S. 1152 (2005). This is necessary because the Constitution requires military religious leaders to meet the military’s Free Exercise needs. Plaintiff Military Chaplains as a class thus may raise unique statutory and constitutional religious liberty claims, in addition to the claims for systematic violations of service members’ RFRA and First Amendment rights that several courts have recently found Military Defendants likely committed.

5. *Katcoff v. Marsh*, 755 F.2d 233 (2d Cir. 1985), rejected an Establishment Clause claim that the Army Chaplain Corps was unconstitutional. *Katcoff* explained that the chaplaincy was Congress’ appropriate and necessary accommodation of competing Constitutional commands. *Katcoff*, 755 F.2d at 234-35, 237. Absent a chaplaincy, military service realities restricted soldiers’ ability to exercise their First Amendment Free Exercise rights, causing conflict with the Establishment Clause’s mandate that government neither hinder nor establish a religion. Accordingly, the Free Exercise Clause “obligates Congress, upon creating an Army” to establish the chaplaincy “to make religion available to soldiers who have been

moved by the Army to areas of the world where religion of their own denomination are not available to them.” *Id.* at 234; *see also id.* at 232 (“by removing them to areas where religious leaders of their persuasion and facilities were not available [the Army] could be accused of violating the Establishment Clause unless it provided them with a chaplaincy”). In other words, the Constitution mandates the Services provide chaplains to allow military personnel to freely exercise their own religion, ensuring that government does not violate the Establishment Clause and remains neutral, rather than hostile, to religion.

6. In recognition of the Services’ failure to acknowledge the unique Constitutional role of Military Chaplains and the Service’s responsibility for Free Exercise to service members, Congress enacted specific protections for Military Chaplains in Section 533 and the 2013 and 2014 NDAA Amendments.<sup>1</sup> Section 533 expressly prohibits the Services from discriminating or retaliating against Military Chaplains for refusing to take

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<sup>1</sup> In 2012, Congress addressed numerous concerns arising out of Congress’ or judicial changes to long-established social policies that impacted some denominations and chaplains’ religious beliefs, *e.g.*, the repeal of the military ban on homosexual behavior and the Supreme Court’s invalidation of the Defense of Marriage Act. Amendments to the fiscal year 2013 NDAA specifically made changes to Title 10 clarifying the rights of all military personnel and chaplains to follow their conscience and protecting chaplains from being forced to participate in practices, rights, and activities that were contrary to their conscience and faith.

certain actions “contrary to the conscience, moral principles, or religious beliefs of the chaplain.” Section 533(b)(1). Because the Services failed to implement these protections, Congress reinforced and amplified the protections for Military Chaplains in the 2016 NDAA and again in the 2018 NDAA. The Military Defendants’ religious persecution and retaliatory actions against the Plaintiff Military Chaplains and the class as a whole have deliberately violated and trampled their § 533 rights and protections. *See generally infra* Section II & Ex. 1 (Plaintiff Declarations).

7. The Military Defendants have not obeyed Congress’s clear directions honoring and protecting Military Chaplains’ conscience and faith, a clear manifestation of contempt for congressional authority, the Constitution’s protection of religious liberties, and religious persons like the Military Chaplains. Few chaplains are even aware of § 533’s protections, apparently the DoD’s desired outcome, contrary to Congress’ clear command in the FY 2018 NDAA to develop and implement Religious Liberty training, including RFRA and Section 533’s protections. The Secretaries’ actions in Mandate planning and implementation show the DoD and Services have trampled on the above protections, retaliating against chaplains for exercising their conscience and faith, protected activities, what § 533 prohibits.

## First Amendment Free Exercise and RFRA Violations

8. The Military Defendants' venom against those who assert religious objections and who have submitted religious accommodation requests ("RARs") shows the Secretary's vaccine Mandate's purpose is to **purge** those who (a) believe in the Judeo-Christian concept of a conscience formed by faith that guides our lives, and (b) will not participate in what their conscience considers evil. Upon information and belief, the Military Defendants have given express directives to deny all RARs, *see infra* Sections V & VI.A, an order executed flawlessly thus far throughout the chain of command. The Military Defendants' own data confirm that zero or near zero RARs have been granted. *Id.*

9. Based on this and similar evidence, several U.S. district courts have found that one or more of the Military Defendants have violated service members' rights under RFRA and the First Amendment.<sup>2</sup> The whole Mandate process appears motivated, permeated and directed by hostility to religion and chaplains and contempt for law. Defendants' open and manifest bad faith is evidenced by Defendants' draconian punishment for those who resist being

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<sup>2</sup>*See generally* *Navy SEAL 1 v. Biden*, No. 8:21-cv-2429, 2021 WL 5448970 (M.D. Fla. Nov. 22, 2021); *Air Force Officer v. Austin*, --- F.Supp.3d ---, 2022 WL 468799 (M.D. Ga. Feb. 15, 2022) ("*Air Force Officer*"); *U.S. Navy SEALs 1-26 v. Biden*, --- F.Supp.3d ---, 2022 WL 34443 (N.D. Tex. Jan. 3, 2022) ("*Navy SEALs 1-26*"), *stay denied*, --- F.4th ---, 2022 WL 594375 (5th Cir. Feb. 28, 2022) ("*Navy SEALs 1-26 Stay Order*"); *Doster v. Kendall*, --- F.Supp.3d ---, 2022 WL 982299 (S.D. Ohio Mar. 31, 2022) ("*Doster*").

bullied into giving up their conscience; refusal to accept or acknowledge any alternatives to vaccination; denial of the military's previous recognition there was a presumption of natural immunity for those who have a previous documented infection; refusal to grant medical exemptions to military personnel who also have religious accommodation requests; and the corruption of the religious accommodation process because Defendants have already determined all RARs will be denied except for service members who also qualify for administrative exemptions and are leaving the Service.

#### **Establishment Clause and No Religious Test Clause Violations**

10. The Military Defendants' Directives violate the First Amendment's Establishment Clause. Military Defendants seek to establish a secular religion whose main sacrament is abortion, its main doctrine is to not allow or recognize individual conscience, and whose mission is to purge adherents of Judeo-Christian beliefs and faith who follow their conscience.

11. Further, the Military Defendants deliberate corruption of the RAR process required under their own regulations and RFRA have erected a *de facto* religious test for service in the military contrary to the Constitution's own words. The No Religious Test Clause of the Constitution states that "no religious test shall ever be required as a Qualification to any office or public Trust under the United States." U.S. CONST. ART. VI, § 3

12. The Military Defendants’ Establishment Clause and No Religious Test Clause violations are evidenced by their hostility to Military Chaplains and others who profess historic Judeo-Christian beliefs in the sanctity of life and those who believe they must follow their conscience as formed by their religious faith. The most common ground for opposition to the alleged COVID vaccines concerns the use of stem cells from aborted babies in the development and testing of vaccines. The DoD’s new religion rejects and punishes anyone who sees abortion as sin forbidden by God.

13. The Military Defendants’ message to Plaintiffs and the public is very clear: “citizens who believe they must follow their conscience as formed by their faith are not welcome”, a forbidden message of religious hostility to Plaintiffs. *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 302 (D.C. Cir. 2006).

### **Violations of DoD and Service Regulations & Procedures**

14. The Military Defendants actions violate their own regulations protecting chaplains’ conscience and faith showing hostility and intentional discrimination on the basis of religion. In particular, DoD’s rule governing religious accommodation, *see* Ex. 2, DoD Instruction 1300.17, *Religious Liberty in the Military Services*, ¶ 2.3.b.(4) (Sept. 1, 2020) (“DoDI 1300.17”), provides that requests for religious accommodation are to be decided at the lowest level. Once the Mandate was promulgated, however, the DoD and Services’

procedure for religious accommodation changed and the approving official are now at the highest level in the Services, either the Surgeon General or a three-star General or Admiral.

15. “It is a familiar rule of administrative law that an agency must abide by its own regulations.” *Stewart Schs. v. FLRA*, 495 U.S. 641, 654 (1990) (citing *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959); *Service v. Dulles*, 354 U.S. 363, 388 (1957)). The Mandate’s execution and procedures raise troubling and alarming issues indicating military leaders’ open rebellion against the Constitutional requirement the military must follow its own regulations.

### **Due Process Violations & Fraudulent Redefinition of Vaccine**

16. Plaintiffs also challenge the Secretary’s authority to issue such a mandate. It rests on an erroneous, fraudulent, and unlawful bureaucratic change in September 2021 to the centuries-old definition of a vaccine. Prior to that change, the term “vaccine” meant a medical procedure that immunized the recipient and the public from the identified disease. Specifically, on September 1, 2021, the Centers for Disease Control and Prevention (“CDC”) redefined “vaccine” and “vaccination” to mean a medical procedure that merely stimulates the immune system to provide “protection” (“CDC Vaccine Redefinition”), rather than immunity.<sup>3</sup> *See infra* Section VIII.

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<sup>3</sup> Vice President Harris was “fully vaccinated” with two vaccine shots followed by two additional boosters. She still caught COVID, as have other Administration high-ranking officials regardless of how many boosters they’ve had. “Joint Chiefs

17. The new, fraudulent definition of “vaccine” and “vaccination” allows the Military Defendants to claim the experimental COVID-19 treatments are “vaccines,” despite the fact that they do not provide immunity to the recipient, or prevent infection, re-infection or transmission. This fraudulent definition of a vaccine is the basis for the Secretary’s and the Services’ threats and actual punitive and retaliatory actions against Plaintiffs and other service personnel.

18. The CDC Vaccine Redefinition, and Military Defendants’ express reliance on the CDC’s actions, violates the APA, the Fifth Amendment Due Process Clause, Separation of Powers and the Major Questions Doctrine, *see, e.g., Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661, 667 (2022) (“*NFIB*”) (Gorsuch, J. Concurring), the ban on administrative agencies creating laws with punitive consequences without following due process requirements and the ban on administrative officials being given unbridled power over First Amendment activity.

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Chairman and Marine Corps Chief Have COVID-19. The Joint Chiefs of Staff says Chairman Gen. Mark Milley has tested positive for COVID-19 and is experiencing very minor symptoms.” Associated Press (Jan. 17, 2022) <https://www.usnews.com/news/politics/articles/2022-01-17/joint-chiefs-chairman-milley-tests-positive-for-covid-19>.

### **Pattern and Practice of Retaliation for Religious Exercise**

19. The Military Defendants' actions establish a uniform pattern and practice of retaliation and hostility to religious personnel who follow their conscience and the rule of law. The testimony from these Plaintiffs provided in their declarations (attached as Exhibit 1) have one common characteristic: the actions taken against them, including the requirement to justify why they have religious objections to the Mandate, violate their rights under § 533, RFRA and the First and Fifth Amendments.

20. These actions are retaliation for Plaintiffs' exercise of their rights to the free exercise of religion. This is by design, not by accident. Upon information and belief, the Secretary and Service Secretaries have directed their chain of commands to systematically and uniformly refuse to grant any religious accommodations to the Mandate. The data provided by Defendants in related proceedings confirm that these illegal and unconstitutional orders have been carried out DoD-wide.

21. Further, special Staff with medical, legal and religious expertise have ignored their respective professional codes and their civic, military and legal duties in following these unlawful orders. On information and belief, the Services and their respective Chaplain Corps have instructed chaplains to ignore their RFRA duties; to discourage and/or recommend disapproval of RARs from service members with sincerely held religious objections to the

Mandate; and to retaliate against chaplains who themselves have religious objections or submit RARs. On information and belief, the Judge Advocate Generals (“JAGs”) have provided guidance on how to avoid, rather than obey, Military Defendants’ obligations under the Constitution, RFRA, § 533 and other laws. Surgeons General and medical personnel have failed to follow their own regulations concerning natural immunity and adequately research the link between the vaccines and numerous cases of serious medical incidents and injuries and/or death of individuals, including military personnel and their dependents. *See generally infra* Section V. Plaintiffs’ reserve the right to name these special staff personnel as individual defendants after discovery

### **Class and Sub-Class Definitions and Allegations**

22. Plaintiffs file this complaint as a class action on behalf of all Military Chaplains who have submitted an RAR (“Military Chaplain Class” or “Military Chaplain Plaintiffs”), as well as three sub-classes.

23. The first sub-class consists of Military Chaplain Class members who have sufficient time to retire if they chose to do so, do not wish to retire, but are faced with the draconian threat to either retire or forfeit everything that they have worked for their entire careers (“Constructively Discharged Sub-Class” or “Constructively Discharged Plaintiffs”). This sub-class includes Plaintiff Chaplains (“CH”) Lee, Lewis, and Snyder.

24. The second sub-class consists of those class members who have reached or almost reached 18 years of service, entitling them to “sanctuary” until they reach 20 years of service and are eligible for retirement (“Sanctuary Sub-Class” or “Sanctuary Plaintiffs”). Until the COVID Mandate, this was a protected zone in which service personnel could not be discharged except for serious misconduct. Like everything else, the rules changed in order to punish chaplains and others for following their conscience, contrary to § 533. This sub-class includes CHs Eastman, Cox, Snyder, and Wine.

25. The third sub-class consists of those class members who have natural immunity from a documented previous COVID-19 infection—that provides equal or greater protection than vaccination for the current Omicron variant—and should be eligible either for religious accommodation (*i.e.*, as an alternative, less restrictive means) or a medical exemption under AR 40-562, “Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases.” They have been denied a medical exemption due to the Military Defendants’ categorical refusal to consider natural immunity (“Natural Immunity Sub-Class” or “Natural Immunity Plaintiffs”) despite their own regulations ordering otherwise, an established regulatory presumption.

### **Relief Requested**

26. Plaintiffs file this action seeking a Preliminary Injunction and Declaratory Judgment requesting that this Court:

- (1) Certify the Classes and Sub-Classes as defined herein and on behalf of the Named Plaintiffs and all Members of the Certified Classes;
- (2) Declare the Mandate and Military Defendants' No Accommodation Policy violates § 533; RFRA; the Constitution's Article VI No "Religious Test" Clause; the First Amendment's Establishment, Free Exercise, Free Speech and Right to Petition Clauses; the Fifth Amendment Due Process Clause, and the No Religious Test Clause;
- (3) Enjoin the implementation or enforcement of the Mandate and No Accommodation Policy with respect to the Plaintiffs, the Military Chaplain Class, and the Sub-Classes;
- (4) Enjoin any adverse or retaliatory action against the Plaintiffs as a result of, arising from, or in conjunction with the Plaintiffs' RAR requests or denials, or for pursuing this action, or any other action for relief from Defendants' constitutional, statutory, or regulatory violations;
- (5) Order Defendants to take necessary actions to repair and restore Plaintiffs' careers and personnel records, and to provide effective guarantees against future retaliation for the exercise of their protected rights through the Services' assignment, promotion and schooling systems;
- (6) Find unlawful the CDC Vaccine Redefinition and vacate any Defendant agency actions adopting or relying on this unlawful redefinition; and
- (7) Issue an Order declaring the Defendants have acted with bad faith from the beginning of the Mandate and with reckless disregard for the health, safety and welfare of Plaintiffs and the class.
- (8) Granting attorney's fees for prosecuting this action based on Defendants' bad faith and/or under the Equal Access to Justice Act, 28 U.S.C. § 2412.

27. Plaintiffs seek this relief pursuant to the APA, 5 U.S.C. §§ 702 and 705; the Federal Declaratory Judgment Act, 28 U.S.C. §§ 1331, 1346, 2201 and 2202; the All Writs Act, 28 U.S.C. § 1651; and 42 U.S.C. § 1983.

## **PARTIES**

### **Plaintiffs**

28. Plaintiff Chaplain Israel Alvarado is a Lieutenant (“LT”) in the US Navy with two years of service. He is domiciled in Kent County, Michigan, and he is stationed at Naval Base, Norfolk County, Norfolk Virginia. LT Alvarado’s initial RAR was denied on October 26, 2021, and his RAR appeal was denied on January 25, 2022. LT Alvarado has natural immunity from a previous documented infection in January 2022. Due to his vaccine refusal, he has: received a report of misconduct and an adverse fitness report; been removed from operational duties; and has not received orders for his next duty station. 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 in jails or in VA or civilian hospitals.

29. Plaintiff Chaplain (“CH”) Steven Barfield is a Lieutenant Colonel (“Lt Col”) in the US Air Force Reserve with 17 years of service on active-duty and now the Reserves. He is domiciled in Boyd County, Kentucky, and he is stationed at Wright-Patterson Air Force Base (“AFB”), Greene County, Ohio. Lt Col Barfield’s initial RAR was denied on February 22, 2022, and his RAR

appeal was denied on March 31, 2022. On April 29, 2022, Lt Col Barfield's request for a medical exemption based on his natural immunity from a documented previous COVID-19 infection was denied. He has been counselled on the negative career impacts for being unvaccinated, and while his RAR request was pending, he was denied a career-advancing duty title change to which he should be entitled as the highest-ranking chaplain on staff.

30. Plaintiff Chaplain Walter Brobst is a Lieutenant in the US Air Force Reserve with eight years of service. He is domiciled in Riverside County, California, and he is stationed at March Air Force Reserve Base in California. Lieutenant Brobst's initial RAR was denied on November 16, 2021, and his RAR appeal was denied on January 28, 2022 (though he was not informed of the denial until February 11, 2022). He has natural immunity from two previous documented infections. Due to his unvaccinated status and/or submission of an RAR request, Lieutenant Brobst was denied attending Basic Chaplain Course; his request for any annual tour was denied; has been forced to be isolated from working on base; received a Letter of Reprimand; and his travel has been restricted.

31. Plaintiff Chaplain Justin Brown is a Lieutenant in the US Navy with nine years of service. He is domiciled in Galveston County, Texas, and he is stationed with the U.S. Coast Guard for the Galveston Sector, Houston, Harris County, Texas. Lieutenant Brown's initial RAR was denied on March

8, 2022; he submitted his appeal on April 1, 2022, which is still pending. He has natural immunity from a March 2020 infection, and he has repeatedly tested positive for antibodies as recently as January 2022 nearly two years later. Due to his unvaccinated status and submission of an RAR request, Lieutenant Brown has been asked to resign his commission; is subject to travel restrictions; has been reprimanded for referring service members to legal or civil rights for advice on their RARs; and has been told to expect a general discharge for misconduct that will prevent his future employment as a chaplain and result in the loss of VA benefits. He has been informed in writing by his command and Navy Chaplain leadership that no RARs will be approved, but that if any are approved, the servicemembers will still be discharged from service. Lieutenant Brown has spent hundreds of hours in assisting Coast Guard members with their RARs and appeals, counseling those who have been denied, and in some cases those who are suicidal due to the denial; he also officiated the funeral of one Coast Guard member who committed suicide after being denied religious accommodation.

32. Plaintiff Chaplain David Calger is a Captain in the US Army Reserve with 11 years of service. He is domiciled in Charlotte County, Florida, and he is stationed in Miami, Florida. Captain Calger's initial RAR is still pending. CH Calger has natural immunity from a previous COVID-19 infection in December 2020. Even though his RAR is still pending, Captain Calger has

been counselled and flagged by Brigade so that he cannot take a new assignment, and he has been told appeals of initial RAR denials will not be accepted.

33. Plaintiff Chaplain Mark Cox is a Commander (“CDR”) in the US Navy in which he has served for 18 years, following a 20-year career as civilian minister. He is domiciled in Rhea County, Tennessee, and he is stationed at Navy Reserve Center Chattanooga, Tennessee. LT Cox’s initial RAR was denied on January 8, 2022, and he submitted his appeal on March 24, 2022, which is still pending. As a result of not getting vaccinated CDR COX was refused opportunities to return to Active Duty, fulfill his Annual Training, receive orders for Active Duty Training, participate in Funeral Honors or reschedule his Weekend Drills to accommodate his schedule, and was given an Adverse FITREP to sign for misconduct, failure to obey a direct order, regarding the vaccine. Further, CDR COX was forced into the Reserve Volunteer Unit, and he now receives zero compensation from the Navy for Drill Weekends or for the work he does serving our Sailors.

34. Plaintiff Chaplain John Eastman is a Commander in the US Navy Reserve with 18 years of active-duty service and an additional six years in the Air Force Reserve. He is domiciled in Escambia County, Florida, and he is stationed at Pensacola Naval Air Station, Pensacola, Florida. CDR Eastman’s initial RAR was denied on November 22, 2021; he submitted his RAR appeal

on December 21, 2021, which is still pending. CDR Eastman has over 18 years of service which normally would put him in the “sanctuary” zone meaning he cannot be discharged absent grave criminal activity. CDR Eastman is Jewish, he has become a Christian. His father is one of the few surviving Holocaust victims and he believes that his relatives were victims of Nazi medical experimentation, which makes CH Eastman keenly aware and sensitive to coerced, forced medical procedures that are experimental in nature, especially those imposed without consent.

35. Plaintiff Chaplain Thomas Fussell is a Major in the US Air Force with 14 years of service. He is domiciled in Decatur County, Georgia, and he is stationed at Wright-Patterson AFB, Greene County, Ohio. Major Fussell’s initial RAR was denied on April 27, 2022; he submitted his RAR appeal on May 2, 2022, which is still pending. Major Fussell has natural immunity from a previous COVID-19 infection, as confirmed by a positive test in February 2022. Due to his unvaccinated status and/or submission of an RAR, Major Fussell was removed from the Religious Resolution Team (“RRT”), and he is restricted from travel and temporary duty assignments.

36. Plaintiff Chaplain Nathanael Gentilhomme is a Lieutenant in the US Navy with 13 years of service. He is domiciled in Greenville County, South Carolina, and he is stationed at Marine Corps Air Facility in Quantico, Virginia. Lieutenant Gentilhomme’s initial RAR was denied on November 9,

2021; he submitted his RAR appeal on December 2, 2021, which is still pending. He has natural immunity from a previous COVID-19 infection in December 2020. Before the imposition of the Mandate in August 2021, Lieutenant Gentilhomme questioned why one of his commands was penalizing unvaccinated Marines for not getting a shot that was still voluntary. He was “fired” as a chaplain for that unit. After the Mandate was announced, his command prohibited him from interviewing Marines and Sailors for the RAR process (who were instead interviewed by an Army Chaplain) and from performing his ministry duties more generally, resulting in a significant downgrade to his most recent FITREP. He has also received adverse counseling and been informally reprimanded for his attempts to advise Marines and Sailors and encouraging them to submit RARs and for advocating on behalf of those with religious objections.

37. Plaintiff Chaplain Doyle Harris is a Captain in the US Army with 14 years of service. He is domiciled in Howard County, Indiana, and he is stationed at Kadena Air Base, Okinawa, Japan. Captain Harris submitted his initial RAR on September 13, 2021 (though it was not routed to the Army Office of the Surgeon General until March 8, 2022), which is still pending. On April 13, 2022, he tested positive for COVID-19 and was placed into quarantine for 10 days; he has fully recovered and now has natural immunity. As a result of his unvaccinated status and pending RAR, Captain Harris cannot attend

training or travel with his unit, and he will likely be denied a permanent change of station (“PCS”), which will prevent him from moving on to a new assignment, promotion, or even enrolling his children for the 2022-23 school year.

38. Plaintiff Chaplain Jeremiah Henderson is a Captain in the US Air Force with over 17 years of service. He is domiciled in Otero County, New Mexico, and he is stationed at Holloman AFB, Otero County, New Mexico. Captain Henderson’s initial RAR was denied on March 4, 2022; he submitted his RAR appeal on April 6, 2022, which is still pending. Due to his unvaccinated status and/or submission of an RAR, he has been denied PCS; been informed that he faces a general discharge for misconduct, which will prevent him from future employment as a chaplain and result in the loss of VA benefits; and has been prohibited from attending his Chaplain Endorser-mandated training in violation of Air Force rules. *See* Department of the Air Force Instruction (“DAFI”) 52-101, § 3.1.1.5.2.1 and DAFI 52-201, § 1.3.

39. Plaintiff Chaplain Andrew Hirko is a Captain in the US Army who has served for 14 months and who joined the Army following over 20 years of experience as a civilian minister and leader. He is domiciled in St. John’s County, Florida, and he is stationed at Fort Campbell, Kentucky. Captain Hirko initial RAR was denied on February 23, 2022 (though he was not notified until March 15, 2022); he submitted his RAR appeal on March 17, 2022, which

is still pending. Captain Hirko has natural immunity from a previous COVID-19 infection. Due to his unvaccinated status and/or submission of an RAR, he was removed at the last minute from a training exercise, been denied leave, and publicly and privately ridiculed by fellow chaplains.

40. Plaintiff Chaplain Krista Ingram is a Major in the US Air Force with 15 years of service, and she is one of only 40 female Air Force Chaplains. She is domiciled in Williamson County, Texas, and she is stationed at Wright-Patterson AFB, Greene County, Ohio. Major Ingram submitted her initial RAR on September 16, 2021, which was denied on April 22, 2022. She has natural immunity from a previous infection in January 2022. Due to her unvaccinated status and/or submission of an RAR, she has been denied a new assignment/PCS and professional training scheduled for Summer 2022. If she is discharged due to her vaccination status, she will be rendered unemployable as a civilian minister.

41. Plaintiff Chaplain Ryan Jackson is a Captain in the US Air Force with 23 years of service. He is domiciled in New Castle County, Delaware, and he is stationed at Whiteman AFB, Johnson County, Missouri. Captain Jackson's initial RAR was denied on February 28, 2022, and his RAR appeal was denied on April 19, 2022. Captain Jackson has been told repeatedly by his leadership that his RAR and appeal will be denied; that his request to separate will be denied; and that he will receive disciplinary action for disobeying a

“lawful” order. Due to his unvaccinated status and/or submission of an RAR, he cannot deploy, travel or attend training, and he has had to sign two adverse counseling statements. Further, despite his combined 23 years of service on active duty and the reserves, he does not have enough time on active duty for retirement, and because he cannot rejoin the Air Force Reserves he stands to lose all benefits and receive no retirement compensation; further his discharge status will prevent him from any future employment as a civilian minister.

42. Plaintiff Chaplain Joshua Layfield is a Captain in the US Air Force Reserve with 12 years of service. He is domiciled in Upshur County, West Virginia, and he is stationed at Wright-Patterson AFB, Greene County, Ohio. Captain Layfield’s initial RAR was denied on February 24, 2022, and his RAR appeal was denied on April 25, 2022. Due to his unvaccinated status and/or submission of an RAR, Captain Layfield has been told to prepare for separation; demeaned in front of staff or in private; removed from duty, special schools, and special assignments; had to sign adverse counseling statements; is subject to travel and training restrictions; been singled out for discriminatory treatment or denied same accommodations as other people; and will likely face a general discharge for misconduct that will cause him to lose VA benefits and prevent him from finding future civilian employment as a minister.

43. Plaintiff Chaplain James Lee is a Colonel in the US Army with 23 years of service. He is stationed at Fort Shafter, Hawaii. Colonel Lee's initial RAR was denied on April 19, 2022; he submitted his RAR appeal on April 24, 2022, which is still pending. He wants to remain on active duty but this is being forced to retire or lose all his work for in his 23 years of service, including his retirement and be given a discharge which will effectively preclude him from further ministry. Due to his unvaccinated status and/or submission of an RAR, he has been denied three separate temporary duty and training trips, including one to attend his Endorsers annual conference (in violation of Army regulations), and his request to PCS for a new assignment has been denied, preventing his family from moving and from making definitive plans regarding school enrollment for his children.

44. Plaintiff Chaplain Brad Lewis is a Colonel in the US Army with 26 years of service. He is domiciled in Missouri, and he is stationed at US Army War College in Pennsylvania. COL Lee's initial RAR was denied on February 24, 2022 (though he was not notified until March 17, 2022); he submitted his RAR appeal on March 20, 2022, which is still pending. COL Lewis has natural immunity from a previous COVID-19 infection in January 2022. He was denied an exception to policy to PCS after U.S. Army War College, which essentially means he will be warehoused following graduation for an indefinite period.

45. Plaintiff Chaplain Robert Nelson is Captain in the United States Air Force, who has served for three years. Captain Nelson joined after 18 years of civilian ministry in the United States and Japan, serving in leadership positions and starting multiple ministries. He is domiciled in San Antonio, Bexar County, Texas, and he is currently assigned to the 18 Air Support Operations Group, Air Combat Command, Pope Army Airfield, North Carolina. His RAR was submitted 15 November 2021, which is still pending. Due to his unvaccinated status and/or submission of an RAR, Captain Nelson is subject to training and travel restrictions that prevent him from supporting the geographically separated units to which he is assigned and may prevent him from attending his annual Endorser Conference required for him to maintain his certification and remain an approved Chaplain. Captain Nelson has also been sidelined from his other duties, having been singled out and removed from any involvement in the RAR interview process or to sit on the RRT evaluating RARs because of unfounded allegations that he could not be objective because he had submitted an RAR himself.

46. Plaintiff Chaplain Rick Pak is a Major in the US Army with 16 years of service. He is domiciled in Pierce County, Washington, and he is stationed at US Army Garrison Grafenwoehr, Bavaria, Germany. Major Pak submitted his RAR on October 4, 2021, which is still pending. He has natural immunity from a previous infection from which he fully recovered in August-

September 2021. Major Pak has repeatedly been informed through his Chaplain chain of command that all RARs will be denied, and he has been informed by medical providers that all medical exemption requests based on natural immunity would be denied. Due to his unvaccinated status and/or submission of an RAR, he is subject to travel and training restrictions; is not permitted to PCS or take a new assignment, forcing him and his family to remain in Germany indefinitely; and faces a general discharge for misconduct, which will cause him to lose VA benefits, prevent him from transferring his GI Bill educational benefits to his children, and will prevent him from obtaining future employment as a minister.

47. Plaintiff Chaplain Randy Pogue is a Major in the US Army Reserve with seven years of service. He is domiciled in Butler County, Missouri, and he is stationed in Jackson County, Missouri. Major Pogue submitted his initial RAR on November 2, 2021, which is still pending. Major Pogue has natural immunity from a previous COVID-19 infection in November 2021 that was confirmed by PCR test. Due to his unvaccinated status and/or submission of an RAR, he has been threatened with a General Officer Memorandum of Reprimand (“GOMOR”), and he faces a general discharge for misconduct, which will cause him to lose VA benefits, and will prevent him from obtaining future employment as a minister

48. Plaintiff Chaplain Gerardo Rodriguez is Captain in the US Air Force with 15 years of service. Captain Rodriguez he is one of only nine active-duty Jewish Chaplains in the Air Force, and only one of five Orthodox Jewish Chaplains. He is domiciled in Montgomery County, Ohio, and he is stationed at Wright-Patterson AFB, Greene County, Ohio. Captain Rodriguez submitted his initial RAR on December 9, 2021, which is still pending. Captain Rodriguez was diagnosed with cancer in 2018, which is now in remission. Due to his unvaccinated status and/or submission of an RAR, he is restricted from traveling; was prevented from attending Squadron Officer School, which is required both for his current position and for promotion to Major; was denied a deployment to Saudi Arabia in October 2021; and faces a general discharge for misconduct that will cause him to lose VA benefits and prevent him from obtaining future employment as a civilian minister.

49. Plaintiff Chaplain Parker Schnetz is a Captain in the US Army with five years of service. He is domiciled in Thurston County, Washington, and he is stationed at US Army Garrison Ansbach, Germany. Captain Schnetz submitted his initial RAR on September 24, 2021, which is still pending. He has natural immunity from a previous documented infection in October, 2021, confirmed by a positive test. Captain Schnetz has been informed by his chain of command that they have been instructed to disapprove such requests, that his request would be denied, and that he should expect to be separated soon.

In fact, even before the announcement of the Mandate when vaccination was still voluntary, he was prevented from participating in training and told by his commander that if he waited to get vaccinated until vaccination was mandatory, he would be reported to the commanding general for failure to provide religious support and instructed that he should return to civilian life. Because he had submitted an RAR, Captain Schnetz was prohibited from performing the chaplain interview for soldiers in his unit seeking religious accommodation; was ordered by his command to parrot the Army position on vaccines; instructed that his responsibility as a chaplain was to assuage any religious concerns soldiers may have regarding the vaccine; and had his religious objections and those of soldiers he counsels ridiculed by his commander. He has also counseled multiple officers and NCOs who were threatened by commanders not to submit RARs. Due to his unvaccinated status and/or submission of an RAR, Captain Schnetz is restricted from performing essential duty requirements; cannot travel or minister to soldiers who are deployed to Eastern Europe to deter Russian aggression; cannot attend the annual required Chaplain training course; cannot PCS, accept a new assignment, or even move back to the United States, which imposes tremendous hardship and uncertainty on his family with five children and another one on the way; and has been threatened with a GOMOR.

50. Plaintiff Chaplain Richard Schaffer is a Lieutenant in the US Navy with six years of service. He is domiciled in El Dorado County, California, and he is stationed at Camp Lejeune, Onslow County, North Carolina. Lieutenant Schaffer's initial RAR was denied on November 30, 2021; he submitted his RAR appeal on December 20, 2021, which is still pending. He has natural immunity from previous COVID-19 infections in July 2020 and in January 2022.

51. Plaintiff Chaplain Jonathan Shour is a Lieutenant in the US Navy with 16 years of service. He is domiciled in Kootenai County, Idaho, and he is stationed at Camp Lejeune, Onslow County, North Carolina. Lieutenant Shour's initial RAR was denied on February 6, 2022; he submitted his RAR appeal on February 20, 2022, which is still pending. He has natural immunity from previous COVID-19 infection in August 2021. Lieutenant Shour submitted a request for medical exemption based on a documented previous COVID-19 infection, which was denied. Since entering into the Navy in August 2021, he has faced discrimination and retaliation for his request to abide by his religious beliefs at three separate commands. Among other things, he has been isolated and treated differently in training environments, had his assignment changed simply for seeking exemption, and has been excluded from performing rites and services as a chaplain. His family was effectively made homeless for seven months by the Navy's restrictions on permanent change of station (PCS) moves due to the vaccination mandate. His family was restricted

from completing their PCS while they were already in between assignments. Having already moved out of their last home and their household goods in storage, the Navy told him he would not be able to leave a training assignment to complete their move to North Carolina. He was held over after training for over three months. During this time, his family of five (pregnant wife, three young children, and family dog), effectively homeless, lived in a hotel with no end in sight through most family birthdays, Thanksgiving, and Christmas.

52. Plaintiff Chaplain Jeremiah Snyder is a Major in the US Army with over 20 years of service. He is domiciled in Bell County, Texas, and he is stationed at Fort Polk, Louisiana. Major Snyder has submitted and resubmitted his initial RAR on multiple occasions, from September, 2021 to February, 2022, and his request is still pending. Due to his unvaccinated status and/or submission of an RAR, Major Snyder has been denied and/or removed from special schools and new assignments; received a negative fitness report; told to prepare for separation; demeaned in front of staff or in private; received negative counseling statements and threatened with a GOMOR; and been informed that he faces a general discharge for misconduct, depriving him of VA benefits and preventing him from obtaining future civilian employment as a chaplain.

53. Plaintiff Chaplain David Troyer is a Captain in the US Army with 10 years of service. He is domiciled in Okaloosa County, Florida, and he is

stationed in Vicenza, Italy. Captain Troyer's initial RAR was denied on February 4, 2022; he submitted his RAR appeal on February 22, 2022, which is still pending. Captain Troyer has natural immunity based on a positive test result on September 21, 2021. Captain Troyer now faces a general discharge, which will prevent him from obtaining future civilian employments, and he and is restricted from PCS or new assignments, so that he and his family cannot return to the United States.

54. Plaintiff Chaplain Seth Weaver is a First Lieutenant in the US Army Reserve with four years of service. He is domiciled in Greenville County, South Carolina, and he is stationed in Mecklenburg County, North Carolina. First Lieutenant Weaver's initial RAR is still pending. Due to his unvaccinated status and/or submission of an RAR, he cannot participate in annual training and other training opportunities.

55. Plaintiff Chaplain Justin Wine is a Captain in the US Air Force Reserve with 18 years of service. He is domiciled in Cabell County, West Virginia, and he is stationed in Goodfellow AFB in Tom Greene County, Texas. Captain Wine's initial RAR is still pending. In March 2022, he was contacted by the Chaplain Corps leadership who pressured him to withdraw the request or resign his position, or else he would face a range of adverse consequences. Captain Wine has natural immunity from a documented previous infection in August 2021. Due to his unvaccinated status and/or submission of an RAR, he

has repeatedly been told to prepare for separation; been demeaned in front of his staff; and his promotion to Captain has not been recognized.

56. Plaintiff Chaplain Thomas Withers is a Major in the Army National Guard with nine years of service. He is domiciled and stationed in Bexar County Texas. Major Withers submitted his initial RAR on November 14, 2021, which is still pending. Major Withers has natural immunity from a documented previous infection in August 2021. Major Withers was advised against the COVID-19 shot by his medical provider because of the high likelihood of it causing autoimmune injury, but his physician was restricted from writing a memo to that effect because of the CDC restriction on medical professionals issuing anything other than a 90-day exemption. Due to his unvaccinated status and/or submission of an RAR, Major Withers has been classified as non-deployable, and he cannot participate in training or professional education required for next promotion. He was also told by leadership that anyone remaining unvaccinated after June 30, 2022, would be marked AWOL even if they showed up for drill and would not be allowed to be paid, and that would be involuntarily discharged after “missing” three drills.

57. Plaintiff Chaplain Matthew Wronski is a Lieutenant Junior Grade (“LTJG”) in the US Navy with eight years of service. He is domiciled in Autauga County, Alabama. LTJG’s Wronski’s initial RAR is still pending.

58. Plaintiff Chaplain Jerry Young is a Major in the US Army with 14 years of service. He is domiciled in Bell County, Texas, and he is stationed in Richland County, South Carolina. Major Young submitted his initial RAR on October 28, 2021, which is still pending. He has natural immunity from a previous infection in December 2021. Due to his unvaccinated status and/or submission of an RAR, Major Young has been subject to travel and training restrictions; repeatedly been demeaned and publicly singled out based on his vaccination status or characterized as a “refuser”; directed to “comply or get out”; and been subjected to multiple types of intimidation and coercion. Further, his chain of command has identified religious objectors as “extremists”; coached chaplains on how they should overcome “vaccine hesitancy” or assuage service members’ religious objections; and informed him that his RAR would be denied resulting inevitably in expulsion.

### **Defendants**

59. Defendant DoD is a Department of the United States Government. It is led by the Secretary of Defense, Lloyd J. Austin, III, who issued the DoD Vaccine Mandate.

60. Defendant Department of the Air Force is a Department of the United States Government. It is led by the Secretary of the Air Force Frank Kendall.

61. Defendant Department of the Army is a Department of the United States Government. It is led by the Secretary of the Army Christine Wormuth.

62. Defendant Department of the Navy is a Department of the United States Government. It is led by Navy Secretary Carlos Del Toro.

63. Defendant Food and Drug Administration (“FDA”) is an agency of the United States Government. It is led by acting Commissioner Janet Woodcock who is sued in her official capacity as Acting Commissioner of the FDA.

64. Defendant CDC is an agency of the United States Government. It is led by Director Rochelle Walensky who is sued in her official capacity as CDC Director.

65. Defendant Department Health and Human Services (“HHS”) is an agency of the United States Government and oversees the FDA and CDC. It is led by Secretary Xavier Becerra who is sued in his official capacity as head of HHS.

### **JURISDICTION AND VENUE**

66. This case arises under federal law, namely the Constitution’s Article VI forbidding any “religious test” for an office or public trust; the First and Fifth Amendments of the United States Constitution, U.S. CONST. AMENDS. I & V; the APA, 5 U.S.C. § 551, *et. seq.*; 28 U.S.C. §§ 1331, 1343, 1346,

1361, 2201 & 2202; RFRA, 42 U.S.C. § 2000bb-1, *et seq.*; and 42 U.S.C. § 1983; and the FY 2013 NDAA § 533.

67. The Mandate, No Accommodation Directive, and CDC Vaccine Redefinition are final agency actions, as they mark the consummation of the agency's decision-making process. Each of these agency actions is an *ultra vires* action in violation of Plaintiffs' federal statutory and constitutional rights, and to the extent these statutes do not create a right of action, Defendants' actions are agency actions for which there is no other adequate remedy in a court that may be brought pursuant to the APA. 5 U.S.C. § 704.

68. To the extent that Defendants' actions are deemed non-final agency actions that would wholly deprive Plaintiffs of federal statutory rights, the Court has jurisdiction pursuant to its inherent equity powers and federal question jurisdiction under 28 U.S.C. § 2201 and 28 U.S.C. § 1331.

69. Jurisdiction is proper in this Court under the APA, 5 U.S.C. § 702, and under 28 U.S.C. § 2201, which states that actions involving controversies with federal agencies may be pursued in any United States District Court, and under 28 U.S.C. §§ 1331 and 1346.

70. Venue is proper in this Court pursuant to 28 U.S.C. §1402 and 28 U.S.C. § 1391(e) because certain Plaintiffs are stationed and/or domiciled in this District, and because a substantial part of the act or omissions giving rise to the claim, have or will occur in this district, unless this Court grants the

relief requested herein. Specifically, in this class action two plaintiffs home of record are within the Middle District, but in different divisions; Chaplain (“CH”) Calger resides in Charlotte County, the Fort Myers Division; and CH Hirko’s home of record is in Saint John’s County, the Jacksonville Division. Two other plaintiffs live or have homes of record in Florida’s Northern District, CHs Eastman and Troyer.

71. Local Rule 1.04 (b) “Division For a Civil Action” states: “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.” There is already a similar case in the Tampa Division, *Navy SEAL 1 v. Austin*, No. 8:21-cv-2429-SDM-TGW (M.D. Fla.) (“*Navy SEAL 1* Proceeding”), in which the Court has already addressed some of the issues Plaintiffs raise here. The Tampa division is already familiar with some of the background of the challenged Mandate and specifically raised the issue of “retaliation”, which is one of the major issues in this case. Accordingly, the Tampa Division is the division “in which the action is most conveniently advanced.”

## **STATEMENT OF FACTS & LEGAL BACKGROUND**

### **I. MILITARY CHAPLAINS’ UNIQUE CONSTITUTIONAL ROLE**

72. Chaplains are “unique” military officers, commissioned denominational representatives because the Constitution requires military

religious leaders to meet the military's Free Exercise Needs. *See In re England*, 375 F.3d 1169, 1172 (D.C. Cir. 2004).

73. *Katcoff v. Marsh*, 755 F.2d 233 (2d Cir. 1985) is the leading case reviewing and reaffirming the constitutionality of America's tradition of having military chaplains. In *Katcoff*, plaintiffs initially challenged the Chaplain Corps as an impermissible entanglement of government and religion in violation of the Establishment Clause under the third prong of *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971)'s three-part test. *Katcoff*, 755 F.2d at 229. After admitting that soldiers had a Free Exercise right that could only be met by clergy or religious leaders, the plaintiffs argued that such requirements could be met by civilian chaplain volunteers rather than paid military clergy commissioned as officers. *Id.* at 229-30. Only one small denomination volunteered to provide civilian volunteers. *Katcoff* rejected applying *Lemon* because the issue involved other competing Constitutional values: the Free Exercise imperative, the Establishment Clause's mandate for religious neutrality, and Congress's authority over the military. *Id.* at 231-36. After examining the realities of military life and the constitutional requirements discussed below, *Katcoff* found the "plaintiffs' proposal is so inherently impractical as to border on the frivolous." *Id.* at 237.

74. *Katcoff* held the chaplaincy was Congress' appropriate and necessary accommodation of competing Constitutional commands. *Id.* at 234-

35, 237. Absent a chaplaincy, military service realities restricted soldiers' ability to exercise their First Amendment's Free Exercise rights, *id.* at 228 ("mobile, deployable nature of our armed forces", Geneva Convention requirements, need for familiarity with military procedures, equipment, and practices), causing conflict with the Establishment Clause's mandate that government neither hinder nor establish a religion.

It is readily apparent that [the Free Exercise] Clause, like the Establishment Clause, obligates Congress, upon creating an Army, to make religion available to soldiers who have been moved by the Army to areas of the world where religion of their own denominations are not available to them. ... Unless the Army provided a chaplaincy it would deprive the soldier of his right under the Establishment Clause not to have his religion inhibited and of his right under the Free Exercise Clause to practice his freely chosen religion.

*Id.* at 234. *See also id.* at 232 ("by removing them to areas where religious leaders of their persuasion and facilities were not available [the Army] could be accused of violating the Establishment Clause unless it provided them with a chaplaincy").

Indeed, if the Army prevented soldiers from worshiping in their own communities by removing them to areas where religious leaders of their persuasion and facilities were not available it could be accused of violating the Establishment Clause *unless* it provided them with a chaplaincy since its conduct would amount to inhibiting religion. *Everson v. Board of Education*, [331 U.S. 1, 15 (1947)] (the government can neither "force nor influence a person . . . to remain away from church against his will. . . .") **State power is no more to be used so as to handicap religions than it is to favor them.**

*Id.* at 232 (emphasis added) (internal citations and quotation marks omitted).

75. In other words, the Constitution mandates the Services provide chaplains, *i.e.*, denominational representatives and religious leaders, and therefore a Chaplain Corps, to allow military personnel to freely exercise their individual religion. This keeps the government neutral to religion rather than hostile.

76. Accordingly, Military Chaplains have standing to raise unique statutory (*i.e.*, Section 533) and constitutional claims (*i.e.*, Establishment Clause and No Religious Test Clause), in addition to the RFRA and First Amendment Free Exercise claims raised by other service members seeking religious accommodations (and which several courts have found have a substantial likelihood of success). *See supra* note 2 & cases cited therein.

## **II. CONGRESS ENACTED UNIQUE PROTECTIONS FOR CHAPLAINS IN THE 2013 AND 2014 NDAA AMENDMENTS.**

77. Congress passed specific protections for chaplains in the FY 2013 and 2014 NDAA Amendments which Defendants have deliberately violated and trampled by their religious persecution and retaliatory actions against these Chaplains and the class. *See Note 1 supra*. Section 533 of the FY 2013 NDAA as amended by section 532 of the FY 2014 NDAA now reads:

(a) ACCOMMODATION. Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the Armed Forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the

basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training or assignment.

(b) PROTECTION OF CHAPLAIN DECISIONS RELATING TO CONSCIENCE, MORAL PRINCIPLES, OR RELIGIOUS BELIEFS.—No member of the Armed Forces may—

(1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or

(2) discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1).

78. The Military Defendants’ actions at issue here clearly violate § 533(a) “Accommodation”, and (b), “Protection of Chaplain Decisions Relating to Conscience, Moral Principles, or Religious Beliefs”, despite its clear protection of “chaplains decisions relating to conscience, moral principles, or religious beliefs” from retaliation and discrimination.

79. Congress later provided directions and reminders about the importance of chaplains’ religious liberty, freedom of conscience and unique skills in the FY 2016 NDAA. *See* Ex. 3, 2016 NDAA, Senate Armed Services Committee Report at 163-64 (“2016 NDAA Senate Report”),

80. The FY 2018 NDAA again stated Congress’s great concern over chaplains’ religious liberty. Congress specifically directed the DoD and the Services to provide instruction and/or training on RFRA, chaplains’ religious liberty, and § 533. Congress directed this training to be covered in DoD’s and

the Armed Forces training courses for Chaplains, Judge Advocates General, and those selected for command.<sup>4</sup>

**III. DEFENDANTS HAVE WILLFULLY IGNORED AND VIOLATED SECTION 533'S SPECIFIC PROTECTIONS FOR CHAPLAINS EXERCISING THEIR CONSCIENCE AND FAITH.**

81. Military Defendants have consistently failed to implement § 533's protections for Military Chaplains. Their refusal to obey Congress's directive is a clear manifestation of contempt for congressional authority, the Constitution's protection of religious liberties, and religious persons like Military Chaplains. Few chaplains are aware of § 533, apparently a situation DoD wanted. The Secretaries' actions in planning and implementing the Mandate show the DoD and its Services have trampled on the above protections, retaliating against chaplains for exercising their conscience and faith.

82. The Associated Gospel Churches ("AGC"), a DoD-approved endorser, which has seven of its endorsed chaplains as plaintiffs in this case, submitted written testimony to the House Armed Service Committee's Personnel Subcommittee for its September 19, 2014, Hearing on chaplains' religious liberty. *See* Ex. 5, AGC, "The Associated Gospel Churches'

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<sup>4</sup> *See* Ex. 4, 2018 NDAA, Senate Armed Services Committee Report, National Defense Authorization Act for Fiscal Year 2018, Report [to accompany S. 1519], Items of Special Interest (After "Subsection H - Other Matters"), S. Rept. 115-125 at 149-150 (July 10, 2017), "Leadership training" ("2018 NDAA Senate Committee Report").

Perspective on Religious Liberty, Including Military Prayer and Religious Speech Problems” (“AGC Testimony”). That testimony highlighted continuing examples of Military Chaplains’ religious speech being suppressed or censored despite § 533's protections. AGC asked for a statutory definition of a chaplain and their rights to make it clear chaplains were commissioned faith group representatives, not government religious officials.

83. AGC also submitted supplemental testimony reporting incidents that happened immediately after submitting the AGC Testimony. *See* Ex. 6, AGC, “The Associated Gospel Churches’ Supplement to its Perspective on Religious Liberty, Including Military Prayer and Religious Speech Problems” (“AGC Supplemental Testimony”). AGC cited incidents where § 533 was clearly violated. One involved a situation where § 533 was cited as a defense in an investigation arising in a Chief of Chaplains mandated chaplains’ training session addressing possible scenarios involving same sex couples. The command’s JAG recommended § 533 be ignored and the chaplain sanctioned because the chaplain’s response reflecting his faith offended someone. The Army Chief of Chaplains’ office reported to AGC it warned the command that retaliating against the chaplain would create a firestorm and cited § 533.

84. The FY 2016 NDAA also had directive language to DoD and the Armed Services emphasizing its continued interest in chaplains’ religious liberty and § 533's protections for Military Chaplains conscience and their

ability to accurately represent their denominations and faith. *See generally* Ex. 3.

85. The above is cited to show the Services were aware of § 533, but chose to ignore it, and they made sure its provisions and protections were not distributed and known throughout the DoD and Armed Services.

86. The Plaintiffs' identified incidents of retaliation and prejudice resulting from their refusal to take the vaccine based on their conscience and faith, including the denial of their RARs in the interrogation as part of this process are direct violations of § 533.

**IV. DEFENDANTS HAVE DELIBERATELY IGNORED CONGRESS' CLEAR INSTRUCTIONS TO DEVELOP TRAINING ON CHAPLAINS' RELIGIOUS LIBERTY UNDER RFRA AND SEC. 533 AND PROVIDE SUCH TRAINING TO JUDGE ADVOCATES, COMMANDERS AND CHAPLAINS.**

87. Following a series of incidents in which chaplains were attacked and threatened with career ending retaliation for following their conscience and religious beliefs contrary to the specific provisions and protections of § 533 and RFRA, the 2018 NDAA directed DoD to develop and implement "a comprehensive training program on religious liberty issues for military leadership and commanders" on religious liberty for chaplains, JAGs and commanders' courses (preparing them to take command).

The committee continues **to recognize the importance of protecting the rights of conscience of members of the Armed Forces**, consistent with the maintenance of good order

and discipline. The Congress has expressed this view in title 42, United States Code, section 2000bb, et seq. and in section 533 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239) as amended by section 532 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66). **Complying with this law requires an intentional strategy for developing and implementing a comprehensive training program on religious liberty issues for military leadership and commanders.** The committee urges the Department, in consultation with commanders, chaplains, and judge advocates, to ensure that appropriate training on religious liberty is conducted at all levels of command on the requirements of the law, and to that end **the committee directs the Secretary, in consultation with the Chief of Chaplains for the Army, Navy, and Air Force, to develop curriculum and implement training concerning religious liberty in accordance with the law.** Recipients of this training should include commanders, chaplains, and judge advocates.

Ex. 4, 2018 NDAA Senate Committee Report at 149-150 (emphasis added).

88. No such instruction has been developed in the intervening five years and no instruction has been provided in the Military Chaplains' various professional development training courses.

89. The Military Defendants' Mandate, No Accommodation Policy, and their failure to recognize the rights of Military Chaplains and other service members to follow their conscience is a clear demonstration of Military Defendants' contempt for the law, the rights of chaplains, Congress who passed § 533, and the Constitution which they have sworn to uphold.

90. Congress established specific criteria to comply with Congress' intent in passing § 533: "Complying with this law requires an intentional

strategy for developing and implementing a comprehensive training program on religious liberty issues for military leadership and commanders.” *Id.* at 149.

91. Section 533 was not codified in Title 10. The original House NDAA language stated it would be inserted after § 1034, addressing Whistle Blowers and Retaliation. Its omission suggests intent or gross incompetence.

92. DoD’s deliberate failure to do what Congress clearly intended and instructed, along with Military Defendants’ further direct violations of Military Chaplains’ rights protected by Section 533 protections, RFRA and the First Amendment based on conscience is deliberate insubordination and dereliction of duty.

93. The following section details Military Defendants’ pattern and practice of violating the religious liberties of Military Chaplains and service members generally.

**V. DEFENDANTS’ PATTERN AND PRACTICE OF RETALIATION AGAINST AND HOSTILITY TO RELIGIOUS EXERCISE.**

94. The Military Defendants’ actions establish a uniform pattern and practice of retaliation and hostility to Military Chaplains and religious service members who follow their conscience and the rule of law.

95. The testimony from these plaintiffs, *see generally* Ex. 1, have one common characteristic: the actions taken against them, including the requirement to justify why they have religious objections to the Mandate,

violate their rights under RFRA, § 533, and the First and Fifth Amendments. These actions are retaliation for Plaintiffs' exercise of their above cited protected rights. This is by design, not by accident.

96. Special Staff with medical, legal and religious expertise have ignored their respective professional codes and their civic, military and legal duties to respect religious beliefs, identify medical threats to individuals and the force, and operate within the boundaries of the Constitution and law.

97. **Army Chaplain Corps.** On October 7, 2021, the Army Chief of Chaplains addressed the Chaplain School in a townhall concerning the vaccines. He implied that if you didn't agree with the mandate, you can easily exit the military because it is an all-volunteer Army. The Chief showed no consideration for soldiers and chaplains' free exercise of religion nor the importance of conscience, rather it was framed as "comply or get out." By implication, he also conflated vaccine hesitancy with extremism, which he identified as the number one problem in the military. He said chaplains should be part of the healing, rather than part of the problem and "leaders lead, and leaders don't have RARs." Ex. 1, Young Decl., ¶ 18.h.

98. On information and belief, the Army Chief initially sought to move all chaplains with RARs to non-deploying units, but this was squashed for legal reasons. The Office of the Chief of Chaplains said on November 15, 2021, that the new "free exercise of religion" actually takes place when the "chaplain

interview memorandum includes a well-written summary of the interview, a thorough, well-written assessment of the religious basis of the request, and a thorough, well-written assessment of the sincerity of the requester's belief." *Id.* One chaplain requesting a RAR described the interview as "more like an invasive colonoscopy." *Id.*

99. **Air Force & Air Force Chaplain Corps.** On information and belief, the Air Force Chaplain Corps collected and reviewed RARs and provided several "good" samples for those determining how to attack and undermine them as a prelude or pretext to deny RARs at a COVID Summit at the Air Force Academy. This violates § 533 and the Chaplain Corps' very purpose for being.

100. On October 19, 2021, Air Force leaders attended the CORONA<sub>3</sub> conference, including all MAJCOM commanders, and those who were responsible for adjudicating accommodation requests to the Air Force's vaccine mandate. The 2021 CORONA Conference was held at the United States Air Force Academy.

101. Whistleblowers have reported that all Chaplains and all persons other than those MAJCOM commanders responsible for adjudicating accommodation requests to the Air Force's vaccine mandate, were asked to leave the room, so that the Secretary of the Air Force's expectations concerning religious accommodation requests could be communicated to Air Force senior

leaders. Upon information and belief, the Secretary of the Air Force and/or his designees, communicated that no religious accommodations could or should be approved for anyone who would be remaining in the Department of the Air Force.

102. Finally, all Air Force members have received “adverse administrative action” of a Record of individual counseling under Air Force Form 174 simply for submitting an RAR. *See* Air Force Instruction 36–2907, *Unfavorable Information File (UIF) Program*, ¶ 2.3.2 (Nov. 26, 2014).

103. **Removal from RRT and RAR Process.** Several Plaintiffs have reported that they were expressly and intentionally excluded from any involvement in the RAR process, removed from RRT, prohibited from counseling servicemembers seeking religious accommodation, and/or otherwise punished for submitting RARs, expressing religious objections or support for service members with religious objections. *See, e.g.*, Fussell Decl., ¶ 12; Gentilhomme Decl., ¶ 14; Nelson Decl., ¶ 11; Schnetz Decl., ¶ 18.

104. **Surgeons General.** The Surgeons General have declared the alleged vaccines are safe, ignoring numerous medical incidents reported through the Military Medical incident reporting system.<sup>5</sup> They have failed to

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<sup>5</sup> *See* Patricia Kime, *DoD Confirms: Rare Heart Inflammation Cases Linked to COVID-19 Vaccines*, Military.com (June 30, 2021); Sen. Ron Johnson’s “Second Opinion” hearing on the damage done by COVID-19 vaccines, suppression of dissent

adequately research the link between the vaccines and numerous cases of serious medical incidents and injuries and/or death of individuals, including military personnel and their dependents. *Id.* The Surgeons General also have failed to follow their own regulations when it comes to “natural immunity.”

105. **Judge Advocate Generals.** On information and belief, the Judge Advocate Generals (“JAGs”) have provided guidance on how to avoid and violate the Constitution, RFRA, § 533 and other laws rather than obey them, especially in regard to RFRA and religious accommodations, and chaplains’ rights and protections.

106. **Establishment of Secular Religion.** The actions of Secretary Austin and the Service Secretaries show they are attempting to establish a secular religion whose main sacrament is abortion, its main doctrine is to not allow or recognize individual conscience, and whose mission is to purge adherents of Judeo- Christian beliefs and faith who follow their conscience. The DoD’s new religion rejects and punishes anyone who sees abortion as sin forbidden by God.

107. **Adoption of a Prohibited Religious Test.** DoD and the Service Secretaries’ deliberate corruption of the RAR process in violation of the First Amendment, RFRA, and their own regulations amounts to a *de facto* religious

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on the vaccines’ safety and troubling side effects, available at: <https://rumble.com/vt62y6-covid-19-a-second-opinion.html>.

test for service in the military contrary to the express prohibition in Article VI of the Constitution, which predates the First Amendment. It is evidenced by their hostility to Military Chaplains and others who profess historic Judeo-Christian beliefs in the sanctity of life and those who believe they must follow their conscience as formed by their religious faith. The most common opposition to the alleged COVID vaccines concerns the use of stem cells from aborted babies in the development and testing of vaccines.

## **VI. MILITARY DEFENDANTS' RFRA AND FIRST AMENDMENT VIOLATIONS.**

### **A. Systematic Denial of Religious Accommodations.**

108. The DoD and each of the Armed Services have adopted guidance, procedures, and evaluation criteria for religious accommodation requests.<sup>6</sup> While there are arguably some differences among the Services' respective procedures, the outcome is always the same: no accommodations are granted.

109. Plaintiffs have attached Defendants' filings in the *Navy SEAL 1* Proceeding, which speak for themselves. *See* Ex. 7, *Navy SEAL 1 v. Austin*, No. 8:21-cv-2429-SDM-TGW (M.D. Fla. Feb. 4, 2022), "Third Notice of Compliance," ECF 73 ("February 4, 2022 Compliance Notice"). Defendants

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<sup>6</sup> *See generally* Ex. 1, DoD Instruction 1300.17, "Religious Liberty in the Military Services" (Sept. 1, 2020) ("DoDI 1300.17") (DoD-wide procedures). *See also* DAFI 52-201, "Religious Freedom in the Department of the Air Force" (June, 23, 2021) (Air Force); Army Regulation 600-20, "Army Command Policy" (July 24, 2020) (Army); BUPERSINST 1730.11A (Navy and Marine Corps)).

appear to have approved zero requests (or 0.00%) for service members who will continue to serve, and they have approved about a dozen out of over 25,000 (or 0.05%) when those who are will be separating or on terminal leave are included.<sup>7</sup>

**Table 1: Religious Accommodation Requests & Appeals**

Armed Service	Initial RA Requests			RA Appeals		
	Filed	Denied	Approved	Appeals	Denied	Approved
<b>Air Force</b>	12,623	3,180	5	2,221	443	1
<b>Army</b>	3,523	391	0	55	0	0
<b>Coast Guard</b>	1,308	578	0	224	0	0
<b>Marine Corps</b>	3,539	3,458	0	1,150	119	3
<b>Navy</b>	4,095	3,728	0	1,222	81	0
<b>Total</b>	<b>25,008</b>	<b>11,335</b>	<b>5</b>	<b>4,872</b>	<b>643</b>	<b>4</b>

110. Relying on similar statistics and claims nearly identical to Plaintiffs, several courts have found that the Military Defendants' religious accommodation process violates both RFRA and the First Amendment. *See supra* note 2 & cases cited therein.

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<sup>7</sup> *See Navy SEAL 1*, 2022 WL 534459, at \*19 (Marine Corps approvals); *Poffenbarger*, 2022 WL 594810, at \*13 n.6 (Air Force approvals). More recently, in the May 9, 2022 hearing *Roth v. Austin*, No. 8:22-cv-3038-BCB-MDN (D. Neb.), the transcript for which is not currently available, Air Force counsel again admitted that the Air Force has approved RARs only for airmen at the end of their service who would otherwise qualify for administrative exemptions. *See Kristina Wong, Air Force Admits All Granted Religious Accommodations for Vax Were for Airmen Already Leaving Service*, Breitbart News (May 10, 2022), available at: <https://www.breitbart.com/politics/2022/05/10/exclusive-air-force-admits-all-granted-religious-accommodations-for-vax-were-for-airmen-already-leaving-service/> (last visited May 17, 2022).

**B. More Favorable Treatment of Comparable Secular Activity.**

111. While the Armed Services have categorically denied all or nearly all religious exemptions, they have granted thousands of medical and administrative exemptions. Statistics like those in Table 2 below have led several courts to conclude that Military Defendants have violated RFRA, as discrimination against, and hostility to, religious exercise are the only plausible explanation for the difference in treatment between religious exercise and comparable secular activity (*i.e.*, medical and administrative exemptions). *See, e.g., Air Force Officer*, 2021 WL 468799, at \*7 (“At bottom, Defendants simply don’t explain why they have a compelling interest in Plaintiff being vaccinated while so many other Air Force service members are not.”).

**Table 2: Medical & Administrative Exemptions Granted**

Armed Service	Medical Exemptions		Administrative Exemptions	
	Permanent	Temporary	Permanent	Temporary
<b>Air Force</b>	UNKNOWN	1,513	2,314	
<b>Army</b>	6	2,106	NOT REPORTED	
<b>Coast Guard</b>	4	6	NOT REPORTED	
<b>Marine Corps</b>	21	232	321	78
<b>Navy</b>	11	252	460	35

**C. Refusal To Consider Any Alternatives To 100% Vaccination.**

112. The Secretary’s position there are no reasonable alternatives to discharging chaplains and thereby harming the Services is absurd and

illogical. He first argues unvaccinated chaplains (or other non-vaccinated service persons) are potential COVID carriers or a threat to those who are vaccinated and then argues at the same time the vaccinated are a threat to the unvaccinated. That's absurd because the COVID-19 vaccine does not completely protect or vaccinate those who have taken it from future COVID-19 infections nor prevent them from becoming COVID transmitters; protection of the force cannot be a valid compelling government purpose under the circumstances because the vaccines do not prevent the spread of COVID-19 because they cannot prevent infection of, or transmission by, fully vaccinated service members. *See generally infra* Section VIII.

113. If an unvaccinated chaplain were to get COVID, they would lose at most 5 to 10 days of time at work while in quarantine, but then would be back at work. On its face, that scenario shows treating and keeping such a chaplain is a much more reasonable, rational, cost effective and mission preserving alternative than throwing the chaplain out of the service because the Service has not lost a dedicated chaplain with years of experience, often in highly specialized training in areas for which the Service has great need and will not increase the shortage of chaplains. The Services all report chaplain shortages and difficulty in recruiting. Failure to keep them needlessly degrades the Services' ability to provide chaplains, a constitutional duty.

114. If the new vaccine does not completely protect, which it does not, the chances of the vaccinated and unvaccinated catching COVID are the same. If the Secretary and other high-ranking officials were not fired for catching COVID, *see supra* note 3, but allowed to recover and then resume their duties, and if losing these high ranking leaders for a few days did not imperil the Services, the Secretary is unjustified in not seeing that an unvaccinated chaplain is entitled to the same consideration.

## VII. PLAINTIFFS' RELIGIOUS ACCOMMODATION REQUESTS

### A. Plaintiffs' Sincerely Held Religious Beliefs

115. In their declarations and the religious accommodation requests attached thereto, Plaintiffs have set forth the sincerely held religious beliefs that compel them to oppose the mandate. The primary reason cited is the refusal to participate in the abomination of abortion.<sup>8</sup> Closely related is the

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<sup>8</sup> *See, e.g.*, Brown Decl., ¶ 9 (“I hold a God given conviction to abstain from any vaccine that utilizes or benefits from fetal cells from murdered (aborted) children in any manner or form.”) (*citing* Genesis 1:26, Psalm 139:13-16); Gentilhomme Decl., ¶ 9 (“As a Christian, I believe the murder of babies at any stage of development within a woman’s womb is wrong, and using medicine, pills, or vaccines directly or indirectly linked to aborted babies should be avoided at all costs.”); Pak Decl., ¶ 9 (“My faith prohibits me from participating in or benefitting from abortion, no matter how remote in time that abortion occurred.”); Schnetz Decl., ¶ 8 (“I cannot knowingly or willingly participate in any medical intervention that uses aborted fetal cell lines in any phase of its development or creation.”). *See also* Alvarado Decl., ¶ 9; Brobst Decl., ¶ 9; Fussell Decl., ¶ 10; Henderson Decl., ¶ 9; Hirko Decl., ¶ 9; Lewis Decl., ¶ 9; Nelson Decl., ¶ 10; Pogue Decl., ¶ 9; Schnetz Decl., ¶ 8; Troyer Decl., ¶ 10; Weaver Decl., ¶ 9; Young Decl., ¶ 9.b.

objection that it is a sin to go against one's conscience when informed by prayer and contemplation of God's commands.<sup>9</sup>

116. Many Plaintiffs object to the Mandate to take mRNA vaccines because it violates God's commandment to treat the body as a temple.<sup>10</sup> A related objection is that the use of gene therapies like the mRNA vaccines because they alter God's creation, *i.e.*, their genetic codes or immune system, is in violation of God's commandments.<sup>11</sup> Plaintiffs have also cited the

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<sup>9</sup> See, *e.g.*, Jackson Decl., ¶ 9 (“According to the Word of God, if I went against my conscience after prayer and deliberation with God, it is sin for me. ‘If anyone, then, knows the good they ought to do and doesn't do it, it is sin for them,’ and ‘Each of them should be fully convinced in their own mind.’”); Pak Decl., ¶ 9 (explaining that by participation in or benefitting from abortion he “would be sinning and jeopardizing my relationship with God and violating my conscience.”); Young Decl., ¶ 9.a (“I am 100% convinced by a clear word from God (Ephesians 1:17) that my material participation with the current COVAX would be an intentionally sinful act of rebellion against my God. ... I cannot compromise in a manner which condemns my soul; this would be spiritual suicide (Mark 8:36).”). See also Calger Decl., ¶ 6.b; Cox Decl., ¶¶ 19-21; Shaffer Decl., ¶ 2.c. (explaining that his progressive awareness of vaccine research and development involving fetal cells has caused him to cease taking these products in order to align his behavior with his beliefs); Troyer Decl., ¶9 (same); Wronski Decl., ¶ 9.

<sup>10</sup> See, *e.g.*, Alvarado Decl., ¶ 9 (“My request is based on my religious belief that my body is the temple of the Holy Spirit purchased with the blood of Christ which the Apostle Paul teaches in 1 Corinthians 6:19-20, therefore I am not my own, but belong, body and soul, to my God.”); Jackson Decl., ¶ 9 (“‘Don't you know that you yourselves are God's temple and that God's Spirit lives in you?’ and ‘Do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore, honor God with your body’ (1 Corinthians 3:16-17; 6:19-20). These Scriptures tell me I am to treat my own body as a house or resting place for the Almighty God. If I were to receive the new vaccines, knowing the adverse effects and acknowledging the unknown longterm effects to my body, I would be knowingly causing potential harm to my body.”). See also Brown Decl., ¶ 9; Fussell Decl., ¶ 9; Harris Decl., ¶ 9; Rodriguez Decl., ¶ 9; Wronski Decl., ¶ 9.

<sup>11</sup> See, *e.g.*, Alvarado Decl., ¶ 9; Henderson Decl., ¶9; Hirko Decl., ¶ 9; Wine Decl., ¶ 9;

similarity of the military and civilian vaccine Mandates to the prophecy in Revelation regarding the raising up of a false God or Anti-Christ.<sup>12</sup>

117. But of perhaps greatest relevance to this Complaint is that the Mandate and DoD's No Accommodation Policy specifically prevent Chaplains from performing their constitutional mission as Chaplains. ¶¶ 71-73.

One of the main roles of a chaplain is to provide pastoral counsel support to Soldiers of all faiths enabling them through counsel and encouragement, to act according to their conscience, especially when faced with apparent conflicts between doing what is right and following orders. Forcing chaplains to violate their own conscience renders them effectively useless to the men and women who look to them for support in maintaining their moral integrity.

Hirko Decl., ¶ 10. *See also* Calger Decl., ¶ 6.b (“I find it odd that the U.S. Army would desire chaplains and Officers who are willing to violate their consciences for the sake of a mandate.”); Jackson Decl., ¶ 9 (“If even a chaplain cannot practice his or her faith in the military, who can?”); Young Decl., ¶ 9.j (“Not only for myself, but for all due to my position, I must uphold the free exercise

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Young Decl., ¶ 9.c.

<sup>12</sup> *See, e.g.*, Lewis Decl., ¶ 12 (“In the Bible, Revelation 13 and other passages, clearly warn of a future person, entity, or system that will set himself up as a false god and demand worship. That person will use extremely coercive means, including marking followers, to prohibit anyone around the world who will not bow to him from “buying or selling” (see Revelation 13:11-18). He will stop the “unmarked” from travel, commerce, and maintaining a source of income.”); Schnetz Decl., ¶ 8 (“To receive the vaccine would be to affirm this public religion and akin to idol worship, thus violating my deeply held Christian beliefs that I am not to engage in idol worship.”); Young Decl., ¶ 9.j (“it is sinful for me to receive a vaccine which I do not need in order to appease a newly established religious system which has framed COVAX therapy like a religious sacrament and moral imperative.”).

of religion in my *official capacity* as an US Army Chaplain.”) (emphasis in original). Because of their adherence to their sincerely-held beliefs, Military Defendants prohibited certain Plaintiffs from participating in the RAR interviews and excluded them from the RRTs. *See, e.g., See, e.g.,* Fussell Decl., ¶ 12; Gentilhomme Decl., ¶ 14; Nelson Decl., ¶ 11; Schnetz Decl., ¶ 18.

**B. COVID-19 Vaccines Are Critically Dependent on, and Could Not Exist but for, the Use of Aborted Fetal Cell Tissue.**

118. It is undisputed that HEK-293 and PER.C6 fetal cell lines were used in the development and testing of the three (3) available COVID-19 vaccines. As reported by the North Dakota Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, “[t]he non-replicating viral vector vaccine produced by Johnson & Johnson did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine.”<sup>13</sup> The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which “is a retinal cell line that was isolated from a terminated fetus in 1985.”<sup>14</sup>

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<sup>13</sup> *See* North Dakota Health, *COVID-19 Vaccines & Fetal Cell Lines* (Oct. 5, 2021) (“NDH FAQ”), available at: [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (last visited Nov. 15, 2021).

<sup>14</sup> La. Dept. of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 21, 2020), available at: <https://ldh.la.gov/assets/oph/Center->

119. The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health’s publications again confirm that aborted fetal cells lines were used in the “proof of concept” phase of the development of their mRNA vaccines. *See id.* The North Dakota Department of Health likewise confirms: “Early in the development of mRNA vaccine technology, fetal cells were used for ‘proof of concept’ (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein.” *See* NDH FAQ. Multiple Pfizer executives have confirmed both that aborted fetal cells were critical for development, while at the same trying to cover this up this essential fact.<sup>15</sup>

**C. No Compelling Government Interest: Plaintiffs’ RARs and Appeals Have Been Denied with Form Letters Reciting “Magic Words,” Rather Than Individualized Assessments.**

120. Each Plaintiff has submitted an RAR request, most of which have been denied, and many Plaintiffs have had their RAR appeals denied as well, including Plaintiffs Alvarado, Barfield, Brobst, Jackson, and Layfield.

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PHCH/Center-PH/immunizations/You\_Have\_Qs\_COVID-19\_Vaccine\_FAQ.pdf (last visited Nov. 15, 2021).

<sup>15</sup> *See* Project Veritas, PFIZER LEAKS: Whistleblower Goes On Record, Reveals Internal Emails from Chief Scientific Officer & Senior Director of Worldwide Research Discussing COVID Vaccine ... ‘We Want to Avoid Having the Information on the Fetal Cells Floating Out There’, (Oct. 6, 2021), available at: [www.projectveritas.com/news/pfizer-leaks-whistleblower-goes-on-record-reveals-internal-emails-from-chief/](http://www.projectveritas.com/news/pfizer-leaks-whistleblower-goes-on-record-reveals-internal-emails-from-chief/) (last visited Feb. 8, 2022).

121. **Form Letters & “Magic Words.”** Military Defendants have violated RFRA insofar as they have “rubber stamped” denials on Plaintiffs RAR requests and/or appeals using the same “magic words,” formulaic language, and theoretical speculation, without any individualized evaluation “to the person” required by RFRA or consideration of mission impact required by service regulations. *Navy SEAL 1* PI Order, 2022 WL 534459, at \*18. A cursory review of the attached denial letters show that the letters issued by each service are nearly identical form letters that include a sentence or two that mentions Plaintiffs’ role as a Chaplain, and these sentences are nearly identical for all Chaplains in a given service, just with different names, dates and positions inserted.<sup>16</sup>

122. With respect to the asserted compelling governmental interest, the RAR and appeal denial letters simply recite the same set of interests, in

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<sup>16</sup> For example the Air Force RAR Denial Letters all include three paragraphs, where the first and third paragraphs are identical, while the second paragraph is nearly identical except that it includes an additional one or two pre-written sentences that reference the applicant’s position, but are in fact nearly identical as well. *See* Ex. 1, Barfield, Brobst, Jackson, and Layfield RAR Denial Letter (attached to Declarations). The Navy’s RAR denial letters are also nearly identical with the same number of paragraphs and sub-paragraphs, using the same boilerplate language throughout, reciting the same compelling interest and least restrictive means language, and reaching the same conclusion – denial – for all applicants. *Cf.* Alvarado RAR Denial Letter, Cox RAR Denial Letter, Eastman RAR Denial Letter, etc. (all attached to respective declarations).

particular some sequence of military readiness, unit cohesion, and good order and discipline with slight variations for the Air Force,<sup>17</sup> Army<sup>18</sup> and Navy.<sup>19</sup>

123. **Impermissible Criteria.** The denial letters also appear to rely on impermissible criteria prohibited by RFRA, in particular, “the cumulative impact of granting similar requests.”<sup>20</sup> Or they are based on pretextual, impermissible, and completely unsupported claims that granting the request would endanger the general public. *See, e.g.*, Brown RAR Denial Letter, ¶ 3. Certain denial letters even go as far as asserting that service members unvaccinated for religious reasons pose a threat to others who are unvaccinated for secular reasons, supporting the conclusion that Defendants deem those unvaccinated for religious reasons to be uniquely dangerous. *See, e.g.*, Brown RAR Denial Letter, ¶¶ 3-4.

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<sup>17</sup> *See, e.g.*, Barfield RAR Denial Letter, ¶ 2; Fussell RAR Denial Letter, ¶ 2; Jackson RAR Denial Letter, ¶ 3.

<sup>18</sup> *See, e.g.*, Hirko RAR Denial Letter, ¶ 2; Lewis RAR Denial Letter, ¶ 2 (“I find that vaccination is the least restrictive means to further the Department of the Army’s compelling government interests, which also includes protecting your health, the health of the force, and ensuring mission accomplishment.”); Troyer RAR Denial Letter, ¶2.

<sup>19</sup> *See, e.g.*, Alvarado RAR Denial Letter, ¶ 3 & ¶ 4.a; Cox RAR Denial Letter, ¶ 3 & ¶4.a; Eastman RAR Denial Letter, ¶ 3 & ¶ 4.a; Gentilhomme RAR Denial Letter, ¶¶ 2-3; Shaffer RAR Denial Letter, ¶ 3; Shour RAR Denial Letter, ¶¶ 3 & 4.a.

<sup>20</sup> *See, e.g.*, Alvarado RAR Denial Letter (Navy), ¶ 4.c.; Cox RAR Denial Letter, ¶ 4.c. (Navy); Shour RAR Denial Letter, ¶ 4.c (Navy). *See also* Brobst RAR Appeal Denial Letter (Air Force) (“Your health status as a non-immunized individual ... aggregated with other non-immunized individuals ... would place health and safety, unit cohesion, and readiness at risk.”); Jackson, RAR Appeal Denial Letter (Air Force; same); *See, e.g.*, Brown RAR Denial Letter, ¶ 3 (Coast Guard; same).

**D. Least Restrictive Means: Military Defendants Refused To Consider Alternative Less Restrictive Measures Than Vaccination.**

124. The discussion of “less restrictive means” is even more formulaic, and in most cases consists of a single conclusory assertion that denial of exemption requests “is the least restrictive means” to achieve the DoD’s compelling interests in “military readiness, mission accomplishment and the health and safety of military Service members” (Navy), *see, e.g.*, Alvarado RAR Denial Letter, ¶ 5.a. *See also* Barfield RAR Appeal Denial Letter (Air Force); Brobst RAR Denial Letter, ¶ 2 (Air Force), or that neither vaccination or non-vaccination alternatives are “100% effective” without any attempt to compare the relative efficacy of alternatives. *See, e.g.*, Alvarado RAR Appeal Denial Letter, ¶¶ 3-4. The denial letters either failed altogether to mention proposed alternatives, or dismissed them without any discussion or explanation. *See, e.g.*, Barfield RAR Appeal Denial Letter (Air Force); Jackson RAR Denial Letter, ¶ 2 (dismissing masking, social distancing and telework as insufficient).

125. **No Individualized Assessment.** The Military Defendants make no attempt to perform the individualized assessment required by RFRA. Instead, the letters simply cite the respective Plaintiff’s role as a Chaplain (and frequently their “leadership role”); assert that it requires some degree of “contact” or “close proximity;” and dismiss any alternative to vaccination as

detrimental to the compelling governmental interests discussed above (*i.e.*, readiness, good order, discipline and unit cohesion).<sup>21</sup>

**126. Measures Successfully Used Prior to Mandate.** Several plaintiffs proposed alternative, less restrictive means and provided evidence that these alternatives had been employed successfully over the past two years, while achieving mission objectives and limiting the spread of COVID-19. *See, e.g.*, Hirko Decl., ¶ 10; Jackson Decl., ¶ 12. Moreover, not a single RAR denial letter recognizes natural immunity, physical fitness, diet, or early treatment as alternative mitigation measures.

**127. Alternative Vaccines.** Several plaintiffs stated that they would be willing to take other vaccines to which they did not have religious objections (*e.g.*, Covaxin or Novavax). *See, e.g.*, Eastman Decl., ¶ 18; Harris Decl., ¶ 9; Layfield Decl., ¶ 9; Shaffer Decl., ¶ 2.e; Snyder Decl., ¶ 9; Withers Decl., ¶ 11. None of their denial letters address their stated willingness or proposal to take these alternative vaccines—despite the fact that alternative vaccines are expressly permitted alternatives by Secretary Austin’s August 24, 2021, Memo announcing the Mandate—much less explain why these alternative vaccines

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<sup>21</sup> *See, e.g.*, Alvarado RAR Appeal Denial Letter, ¶¶ 5. B. (Navy); Barfield RAR Appeal Denial Letter (Air Force); Brobst RAR Appeal Denial Letter (Air Force); Cox RAR Denial Letter, ¶ 5.b (Navy); Fussell RAR Denial Letter, ¶ 2 (Air Force); Henderson RAR Denial Letter at 2 (Air Force); Shour RAR Denial Letter, ¶ 5.b (Navy); Troyer RAR Denial Letter, ¶2 (Army; same).

are not a permitted and less restrictive measure to mandatory injection with an mRNA vaccine.

128. **Natural Immunity.** Most Plaintiffs have natural immunity from previous infections, including a plurality with recent infections from December 2021 through the present with the Omicron variant, which provides protection that is stronger and more durable than the two-dose regimen required by the Mandate. All or nearly all these Natural Immunity Plaintiffs<sup>22</sup> cited their natural immunity in their RARs or RAR appeals, which Military Defendants have failed altogether to consider, or to explain in their denial letters why natural immunity (whether considered alone or in conjunction with other proposed alternative measures) is not a permissible alternative to vaccination.

129. **Mistakes in Denial Letters.** In many cases where denial letters attempt to tie a Plaintiff's specific roles or duties to the conclusion reached, the denials are based on incorrect factual assumptions that can be easily refuted.<sup>23</sup>

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<sup>22</sup> Natural Immunity Plaintiffs include Plaintiffs Alvarado, Barfield, Brobst, Brown, Calger, Cox, Fussell, Gentilhomme, Harris, Hirko, Jackson, Lewis, Pogue, Schnetz, Shaffer, Shour, Snyder, Troyer, Wine, Withers, and Young.

<sup>23</sup> See, e.g., Jackson Decl., ¶ 12 (explaining that denial letter conclusion regarding the inadequacy of social distancing and that his Chaplain duties require close personal contact was incorrect. "My job never requires me to touch another person or be within 6 feet of them during in-person face-to-face counseling, providing spiritual care, resiliency coaching, or conducting weekly religious services. There is no regulation requiring me to touch another individual or be within 6 feet of them. In reality, over the course of the pandemic, I have indeed operated with adequate distance and completed all my mission taskings successfully, conducting 204 face-to-face counseling sessions, conducting 13 weekly religious services (shared with other chaplains), engaging 6442 Airmen with spiritual care, and leading 160 spiritual

130. Defendants’ dismissive treatment of Plaintiffs request to accommodate their sincerely held religious beliefs is consistent with their treatment of tens of thousands of other service members. The statistics provided in the *Navy SEAL 1* Proceeding show that Defendants have granted zero religious accommodation requests, while denying over ten thousand. *See supra* Table 1, while the only requests granted to date appear to be for those who are separating or on terminal leave (*i.e.*, no accommodation at all). These statistics demonstrate that (1) submissions of religious accommodation requests are futile and (2) that the DoD and Armed Services are systematically denying these requests, in violation of their statutory obligations and the constitutional rights of Plaintiffs.

#### **VIII. DOD VACCINE MANDATE BASED ON CHANGE IN CDC DEFINITION OF “VACCINE” AND “VACCINATION”**

131. Plaintiff Military Chaplains also challenge the Secretary’s authority to issue such a mandate, because the Mandate itself rests on a fraud, specifically the CDC’s decision to change in September 2021 to the centuries-old definition of “vaccine” and “vaccination.”

132. On September 1, 2021—roughly one week after FDA approved Pfizer/BioNTech’s Comirnaty on August 23, 2021, and the Secretary issued the

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resiliency events—all while maintaining social distance and without the need to telework.”).

Mandate on August 24, 2021—the CDC without any statutory authorization, notice-and-comment rulemaking, or in fact any notice at all, unilaterally changed the centuries old definitions of “vaccine” and “vaccination.” The CDC redefined “vaccine” and “vaccination” from a medical procedure that provides immunity to one that merely stimulates the immune system and provides partial protection.

Before the change, the [CDC’s] definition for “vaccination” read, “the act of introducing a vaccine into the body to produce immunity to a specific disease.” Now, the word “immunity” has been switched to “protection.” The term “vaccine” also got a makeover. The CDC’s definition changed from “a product that stimulates a person’s immune system to produce immunity to a specific disease” to the current “a preparation that is used to stimulate the body’s immune response against diseases.” Some people have *speculated* that the unannounced changes were the CDC’s attempt to hide the fact COVID-19 vaccines are not 100% effective at preventing coronavirus infection.<sup>24</sup>

133. This “speculation” was subsequently confirmed by the CDC’s response to Freedom of Information Act (“FOIA”) requests. In contemporaneous internal emails, CDC leadership acknowledged that it changed the definition of “vaccine” and “vaccination” in response to (correct) public criticism and questions that the COVID-19 vaccines did not meet the CDC’s then current definitions of “vaccine” and “vaccinations” as providing

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<sup>24</sup> Katie Camero, *Why Did CDC Change Its Definition for ‘Vaccine’? Agency Explains Move as Skeptics Lurk*, MIAMI HERALD (Sept. 27, 2021), available at: <https://www.miamiherald.com/news/coronavirus/article254111268.html> (last visited May 17, 2022) (emphasis added).

“immunity.” *See* Ex. 8, CDC FOIA Response at 2 (CDC Emails from Aug. 13, 2021 - Sept. 1, 2021) (“The definition of vaccine we have posted is problematic and people are using it to claim that the COVID-19 vaccine is not a vaccine based on our own definition.”); *see also id.* at 3 (“these definitions are outdated and being used by some to say COVID-19 vaccines are not vaccines per CDC’s own definition.”).

134. On information and belief, Plaintiffs further allege that the CDC changed the definition for political reasons when it became obvious the experimental vaccines would not protect, would degrade over time and had unintended medical injuries and consequences. This failure would embarrass President Biden who claimed he would get control of and eliminate COVID. The new definition provided Military Defendants a convenient tool to get rid of those who believed in following their conscience as formed by their religious faith.

135. The Military Defendants maintain that the COVID-19 “vaccines” are necessary to protect the force from COVID, deceptively relying on the classical meaning of vaccine that people understand as a procedure that immunizes its recipients from the disease, *i.e.*, an impenetrable barrier between the disease and the military force, despite their knowledge that COVID vaccines do no such thing.

136. The COVID-19 mRNA “vaccines” are in fact moderately effective treatments. These products cannot do what “classic vaccines” have historically done, protect recipients, the Force, and the public from infection and prevent further transmission of the disease. It appears the Secretary wants the public and the military to think he is using vaccine in the classic sense, *i.e.*, protection, when he talks about the compelling need for the vaccine while personally knowing and ignoring the fact the new vaccine fails in its mission to protect or to stop the spread of COVID-19. He is using misleading and deceptive speech, as in false advertising, to deceive the DoD, the public and the courts.

137. The Secretary’s and other high officials’ treatment and recovery show DoD’s claim there is no less restrictive alternative than punitive disciplinary action and discharge for failure to be vaccinated is blatantly false. He was treated and returned to work after a few days’ absence, not thrown out because his vaccination didn’t work.

138. This fraud is compounded by the Military Defendants’ refusal, on information and belief, to follow their own regulations (namely, AR 40-562) and “the science” which recognizes the “presumption of natural immunity” following a COVID infection that their medical regulations establish and the science that says taking a vaccine after having had Covid increases the risk of dangerous side effects. That and their refusal to acknowledge and address multiple serious medical incidents following vaccination could result in

criminal and civil consequences for DoD and the special staffs whose duties relate to those issues.

139. This fraudulent definition of a COVID vaccine is the basis for the Secretary's and the Services' threats and actual punitive and retaliatory actions against plaintiffs and other service personnel.

140. The CDC and the Military Defendants' adoption of the new definition violates several constitutional limitations on such unfettered power as explained herein, such as the "Major Questions Doctrine, *NFIB*, 142 S. Ct. at 667 (Gorsuch, J. Concurring), the ban on administrative agencies creating "laws with punitive consequences" without following due process requirements and the ban on administrative officials being given unbridled power over First Amendment activity.

**IX. PLAINTIFFS WILL SUFFER CONCRETE AND PARTICULARIZED HARM FROM DEFENDANTS' ACTIONS**

141. Plaintiffs have real, substantial, and legitimate concerns about taking experimental COVID-19 treatments in light of and the potential for short- and long-term side effects; adverse reactions; and the deprivations of fundamental constitutional rights and the specific protections for Chaplains in § 533.

142. All Plaintiffs have already faced adverse employment or disciplinary actions that are not a theoretical or speculative harm. Plaintiffs

are facing training, duty and travel restrictions—including restrictions on attending their Chaplain Endorser-mandated conferences and training (*e.g.*, Plaintiffs Henderson, Lee, and Nelson), in violation of Service regulations—which prevents them from performing their current ministry duties, training to maintain qualifications for their current positions, and/or remaining an approved Chaplain. Due to their vaccination status, all Plaintiffs are prevented from PCS and taking new assignments, leaving them and their families in a state of limbo; in some case, Plaintiffs and their families are stranded outside the United States without the ability to return home (*e.g.*, Plaintiffs Pak, Shour, and Troyer). *See generally supra* ¶¶ 28-58. They will face further actions, up to and including termination, separation, loss of retirement, VA or other post-separation benefits, and permanent damage to their reputation and employment prospects resulting from a court martial and/or dishonorable discharge.

143. Nearly all Plaintiffs have received negative counseling statements, letters of reprimand (up to and including GOMAR), adverse FITREPs and/or other negative evaluations preventing them from advancement or promotion. Moreover, all or nearly all Plaintiffs face a general discharge, rather than a full honorable discharge, which will deprive them of VA, GI Bill and other retirement benefits to which they are would normally be entitled, and will prevent them from obtaining civilian employment as a chaplain. Further, the

entire Sanctuary Sub-Class, as well as certain Plaintiffs like Chaplain Eastman with a mixture of active and reserve service in excess of 20 years, face the inability to retire or a complete loss of retirement benefits to which they would otherwise be entitled after over 18 years (or over 20 years) of service.

144. *Chaplaincy of Full Gospel Churches v. England* (“*CFGC*”), 454 F.3d 290 (D.C. Cir. 2006), examined the question whether an allegation the government had established a religious preference could meet the irreparable harm criteria when seeking an injunction. It rejected defendants’ argument plaintiffs have to show some chilling effect to invoke the principle of First Amendment rights being violated or threatened, even for a minimal period of time. *CFGC* explained “the Establishment Clause is implicated as soon as the government engages in impermissible action.” *CFGC*, 454 F.3d at 302. Here, Military Defendants have violated the Establishment Clause by preferring and/or rejecting one set of religious beliefs, which sends an unconstitutional message of preference. *Id.* Therefore, it results in irreparable harm.

145. Plaintiffs allege the Secretary’s Mandate seeks to establish a state religion and the Services’ actions rejecting all RAR’s stating their belief that abortion is sin establishes an official religious view preferred by the ruling class on the topic of abortion.

[W]hen when an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place-without any corresponding individual conduct-then to the

extent that the government action violates the Establishment Clause, First Amendment interests *are* “threatened or in fact being impaired.

*Id.* at 303. Thus, the Plaintiffs have and are suffering damages. Several Plaintiffs have been suffered retaliation or discrimination in violation of Section 533, simply for submitting RARs or for advocating on behalf of service members who had done so and had religious objections to the vaccines. Of particular relevance in this regard, several Plaintiffs have been preventing performing their military—and constitutional duties—when removed from RRTs or the RAR interview process due to the expression of their religious beliefs. *See, e.g.*, Fussell Decl., ¶ 12; Gentilhomme Decl., ¶ 14; Nelson Decl., ¶ 11; Schnetz Decl., ¶ 18.

## **X. CLASS ACTION ALLEGATIONS**

146. Plaintiffs bring this action on their own behalf and as a class action as representative parties on behalf of all members of the class and subclasses defined herein under the provisions of Federal Rules of Civil Procedure (the Rules) 23(a) and 23(b). Plaintiffs seek declaratory and injunctive relief, and relief incident to and subordinate to it, including costs and attorney fees. A class action is appropriate because, as shown below: (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law and fact common to the class, (c) the claims of the Plaintiffs are typical

of the claims of the class, and (d) the representative parties will fairly and adequately protect the interests of the class.

147. **Definition of the Class.** The class represented by Plaintiffs in this action, and of which Plaintiffs are themselves members, consists of active duty and Reserve chaplains from all military services and all ranks from Chaplain Candidates to Colonels who submitted RARs that were denied by his or her Service. It includes chaplains whose appeal of their RAR denial was rejected and those whose RAR and/or appeal of their denial is still pending. The Services' clear pattern of rejecting all RARs and denying all such appeals thereof makes it clear that submitting a RAR and appealing RAR denials is a useless exercise because the Secretary's and the Services' policy is to not approve any RARs.

148. Plaintiffs allege and the facts will prove Defendants' execution of the Mandate and their attack on chaplains, despite the protections and commands of the Religious Freedom Restoration and § 533 is nothing more than an unconstitutional attempt to purge those who adhere to Judeo-Christian ethics centered on the right to follow one's conscience as formed by their faith. All Plaintiffs have requested and most have been uniformly been denied RARs. This is because the Secretary and the Secretaries of the Armed Services never intended their RAR processes to grant any RARs.

149. The class also includes those chaplains whose RAR requests and/or their appeals of the denials of their RARs have been submitted but not yet rejected because the whole process is, as numerous district courts have found, merely “theater” or a sham. *Navy SEALs 1-26*, 2022 WL 34443, at \*1; *see also Air Force Officer*, 2022 WL 468799, at \*1 (same).

150. **Constructively Discharged Chaplains’ Sub-Class.** The first subclass is chaplains in the class who are being constructively discharged. These are chaplains who have accrued sufficient time to retire, *e.g.*, CH (COL) James Lee, or are within months of accruing sufficient time to retire and have been told to either retire or risk being subject to disciplinary action for refusing to be vaccinated by an emergency use only vaccine followed by being discharged with a less than honorable discharge, losing their retirement rights and benefits already accrued by their 20 or more years of service, and other rights including most, if not all, VA benefits. The discharge and punitive disciplinary actions will mar such plaintiffs’ reputation for life for following their conscience, a right § 533 protects and for exercising their right to seek a religious accommodation.

151. This subclass does not wish to retire, have submitted RARs that were denied along with the appeal of their denied RARs but are being forced to retire in response to the Secretary’s draconian threat to either retire or forfeit everything that they have worked for their entire careers because they

will be involuntarily discharged and given a General Discharge.<sup>25</sup> A General Discharge forfeits their retirement, their right to separation pay, most Veterans benefits, including G.I. Bill education benefit, and given a false service characterization inconsistent with their record. Such a discharge will destroy their reputation, and greatly hinder if not deny any future career in ministry as civilians because anything less than an “honorable” discharge for officers is an immediate hindrance to successful civilian employment either in religious ministry or secular employment.

152. The public understands a General Discharge identifies troublemakers and those who have difficulty submitting to authority evidenced by a pattern of discipline problems. A General Discharge for these or any chaplain, is in effect, a punitive discharge whose injury to their reputation and ability to earn a living follows until death, a kiss of death for any effective ministry post-service. This also punishes Plaintiffs’ spouses and children who in some cases will literally be thrown out on the streets because the chaplain followed his conscience as required and authorized by § 533.

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<sup>25</sup> A general discharge is a special category originally created to allow the new volunteer military services to quickly process personnel w after entry into the service exhibited a pattern and practice of indiscipline or behavior p indicating problems with authority. It did not carry the onerous title of an "other than honorable discharge" but it limits the benefits available to those who continue to serve honorably and received honorable discharges , *e.g.*, access to GI Education Bill, medical coverage and some veterans benefits. It was never meant to be a weapon of retribution and retaliation for the exercise of protected rights as DoD is currently using it.

153. These chaplains in the subclass challenge their forced retirement as a constructive discharge. What is challenged here is unlike a “selective early retirement” (“SER”) which is the result of a board of officers examining records to select those best qualified to be involuntarily retired based on their record as compared to other chaplains similarly situated. SER is used to keep the promotion rates competitive due to rank and manpower imbalances or when necessary to reduce officer and strengths due to changes in manpower authorizations. Plaintiffs here are being unlawfully forced to retire or suffer an unjust and illegal punishment that forces them or any other rational person to accept the retirement offer; the whole process here is built on a fraud.

**154. The Sanctuary Sub-Class.** Military Defendants’ policies acknowledge the equitable principle of allowing someone who has invested a considerable portion of their lives in the service to be protected from personnel reductions or other manpower programs designed to reduce the force until they can reach retirement. That is no longer the case with the COVID Mandate. For example, CDR Eastman was told following his RAR submission to prepare for separation in June 2022 despite having more than 18 years of honorable service. Other plaintiffs are close to the sanctuary zone and yet the Defendants seek to seize that experience, hard work and sacrifice and illegally make it a nullity.

155. **Natural Immunity Sub-Class.** The third chaplain subclass with 17 plaintiffs are those who have had COVID yet been denied exemption from receiving the vaccine because of natural immunity, a decision contrary to the DoD policy expressed in all Services' vaccine regulations, AR 40-562. Numerous studies have shown that taking the new vaccine after having COVID increases the risk of dangerous side effects and lowers immunity to the disease.

**Plaintiffs Satisfy FRCP Rule 23(a)**

156. **Numerosity.** The exact number of the class and subclasses identified above is not known at this time, but the Defendants have that information. Plaintiffs estimate that there are at least 100 or more class members. The class is so numerous that joinder of individual members in this action is impractical.

157. **Commonality.** There are common questions of law and fact involved in this action that affect the rights of each member of the class and the relief sought is common to the entire class, namely:

- a. Defendants exhibit a long and continuing pattern of violations of the First and Fifth Amendments including: Defendants' open hostility to persons who believe the Constitution allows them to follow their consciences as formed by faith; the Defendants' attempt to establish a secular religion built around (i) approval of abortion and hostility to

anyone who believes that abortion is religiously “sinful”, *i.e.*, opposed to God’s word, and morally degrading; (ii) all orders must be obeyed without questioning regardless of their moral, ethical, or legal implications; and (iii) conscience has no role in guiding a military member’s decisions, especially when formed by faith;

b. **Section 533 Violations.** The Defendants’ conduct shows a willful failure to recognize, honor and obey the “protection of rights of conscience” and “protection of chaplain decisions relating to conscience, moral principles or religious beliefs,” clearly established by § 533. Contrary to the clear prohibitory words of § 533(a) and similar language in (b) that “The Armed Forces ... may not use such beliefs [reflecting a conscience, moral principles, or religious beliefs of the member] as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment”, *id.* Defendants have done to Plaintiffs exactly what the law prohibits. The evidence suggests it has been done willfully in order to purge Plaintiffs and those with similar beliefs from the military. *See f. below*;

c. **First Amendment Violations.** Defendants have violated Plaintiffs’ First Amendment rights of non-Establishment, Free Speech, Free Exercise and Right to Petition and their Fifth Amendment right to

expect and to have Defendants follow the Constitution, statutory law and their own regulations. For example, the Defendant's retaliatory actions against Plaintiffs for following their conscience, exercising their right to seek a religious exemption and object to the unconstitutional treatment they have received is contrary to Section 533's specific protections. Military Defendants' actions send a clear but forbidden government message of hostility to Plaintiffs' religious beliefs and the exercise of their conscience contrary to the neutrality mandate of the Establishment, Free Exercise, and Due Process Clauses and the specific statutory "conscience" protections for chaplains;

- d. **RFRA Violations.** Defendants have also deliberately violated RFRA and constructed a RAR process that courts have described as "theater", *Navy SEALs 1-26*, 2022 WL 34443, at \*1, and established an unconstitutional religious test for the government benefit of continued employment, and for some, retirement. These actions are done deliberately to prejudice Plaintiffs for their religious beliefs which are protected by law;
- e. **Retaliation.** Every negative action Defendants have taken against these Plaintiffs in conjunction with the Mandate has been retaliation for the exercise of their protected rights. This violates the

Constitution, RFRA, 42 U.S.C. § 2000bb, § 533, and Department of Defense Instruction (DoD I) 1300.17, and the Service Secretaries' own regulations. This is manifest bad faith;

f. **Establishment Clause Violations.** The evidence suggests Defendants' actions against Plaintiffs have been done to establish a "secular religion" with a religious test for the purpose of (i) **purging** from the military religious people who believe that their faith must also shape their conscience and (ii) establish the precedent that military personnel must blindly obey all orders without thinking or questioning similar to the German and Japanese Armed Forces before and during World War II;

g. **Due Process and APA Violations.** The Defendants have used a bureaucratic shell game to unlawfully change the centuries' old definition of a vaccine as a procedure that protected the recipient from the targeted disease with ascertainable criteria for measuring its success. The "new vaccine" definition now means a treatment that stimulates the immune system but does not protect with no ascertainable standard, *e.g.*, how many boosters equals full vaccination. This change, affecting all Americans without even "notice and comment" has become the basis for draconian sanctions and penalties for failure to meet Defendants' illegal and ever

changing “fully vaccinated” standard contrary to the “the major questions doctrine.” *See NFIB*, 142 S. Ct. at 667 (Gorsuch, J., Concurring). Defendants have perpetrated a fraud through this vaccination shell game and bad faith permeates all their actions;

- h. **A “Pattern and/or Practice” of disobeying Congress and their own regulations.** Defendants have established a pattern and practice of willful disobedience to (i) Congress’s statutory protections for chaplains establishing their right to follow and make decisions according to their conscience; (ii) specific directions to provide training on religious liberty, including RFRA and § 533’s provisions and protections for chaplains, judge advocates and commanders preparing to assume command. *See ¶¶ 81-86*;
- i. Defendants’ actions seeking to illegally and vindictively destroy these Plaintiffs careers and, in some cases, literally bankrupt them and make them destitute amounts to criminal activity and an illegal seizure and/or destruction of legally established benefits; and,
- j. Defendants’ special staff, *i.e.*, Surgeons General, JAGs, and the Chaplain Corps, have abandoned their professional codes and their specific staff related duties to further Defendants’ unconstitutional and unlawful activities, making them accessories after and before the fact concerning the above criminal activity.

158. **Plaintiffs' Claims Are Typical of the Proposed Classes.** The claims of the Plaintiffs, who are representatives of the class, are typical of the claims of the class in that the claims of all members of the class, including Plaintiffs, depend on a showing of the Defendants' acts and omissions giving rise to the Plaintiffs' right to the relief sought. There is no conflict between any individual named plaintiff and other members of the class with respect to this action, or with respect to the claims for relief set forth in this complaint. The class has similar injuries flowing from the Secretary's and his subordinate Service Secretaries' hostile, unconstitutional and otherwise illegal acts attacking the class with retaliation, systematic and intentional religious prejudice and hostility because of their faith expressed by asking for accommodation of their conscience driven objections based on their religious beliefs.

159. **Adequacy.** The named Plaintiffs are the representative parties for the class, are able to and will, fairly and adequately protect the interests of the class. The Plaintiffs' declarations in show they adequately represent the various statuses of the class, *i.e.*, all Services, active, reserve, National Guard. The attorneys for Plaintiffs, Arthur A. Schulcz, Sr., and Brandon Johnson from Defending the Republic will actively conduct and be responsible for Plaintiffs' case. J. Andrew Meyer, an experienced class action attorney, will assist them. Mr. Schulcz has had previous experience with a chaplains' class action. The

named Plaintiffs and their undersigned counsel will fairly and adequately protect the interests of the class.

**Plaintiffs Satisfy FRCP Rule 23(b)(1) and 23(b)(2)**

160. This class action is maintainable under Fed. Rule of Civil Procedure (the “Rules”) 23(b) because it satisfies the prerequisites of Rule 23(a) and the following conditions of Rule 23(b):

(1) the prosecution of separate actions by individual members of the class would create a risk of :

(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the Defendants, all of whom oppose the class; or

(B) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and/or

(2) the party opposing the class has acted and refused to act on grounds generally applicable to the class, as more specifically alleged below, on grounds which are generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole which this action seeks.

161. The findings required by Rule 23(b)(1) and (2) are supported by the fact there is a large class of chaplains against whom the Secretary and the Armed Forces have operated in a systematic discriminatory manner violating the Constitution, RFRA, § 533, other statutes, and the Defendants’ own regulations. The declaratory and injunctive relief sought will affect all persons

who have experienced the alleged retaliation discrimination. Furthermore, the constitutional and federal questions Plaintiffs raise dominate this action and apply to all members of the class. If Plaintiffs are successful, any individual relief that is incidental to this action will be determined by statute and require little if any involvement by the Court. Additional considerations that support certification under 23(b)(1) and/or 23(b)(2) include:

- a. Inconsistent or varying adjudications with respect to individual class members could subject Defendants to incompatible standards of conduct;
- b. The Court's adjudication of the claims raised herein on behalf of the Named Plaintiffs alone would, as a practical matter, be dispositive of the interests of the other members not party to such individual adjudications and could leave those other members without the ability to protect their own interests;
- c. The Defendants have acted or refused to act on grounds that apply generally to all members of the proposed Classes such that final injunctive or declaratory relief would be appropriate respecting each of the proposed Classes; and finally,
- d. The issues here are primarily constitutional and statutory which involve no exercise of military discretion or expertise.

**FIRST CAUSE OF ACTION**  
**DEFENDANTS HAVE WILLFULLY IGNORED AND/OR VIOLATED**  
**SECTION 533'S SPECIFIC PROTECTIONS FOR CHAPLAINS**  
**EXERCISING THEIR CONSCIENCE AND FAITH**  
**2013-2014 NDAA AMENDMENTS, SECTION 533**  
**(All Plaintiffs Against DoD & Service in Which They Serve)**

162. Plaintiffs reallege, as if set forth fully in this Count, the facts in Paragraphs 6-7, Paragraphs 28-58, Sections II-V (Paragraphs 77-93), and Section IX (Paragraphs 141-142).

163. Military Defendants have ignored Section 533's specific protections for Military Chaplains, and they have intentionally willfully violated Section 533 by retaliating against them for exercising their conscience and faith.

To state an unconstitutional retaliation claim a plaintiff must show (1) he or she engaged in constitutionally protected conduct, here the First Amendment; (2) the defendant took some retaliatory action that adversely impacted the plaintiff; and (3) a causal link between the exercise of the constitutional right and the adverse action taken against him or her.

*Wilkie v. Robbins*, 551 U.S. 537, 558 n.10 (2007).

164. Congress passed § 533 to specifically address the rights of chaplains to follow their conscience their faith and protect them from retaliation when they did so.

(a) ACCOMMODATION.-Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the Armed Forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the basis of any

adverse personnel action, discrimination, or denial of promotion, schooling, training or assignment.

(b) PROTECTION OF CHAPLAIN DECISIONS RELATING TO CONSCIENCE, MORAL PRINCIPLES, OR RELIGIOUS BELIEFS.—

No member of the Armed Forces may—

(1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or

(2) discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1)

165. Paragraphs 6-7 and Section II (Paragraphs 77-80) above provide the background showing that Congress believed it was necessary to “accommodate individual expressions of belief” for members of the “Armed Forces reflecting [their] sincerely held conscience, moral principles or religious beliefs” and prohibit use of “such expression of belief is the basis of any adverse personnel action, discrimination or denial of promotion, schooling, training, or assignment.” They also show why was important to protect chaplains and their decisions based on their conscience and faith. This section further shows how Congress continued to emphasize the importance of religious liberty in its FY 2016 NDAA language amidst reports of ignorance of or deliberate violations of the protections of § 533.

166. Section 533(a) of the 2013 NDAA specifically directs the Armed Forces to “accommodate individual expressions of belief of the of a member of

the armed force reflecting a sincerely held conscience, moral principles, or religious beliefs of the member”, including these Plaintiffs, and precludes using “such expression of belief is the basis of any adverse personnel action, discrimination or denial of promotion, schooling, training or assignment.”

167. The exception to this rule is “conduct that is prescribed” by the UCMJ including actions and speech that threaten good order and discipline.

168. Chaplain objections to the Mandate cannot be termed or qualify as “speech that threatens good order and discipline” because RFRA, DoDI 1300.17, and the First Amendment authorizes such objections and seeking religious accommodations.

169. Section 533(b). “Protection of chaplain decisions relating to conscience, moral principles, or religious beliefs” specifically protects chaplains from being required to perform any “rite, ritual, or ceremony ... that is contrary to the conscience, moral principles, or religious beliefs of the chaplain.”

170. Defendants have made taking the vaccine a “rite, ritual and ceremony” celebrating the destruction of chaplains’ consciences.

171. The facts and testimony of these Plaintiffs in Paragraphs 28-58 above and their individual declarations in Exhibit 1 show Defendants have initiated adverse personnel actions, *e.g.*, discrimination, schooling, training [and] assignment” against them for the exercise of their protected rights in refusing the vaccine and seeking a religious accommodation in accord with

their conscience and faith. This is retaliation contrary to § 533, RFRA, and the First and Fifth amendments.

172. Section III and IV (Paragraphs 81-93) above further show Congress continued to emphasize the importance of religious liberty in its 2016 NDAA and 2018 NDAA language amidst reports of ignorance or deliberate violations of the protections of § 533. *See generally* Ex. 3 and Ex. 4.

173. The DoD and Armed Services cannot deny they were aware of Congress's specific instructions nor that they refused to obey Congress's clear directions about § 533 instruction; it has not been developed.

174. The Plaintiffs' identified incidents of Defendants' retaliation and prejudice, *e.g.*, threatening all Plaintiffs with discharge, denied travel and schooling, and being bullied, all result and flow from their refusal to take the vaccine based on their conscience and faith, including the denial of their RARs and the interrogation as part of this process are direct violations of § 533 and retaliation for Plaintiffs' exercise of their § 533's protected rights

175. The DoD and Armed Services cannot deny they were aware of Congress's specific instructions nor their refusal to do what Congress ordered.

176. The Plaintiffs' identified incidents of retaliation and prejudice, *e.g.*, being threatened with discharge, denied travel bullied, resulting from their refusal to take the vaccine based on their conscience and faith, including the denial of their RARs in the interrogation as part of this process are direct

violations of § 533 and retaliation for Plaintiffs' exercise of their § 533's protected rights, all of which has been done in bad faith.

177. These § 533 violations demonstrate religious prejudice and have been done in bad faith since Defendants announced the Mandate.

178. Defendants' actions result in unconstitutional retaliation.

179. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by Defendants' violation of their rights under Section 533.

**SECOND CAUSE OF ACTION**  
**DEFENDANTS HAVE DELIBERATELY IGNORED CONGRESS'**  
**CLEAR INSTRUCTIONS TO DEVELOP TRAINING ON CHAPLAINS'**  
**RELIGIOUS LIBERTY UNDER RFRA AND SEC. 533 AND PROVIDE**  
**SUCH TRAINING TO JAGS, COMMANDERS, AND CHAPLAINS**  
**2013-2014 NDAA AMENDMENTS, SECTION 533**  
**(All Plaintiffs Against DoD & Service in Which They Serve)**

180. Plaintiffs reallege, as if set forth fully in this Count, the facts in Paragraphs 6-7 and Sections II-IV (Paragraphs 77-93).

181. It cannot be denied DoD has provided no comprehensive training program on religious liberty issues for military leadership and commanders" despite congresses words in the 2018 NDAA.

The committee continues **to recognize the importance of protecting the rights of conscience of members of the Armed Forces**, consistent with the maintenance of good order and discipline. The Congress has expressed this view in title 42, United States Code, section 2000bb, et seq. and in section 533 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239) as amended by section 532 of the National

Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66). **Complying with this law requires an intentional strategy for developing and implementing a comprehensive training program on religious liberty issues for military leadership and commanders.** The committee urges the Department, in consultation with commanders, chaplains, and judge advocates, to ensure that appropriate training on religious liberty is conducted at all levels of command on the requirements of the law, and to that end **the committee directs the Secretary, in consultation with the Chief of Chaplains for the Army, Navy, and Air Force, to develop curriculum and implement training concerning religious liberty in accordance with the law.** Recipients of this training should include commanders, chaplains, and judge advocates.

Ex. 4, 2018 NDAA Senate Committee Report at 149-150 (emphasis added).

182. No such instruction for Congress's identified categories has been developed in the nearly 10 years since § 533's passage and no instruction has been provided in the Military Chaplains' various professional development training courses. Had it been developed and implemented, this litigation might not be necessary.

183. The Secretary's Mandate and the Services' uniform rejection of RARs and failure to recognize the rights of chaplains and other service members to follow their conscience is a clear pattern and practice demonstrating the Secretary's and the Service Secretaries' contempt for the law, the rights of Military Chaplains, Congress who passed § 533, and the Constitution which they have sworn to uphold.

184. Congress established specific criteria to comply with Congress' remedial intent of informing JAGs, chaplains and commanders in passing Section 533. "Complying with this law requires an intentional strategy for developing and implementing a comprehensive training program on religious liberty issues for military leadership and commanders." *Id.*

185. Defendants have not developed or implemented an intentional strategy addressing religious liberty except to ignore what Congress directed them to do.

186. The words of § 533 are not found in Title 10. Its omission suggests intent or gross incompetence.

187. DoD's deliberate failure to do what Congress clearly intended and instructed and its further direct violations of § 533's protections for chaplains actions based on conscience is deliberate and insubordination and would seem to qualify as a violation of 18 U.S. Code § 2387 - Activities affecting armed forces generally ("intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States [and/or] "advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty ... or refusal of duty by any member of the military or naval forces of the United States").

188. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by Defendants'

violation of their rights under Section 533, which is a direct consequence of the Military Defendants' failure to follow Congress's clear and repeated directives.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF RELIGIOUS FREEDOM RESTORATION ACT**  
**42 U.S.C. § 2000bbb, et seq.**  
**(All Plaintiffs Against DoD & Service in Which They Serve)**

189. Plaintiffs reallege, as if set forth fully in this Count, the facts in Paragraphs 8-9, Paragraphs 28-58, Section V Defendants' pattern and practice of retaliation against and hostility to religious exercise.(Paragraphs 94-107), Section VI (Paragraphs 108-114), Section VII (Paragraphs 115-130), and Section IX (Paragraphs 141-142).

190. RFRA was enacted "in order to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2760 (2014) ("*Burwell*"). "Congress mandated that this concept be 'construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.'" *Burwell*, 134 S. Ct. at 2762 (quoting 42 U.S.C. § 2000cc-3(g)).

191. RFRA states that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 U.S.C. § 2000bb-1(a). The government burdens religion when it "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs," *Thomas v. Rev. Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707,

718 (1981), or “prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief.” *Davila v. Gladden*, 777 F.3d 1198, 1204 (11th Cir. 2015) (citation and quotation omitted). “That is especially true when the government imposes a choice between one’s job and one’s religious belief,” *Navy SEALs 1-26*, at \*9 (citing *Sherbert v. Verner*, 374 U.S. 398 (1963)).

192. If the Government substantially burdens a person’s exercise of religion, it can do so only if it “demonstrates that application of the burden **to the person** – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(b) (emphasis added). This means that strict scrutiny must be satisfied both for the “the asserted harm of granting specific exemption to particular religious claimants,” and of “the marginal interest in enforcing the challenged government action in that particular context.” *Burwell*, 573 U.S. at 726-27. See also *O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 430 (2006) (“*O Centro*”) (the Government must “demonstrate that the compelling interest is satisfied through the application of the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened”).

193. “RFRA expressly creates a remedy in district court,” *Navy SEAL 1*, 2022 WL 534459, at \*13, granting a “person whose religious exercise has been

burdened in violation of” RFRA to “assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government.” 42 U.S.C. § 2000bb-1(c).

194. RFRA applies to Defendants, as they constitute a “branch, department, agency, instrumentality, and official of the United States.” 42 U.S.C. § 2000bb-2(1). Further, “RFRA includes no administrative exhaustion requirement and imposes no jurisdictional threshold. No exemption, whether ... express or implied, insulates the military from review in the district court.” *Navy SEAL 1*, at \*13.

195. Plaintiff Military Chaplains have sincerely held religious objections to the mRNA vaccines and the Mandate, in particular, based on their refusal to participate in or benefit from the abomination of abortion. *See supra* ¶¶ 114-118. Military Defendants have substantially burdened Plaintiffs’ free exercise rights because the mandate forces Plaintiffs to “decide whether to lose their livelihoods or violate sincerely held religious beliefs.” *Navy SEALs 1-26*, at \*9. “By pitting their consciences against their livelihoods, the vaccine requirements would crush Plaintiffs’ free exercise of religion.” *Navy SEALs 1-26 Stay Order*, 2022 WL 594375, at \*9.

196. Defendants’ religious exemption regulation, and implementation thereof, is neither neutral nor generally applicable because it treats comparable secular activity—medical and administrative exemptions—more

favorably than religious exemptions. As shown in Table 1 above, out of roughly 25,000 RARs, somewhere between 0.00% and 0.03% (*i.e.*, eight of over 25,000, and those appear to have been granted only to service members separating from the service), while on the other hand, Table 2 shows that thousands of medical and administrative exemptions have been granted. *See supra* Section VI.A, Table 1 & Section VI.B, Table 2.

197. Plaintiffs have presented *prima facie*—and undisputable—evidence that Defendants have substantially burdened their exercise of religion, which triggers strict scrutiny where the government bears the burden of proving that its policies satisfy strict scrutiny. *O Centro*, 546 U.S. at 429. “Because the mandate treats those with secular exemptions more favorably than those seeking religious exemptions, strict scrutiny is triggered.” *Navy SEALs 1-26*, at \*9. RFRA thus presents a “high bar” to justify substantially burdening free exercise, and “[t]his already high bar is raised even higher [w]here a regulation already provides an exception from the law for a particular group.” *Navy SEALs 1-26 Stay Order*, at \*10 (citations and internal quotations omitted). Defendants fail to meet this high bar for either of the two prongs of the strict scrutiny analysis.

198. While “[s]temming the spread of COVID-19 is unquestionably a compelling interest,” *Cuomo*, 141 S. Ct. at 67, “its limits are finite.” *Navy SEALs 1-26*, at \*10. The government cannot rely on “broadly formulated

interests,” like “public health” or “military readiness,” and must justify its decision by “scrutinize[ing] the asserted harm of granting specific exemptions to particular religious claimants.” *Hobby Lobby*, 573 U.S. at 726-27.

199. Defendants’ “broadly formulated interest in national security,” *Navy SEALs 1-26*, at \*10, will not suffice. Nor will simply invoking “magic words” like “military readiness and health of the force.” *Navy SEAL 1*, at \*17 (quoting *Davila*, 777 F.3d at 1206). Instead, Defendants must produce “record material demonstrating that the military considered both the marginal increase, if any, in the risk of contagion incurred by granting the requested exemption and the marginal detrimental effect, if any, on military readiness and the health of the force flowing from the ... denial” of the specific Plaintiff’s exemption request. *Navy SEAL 1*, at \*15.

200. As in *Navy SEAL 1*, Military Defendants have manifestly failed to demonstrate that they have a compelling governmental interest in denying Plaintiffs’ RARs and appeals. Instead, they have relied on “magic words” to “rubber stamp,” see *Navy SEAL 1*, \*18, in their blanket denials of Plaintiffs’ RAR and appeal denial letters, see *supra* ¶¶ 120-123 (summarizing formulaic and deficient analysis in Plaintiffs’ RAR and appeal denial letters), just as they have for tens of thousands of other service members. See *supra* Section VI.A, Table 1.

201. Nor have Military Defendants demonstrated that their blanket denials of Plaintiffs' religious exemptions are the least restrictive means of furthering that interest. *See generally supra* ¶¶ 112-114 & ¶¶ 124-130. Military Defendants' RAR denial and RAR appeal denial letters both ignore Military Defendants' own successful use of alternatives to vaccination over the past two years (e.g., masking, testing, quarantine, social distancing), but also those proposed by Plaintiffs that are specifically adapted to their specific role, unit, vessel, or mission and the evidence presented by that these measures have enabled them to successfully perform their missions and roles without vaccination. Similarly, Defendants' assertions that no less restrictive means than vaccination exists because alternative, less restrictive measures "are not 100 percent effective," similarly cannot satisfy strict scrutiny because this "statement [is] equally true of vaccination." *Navy SEAL 1*, \*18 & n.10.

202. Further, 17 Plaintiffs have documented previous COVID-19 infections from which they have fully recovered, in many cases, quite recently. *See supra* note 22 (listing Natural Immunity Plaintiffs). Such natural immunity from previous infections provides stronger and longer-lasting protection than the vaccines. Moreover, several Plaintiffs have proposed alternative mitigation measures consistent both with those that have been successfully practiced over the last two years since COVID-19 emerged. For example, Plaintiffs could be subject to regular COVID-19 testing, masking,

social distancing, along with isolation or quarantine for positive tests, as they have been for over a year.

203. Yet, the Services' denial letters dismiss natural immunity—"reaching disputed medical conclusions without evaluation or citation of medical or legal authority," *Navy SEAL 1*, at \*16 & n.10—both on its own or in conjunction with Plaintiffs' proposed less restrictive alternatives that have been successfully employed in the past without acknowledgement or discussion. *See id.* at \*18-19. Just as in *Air Force Officer*, Defendants' conclusory assertions fail to show that "COVID-19 vaccine[s] ... provide more sufficient protection" than Plaintiffs' "natural immunity coupled with other preventive measures," nor have they shown "vaccination is actually necessary by comparison to alternative measures[ ], since the curtailment of free [exercise] must be actually necessary to the solution." *Air Force Officer*, 2022 WL 468799, at \*10 (citation and quotation omitted).

204. Finally, Military Defendants cannot satisfy either prong of strict security—compelling government interest or least restrictive means—by mandating 100% vaccination with a vaccine that is known to be ineffective and obsolete. The government's strict scrutiny analysis is highly fact intensive, and the individualized assessment prescribed by *Burwell* and *Navy SEAL 1*, require the government to perform a marginal cost vs. benefit analysis that takes into account the current costs and benefits from granting specific

exemptions. Defendants have failed entirely to account for the impact of the Omicron variant, and the minimal and rapidly declining efficacy of the vaccine against it, in performing this assessment.

205. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by Defendants' violation of their right under RFRA to the free exercise of religion.

**FOURTH CAUSE OF ACTION**  
**VIOLATION OF THE CONSTITUTION'S ARTICLE VI AND THE**  
**FIRST AMENDMENT'S ESTABLISHMENT CLAUSE BY**  
**ESTABLISHING A STATE RELIGION THAT EXCLUDES MORAL**  
**AND RELIGIOUS OBJECTIONS TO ABORTION AS A**  
**REQUIREMENT FOR CONTINUED SERVICE**  
**U.S. CONST., ART VI § 3 & U.S. CONST. AMEND. I**  
**(All Plaintiffs Against DoD & Service in Which They Serve)**

206. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 10-13, Section I (Paragraphs 72-76), and Section V (Paragraphs 94-107).

207. ARTICLE VI states that “no religious Test shall ever be required as a Qualification to any office or public trust under the United States. U.S. CONST.

208. The First Amendment's Establishment Clause provides that “Congress shall make no law respecting an establishment of religion.” U.S. CONST. AMEND. I.

209. Plaintiffs' Third Cause of Action above establishes Defendants have violated the Religious Freedom Restoration Act by denying all Plaintiffs' requests for religious accommodation and all appeals that have been adjudicated to date.

210. The facts supporting that cause of action have already been described by various courts as "theater" or other descriptions of what is essentially a sham or a fraud. *See Navy SEALs 1-26, 2022 WL 34443, at \*1.*

211. As explained above, Plaintiffs' consistent primary religious objection to the Mandate is the use of stem cells in the development and testing that came from aborted babies. *See supra* ¶ 115. This is based on a theological view as to when life begins in the sacredness of the soul, basic, well-established, historical Judeo-Christian beliefs and religious doctrines.

212. Defendants started out with and have continued with their deliberate plan of denying all RARs, a plan that rejects abortion as a viable religious belief that guides the conscience of these chaplain Plaintiffs. *See supra* Section V.

213. Plaintiffs' Third Cause of Action above establishes Defendants have violated Plaintiffs' Free Exercise rights as protected and enforced through RFRA. As in the RFRA case, the free exercise at issue is Plaintiff's belief that life is sacred and that abortion is a sin because it destroys a living being outside of the provisions that God has allowed in his Word for the taking of life.

214. Defendants' actions in rejecting all RAR's shows a hostility to these chaplains' religion that has constructed a religious test for continued service, *i.e.*, agreeing that it's okay to kill babies in the womb. To these chaplains that is not unlike the worship of the Canaanite god Molec to whom they sacrificed their children.

215. The common constitutional linkage and mandate between the Establishment and the Free Exercise Clauses is the mandate of government neutrality to religion, it may not prefer one set of religious beliefs over another which is the natural byproduct of preference for one set of religious beliefs and contempt for the other.

216. The results show Defendants prefer one set of beliefs about abortion over another and in so doing have drawn a dividing line between continued employment or separation and a consequent loss of benefits with the discharge that will mark them for life. This is a clear message of preference for one set of beliefs and contempt for Plaintiffs' beliefs.

217. That preference establishes a government secular religion and creates a *de facto* religious test for military service. It communicates the twin forbidden messages of government hostility to chaplains who exercise their conscience as formed by faith and who reject abortion while preferring and benefiting those who love abortion.

218. Military Defendants' actions violate well-established precedent that government decisions concerning the award of benefits must be free from religious factors. *See Bd. of Educ. of Kiryas Joel v. Grumet*, 512 U.S. 687, 698-703 (1994). That is clearly not the case here given the preference for one set of beliefs about abortion and rejection of Plaintiffs' exercise of their conscience based on their religious beliefs.

219. The DoD's unprecedented and medically unjustifiable 100% vaccination requirement is further proof that Defendants true motivation is to purge the military of people of faith (as well as those who would question the lawfulness of a facially unconstitutional regulation), rather than to promote military readiness or protect the health and welfare of service members.

220. The religious exemption requirement, which Plaintiffs must pass to avoid the vaccine mandate and continue their employment, is itself an unconstitutional religious test in violation of Article IV, § 3 of the U.S. Constitution as applied to those Plaintiffs who have been denied religious exemptions. Moreover, Defendants' denial of Plaintiffs' religious exemption requests, where applicable, is a violation of the No Religious Test Clause.

221. The No Religious Test Clause of the Constitution states that "no religious test shall ever be required as a Qualification to any office or public Trust under the United States." U.S. CONST. ART. VI, § 3. Plaintiffs are

members of the United States military and are thus officers or under the public Trust of the United States.

222. Upon information and belief, Defendants have implemented their religious exemption policy in order to identify, isolate, and ultimately screen-out and/or punish those with sincerely held religious objections to the COVID-19 vaccines. This is demonstrated, in part, by the hostility in which Defendants have addressed Plaintiffs' religious accommodation request and their blanket refusal to grant any requests submitted to date.

223. Plaintiffs seek declaratory and injunctive relief because have no adequate remedy at law for Defendants' violation of the Establishment Clause and the No Religious Test Clause of the Constitution.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF FIRST AMENDMENT FREE EXERCISE CLAUSE**  
**U.S. CONST. AMEND. I**  
**(All Plaintiffs Against DoD & Service in Which They Serve)**

224. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 8-9, Paragraphs 28-58, Section V Defendants' pattern and practice of retaliation against and hostility to religious exercise.(Paragraphs 94-107), Section VI (Paragraphs 108-114), Section VII (Paragraphs 115-130), and Section IX (Paragraphs 141-142).

225. The First Amendment's Free Exercise Clause provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. CONST. AMEND. I.

226. "Government is not free to disregard the First Amendment in times of crisis." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 69 (2020) ("*Cuomo*") (Gorsuch, J., concurring). "Even in a pandemic, the Constitution cannot be put away and forgotten." *Cuomo*, 141 S. Ct. at 68 (per curiam). Just as "[t]here is no COVID-19 exception to the First Amendment," there is "no military exclusion from our Constitution." *Navy SEALs 1-26*, at \*1.

227. Governmental regulations that are not neutral or generally applicable "trigger strict scrutiny" when "they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (emphasis in original) (*citing Cuomo*, 141 S. Ct. at 67-68). "A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1877 (2021).

228. Plaintiffs submitted religious exemption requests, stating that their religious beliefs prohibited them from receiving the available COVID-19 vaccines because of their sincerely held religious beliefs that, among other things, abortion is an abomination and because the aborted fetal cells were

critical to the development of the vaccines, they refuse to participate or support this evil. *See supra* ¶¶ 115 & 118-119.

229. Military Defendants have not granted any of Plaintiffs’ religious accommodation requests, and every Plaintiff who has received a decision has been denied. Several have also had their appeals have been denied as well. *See* Section VI.A. In issuing these denials, Defendants are unlawfully denied Plaintiffs’ requests for accommodation of their sincerely held religious beliefs.

230. Military Defendants’ rules and policies governing religious accommodations—uniformly denying and granting zero exemptions (or close enough to zero to amount to a rounding error—are neither neutral nor generally applicable because they “single out ... for harsh[er] treatment,” *Cuomo*, 141 S. Ct. at 66, those who choose to remain unvaccinated for religious reasons than those who seek to remain vaccinated for secular treatment. The numbers in Table 1 and Table 2 speak for themselves, with thousands of medical and administrative exemptions granted, compared to a mere handful of religious accommodations for service members who will not remain in the service. Even if the comparison is limited to permanent medical exemptions—which necessarily excludes any administrative exemptions for those on terminal leave or in the separation process—the number of such exemptions is still several times larger than those granted religious accommodations. “No matter how small the number of secular exemptions by comparison, *any*

favorable treatment ... defeats neutrality.” *Navy SEALs 1-26*, at \* 11 (emphasis in original).

231. Having established that Military Defendants’ policies are not neutral and substantially burden Plaintiffs’ exercise of religion by treating those seeking exemption from vaccination less favorably than those seeking exemption for secular reasons, the burden of proof switches to Defendants who must demonstrate that their policies satisfy strict scrutiny, meaning that they must be (1) “narrowly tailored” (2) “to serve a compelling [government] interest.” *Cuomo*, 141 S. Ct. at 67 (citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)).

232. Military Defendants’ religious exemption policies fail to satisfy strict scrutiny under the First Amendment for largely the same reasons they fail strict scrutiny under RFRA. *See, e.g., Navy SEALs 1-26*, at \*11; *Air Force Officer*, at \* 11-12. The DoD Mandate, as a policy and as applied to Plaintiffs, fails to accommodate Plaintiffs’ sincerely held religious beliefs. There is no interest, compelling or otherwise, for Defendants to deny Plaintiffs’ religious exemptions or threaten not to accommodate Plaintiffs’ sincerely held religious beliefs. Nor have Defendants chosen the least restrictive means of achieving any compelling governmental interest, and in fact, have dismissed and uniformly denied Plaintiffs’ alternative, less restrictive mitigation measures.

Accordingly, the DoD Mandate, and the Defendants' religious accommodation policies and procedures, cannot survive strict scrutiny.

233. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by Defendants' violation of their First Amendment right to the free exercise of religion.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF PLAINTIFFS' FIRST AMENDMENT'S FREE**  
**SPEECH AND RIGHT TO PETITION CLAUSES**  
**U.S. CONST. AMEND. I**  
**(All Plaintiffs Against DoD & Service in Which They Serve)**

234. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 188-233 (Third and Fourth Causes of Action for RFRA and First Amendment Free Exercise violations).

235. The Free Speech Clause restricts the government from censoring speech on the basis of content and viewpoint.

236. Defendants' rejection of Plaintiffs RARs is based on Plaintiff's view of abortion in the use of stem cells from aborted children in the development of the mRNA vaccines.

237. The RAR process laid out by RFRA and DoD I 1300.17 are tools to allow Plaintiffs to petition for redress of wrong.

238. The discussion of Plaintiffs' Third and Fourth Causes of Action establish that the RAR process was theater, a farce, and a fraud. This is a clear violation of the requirement that such petitions for redress must be answered

by answers and decisions that are honest, lawful, effective, and free from religious bias.

239. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by Defendants' violation of their First Amendment rights to free speech and to petition the government for redress.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**  
**U.S. CONST. AMEND. V**  
**(All Plaintiffs Against DoD, CDC & Service in Which They Serve)**

240. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 14-18, Section V (Paragraphs 94-107), and Section VIII (Paragraphs 131-140).

241. The Fifth Amendment Due Process Clause provides that no person may “be deprived of life, liberty or property without due process of law.” U.S. CONST. AMEND. V. The DoD Mandate would deprive Plaintiffs of all three.

242. The CDC Vaccine Redefinition, the Mandate, the No Accommodation Policy and the deprive Plaintiffs of their Fifth Amendment Rights to procedural due process.

243. The CDC, recognizing that the Pfizer/BioNTech and Moderna COVID-19 treatments do not provide immunity to COVID-19, changed the centuries old definitions of “vaccine” and “vaccination” from a medical

procedure that provides immunity to one that merely provides “protection” or lessens the severity of a symptom (*i.e.*, like any other therapy). *See* Ex. 8, CDC FOIA Responses. The CDC FOIA Responses confirm that the CDC did so because it recognized that the public was well aware that the Pfizer/BioNTech and Moderna mRNA COVID-19 treatments did not provide immunity, and the redefinition was a transparent attempt to use its authority to deceive the public. *See generally* Ex. 8 & Section VIII.

244. Further, the CDC changed the definition from that set forth in statutes defining vaccines and recognized in Supreme Court precedents as a significant exception to the fundamental right to refuse medical treatment and against battery more generally. The US Supreme Court has recognized a “general liberty interest in refusing medical treatment.” *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 278, 110 S. Ct. 2841, 2851 (1990). It has also recognized that the forcible injection of medication into a nonconsenting person’s body represents a substantial interference with that person’s liberty. *Washington v. Harper*, 494 U.S. 210, 229, 110 S. Ct. 1028, 1041, 108 L.Ed.2d 178, 203 (1990), *see also id.* at 223 (further acknowledging in dicta that, outside of the prison context, the right to refuse treatment would be a “fundamental right” subject to strict scrutiny).<sup>26</sup> Thus, in doing so, the CDC sought to

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<sup>26</sup> Although *Cruzan* was decided under the due process clause of the Fourteenth Amendment, the Supreme Court has long held that the same substantive due process analysis applied to the states under the due process clause of the Fourteenth

circumvent not only the applicable federal laws and regulations defining vaccines and governing the CDC's administrative procedures, but also long-standing Supreme Court precedents that grant the procedural and substantive due process rights to refuse medical treatments by fraudulently treating the COVID-19 mRNA treatment as vaccines.

245. The CDC did so without any notice-and-comment rulemaking or in fact any procedure at all. *See supra* Section VIII. The CDC's action in concert with the Military Defendants' imposition of the Mandate deprives Plaintiffs of their right to life, liberty and property without due process in violation of the Fifth Amendment. The CDC and Military Defendants' actions also violate the Fifth Amendment Due Process Clause insofar the ban on administrative agencies creating "laws with punitive consequences" without following due process requirements and the ban on administrative officials being given unbridled power over First Amendment activity. *See, e.g., NFIB*, 142 S. Ct. at 667 (2022) (Gorsuch, J. Concurring).

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Amendment also applies to the federal government under the due process clause of the Fifth Amendment. *See, e.g., Bolling v. Sharpe*, 347 U.S. 497, 500 (1954) ("In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.") *See also, Adarand Constructors v. Pena*, 515 U.S. 200 (1995)(same).

246. First, the CDC Vaccine Redefinition and the Mandate require Plaintiffs to take a vaccine without their consent and thereby exposes them to a non-negligible risk of death or serious injury.

247. Second, the Mandate and No Accommodation Directive “threaten[] to substantially burden the liberty interests” of Plaintiffs “put to a choice between their job(s) and their job(s).” *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021) (“*BST*”). Plaintiffs face not only the loss of the current employment, but also will be barred from other federal or private employment as chaplains due to their discharge status and from any employer (including federal agencies or contractors) that have adopted vaccine mandates.

248. Third, the CDC Vaccine Redefinition, the Mandate, and the No Accommodation Directive may result in deprivation of Plaintiffs’ protected property interests. Disciplinary action or discharge status will cause Plaintiffs to lose retirement, veterans, and other governmental benefits to which they are entitled. *See, e.g., supra* ¶¶ 31, 38, 42, 46-48, 52 (discharge will result in loss of VA benefits, GI Bill and/or partial or total loss of earned retirement benefits).

249. Further, the Mandate and the No Accommodation Policy deprives Plaintiffs of their fundamental rights, in particular, the free exercise of religion protected by RFRA and the First Amendment. *See BST*, 17 F.4th at 618 n.21 (citations omitted). The Military Defendants’ policy of systematic and uniform

denial of 100% of RARs is just as much a deprivation of their Fifth Amendment Due Process rights, U.S. CONST. AMEND. V, as it is of First Amendment Free Exercise rights. Due process requires not only notice and an opportunity to be heard, but also an impartial decisionmaker where, unlike here, the outcome is not “predetermined.” *See, e.g., McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). The zero or near zero approval rate shows that the Armed Services have “predetermined the denial of the religious accommodations.” *Navy SEALs 1-26*, at \*6. This is no accident, but the intended result of a process designed to deny Plaintiffs’ free exercise rights; their fate has been sealed before the process begins.

250. The Defendants have also violated the Due Process Clause insofar as they have modified or amended AR 40-562, the currently effective regulation governing immunization and exemptions—by imposing an entirely new vaccination requirement and categorically eliminated existing exemptions—without any legal authorization or following procedures required by law.

251. Even if Plaintiffs were to become “fully vaccinated,” they would be threatened with the loss of this status (and consequent deprivation of protected life, liberty and property interests), at any time and without fair notice, due to changes in the CDC or FDA approval of booster shots and change to the definition of “fully vaccinated.” So would the majority of service members who are currently deemed “fully vaccinated.” The rapid decline in efficacy and need

for booster shots demonstrates that there is no scientific consensus on the COVID-19 vaccines' efficacy, protection provided, or even dosage. "As COVID-19 is a new disease, and the vaccines are even newer, the long-term efficacy of immunity derived from vaccination and infection is not proven." *Klaassen*, 2021 WL 3073926, at \*12. Accordingly, this fluid and changing classification cannot be used as the benchmark for determining who may serve in the military, or alternatively, for depriving Plaintiffs of their life, liberty, property and other fundamental constitutional rights, including the free exercise of their religion.

252. As a result of the Defendants' unlawful and unconstitutional actions, Plaintiffs face deprivation of their rights to life, liberty and property without due process. Plaintiffs seek declaratory and injunctive relief because they have no adequate remedy at law to prevent future injury caused by Defendants' violation of their Fifth Amendment rights to due process.

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF ADMINISTRATIVE PROCEDURE ACT**  
**5 U.S.C. §§ 706(2)(A)-706(2)(E)**  
**(All Plaintiffs Against All Defendants)**

253. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 14-18, Section V (Paragraphs 94-107), and Section VIII (Paragraphs 131-140).

254. **Arbitrary & Capricious and Unsupported by Substantial Evidence.** Each of the CDC Vaccine Redefinition and the Mandate is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” in violation of 5 U.S.C. § 706(A) and is unsupported by substantial evidence in violation of 5 U.S.C. § 706(2)(E).

255. As far as the CDC Vaccine Redefinition, the CDC simply redefined the centuries old definitions of “vaccine” and “vaccination” in response to public doubts and questions regarding the efficacy of the vaccine and the CDC and other agencies’ public admissions that the Pfizer/BioNTech and Moderna COVID-19 vaccines did not provide immunity and could not prevent infection, re-infection or transmission. The CDC did so simply by posting a new definition on its website, and without statutory authority, instituting notice-and-comment rulemaking, or citing any evidence in support of its entirely novel definition. For their part, the Military Defendants blindly and retroactively relied on the CDC’s new definition (which in fact was announced *after* the DoD’s August 24, 2021 mandate).

256. The entirety of the DOD Mandate is a two-page memorandum from the Secretary of Defense that cites no statute, regulation, executive order or other legal authority. The DoD Mandate is arbitrary and capricious insofar as it imposes an entirely new mandate on over two million active duty and reserve service members without any explanation, justification, legal basis or

authority; any findings of facts or analysis (cost-benefit or otherwise) supporting the directive; seeks to exercise *ultra vires* action in excess of DoD or Secretary Austin's authority and/or that is expressly delegated to another agency; and is based on patent misrepresentations of the law.

257. The DoD Mandate is arbitrary and capricious insofar as its sole justification or explanation is a conclusory statement that the Secretary has “determined that mandatory vaccination against [COVID-19] is necessary to protect the Force and defend the American people.” August 24, 2021 SECDEF Memo. Given that the DoD Mandate was issued on the very next day after FDA Comirnaty Approval, it is apparent the DoD blindly relied on the FDA approval and out-of-context FDA statements regarding interchangeability.

258. Military Defendants also purport to rely on the CDC's recommendations in adopting the two-dose regimen but have ignored the CDC's unanimous recommendation that all eligible adults should receive a third booster shot. *See* CDC, *CDC Expands Eligibility for COVID-19 Booster Shots to All Adults*, CDC Media Statement (Nov. 19, 2021), available at: <https://www.cdc.gov/media/releases/2021/s1119-booster-shots.html>. Such selective picking and choosing of which recommendations to follow, without any explanation, is the essence of arbitrary and capricious decision-making.

259. Finally, Military Defendants' actions are arbitrary and capricious, and unsupported by substantial evidence, insofar as they categorically

eliminated existing exemptions for previous documented infections under AR 40-562, or to consider natural immunity in its religious exemption decisions. *See, e.g., Navy SEAL 1*, at \*16 & n.10; *Navy SEALs 1-26*, at \*10; *Air Force Officer*, at \*10. In doing so, Defendants have “entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

260. **5 U.S.C. § 706(2)(B): Violation of Constitutional Rights.** The CDC Vaccine Redefinition, the Mandate and the No Accommodation Policy are violations of Plaintiffs’ constitutional rights for the following reasons. First, these policies result in a deprivation of Plaintiffs’ Fifth Amendment rights to procedural due process as set forth in the Seventh Cause of Action. *See supra* ¶¶ 240-252. Second, the No Accommodation Policy deprives Plaintiffs of their First Amendment RFRA rights as set forth in the Third Cause of Action (RFRA), *see supra* ¶¶ 189-205, Fourth Cause of Action (First Amendment Establishment Clause and No Religious Test Clause), *see supra* ¶¶ 206-223, Fifth Cause of Action (First Amendment Free Exercise), *see supra* ¶¶ 224-233, and Sixth Cause of Action, (Free Speech and Right to Petition). *See supra* ¶¶ 234-238.

261. ***Ultra Vires*/Violation of Statutory Right.** The DoD Mandate and Armed Services’ guidance are *ultra vires* actions “in excess of statutory jurisdiction [and] authority,” 5 U.S.C. § 706(2)(C), for the reasons set forth

under the Fourth Cause of Action above. The DoD and the Armed Services are departments and agencies of the United States Government. As such, they are agencies created by statute, and “it is axiomatic that an administrative agency’s power to promulgate legislative regulations,” like the DoD Mandate, “is limited to the authority delegated by Congress.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 109 S. Ct. 468, L.Ed.2d 493 (1988) (“*Bowen*”); *see also La. Pub. Serv. Comm’n v. FERC*, 476 U.S. 355, 375, 106 S. Ct. 1890, 90 L.Ed.2d 369 (1986) (“an agency literally has no power to act, ..., unless and until Congress confers power on it.”).

262. The CDC and Military Defendants’ actions are *ultra vires* in excess of their statutory authority in violation of 5 U.S.C. §706(2)(C) insofar as they have redefined the centuries old definitions of vaccine and vaccinations to extend coverage to COVID-19 treatments that provide “protection” (like any other therapy) rather than immunity, and then making this unproven experimental treatment mandatory, without any statutory authorization whatsoever. *See generally supra* Section VIII.

263. The Mandate and the Military Defendants’ No Accommodation Policy violates Plaintiff Chaplains’ statutory rights to free exercise of religion that apply to all service members, as well as their specific rights as Military Chaplains to free exercise and to be free from religious discrimination and retaliation that are set forth in Section 533. The facts and allegations

supporting the claim under 5 U.S.C. § 706(2)(C) are set forth in more detail, and realleged as if set forth in this Count, in the First Cause of Action (Section 533), *see supra* ¶¶ 162-176, and the Second Cause of Action (Section 533), *see supra* ¶¶ 180-187.

264. **5 U.S.C. § 706(2)(D): Without Observance of Procedures Required by Law.** As explained above, neither the CDC nor the Military Defendants followed any procedures whatsoever in announcing the CDC Vaccine Redefinition or the Mandate. They simply announced new policies that had the force of law. The CDC posted a new definition to its website changing the centuries old definition of “vaccine” and “vaccination” from one day to the next. Secretary Austin adopted the Mandate on August 24, 2021, just one day after the FDA approved Pfizer/BioNTech’s Comirnaty vaccine.

265. As a result of Defendants’ unlawful actions, Plaintiffs will be required either to take an unlicensed vaccine, pursuant to an unlawful directive, or else face the serious disciplinary consequences outlined above that will result in the loss of their livelihoods, benefits, and fundamental rights.

**NINTH CAUSE OF ACTION**  
**VIOLATION OF SEPARATION OF POWERS**  
**U.S. Const. Art I, § 8**

266. Plaintiffs reallege, as if fully set forth in this Count, the facts in Paragraphs 16-18, Section V (Paragraphs 94-107), and Section VIII (Paragraphs 131-140).

267. The DoD Mandate and CDC Vaccine Redefinition must be considered as part of a larger effort to impose unconstitutional vaccine mandates on nearly every U.S. citizen or legal resident. The unprecedented federal vaccine mandates have been enacted solely through administrative action, without authorization from Congress. Neither the DoD Mandate nor the CDC Vaccine Redefinition cite any statute, regulation, executive order or action, or other legal basis for their action, and thereby violate the separation of powers and Congress' enumerated powers in Article I, § 8 of the U.S. Constitution. The Secretary of Defense and CDC Director cannot rely on the President's authority as commander-in-chief, both because they do not rely on any executive order or other Presidential action or authorization for this mandate and because such authorization itself would likely violate the separation of powers.

268. As explained above, the each of the Military Defendants and the CDC is a department or agency of the United States Government. As such, they are agencies created by statute, and "it is axiomatic that an administrative agency's power to promulgate legislative regulations," like the DoD Mandate, "is limited to the authority delegated by Congress." *Bowen*, 488 U.S. at 208.

269. The DoD Mandate and CDC Vaccine Redefinition violate the separation of powers, and the Congressional delegation of authority, insofar as

it seeks unilaterally “[t]o make Rules for the Government and Regulation of the land and naval forces,” U.S. CONST. ART. I, § 8, cl. 14, without congressional authorization. Further, insofar as Secretary Austin’s order may result in the expulsion of tens or even hundreds of thousands of service members and devastate military readiness, it interferes with Congress exclusive authority “[t]o raise and support Armies” and “[t]o provide and maintain a Navy.” U.S. CONST. ART. I, § 8, cl. 12 & cl. 13. These enumerated powers give Congress, rather than the DoD or even the President, the power to set personnel levels through legislation, in particular the annual National Defense Authorization Acts, and related legislation governing spending, military readiness, and the health and welfare of service members. Similarly, Congress has the plenary and exclusive authority to determine who may serve in the military. *See generally U.S. v. Williams*, 302 U.S. 46, 58 S. Ct. 81 (1937) (affirming Congressional authority for conscription and to set the age and other conditions of eligibility for service).

270. Congress has not enacted any legislation authorizing the DoD Mandate, nor has it established COVID-19 vaccination as a condition to be eligible to serve in the military, or to systematically exclude those with sincerely-held beliefs. Further, there is no indication that Congress intended to do so given the absence of such authorization in any of the COVID relief legislation or the 2022 NDAA.

271. The DoD Mandate and the CDC Vaccine Redefinition also violate the “Major Questions” doctrine. The Fifth Circuit struck down the OSHA Mandate, among other things, because “the major questions doctrine confirms that the Mandate exceeds the bounds of OSHA’s statutory authority,” where there was no evidence that Congress had delegated the agency that authority. *BST*, 17 F.4th at 617. *See also NFIB*, 142 S. Ct. 661 (staying OSHA Mandate).

272. The Mandate and CDC Vaccine Redefinition, imposed through administrative fiat, are in many ways similar to the CDC’s eviction moratorium that the Supreme Court struck down as exceeding the authority granted to the CDC by enabling statute. Where, as in the CDC eviction moratorium and the OSHA Mandate, “an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the economy,” the Court must “greet its announcement with a measure of skepticism.” *See generally Alabama Assoc. Realtors v. HHS*, 141 S.Ct. 2485, 2489 (2021). Further, Congress must “speak clearly when authorizing an agency to exercise vast powers of economic and political significance.” *Id.* (internal citation and quotation omitted).

273. The CDC and Military Defendants’ actions also violate the Separation of Powers and “Major Questions” doctrine insofar as they would create “laws with punitive consequences” without statutory authorization and

the give unelected officials unbridled power over First Amendment activity. *See, e.g., NFIB*, 142 S. Ct. at 667 (2022) (Gorsuch, J. Concurring).

274. This Court must therefore reject the efforts of Defendants to bypass Congress and the Constitution, to enact by administrative fiat an unconstitutional vaccine mandate, without any authorization from Congress or the Executive. Plaintiffs have no adequate remedy at law for the Military Defendants' unilateral and unauthorized administrative action imposing new vaccine requirements and elimination of existing medical and/or religious exemptions, or for the CDC's redefinition of "vaccine" and "vaccination" on which the Military Defendants' unlawful actions rely.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully ask this Court to:

- (1) Certify the Classes and SubClasses defined herein pursuant to Rules 23(b)(1) and 23(b)(2), appoint the Named Plaintiffs as representatives of such Classes and SubClasses, and appoint undersigned counsel as Class Counsel for each Class and SubClass;
- (2) Declare that the Military Defendants' No Accommodation Policy violates Section 533; RFRA; the Constitution's Article VI No "Religious Test" Clause; the First Amendment's Establishment, Free Exercise, Free Speech and Right to Petition Clauses; the Fifth Amendment Due Process Clause, and the No Religious Test Clause;
- (3) Enjoin the implementation or enforcement of the Mandate and No Accommodation Policy with respect to the Plaintiffs, the Military Chaplain Class, and the two sub-classes;
- (4) Enjoin any adverse or retaliatory action against the Plaintiffs as a result of, arising from, or in conjunction with the Plaintiffs' RAR requests or denials, or for pursuing this action, or any other action

for relief from Defendants' constitutional, statutory, or regulatory violations;

- (5) To order Defendants to take necessary actions to repair and restore Plaintiffs' careers and personnel records, and to provide effective guarantees against future retaliation for the exercise of their protected rights through the Services' assignment, promotion, and schooling systems;
- (6) Find unlawful the CDC Vaccine Redefinition and vacate any Defendant agency actions adopting or relying on this unlawful redefinition;
- (7) An Order declaring the Defendants have acted with bad faith from the beginning of the Mandate and with reckless disregard for the health, safety and welfare of Plaintiffs and the class; and
- (8) Attorney's fees and costs for prosecuting this action based on Defendants' bad faith and/or under the Equal Access to Justice Act, 28 U.S.C. § 2412.

Respectfully Submitted,

/s/ J. Andrew Meyer

J. Andrew Meyer, Esq.

Fla Bar No. 0056766

FINN LAW GROUP, P.A.

8380 Bay Pines Blvd

St. Petersburg, Florida 33709

Tel.: 727-709-7668

Email: ameyer@finnlawgroup.com

/s/ Arthur A. Schulcz, Sr.

Arthur A. Schulcz, Sr.

DC Bar No. 453402

Chaplains Counsel, PLLC

21043 Honeycreeper Place

Leesburg, VA 20175

Tel. (703) 645-4010

Email: art@chaplainscounsel.com

Motion for Special Admission Pending

/s/ Brandon Johnson  
Brandon Johnson, DC Bar No. 491370  
Defending the Republic  
2911 Turtle Creek Blvd., Suite 300  
Tel. (214) 707-1775  
Email: bcj@defendingtherepublic.org

Motion for Special Admission Pending

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

This is to certify that on this 18<sup>th</sup> day of May, 2022, the foregoing Plaintiffs' Complaint for Declaratory and Injunctive Relief was e-filed using the CM/ECF system, and that I have delivered the filing to the Defendants, as well as the United States Attorney General and the United States Attorney for the Middle District of Florida, by certified mail at the following addresses:

This 18th day of May, 2022.

Respectfully Submitted,

/s/ Arthur A. Schulcz  
Arthur A. Schulcz

Lloyd J. Austin III  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Xavier Becerra  
Secretary  
Dept. of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Frank Kendall  
Secretary of the Air Force  
1670 Air Force Pentagon  
Washington, DC 20330-1670

Carlos Del Toro  
Secretary of the Navy  
1000 Navy Pentagon  
Washington, DC 20350-1000

Janet Woodcock  
Commissioner  
Food and Drug Administration  
10903 New Hampshire Ave  
Silver Spring, MD 20993-0002

Christine E. Wormuth  
Secretary of the Army  
101 Army Pentagon  
Washington, DC 20310-0101

Merrick Garland  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

Karin Hoppmann  
Acting United States Attorney  
U.S. Attorney's Office  
400 North Tampa Street, Ste 3200  
Tampa, FL 33602

Rochelle Walensky  
Director,  
Centers for Disease Control &  
Prevention  
395 E St SW  
Washington, DC 20024

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF LT ISRAEL ALVARADO**

Pursuant to 28 U.S.C. §1746, I, ISRAEL ALVARADO declare as follows:

1. My name is ISRAEL ALVARADO. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Navy mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside in Chesapeake VA. My home of record and where I am domiciled is Wyoming, Kent County, MI.
4. I am an active duty chaplain in the United States Navy serving at the rank of Lieutenant. I am currently assigned to Commander Destroyer Squadron TWO SIX, located at 9727 Avionics Loop Suite 100, BLDG LF-18, Norfolk, VA 23511.
5. I began my military service when I commissioned on 29 July 2020 and entered active duty on 31 August 2020.
6. I was promoted to the rank of Lieutenant in July 2021. I will have 2 years of service as of September 2022.
7. During my military career, I have done one deployment to the 4th Fleet, The Caribbean/Panama Canal on 01/2021-03/2021
8. I submitted my Religious Accommodation Request (RAR) at Exhibit 1 asking to be excused from the NAVY's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows:

My request is based on my religious belief that my body is the temple of the Holy Spirit purchased with the blood of Christ which the Apostle Paul teaches in 1 Corinthians 6:19-20, therefore I am not my own, but belong, body and soul, to my God. God calls me to honor him with my body, therefore, it would be sinful and foolish to inject a new type of vaccine technology into my body, such as the mRNA, whose long term serious side effects are unknown and a likelihood exists that genetic elements, known as retro-transposons, hijack cellular mRNA, convert it into DNA and insert that DNA back into my genetic material, altering my DNA, thus tampering God's temple which is my body.

It is also my belief that unborn children are living creatures created in the image of God. Since conception they are the objects of God's providence, care and sacrificial love. Therefore, we are obligated to treat the unborn children as human persons in all decisions and actions involving them. It is publicly known that fetal cell lines were used to produce COVID-19 vaccines. Abortion is murder and Exodus 20:13, the sixth commandment, forbids us to murder, thus receiving the Covid-19 or any other vaccine that has used fetal cell lines for its production, development or testing would make me morally complicit in the act of abortion, conveying a sense of approval for the killing of the unborn, which is immoral, sinful and forbidden in the sixth commandment.

Finally, the liberty of conscience God has given me was purchased with a high price, the life of his only begotten son. Dismissing this sacrifice by surrendering my liberty of conscience would be a sin before God as stated by Romans 14:23 "For whatever does not proceed from faith is sin". I sincerely hold the religious belief that the COVID-19 vaccines were produced, developed or tested in violation of God's commandment not to murder, and allowing aborted fetal tissue or a new vaccine technology to be injected into my body, against my conscience, would be sinful, immoral and a violation of the Sacred Texts of my faith tradition.

9. I also have developed natural immunity after I caught the COVID-19 virus on 10 January 2022.

10. My RAR was denied on 26 October 2021, Exhibit 2. I submitted my RAR appeal, Exhibit 3, on 12 November 2021, which was denied on 25 January 2022, Exhibit 4. Because I became infected with the COVID-19 virus in January 2022, per BUPERSINST 1730.11A, I submitted a new RAR on 10 February 2022, Exhibit 5. My second RAR was denied on 24 February 2022, Exhibit 6. I submitted an appeal to the denial of my new RAR on 9 March 2022, Exhibit 7, which my command did not forward for consideration, Exhibit 8.

11. Even though I have had no allergic reactions to vaccines in the past, I have serious objections to injecting my body with a rapidly developed “experimental use only” vaccine without long-term studies that could potentially change my DNA and whose effects have been suppressed. Also I object to the COVID-19 vaccination because the COVID-19 vaccines are not legitimate vaccines as that term has been historically and medically defined and presented to the public, “Vaccine” used to mean a medical procedure that protected you from the disease against which you were being vaccinated against whereas COVID vaccines do not protect you but are in reality are gene therapy, altering my DNA to “fight” the virus in order to lessen the effects of the disease and not guaranteeing protection as traditional vaccines do.

12. Another reason why I reject this “treatment” (COVID-19 vaccine) is because I believe it is unnecessary. The age bracket of our service members is the least affected by this virus. Our service members go through a demanding physical screening before they join the service, thus most of them, unless they have a medical waiver, are young and healthy. The current number of COVID-19 related deaths in the Navy since the beginning of this pandemic is 17. The Navy has a total active duty and reserve force of about 450,000 members. This means that the COVID-19 in the whole Navy has a death rate of .037%, which means that there is a 99.96 probability of

surviving this virus. There have been 89,231 cases of which 87,074 have recovered and 2,150 are active cases. These numbers clearly prove that this virus is not deadly as it has been advertised, thus no need for a fully vaccinated force. I believe that vaccination against COVID-19 should be voluntary and not mandatory. Even though I have acquired natural immunity, I am still required to show proof of vaccination when entering buildings on base. Also there is a weekly testing requirement for unvaccinated sailors, when fully vaccinated sailors continue contracting the virus, getting sick and spreading the virus without a testing requirement. This only proves that the Navy's main goal is not to stop the spread of the virus and protect the force but simply to have every single service member fully vaccinated. I believe that I have not received orders for my next duty station based on the fact that I have refused the COVID-19 vaccine. I should have received them in January of this year and I am still waiting for my detailer to get back to me. Also I have to fill out a COVID-19 travel risk assessment every time I request leave when fully vaccinated sailors don't have to do that even though they continue getting sick with the virus.

13. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: I have received a report of misconduct and an adverse FITREP because, on the basis of my sincerely held religious belief, I refused to comply with the order to get vaccinated. In the Adverse FITREP I received from my Commanding Officer, he stated "LT Alvarado is not recommended for promotion or retention" because of my religious belief. I have been removed from operational status, not allowing me to visit the ships that are under my care, thus I can't get underway with the 4 destroyers we have in the waterfront, and I won't be able to deploy with the one I was scheduled to deploy in July 2022. I have received Temporary Additional Duty orders to Commander, Naval Surface Force Atlantic Ministry Center, where I was confined for 2 weeks to an office with no tasks to do. Because of the lack of office space and

working stations, I was allowed to muster from home Tuesday- Thursdays. While it was convenient to be at home spending time with my family, this fight to defend my religious freedom psychologically affects me and my family. It is demoralizing and it's taking its toll in my wellness. This is nothing but a punishment meant to break my mind and spirit. There is not a single day when I don't experience some sort of anxiety caused by the vaccine mandate. Every time I check my email my heartbeat raises as I worry that I may have another email from my command with negative news regarding my pending separation. I can't currently search for employment outside of the Navy because I don't know when/if I will be separated. Lastly, I have to compile a package for a career status board that meets in September 2022 which will determine if I am retained in Active Duty service. One of the documents I have to compile is a letter of recommendation from my Commander Officer, which he already stated in my last FITREP that he does not recommend me for retention. I am not recommended for retention because of my religious beliefs.

14. In December 2021, my supervisory chaplain verbally presented me an offer to resign my commission in order that I could get an honorable discharge and thus retain any VA benefits that I may be entitled to. This happened while I had an Appeal pending and I opted to wait for adjudication. Now that my appeal was denied, I have been told that, if I am separated, I will receive a General Discharge Under Honorable Conditions. This poses a problem to my future as I will be searching for chaplaincy jobs in corrections, jails, VA hospitals, civilian hospitals and this type of discharge may hinder any future employer from hiring me. This type of discharge does not reflect my conduct, character and behavior during my time of service in the Navy. Also, a General Discharge Under Honorable Conditions will not allow me to receive the GI educational benefit, which I have worked hard to earn and I am planning on using as I continue receiving the education I need to improve my knowledge and skills in the professional

chaplaincy field. This being said, this discharge may close doors for me to use my gifts, skills, experience and knowledge as a chaplain.

15. Lastly, there is a shortage of chaplains in the Navy. Every other chaplain I have talked to about my situation can't understand why the Navy is getting rid of chaplains and not granting their religious accommodation when the Navy can't recruit enough chaplains to meet the demand for chaplains. As a matter of fact, my detailer expressed that there were a large number of billets gapped waiting for chaplains to fill them. As an example, my command, Destroyer Squadron TWO SIX has 2 chaplains that cover 4 ships. Now this command is down to one chaplain covering 4 ships because I have been removed from my command.

16. It would be a mistake for the Navy to separate me from service based upon the false allegation of misconduct for disobeying a lawful order and it would negatively impact command readiness, result in the loss of the Navy's investment in my training and the expertise I possess. The loss of my contribution to the command would result in a great loss to the readiness of the ships in my command and the Navy as a whole as the biggest problem the Navy faces on the ships pertains to mental health, and chaplains help bridge that gap. Given that destroyers do not have a permanent psychologist or behavior health trained personnel, chaplains fill that role and help improve the mental, spiritual, and emotional wellbeing of our sailors.

17. I am a skilled chaplain. I have significant experience in the mental health field, especially working with young adults who have been diagnosed with severe anxiety and depression, suicidal ideation, substance and drug abuse. My experience working with interdisciplinary medical teams provides me with vast knowledge, resources and skills to care for sailors with suicidal ideation and support them in their recovery. As a safeTALK trainer, I can assist in providing suicide prevention programs and as a trained facilitator for the Warrior Toughness initiative, I can help support the goal of the Navy to have a mission ready force by building

resilience in our local commands. I am a gifted facilitator with 7+ years of proven experience leading learning groups. I have substantial experience in leadership development, coaching, counseling, conflict resolution, character development and anger management. I have 4 units of Clinical Pastoral Education, and speak fluent Spanish. I also have vast experience in cross cultural ministry and I am cultural intelligence competent. I am willing to provide references to validate my claims.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

May 07, 2022

A handwritten signature in black ink that reads "Israel Alvarado". The signature is written in a cursive style with a large initial 'I'.

**Israel Alvarado**

EXHIBIT 2



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/ 114388  
26 Oct 21

**From:** Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
**To:** LT Israel Alvarado, USN, CHC  
**Via:** Commander, Destroyer Squadron TWO SIX

**Subj:** REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS

**Ref:** (a) 42 U.S.C. §2000bb-1  
(b) DoD Instruction 1300.17 of 1 September 2020  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) MILPERSMAN 1730-020  
(f) United States Attorney General memo of 6 Oct 17  
(g) Your ltr of 10 Sep 21 w/ends  
(h) BUMED ltr 6320 Ser M44/21UM40516 of 13 Oct 21

1. Pursuant to references (a) through (h), your request for religious accommodation through waiver of immunization requirements is disapproved. You must receive all required vaccines. However, you are free to request from your healthcare provider alternative vaccines that are available and meet the Navy's immunization requirements, as determined by a credentialed military healthcare provider. You are free to choose which COVID-19 vaccine to take. If you choose a COVID-19 vaccine that requires two doses, you must receive your first dose within five calendar (5) days upon receipt of this letter and complete the series as prescribed. If you choose a one-dose vaccine you must meet the established vaccination timeline or receive the vaccine within five calendar (5) days upon receipt of this letter, whichever is later.
2. In line with references (b) through (d), I am designated as the approval authority for requests for religious accommodation.
3. Reference (a), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion and good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (f)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS

emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

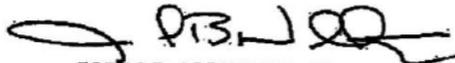
- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there are alternatives available to meet the requested accommodation and
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (g), including the endorsements from your chain of command, the local chaplain and the advice of Chief, Bureau of Medicine and Surgery in reference (h).

a. A waiver of immunizations would have a predictable and detrimental effect on your readiness and the readiness of the Sailors who serve alongside you in both operational and non-operational (including training) environments. Primary prevention of disease through immunizations has been a key enabler for maintaining force health and avoiding disease-related non-battle injury. Granting your request will have a direct and foreseeable negative impact on the compelling Government interests of military readiness and health of the force.

b. While serving in the U.S. Navy, you will inevitably be expected to live and work in close proximity with your shipmates. I find that disapproval of your request for a waiver of immunization requirements is the least restrictive means available to preserve the Department of Defense's compelling interest in military readiness, mission accomplishment and the health and safety of military Service Members.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.

  
JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)  
BUMED

**EXHIBIT 4**



**DEPARTMENT OF THE NAVY**  
CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N00  
25 Jan 22

**From:** Chief of Naval Operations  
**To:** LT Israel Alvarado, CHC, USN  
**Via:** Commander, Destroyer Squadron TWO SIX

**Subj:** APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION REQUIREMENT

**Ref:** (a) DCNO (N1) ltr 1730 Ser N1/114388 of 26 Oct 21  
(b) DoD Instruction 1300.17 of 1 Sep 2020  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) BUPERSINST 1730.11A  
(f) CHBUMED 6320 Ser M44/21UM40516 of 13 Oct 21  
(g) NAVADMIN 190/21

**Encl:** (1) Director, Military Personnel Plans and Policy (N13) memo Ser N13/306 of 17 Nov 21

1. Your appeal of reference (a) is disapproved. I am disapproving your appeal due to the Navy's compelling governmental interest in preventing infection and spread of diseases to support mission accomplishment, including military readiness, unit cohesion, good order and discipline, and health and safety, at the individual, unit, and organizational levels. A waiver of immunizations would have a predictable and detrimental effect on the readiness of you and the Sailors who serve alongside you. Granting your request will have a direct and foreseeable negative impact on the compelling governmental interest in military readiness and health of the force. I further find that there are no less restrictive means to achieve the Navy's compelling governmental interest.
2. References (b) through (e) designate me as the final appeal authority for requests for religious accommodation.
3. I considered your original request, your appeal, and the endorsements on your correspondence. I also considered your current assignment, which requires spending time underway on surface ships. In reviewing your appeal, I evaluated the request under the assumption that your religious beliefs are sincere and would be substantially burdened. As explained in reference (f), while no vaccine is 100 percent effective, vaccines with lower effectiveness still reduce disease incidence in the population, reduce an individual's risk of contracting the disease, and generally reduce the severity of disease for those who do contract the illness. In addition, the current coronavirus disease 2019 (COVID-19) pandemic further highlights the importance of vaccination in both individual and unit force health protection.

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION  
REQUIREMENT

4. Vaccination of Navy personnel can impact both individual and unit mission accomplishment. It reduces the risk to the individual for disease-related performance impairment, and it reduces the risk to the unit for disease outbreaks of contagious diseases such as COVID-19. While non-pharmacologic measures such as personal hygiene, mask wearing, and social distancing can also reduce the risk of disease outbreaks, they too are not 100 percent effective and must be implemented in conjunction with immunization to reduce the risk of mission failure. As explained in reference (f), these measures are not as effective as vaccination in maintaining military readiness and the health of the force.
5. Your appeal addressed to me specific questions related to the Navy's compelling governmental interest and certain lesser restrictive means. Enclosure (1) answers many of your questions.
6. You must now become fully vaccinated against COVID-19 in accordance with reference (g). You are free to choose which authorized COVID-19 vaccine to take, but you must receive a vaccine within five calendar days upon receipt of this letter. If you choose a COVID-19 vaccine that requires two doses, you must complete the series as prescribed. You must also receive all other required immunizations as directed by your command and/or primary care manager.
7. This letter applies only to your request for accommodation from the COVID-19 vaccine. I did not consider your request, raised for the first time in paragraph 11 of your appeal, for accommodation from all routine and non-routine vaccinations. You are free to properly submit a request for accommodation from these vaccines to DCNO (N1).
8. The Navy welcomes people of all faiths and no faith to join our ranks in patriotic service. Our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.

  
M. M. GILDAY

Copy to:  
ASN (M&RA)  
OPNAV (N131)  
BUMED

**EXHIBIT 6.**



**DEPARTMENT OF THE NAVY**  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser NI/118243  
24 Feb 22

**From:** Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
**To:** LT Israel Alvarado, CHC, USN  
**Via:** Commander, Destroyer Squadron TWO SIX

**Subj:** REQUEST FOR WAIVER OF POLICY IN SUPPORT OF RELIGIOUS PRACTICE

**Ref:** (a) LT Israel Alvarado, CHC, USN ltr of 10 Feb 22 w/ends  
(b) BUPERSINST 1730.11A  
(c) DCNO/NI RA Response ltr of 26 Oct 21  
(d) CNO Appeal RA Response ltr of 25 Jan 22

1. Your request in reference (a) is denied. Contrary to your assertion, there have been no substantive changes to the physical environment since your original request and appeal. The compelling government interest in ensuring mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels remains the same.

2. As provided in reference (b), members are afforded the opportunity to renew requests when the physical, operational, or geographical environment in which they work or operate has changed. In your case, the environment has not materially changed. Specifically, and as already noted in references (c) and (d), you remain a Chaplain and serve a critical fleet support role and also must maintain readiness to deploy at any time. Further, a waiver of the COVID-19 immunization would continue to have a predictable and detrimental effect on your readiness and the readiness of the Sailors who serve alongside you in both operational and non-operational environments. Granting your request would still have a direct and foreseeable negative impact on the compelling government interests of military readiness and health of the force. Finally, while no vaccine is completely effective, vaccines reduce disease incidence and disease severity.

NOWELL,JOHN,BL  
ACKWELDER,JR,1  
057611835  
JOHN B. NOWELL, JR

Digitally signed by  
NOWELL,JOHN,BLACKWELDER  
JR,1057611835  
Date: 2022.02.24 20:41:21 -0500

Copy to:  
OPNAV (N131, N0975)  
BUMED

**EXHIBIT 8**



**DEPARTMENT OF THE NAVY**  
**COMMANDER DESTROYER SQUADRON TWO SIX**  
9727 AVIONICS LOOP  
BLDG LF-18 RM 102  
NORFOLK, VA 23511-3729

IN REPLY REFER TO  
1730  
N00  
11 Mar 22

From: Commander, Destroyer Squadron TWO SIX  
To: LT Israel Alvarado, USN, CHC

Subj: RESPONSE TO SECOND APPEAL REQUEST FOR WAIVER OF POLICY IN  
SUPPORT OF RELIGIOUS PRACTICE IN CONSIDERATION OF LIEUTENANT  
ISRAEL ALVARADO

Ref: (a) LT Israel Alvarado, CHC, USN ltr of 9 March 2022

1. Receipt of reference (a) is acknowledged and returned without action.
2. In speaking with OPNAV 131B Branch Head, CDR Diane Cua, it has been further confirmed that your request should not be forwarded for consideration.

  
F. E. BRANDON

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CHAPLAIN, LT COL STEVEN WEYMAN BARFIELD**

Pursuant to 28 U.S.C. §1746, I, STEVEN WEYMAN BARFIELD declare as follows:

1. My name is STEVEN WEYMAN BARFIELD. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED], Ashland, KY 41101. My home of record and where I am domiciled is Ashland, KY.
4. I am an IMA reserve duty chaplain in the United States Air Force serving at the rank of Lt Col. I am currently assigned to the 88<sup>th</sup> ABW, AFMC, Wright-Patterson AFB, OH, 45433.
5. I began my military service on 25 Aug 2005 when I was commissioned as an Air Force Chaplain, Captain where I served as active duty until 3 Oct 2011, both at Mountain Home AFB, ID and the United States Air Force Academy, CO. I was commissioned and began service in the Reserves on 4 Oct 2011 where I continued to serve as an IMA reserve Chaplain at USAFA until 2013 and then transferred to Wright-Patterson AFB, OH where I continue to serve.
6. My promotions were as follows: Major on 1 Oct 2012 and Lt Col on 1 Oct 2019. I have approximately 17 years of service as of April 29, 2022, where six years were on active-duty where I received an honorable discharge.
7. During my active-duty military career, I deployed to Afghanistan from 08/2009-12/2009.
8. I have received the Meritorious Service Medal with one Oak Leaf Cluster and the Joint Commendation Service Medal along with other medals and awards during my military career.

9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) on 22 Sept 2021, Exhibit 1, asking to be excused from the Air Force's COVID-19 vaccine mandate based on my sincerely held religious beliefs. I submitted an RAR to the Air Force because I believed it was wrong for me to receive a vaccine that I knew was developed using aborted fetal cell tissue. I also provided a letter of support from my Southern Baptist Convention military chaplain endorser, Exhibit2.

10. My RAR was denied on 22 Feb 2022, Exhibit 3. I submitted my RAR appeal, Exhibit 4, on 1 Mar 2022, which was denied on 31 Mar 2021, Exhibit 5. In my appeal I focused on the issue of my readiness since the Air Force didn't place any weight on my religious beliefs but denied my RAR based on the needs of the government and their belief that vaccination was required for a fully ready force. In order to focus on the issue of my readiness I provided medical proof of my infection and recovery from COVID-19 as evidenced by the presence of antibodies over the course of two tests nearly one year apart (Exhibits 6 and 7) therefore showing I had natural immunity equal to or greater than those vaccinated with the two shots required by the Air Force. I also wanted to provide a recommendation from one of my doctors (Exhibit 8) stating that due to my long-term antibodies, validated by my antibody tests, receiving the vaccination presented more risks than benefits to me personally. I believe I was infected with COVID-19 during the first week of April 2021, from which I recovered without need of medical attention or hospitalization and have not missed work due to COVID-19 symptoms since. In my appeal denial letter, the Air Force did not directly address any of my concerns presented therein or those of my medical doctor, but instead provided a form letter with no indication that my information was actually read or taken into consideration.

11. I then submitted a MFR for a medical waiver on 19 Apr 2022, Exhibit 9, which was denied on 29 Apr 2022, Exhibit 10. The purpose of the medical waiver was to seek an

appointment with an Air Force medical provider so that I could express my concerns about the benefits and risks of receiving the COVID-19 vaccine due to the presence of antibodies. I was able to speak with a tech and doctor at Wright-Patterson AFB to discuss the scientific studies provided by the CDC, Cleveland Clinic and a study in Israel that pointed to the power of natural immunity compared to those who only had two shots, which is the only requirement of the Air Force. I expressed my concern that I was being asked to take more risks and be more vaccinated than my fellow Airmen who had never contracted COVID-19 but had only received two shots to meet the mandate. Studies have shown that natural immunity can have more robust antibodies than two shots. The Air Force medical tech and provider said that I provided valid points, but that their hands were tied by Air Force policy and as such denied my waiver. Other medical concerns mentioned in my MFR were not mentioned by either the tech or the medical provider. Both kept referring to the policy preventing them from approving a waiver or even offering a recommendation for a waive based on the science behind my request. Within one hour of my phone consultation, I received the form denial letter that did not address my concerns directly, had my incorrect rank and mentioned items in section 2 that were not even discussed such as the risk and benefits of the COVID-19 vaccine or the risk of contracting COVID-19. In my opinion, the Air Force is so overwhelmed with RAR and medical waiver requests that they do not take the time to carefully consider and address individual concerns and conditions and have already made up their mind how they will reply to any and all requests for waivers with no regard for the specific circumstances of each request.

12. The following retaliatory, career damaging, negative, punitive or administrative action has been taken against me for refusing the COVID-19 vaccine and requesting a religious accommodation request: I was given a letter of individual counseling in which I was instructed that failure to get the vaccine could negatively impact my career (Exhibit 11). The Air Force

Reserve Command has denied a duty title change to “IMA to the Wing Chaplain” because of my vaccination status. This duty title change is a one-page form that take a few minutes to fill out by my commander and be approved by the AFRC Chaplain office. IMA is the type of reservist that I am in the Air Force Reserves. The Air Force Reserve Command Chaplain leadership told me and my Wing Chaplain commander that my pending RAR request and unvaccinated status was the main reason that I was disqualified to have the new duty title. I was told that they wanted to see how that played out first. When I told them that this was discriminatory, they said that it wasn’t and that again, they wanted to see how the RAR process played out. I expressed my disagreement as did my active-duty Wing Chaplain who was advocating for me to have the duty title. It is important to note that this duty title would potentially help advance my career and is traditionally given to the highest ranked IMA on staff, which I am, which is why my Wing Chaplain wanted me to have this title along with him seeing me fit for the title.

This has been an incredibly trying time for me and my family as we have discussed this issue ad nauseum. I have spent countless hours drawing up paperwork and sending appeals. My family, friends and other military members going through this same ordeal have been incredibly supportive, but this has been a hardship we have endured together.

13. I am currently working on an appeal to my medical waiver denial. I must submit this appeal by midnight on 4 May 2022. Therefore, no disciplinary action has been taken by my Squadron Commander at this time.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 29, 2022

*Steven W. Barfield*

Steven Weyman Barfield



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT-PATTERSON AIR FORCE BASE OHIO

22 February 2022

MEMORANDUM FOR LT COL STEVEN W. BARFIELD

FROM: AFMC/CC

SUBJECT: Request for Immunization Exemption – Lt Col Steven W. Barfield, 88 ABW/HC

1. I have received your request for an exemption from the COVID-19 vaccine based on your sincerely held beliefs. After carefully considering the specific facts and circumstances of your request, along with the recommendations from your chain of command and functional experts, I **disapprove** your request for exemption from the COVID-19 immunization requirement.

2. I understand your concerns about receiving vaccines and appreciate the gravity of these immunization requirements in light of your beliefs. However, when evaluating your request, I also had to consider the risk your exemption would pose for mission accomplishment, including readiness, unit cohesion, good order, discipline, and the health and safety of you and other Airmen. As a Chaplain, your duties require you to come into close contact with personnel across the installation. Furthermore, as an IMA, your role requires you to be able to deploy or provide backfill support in a contingency. Not being vaccinated increases the impact on others in your unit, tends to diminish unit cohesion, and limits your ability to fully respond to mission or contingency requirements. Not being vaccinated also increases your risk for serious illness, hospitalization, or even death from contracting COVID-19, and/or spreading it to others in the workplace. This increased health risk elevates the threat to your unit's ability to accomplish its mission. I therefore find your vaccination furthers a compelling government interest. I also find that less restrictive means than vaccination are insufficient because the totality of mitigation measures like 100% telework, social distancing and masking at all times afford less health protection than vaccination, while delayed readiness due to the time needed to become fully vaccinated and other mobility restrictions limit your role and degrade the operational effectiveness of your unit.

3. You have five (5) calendar days to begin a COVID-19 vaccination regimen, submit an appeal, or apply for voluntary separation or retirement if eligible. If you wish to appeal, you must provide your written appeal request to your unit commander. Your unit commander will route your appeal to the Air Force Surgeon General for processing. A copy of this memorandum will be placed in your automated personnel records.

BUNCH.ARN  
OLD.W.JR.11  
07808708  
ARNOLD W. BUNCH, JR.  
General, USAF  
Commander

Digitally signed by  
BUNCH.ARNOLD.W.JR.  
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Date: 2022.02.22  
11:14:23 -05'00'

1st Ind, Lt Col Steven W. Barfield

MEMORANDUM FOR 88 CPTS/CC

I acknowledge receipt of decision on my religious accommodation request on  
\_\_\_\_\_ (DATE).

STEVEN W. BARFIELD, Lt Col, USAF



**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON DC**

**MAR 31 2022**

**MEMORANDUM FOR LIEUTENANT COLONEL STEVEN W. BARFIELD**

**FROM: HQ USAF/SG  
1780 Air Force Pentagon  
Washington, DC 20330-1780**

**SUBJECT: Decision on Religious Accommodation Appeal**

Your final appeal is denied. In accordance with Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, paragraph 3.2, I have carefully reviewed your request for religious accommodation, specifically for an exemption from the COVID-19 immunization.

The Department of the Air Force has a compelling government interest in requiring you to comply with the requirement for the COVID-19 immunization because preventing the spread of disease among the force is vital to mission accomplishment. In light of your circumstances, your present duty assignment requires intermittent to frequent contact with others and is not fully achievable via telework or with adequate distancing. In addition, your duties require parishioner contact. Your leadership role was also taken into consideration. While some of these duties may be completed remotely, institutionalizing remote completion of those duties permanently would be detrimental to readiness, good order and discipline, and unit cohesion. We must be able to leverage our forces on short notice as evidenced by recent worldwide events. Your health status as a non-immunized individual in this dynamic environment, and aggregated with other non-immunized individuals in steady state operations, would place health and safety, unit cohesion, and readiness at risk. Foregoing the above immunization requirement would have a real adverse impact on military readiness and public health and safety. There are no less restrictive means available in your circumstance as effective as receiving the above immunization in furthering these compelling government interests.

A copy of this decision memorandum will be placed in your automated personnel records. Please contact your unit leadership with questions or concerns.

A handwritten signature in cursive script that reads "Robert Miller".

**ROBERT I. MILLER  
Lieutenant General, USAF, MC, SFS  
Surgeon General**

IN THE MATTER OF THE VACCINE MANDATE CHALLENGE  
DECLARATION OF CHAPLAIN (1LT) WALTER DOMINO BROBST

Pursuant to 28 U.S.C. §1746 I, Chaplain (1LT) Walter Domino Brobst, declare as follows:

1. My name is Walter Domino Brobst. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I live at [REDACTED], Temecula, CA 92592. This is my home of record.
4. I am a chaplain in the United States Air Force Reserve endorsed by the Associated Gospel Churches (“AGC”). I am serving at the rank of First Lieutenant and currently assigned to the 452 AMW/HC, 2145 Graeber Street, March ARB, CA 92518.
5. My military history is as follows.
  - a. I served in the United States Navy as an enlisted Religious Program Specialist from June 2008 to March 2016 and left at the enlisted rank of First Class Petty Officer, pay grade E-6.
  - b. I was commissioned as a chaplain in the Air Force Reserve at the grade of First Lieutenant March 24, 2020.
  - c. I have had COVID-19 twice, the second time I was asymptomatic, not showing any symptoms. Under Air Force Instruction 48-110 IP, Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, my prior COVID exposure and recovery is supposed to “provide immunization credit for pre-existing immunity”, which has not happened.

6. During my prior Naval service, I had the following deployments to the foreign areas: Seventh Fleet Deployment to RIMPAC and WESTPAC.

7. I have received the following Navy and Air Force medals, awards, and professional education: Navy and Marine Corps Achievement (4), Meritorious Unit Commendation, Navy E Ribbon, Navy Good Conduct Medal (2), National Defense Service Medal, Global War on Terrorism Service Medal, Humanitarian Service Medal, Sea Service Deployment Ribbon, and the Enlisted Surface Warfare Specialist Breast Insignia. During my military career I attended Officer Training School and was selected to attend Basic Chaplain Course. I received a Bachelor of Science in Religious Studies at Liberty University (Lynchburg, VA) and a Master of Divinity at Westminster Seminary (Escondido, CA).

8. I submitted my Religious Accommodation Request (RAR) at Exhibit 1 asking to be excused from the Air Force's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: My religious accommodation request is related to my sincerely held belief and convictions founded on the matters of religious conviction, conscience, and moral principle that I find in the Bible. I serve as a chaplain for the Air Force and a pastor at a church. I have prayed and sought counsel about this issue and I am unable to reconcile within my personal faith, conscience, and moral principles to put this vaccine in my body. The mandate is a violation and overreach of the governmental authority and jurisdiction which violates my freedom of religious rights. I hold to a strong conviction that the right to choose what to put in my body is my God-given right and if I were to take it my conscience would lead me to believe that it would dishonor my God and Maker. I had COVID and my natural immunity, which I believe is part of God's wonderful and beautiful design, was efficient to combat the virus and restore me to good health. I have gotten COVID twice and the second

time I got the virus I was asymptomatic. Please see Exhibit 2 of Chaplain Matthew Nelson's Memorandum recommendation to grant my Religious Accommodation Request.

9. On Wednesday, November 17, 2021 I was notified, by Lieutenant Colonel Mark S. Baker 452 AMW/DS via telephone, that my RAR was denied. The denial letter was dated on Tuesday, November 16, 2021, Exhibit 3. I submitted my RAR appeal, Exhibit 4, on Saturday, November 20, 2021, which was denied on Friday, January 28, 2022. However, I was not notified that my appeal was denied until Friday, February 11, 2022, via telephone by Lieutenant Colonel Baker. I did not receive a copy of the denial letter until Monday, February 14, 2022, Exhibit 5. At the time of writing this declaration I received an LOR and a Notification of Involuntary Reassignment-Non-Participating Individual Ready Reserve (IRR). It is my intention to object and provide reasons why my appeal should be granted. I believe that the COVID-19 vaccine has not yet proven to be 100% safe, effective nor without any potential harmful side effects, see <https://www.cdc.gov/vaccinesafety/ensuringsafety/sideeffects/index.html>; [https://www.algora.com/Algora\\_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative](https://www.algora.com/Algora_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative).

10. To further state, I had no problems with "sterilized vaccines" like measles, mumps, polio, but have serious objections to a rapidly developed "experimental use only" vaccine without long-term studies that changes your DNA and whose effects have been suppressed. I object to the COVID-19 vaccination because the COVID-19 vaccines are not legitimate vaccines as that term has been historically and medically defined and presented to the public, so state. *I.e.*, "Vaccine" used to mean a medical procedure that protected you from the disease against which you were being vaccinated against whereas COVID vaccines do not protect you but are in reality a treatment.

12. I was ordered to provide proof of negative results for COVID prior to serving in reserve status. I was also ordered to always wear a mask because I was not fully vaccinated regardless of no proof that unvaccinated spread the virus more than fully vaccinated. While at Officer Training School, my roommate tested positive for COVID and he was quarantined for 10 days. I did not show any signs or symptoms of COVID but was forced to be in isolation for 14 days which resulted in low morale and negatively impacted my training experience.

13. The following retaliatory, career damaging, negative, punitive, and administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: I was denied attending Basic Chaplain Course, request for any annual tour was denied, I was forced to be isolated from working on base, received a Letter of Reprimand, loss of benefits, and restrictions on travel due to my vaccination status. During UTA, I was verbally told on Sunday February 27, 2022 not to return to the following UTA because I will be placed on an involuntary Individual Ready Reserve (IRR) but not given any written documents regarding it. I planned accordingly but was told on Thursday, March 10, 2022 to come to UTA because the paperwork has not been processed. I reported to UTA 12-13 March but was directed to telework and I was not provided any guidance or direction on my duties. I felt I was isolated who I worked with and that my chain of command was avoiding me until the Letter of Reprimand (LOR) was signed. Prior to receiving my LOR, I was denied my request to attend annual tour 14-15 March because my chain of command anticipated my LOR to be submitted. In addition, I felt ostracized by my chain of command by not receiving a text regarding my birthday on January 2022 when everybody else got one with whom I work with.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

March 29, 2022



Walter Domino Brobst



DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND

NOV 16 2021

MEMORANDUM FOR 1ST LT WALKER BROBST

FROM: HQ AFRC/CC  
555 Robins Parkway, Suite 250  
Robins AFB GA 31098-2005

SUBJECT: Request for Immunization Exemption

1. I have reviewed your request for religious exemption from the recently approved COMIRNATY®/ Pfizer-BioNTech COVID-19 vaccine, the EUA COVID-19 vaccines that include Johnson’s Janssen and the Moderna COVID-19 vaccines. I understand your concerns, which are based on your sincerely held beliefs. After carefully considering the specific facts and circumstances of your request, the recommendation of your chain of command and the MAJCOM Religious Resolution Team, I **disapprove** your request for religious exemption for the COVID-19 vaccine.

2. I do not doubt the sincerity of your beliefs. However, when evaluating your request for religious exemption, I also had to consider the risk to our mission. All immunizations, including those listed above, are an important element of mission accomplishment, as they contribute to the health, safety, and readiness of the force. Given the importance of our mission, the Department of Defense and the Department of the Air Force have a compelling government interest in maintaining a healthy and ready military force through vaccination. Specifically regarding the COVID-19 vaccination, since less restrictive means of protecting our force from COVID-19 are unavailable, all uniformed Airmen must be fully vaccinated against COVID-19 and other infectious diseases. Individual medical readiness is a critical requirement for maintaining a healthy and ready force.

3. If you choose to appeal this decision, please submit your written request to your unit commander within 72 hours of receiving notice of my decision.

4. A copy of this decision memorandum will be placed in your online personnel records. My point of contact is Ch, Lt Col Stacey Hanson, stacey.hanson@us.af.mil, DSN 497-1221.

  
RICHARD W. SCOBEE  
Lieutenant General, USAF  
Commander

cc:  
4 AF/CC  
452 AW/CC  
452 AMW/CC



**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON DC**

**JAN 28 2022**

**MEMORANDUM FOR FIRST LIEUTENANT WALTER D. BROBST**

**FROM: HQ USAF/SG  
1780 Air Force Pentagon  
Washington, DC 20330-1780**

**SUBJECT: Decision on Religious Accommodation Appeal**

Your final appeal is denied. In accordance with Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, paragraph 3.2, I have carefully reviewed your request for religious accommodation, specifically for an exemption from the COVID-19 immunization.

The Department of the Air Force has a compelling government interest in requiring you to comply with the COVID-19 immunization requirement because preventing the spread of disease among the force is vital to mission accomplishment. Specifically, in light of your circumstances, your present duty assignment as a chaplain requires intermittent to frequent contact with others and is not fully achievable via telework or with adequate distancing. Upon attending your Basic Chaplain's Course, you would be in frequent contact and immersion with multiple individuals, which would significantly impact training accomplishment if you, your instructors, or your fellow trainees were exposed or actively infected. We must be able to leverage our forces on short notice as evidenced by recent worldwide events. Your health status as a non-immunized individual in this dynamic environment, and aggregated with other non-immunized individuals in steady state operations, would place health and safety, unit cohesion, and readiness at risk. Foregoing the above immunization requirement would have a real adverse impact on military readiness and public health and safety. There are no less restrictive means available in your circumstance as effective as receiving the above immunization in furthering these compelling government interests.

A copy of this decision memorandum will be placed in your automated personnel records. Please contact your unit leadership for questions or concerns.

A handwritten signature in cursive script that reads "Robert Miller".

**ROBERT I. MILLER  
Lieutenant General, USAF, MC, SFS  
Surgeon General**

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF JUSTIN ELISHA BROWN**

Pursuant to 28 U.S.C. §1746, I, Justin Elisha Brown declare as follows:

1. My name is Justin Brown. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Navy and United States Coast Guard mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside in League City, Galveston County, TX. My home of record and where I am domiciled is the same address.
4. I am an active duty chaplain in the United States Navy serving at the rank of Lieutenant. I am currently assigned to as the Sector Chaplain with US Coast Guard for Sector Houston-Galveston and Sector Corpus Christi covering 46 Coast Guard units from Lake Charles, Louisiana to Albuquerque New Mexico, with my home office based at 13411 Hillard St Houston Texas, 77034.
5. I began my military service on March 18<sup>th</sup> 2013 when I became a Chaplain Candidate. I was re-commissioned on November 5<sup>th</sup> 2018 and entered active duty in April of 2019.
6. My promotions were as follows: November 2019. I have approximately 6 years of service as a Chaplain Candidate and 3 years of service on active duty as of March 1,2022.
7. During my military career, I have had the following deployments to following areas: Atlantic ocean operational area June-July of 2020, Various locations throughout Louisiana and Texas June 2021-present day.

8. I have received the following awards: Navy Commendation Medal, Navy Achievement Medal, and Armed Forces Service Medal during my military career. Prior to active duty service I completed a Chaplain Residency earning 4 units of Clinical Pastoral Education. I passed my board and became a Board Certified Chaplain with the Association of Professional Chaplains in April of 2016. With these advanced clinical skills and credentials I have a 1440N sub-specialty code and an additional qualification designation in Pastoral Counseling, enabling me to serve in specialized BUMED (hospital) billets throughout the Navy and Marine Corps. My undergraduate degree is in Psychology with a minor in sociology and my Master's of Divinity was specifically focused on Chaplaincy, with advanced classes in counseling and ethics. My 6 years of experience as a hospital and hospice chaplain enabled me to develop a skill set and expertise in crisis and grief counseling. I maintain advanced Suicide prevention training credentials that enable me to train our members in Suicide prevention, enhancing the safety of our units, saving lives.

9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) 15 Oct 2021 at Exhibit 1 asking to be excused from the Coast Guard's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: I hold a God given conviction to abstain from any vaccine that utilizes or benefits from fetal cells from murdered (aborted) children in any manner or form<sup>1</sup>. I hold a God given conviction that my body is a temple of God and I am not my own and I am to steward my body diligently honoring God with my whole being. Taking these vaccines would be a violation of my God given conviction to steward my body as God's temple<sup>2</sup>. Finally God has given me the faculties of reason and

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1 Genesis 1:26, Psalm 139:13-16

2 1<sup>st</sup> Corinthians 3:16-20

discernment that I am convicted to use in “living soberly and righteously in this present age<sup>3</sup>” and given my age and recovery from Covid I have a greater risk of harm and injury from the Covid shots than I do from any strain of Covid.

10. I contracted Covid in March of 2020 while assigned to the USS Vicksburg in Norfolk Virginia. After recovering I have not tested positive for Covid nor exhibited Covid like symptoms since my recovery, all while executing a PCS move to Texas, supporting units throughout my area of Responsibility (Louisiana, Texas, and New Mexico), traveling to Cleveland to conduct a funeral for a Coast Guard member, gotten underway on Coast Guard Cutters and have not caused any member to contract Covid. In October of 2021 I took an antibody test and I still have antibodies to Covid. In January of 2022 I took a more in depth T-Cell test that determined my T-Cells are able to make antibodies to the Covid infection. According to AR 40-562 I should receive a medical exemption due to my natural immunity just as I have for Chicken Pox and other such virus’.

11. My RAR denial letter, Exhibit 2, was signed on 26 FEB 2022, I received this denial on 8 March 2022 and given 10 business days to appeal. I requested an extension to this deadline as operational needs, particularly the suicide of one of my members and the suicidal ideation of another prevented me from writing my appeal. I further requested an extension as I was informed I would have to submit a FOIA in order to receive the documentation delineating the specific reasons my appeal was denied, the denial letter is a standard letter all denials receive with our job description placed at the beginning of paragraph 4. I submitted my RAR appeal, Exhibit 3, on 1 April 2022, which is still pending.

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3 Titus 2: 11-14

12. My appeal is based upon several factors including the approval of some permanent medical waivers in the Coast Guard, if those folks can be accommodated so can I. The blanket denial that was issued to every RAR and the clear communication from leadership through numerous mediums and at various times that no RAR would be approved and even if one was approved we would be separated from service. I am appealing due to having remained healthy and Covid free through natural immunity, while many of my colleagues who have taken the Covid shots have contracted Covid again. Further viewing the DMED data presented to Senator Johnson by Attorney Thomas Rentz it is clear my health is at greater risk from the Covid shot than from Covid itself. The Coast Guard has failed to take into account my particular circumstances let alone demonstrate a compelling government interest, that overrides my God given rights. Just recently the Coast Guard enacted a policy that will allow members seeking Religious Accommodations an administrative exemption if they are separating or retiring on or before October 1<sup>st</sup>. I have continued to serve in my role with no negative to impact to operations whatsoever since arriving at my duty station in June of 2021.

13. Finally, I am appealing because God has called me to serve our women and men in uniform and their families. At minimum it will take a year to have a replacement in place for me, during that time our members and their families will suffer without a chaplain. My particular skill set is tailored for military service, my background in Psychology, MDIV in Chaplaincy, unique skill set and credentials make me an invaluable asset to the Navy and Coast Guard. It is a joy to serve our people and nation, all I ask is to be able to serve honorably without having to compromise the tenets of my faith.

14. While seeking a religious accommodation I have had to provide proof health via negative Covid test, in spite of having no symptoms when other individuals have not, even though they can still get and spread Covid. I have been compelled to wear a mask in spite of CDC, DOD,

DHS, and Safer Federal Workforce guidance stating mask wear is based upon local transmission rates regardless of vaccination status, leaving me to feel singled out for my faith, my mask a scarlet letter. I have been denied the presumption of natural immunity as established by AR 40-562, in spite of having an antibody test and T-cell test indicating I am immune to Covid.

15. The following retaliatory actions have been taken against me for seeking a Religious accommodation to the alleged COVID vaccine: I am prevented from traveling more than 50 miles from my place of work or home<sup>4</sup>. While helping our members through the Religious Accommodation process I was reprimanded for sending members to legal or civil rights when they had questions outside of my purview. It is standard practice and the responsibility of the Chaplain to direct members to the appropriate resources when they are in need of assistance. I received a negative recommendation from my CO for my Religious Accommodation request, which was a predetermined and blanket negative endorsements everyone seeking a religious accommodation received. At the beginning of the mandate I was asked if I would resign my commission or face discharge under article 92 of the UCMJ which carries a maximum punishment of 2 years in jail. These scare tactics among others were employed to compel compliance.

16. While pursuing my own religious accommodation I have conducted interviews and written memos for over 100 religious accommodation requests, totaling well over 500 man hours not including the time spent, assisting members in the appeal process. It has been disheartening to hear from Command and Chaplain leadership that none of the religious accommodations will be approved and even if they were that we would still be discharged from service<sup>5</sup>. My heart has

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4 The travel restriction only applies to Leave and Liberty, I can and do travel beyond 50 miles on a regular basis for work to visit units in my Area of Responsibility.

5 See emails

been burdened for our members seeking to exercise their sincere faith only to be told they're issue is not religious but political, that they are a threat to others, and selfish. It is one thing to comfort Sailors, Marines, and Coast guardsmen when they suffer at the hands of a tragedy or the enemy, however it is soul rending to see their suffering caused by the leaders who should care for their well-being.

17. I received my religious accommodation denial just like so many of our members, a form letter with our job description in paragraph 4. The routing instructions for the appeal are not in alignment with the instruction and serve only to obfuscate the appeal process. I and others face the daunting task of appealing in 10 days, appealing to the specific reasons our religious accommodation was denied even though no such reasons are listed, and told to submit a FOIA request to receive our own personal documents, contrary to how other religious accommodation requests are treated. The FOIA takes at minimum 30 days to be processed and our appeal authority will not issue an extension to the appeal timeline based upon the FOIA timeline, leaving myself and our members in a no win situation.

18. The toll this has taken on me and my family is nearly overwhelming. The administrative burden and counseling load have been substantial. Mental health and moral in the Coast Guard are suffering greatly. To date there have been six suicides in the Coast Guard, of which I have supported the families of two of these Coast Guard members. One member and his wife both sought religious accommodations, both were denied. They faced the same no win situation regarding the appeal and just over a week after receiving his denial he ended his life. In order to officiate his funeral I had to route a travel waiver, in spite of being within the travel policy for work. His family and coast guard family are devastated, as am I. In the past week another member I counseled was preparing to receive his religious accommodation, he is now in

inpatient treatment for suicidal ideation. Whenever my duty phone rings my heart races and I fear it will be another call of a member I care deeply for, who has reached a breaking point.

19. I have met the needs of the members entrusted to my care to the best of my ability. I have struggled and wrestled with serving our people in the midst of a futile religious accommodation process, yet I have not failed to honorably discharge my duties. Yet the specter of an unknown discharge looms over me. I wake up each day not knowing how much longer I will get to serve God and country. My wife and children face an uncertain future and I have no answers I can give. I have been told to expect a general discharge, which is punitive at best and likely will prevent any future employment as a chaplain. Such a discharge mischaracterizes my service and denies VA benefits. I forced into the impossible choice of violating my faith and God given convictions or facing a discharge that will lead to poverty.

20. If force readiness is truly the goal of the DoD and Coast Guard then my continued service is paramount to readiness. My experience, education, and skill set are 14 years in the making. My specialized clinical credentials and ability to teach and train others in suicide prevention are a vital asset now more than ever. My efforts aiding others in seeking religious accommodation, formulation of individualized care plans and Sector wide suicide prevention care plans, have prevented further tragedy from occurring. Chaplains save lives and multiply force readiness and getting a replacement for my billet amid an already undermanned chaplain corps is a substantially greater threat to force readiness than me receiving a religious accommodation. My father served as a Navy chaplain for 26 years, I have known God called me to serve as a chaplain since I was in 1<sup>st</sup> Grade. I have done all in my power to serve and continue to serve honorably, however without relief from the court I will be removed from service. The Nation, Navy, Coast Guard, and my family will be the worse if such a removal should occur.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

March 28, 2022

  
JUSTIN ELISHA BROWN

1300  
08 Mar, TUE

U.S. Department of  
Homeland Security  
  
United States  
Coast Guard



Commandant  
United States Coast Guard

2703 Martin Luther King Jr. Ave. S.E  
Washington, DC 20593-7907  
Staff Symbol: CG-133  
Phone: (202) 475-5388  
Fax: (202) 372-8470  
Email: HQSPolicyandStandards@uscg.mil

6230

**MEMORANDUM**

Digitally signed by ROSCHELMICHAEL R 1034148011  
Date 2022.02.16.16:21:01 -0500'

From: M. R. Roschel, CAPT  
ADJUDICATION AUTHORITY

To: J. E. Brown, LT  
CG SECTOR Houston-Galveston

8 Mar 2022

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION FROM THE COAST  
GUARD'S COVID-19 VACCINATION MANDATE

- Ref:
- (a) Your memo 1000 of 15 OCT 21
  - (b) ALCOAST 305/21 R 262212Z AUG 21
  - (c) ALCOAST 315/21 R 072247Z SEP 21
  - (d) Military Religious Accommodations, COMDTINST M1000.15 (series)
  - (e) Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, COMDTINST M6230.4 (series)
  - (f) 42 U.S.C. §§ 2000bb et seq., Religious Freedom Restoration Act of 1993 (RFRA)
  - (g) U.S. Coast Guard Civil Rights Manual, COMDTINST M5350.4 (series)

1. Reference (a) is your request that the Coast Guard accommodate a religious practice so that you will not be required to receive the COVID-19 vaccine, as required by references (b) and (c). I have been delegated the adjudication authority to act on this request by CG-1 pursuant to reference (d). I have carefully reviewed your request in accordance with references (d)-(f). **Your request is denied.**

2. I made this decision after considering your right to free exercise of your religion or religious beliefs and the government's compelling interest in mission accomplishment, to include military readiness; unit cohesion; good order and discipline; and the health and safety of you, the members assigned to your unit and within the Coast Guard, and the public with whom the Coast Guard regularly interacts. I then considered whether requiring you to receive the COVID-19 vaccine is the least restrictive means available to achieve this compelling interest. It was your burden to establish the religious nature and sincerity of your beliefs and that receiving the vaccine would substantially burden your religious belief or practice. For the purpose of this administrative decision, I do not question the sincerity of your religious belief or whether vaccine requirements substantially burden your religious practice. The Coast Guard reserves the opportunity to make these determinations, but I do not need to address them here to resolve your request.

3. I have concluded that there are no lesser restrictive means available other than vaccination to achieve the compelling government interest here. In assessing your request, I considered that the Coast Guard is a military service that must be ready at all times to perform its military and other missions. The military nature of the Coast Guard and the readiness obligations of military service would likely suffice to require vaccination. In addition, the Coast Guard is unique amongst the military services because of the nature of its missions that include support of the

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION FROM THE 6230  
COAST GUARD'S COVID-19 VACCINATION MANDATE

Department of Defense (DoD), homeland security, and non-homeland security missions, specified in law. The Coast Guard's unique nature is relevant when considering whether there are less restrictive means available to achieve the compelling government interest here. In addition to meeting the military readiness demands confronting the DoD military services, the Coast Guard also conducts its missions on a 24 hours/7 days a week basis and must also be prepared to respond to domestic emergencies. Given the small size of the Coast Guard's work force and geographic dispersion of its units, many of which are small, any impact on the readiness of one Coast Guard unit has cascading effects on the entire Coast Guard. The service is not structured to have multiple layers of coverage that would allow another unit to fill the void left by the impacted unit. Moreover, we need as many members as possible, regardless of rating or assignment, to be prepared to deploy without significant notice to meet emergent needs. Further, Coast Guard members have much greater and more frequent interactions with members of the public than our DoD counterparts. The Coast Guard's eleven statutory missions require Coast Guard personnel to work at times amongst and with the public, and the Coast Guard has an obligation to ensure the safety of both its own personnel as well as those in the communities we serve or with whom we otherwise interact.

4. I also considered the billet to which you are assigned. In your current duties as the Chaplain assigned to Sector Houston-Galveston, your responsibilities make you an integral member of the command staff, requiring routine interaction with your shipmates, their families, and the extended community. Furthermore, your responsibilities include performing religious services, providing confidential counseling and advising commanders on religious, spiritual, and moral matters. As a Chaplain, you must be ready to deploy wherever there are military members in spiritual need or crisis, to include normal and disaster response operations. These interactions place you inside offices, vessels, and other communal meeting locations with insufficient options to consistently maintain compliance with the recommended Center for Disease Control social distancing guidelines.

a. Due to the operational nature of your billet, social distancing measures such as isolation, quarantine, and telework are inadequate to mitigate the spread of COVID-19 throughout your unit and the public. As a member assigned to an operational unit, you are unable to accomplish your daily missions or contingency operations while in isolation, in quarantine, or at home. Your assignment requires your daily physical presence, which renders teleworking without unacceptable loss of mission effectiveness, impossible. The close working quarters of your unit prevents the Coast Guard from isolating or quarantining you away from your shipmates. Moreover, the close working quarters renders social distancing impracticable as you are unable to remain six feet away from your shipmates throughout the day, while completing the mission.

b. Other safety and risk mitigation measures such as masking are also inadequate due to the nature of your billet. Wearing masks, washing hands, and practicing other hygienic techniques do not provide the same level of protection against COVID-19 as full vaccination. Relying solely upon these less effective means of protection poses a greater risk to the mission because you are significantly more vulnerable to contracting COVID-19 while interacting with the public. The inefficacy of preventative hygiene and masking means your failure to be vaccinated poses a substantial risk to your shipmates and the members of the public we are charged with protecting or with whom we interact.

c. Testing is insufficient to mitigate the risk of COVID-19 due to inaccuracy of rapid antigen tests and the window of time necessary to receive the results of a positive COVID-19 test. By the time you receive your results, there is a high likelihood you would have already exposed other members of the Coast Guard and the public.

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION FROM THE COAST GUARD'S COVID-19 VACCINATION MANDATE 6230

d. COVID-19 antibodies developed as a result of infection do not adequately mitigate the risk of you contracting the disease in the future and spreading it throughout your unit, the Coast Guard, and the public. There is insufficient evidence that the development of COVID-19 antibodies attributed to infection provides immunity comparable to vaccination against COVID-19. Studies show unvaccinated personnel who already contracted COVID-19 are more likely than fully vaccinated people to contract COVID-19 a second time. COVID-19 antibodies developed as a result of infection may also fail to provide sustained protection against the disease. According to analyses by both the CDC and the Defense Health Agency, the risk of COVID-19 re-infection increases with time due to the waning of any natural immunity conferred after contracting COVID-19. Thus, COVID-19 antibodies do not provide the same continuous level of protection as full vaccination and therefore lack of full vaccination poses a substantial risk to your unit's mission.

5. Ultimately, unvaccinated Coast Guard members place not only themselves at risk, but also hold at risk every other member in the unit and the public. Your inability to practice social distancing at your unit and the ineffectiveness of other preventative safety measures pose a substantial risk of you contracting or spreading COVID-19. This in turn decreases the military readiness of the unit and the Coast Guard as a whole. You must be medically ready and able to perform your duties for your unit to function effectively.

6. I therefore find that there are no means less restrictive than full vaccination to achieve the Coast Guard's compelling governmental interest because of the conditions under which the Coast Guard executes its missions and your role within that execution. **Your request for a religious accommodation to the Coast Guard's COVID-19 vaccine mandate is denied.**

7. You have 10 business days after receipt of this decision to receive your first dose of a two-dose vaccine or the single dose of a single-dose vaccine.

8. If you wish to appeal this decision, you must do so within 10 business days after receipt of this decision. The appeal authority for this matter is the Assistant Commandant for Human Resources (CG-1) at HQSPolicyandStandards@uscg.mil. The appeal must include the specific basis on which you believe the initial denial was in error.

9. You have the right to file an Equal Opportunity complaint by contacting a Civil Rights Service Provider within 45 calendar days of any denial. For complaint processing, see Chapter 5 of Reference (g).

10. If you do not begin the COVID-19 regimen or submit an appeal within 10 business days after the receipt of this decision, you will be in violation of the lawful order in reference (c), as well as any other order that you received from competent authority to become vaccinated against COVID-19, and will be subject to all punitive and administrative consequences for failing to comply.

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Copy: CG SECTOR Houston-Galveston  
COMDT (CG-00A)  
COMDT (CG-00H)  
COMDT (CG-112)

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF Captain David Andrew Calger**

Pursuant to 28 U.S.C. §1746, I, David Andrew Calger declare as follows:

1. My name is David A. Calger. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein. I make this declaration in support of my challenge to the Department of Defense and Department of Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
2. My home of record and where I am domiciled is Port Charlotte, Charlotte County, Florida.
3. I am a reserve chaplain in the United States Army serving at the rank of Captain (O3). I am currently assigned to the 841<sup>st</sup> Engineer Battalion, 11700 NW 27<sup>th</sup> AVE. Miami, FL.
4. I began my military service on April 2008 when I commissioned as a Chaplain Candidate with the rank of 2<sup>nd</sup> LT. As a Candidate I completed CH-BOLC in August 2011, served a practicum at Army ROTC LTC at Fort Knox, served with two units and was promoted to 1<sup>st</sup> LT (2009) and then to Captain (2013). I was honorably discharged in April 2014 after hitting the six year max for the Candidate program. After completing seminary and being ordained I was commissioned on 13 OCT 2017 as a Captain and entered reserve duty with the 841<sup>st</sup> in December 2017. I have approximately 11 years of service as of March 1,2022.
5. Although I have not deployed and am not on active duty, I have received the following Army Service Medal, and Army Commendation Medal during my career.

6. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) on 5 December 2021 at Exhibit 1 asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows:

a. It is a violation of my conscience as it relates to bodily autonomy, seeming human experimentation, and seeming political maneuvering. I could not in good faith square my conscience with the idea that I was being used by politicians and medical personal as an unwilling subject in a national vaccine experiment.

b. My faith believes that our consciences are given to us by God as a warning that something isn't right, to violate the conscience is to sin, and to risk deadening the conscience. I find it odd that the U.S. Army would desire Chaplains and Officers who are willing to violate their consciences for the sake of a mandate.

c. Additionally, I had covid in December of 2020 and according to AR 40-562 I have natural immunity which should exempt me from a vaccine.

7. While my RAR has not yet been denied, the fact that I have been counselled and flagged show that the Army is behaving in a way that is hostile to even the idea of a religious accommodation.

8. During my military career I have received the other vaccines the Army requires because they are not experimental and have had years of testing and refinement. I'm not opposed to vaccines; I'm opposed to forced human experimentation with a n experimental vaccine.

9. To date the punitive actions taken against me have been that I'm flagged by Brigade so that I cannot transfer. I was seeking the transfer at the advice of the Reserve Chaplain Career Advisor. Additionally Brigade intends to issue GOMARs to soldiers who are denied the RAR and who do not get the vaccine within a month of the denial. Appeals will not be received. I have also been denied the presumption of natural immunity established by AR 40-562.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 24, 2022

A handwritten signature in black ink, appearing to read "David A. Calger". The signature is fluid and cursive, with the first name "David" being the most prominent.

David A. Calger

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CDR MARK D. COX, CHAPLAIN, US NAVY**

Pursuant to 28 U.S.C. §1746, I, **Mark D. Cox** declare as follows:

1. I, **Mark D. Cox**, am over 18 years of age and have a personal knowledge of the following declaration and the competency to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Navy mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at 202 Old Graysville Road, Dayton, TN 37321. My home of record and where I am domiciled is in the city of Dayton, of Rhea county, in the state of TN.
4. I am a currently a Reservist Chaplain in the United States Navy serving at the rank of Commander (O-5). I am currently assigned to the Navy Reserve Center Chattanooga, VTU Unit, at 4051 Annicola Hwy Chattanooga, TN 37406.
5. Prior to my Military Career of 18 years, I had a rewarding Professional Civilian Ministry career for 20 years. During this time, I earned a Bachelor of Arts degree in 1987, a Masters of Divinity in 1990, and was Ordained in 1995. My experience spanned the scope of pastoral ministry as well as humanitarian mission around the world.
6. My military Career is as follows:

**2004** - February 2, at the age of 41, commissioned as a Lieutenant in the United State Navy and began my service on **May 27, 2004** in the Select Reserves Marine Expeditionary Fleet Religious Unit 122 in Spokane, WA, and completed Chaplain Basic Training at the War College.

**2006** - Entered **Active Duty** in May. Served three Coast Guard Commands: Sector Mobile AL, Aviation Training Center Mobile, AL, and Primary & Advanced Flight Training at NAS Whiting Field FL. Provided ASIST Training and CISM support during hurricane recovery efforts, developed leadership course based on the life of Sir Ernest Shackleton.

**2009** - Served as Command Chaplain, 1st Battalion 12th Marines, 3RD MARDIV DET Hawaii. Participated in three Lava Vipers, one Mohave Viper, and deployed to Afghanistan in April 2011. Based at Fiddler's Green, regularly visited artillery positions throughout the Helmand Province. Provided Combat Operational Stress Control Training and Warrior Transition Training.

**2012** - Served as Command Chaplain, NIOC Hawaii, National Security Agency CSS Joint Command and NCTAMS PAC. Maintained TS/SCI clearance. DOD CAF - Certified Adjunct Faculty Instructor. Took special interest in Submarine community, provided VIP tours and went underway on a four-day check ride, providing Chaplain support on the USS Hawaii.

**2015** - Transitioned back to **Select Reserves**, NOSC Pearl Harbor. Assisted Navy Seal Foundation to provide summer camp experience for Gold Star Children. Transferred to NOSC Chattanooga in July. Cross-assigned to COMSEVENTHFLT Yokosuka, Japan on

the Flag staff of the USS Blue Ridge. Attended Naval War College Maritime Staff Operators Course (MSOC). Completed Senior Leadership Course - Navy Leadership and Ethic Center. Participated in preparations for Talisman Saber, and fulfilled the Components Chaplain Role in KR (Key Resolve) 17.

**2017** - Cross Assigned In - CFA Chinhae HQ South Korea. War-gaming OIC during COMFLEACT KR18 and acting Base Chaplain.

**2019** - Cross-assigned to NSA Bahrain DET A - Office support, led Divine Services and provided religious accommodation for Muslim Community during Ramadan. Strong supporting officer of NOSC Chattanooga - special boards & investigations.

**2020** - Returned to Active Duty on two-year ADSW (Active Duty Special Work) orders with Navy Special Warfare Group Four, Stennis MS. Serving four NSW Units: Special Boat Team 22, NAVSCIATES, DET Stennis, SOTM (Special Operations Trauma Medic School). Requested by Commander SBT22 to extend a third year, however, my orders were unexpectedly defunded.

**2021**, October 1, returned to Navy Reserve Center Chattanooga.

7. My promotions were as follows: I joined at the age of 41 with 20 years of experience in civilian ministry and was given the rank of Lieutenant (O-3) February 2, 2004. January 2016, I put on Lieutenant Commander (O-4), and September 2021, I put on the rank of Commander (O-5). There are three dates that effect my service record:

1. Commissioned on February 2, 2004
2. Born on March 26, 1962
3. Entered service on May 27, 2004.

I will have 18 years of service on May 27, 2022, with approximately 13 years of Active Duty and 5 years of Reserve Duty.

8. During my military career, I have had the following deployments to combat zones and/or foreign areas:

Afghanistan, 2011 May - November

Yokosuka, Japan, 2017 - Annual Training

Chinhae, South Korea, 2018 - Annual Training

Bahrain, 2019 - Annual Training

Singapore, 2019 - Annual Training

9. Authorized to wear the following Awards: Fleet Marine Force Chaplain Insignia, Defense Meritorious Service Medal, Joint Service Commendation Medal, Navy & Marine Corps Commendation Medal (x2), Coast Guard Commendation Medal (x2), Navy Achievement Medal (x2), Coast Guard Achievement Medal.

10. Schooling: I joined the Military with a Masters in Divinity 1990 and Ordination 1995. Throughout my Navy Chaplaincy Career I have had opportunity to attend a Senior Leadership Course with fellow Officers, and Advanced Leadership Training with fellow Chaplains. Navy Chaplaincy Professional Development Training continues annually throughout our career, both with the Chaplain Corps and with our Endorsing Agency. One of my favorite and most beneficial training experiences helping me understand the bigger picture was at the War College, called MSOC, Maritime Staff Operator's Course. A five-week training course of operational war planning.

11. I originally submitted my RA (Religious Accommodation) request on September 27, 2021, declining the COVID-19 Vaccine, based on my sincerely-held religious beliefs. At the time, I was on Active Duty with Navy Special Warfare Group Four, out of Stennis MS - Special Boat Team 22. My ADSW/ADOS follow-on orders were to begin October 1, 2021; instead, they were unexpectedly defunded. I was forced to return to my Navy Reserve Center Chattanooga. It was then decided that my package would be resubmitted by the Reserve Center Commander. The date on my letter remained the same - September 27, 2021.

Exhibits

1. Original RA (Religious Accommodation) request submitted while on Active Duty by CDR Schoultz but not sent. The document was forwarded to Commander, Navy Reserve Center Chattanooga. Titled: COX MARK (RELIGIOUS EXEMPTION REQUEST - VACCINE)\_UPDATED UNSIGNED

2. RA request resubmitted by Commander, Navy Reserve Center Chattanooga, via Commander, Navy Region Southeast Reserve Component Command, Jacksonville. Titled: 2 - CUI - RELIGIOUS ACC ICO CDR COX

12. I did not enumerate my religious beliefs in my RA. This is a moot point. My beliefs are not on trial, it is my Constitutional rights that are being abrogated. Following my Conscience and taking responsibility for what goes into my body is a God-given responsibility and right protected by our Constitution.

13. I received word that my RA request was denied January 8, 2022, when I arrived at Navy Reserve Center Chattanooga for Drill Weekend. When I read the disapproval letter from the Commander, Reserve Region Readiness and Mobilization Command Jacksonville, it appeared

that my RA, in fact, had not been read at all. The letter I received implied that I refused the COVID-19 vaccine based on the utilization of fetal cells in the testing and/or production of the vaccine. My RA simply stated that “I am declining the COVID-19 vaccination because of my religious beliefs”. I did not enumerate my beliefs. I may have “95” reasons to decline the vaccine, but the utilization of fetal cells is not one of them. This appeared to be a form letter and not an individual consideration of my case. Initially, I refused to send an Appeal and instead sent a letter to my CO expressing that there seemed to be no good reason to Appeal the RA disapproval because my RA, evidently, was not even read. However, on the recommendation of my Commanding Officer, I submitted an appeal letter on March 24, 2022. Also during this time I refused to be tested for COVID-19 before entering the Reserve Center as I see testing as contributing to the propaganda of the COVID Pandemic and I cannot participate in this deception. I was sent home with Unexcused Absences. On the advice of council I reconsidered but found the individual discrimination an insult since anyone, vaccinated or unvaccinated can contract the virus, mask or no mask. The incident was reported to Commander, Navy Region Southeast Reserve Component Command, Jacksonville, for which I received a letter CAPT Anthony “Tony” J. Gareffa.

Exhibits

1. My Denial Letter from Deputy Chief of Naval Operations. Titled: 1 - RA Response Letter ICO Cox, Mark CDR
2. Personal letter CDR Jones, my Reserve Center CO, regarding my reaction to the Appeal Process. Titled: PERSONAL LETTER TO CDR JONES

3. Letter from CAPT Anthony “Tony” J. Gareffa. For refusing to be tested for Covid before entering the Reserve Center. Titled: Untitled 2

4. My subsequent Appeal Letter on March 24, 2022. Titled: APPEAL RA  
DISAPPROVAL - COX

14. The letter I received from the Deputy Chief of Naval Operations, referenced the Religious Freedom Restorations Act (RFRA) as the justification for disapproval of my RA, stating “compelling government interest” and implying that taking the vaccine is the “least restrictive means of furthering that interest.” I would submit that the government cannot simply state these claims without “compelling justification”. In this matter, the government has been decidedly cagey and not transparent. However, evidence continues to come to light in the public record that shows the government’s argument to mandate the COVID-19 vaccine cannot be substantiated and is without cause to burden an individual’s free exercise of religion.

15. Additionally it is untrue that the COVID-19 vaccine is the “least restrictive means” to deal with the COVID-19 virus. Currently, there are many remedies available that are safe and effective. Combined with a healthy lifestyle, the virus can be defeated and natural immunity improved. People that contract the virus still have a 99% survivability rate. As more and more evidence comes to light in the public record, it is becoming clear that the vaccine is neither safe or effective and should not be called a vaccine. I would go on to say the COVID-19 vaccine has become burdensome to the military and a compromise to mission accomplishment. It is not the “least restrictive means” for the military or the individual. This entire rollout of the vaccine and the mandate is racked with suspicion.

16. The compelling government interest stated for our military is, “mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels.” Nothing new here. These are the compelling interests of our military. However, in the hierarchy of compelling government interest, none of these rise above **Liberty of Conscience** and **Individual Autonomy** and the right to make voluntary and **Informed Consent** for medical treatment. These values have far more compelling interest to our country and far greater impact on mission accomplishment than the aforementioned list.

17. Our oath is founded on these high ideals and based on **Trust**. If this Trust is violated by the government, then the government is in breach of the Constitution. The government fails to meet the high bar set by the RFRA of “compelling justification”. I submit my Oath for your reference.

**Officer Oath of Office:** “I, Mark D. Cox, having been appointed an officer in the Navy of the United States, as indicated above in the grade of LT do solemnly swear (or affirm) that **I will support and defend the Constitution of the United States against all enemies, foreign or domestic**, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservations or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; So help me God.”

18. As a Chaplain, I have taken special interest in this Vaccine Mandate because of the impact on individual’s Liberty of Conscience and Individual Autonomy. I have done research, made observations of the commands I serve, dialogued with civilian lawyers, doctors and nurses, and in the last year and a half, I have spoken to roughly a thousand military service members

regarding their experience with the COVID-19 Vaccine Mandate, to include: Medical Officers, JAGs, Chaplains, Commanding Officers, common Soldier and Sailors, two Admirals and a General. I would say over 95% of them expressed a conscientious objection to the mandate. Not that it is problematic, but that it is morally wrong.

19. Not everyone I spoke with could articulate their thoughts in well-organized religious ideas, but they knew in their hearts there was something wrong with the mandate and the methods being implemented. Most expressed their impressions that the COVID-19 Vaccine Mandate is morally wrong, unconstitutional, unlawful and ethically mishandled. They felt coerced, threatened and manipulated, and many who received the shot ultimately regretted getting it. Those who still refuse to get the shot do so with deep uncompromising conviction that it violates their God-given rights that they serve their country to protect. Others, still in the valley of decision, are facing moral struggles between being true to their conscience and being compliant and/or complicit to the mandate.

20. It is important to acknowledge that the conscience is the avenue by which mankind has the most intimate conversations with God. Often there are no words, only impressions, that God is revealing Himself in what is right and wrong, truth and error, love or selfishness, etc. Impressions can be compelling or restraining and the individual may even experience a visceral affect within their body. When God speaks to an individual, most likely it is not in a well-written doctrinal statement from an institutional church that they memorized, but rather through the conscience. One knows when God speaks to the heart. This is not an unfamiliar idea to our country. In fact, it is the core of our constitutional identity. I share with you the following quote from our Congressional Documents.

“The framers of the Constitution recognized the eternal principle that man’s relation with his God is above human legislation, and his rights of conscience inalienable. **Reasoning was not necessary to establish this truth; we are conscious of it in our own bosoms.** It is this consciousness which, in defiance of human laws, has sustained so many martyrs in tortures and flames. They felt that their duty to God was superior to human enactments, and that man could exercise no authority over their consciences. It is an inborn principle which nothing can eradicate.”—**Congressional Documents (U.S.A.), serial No. 200, document No. 271.**

21. It was in defense of the Individual Conscience that the Declaration of Independence was written and the first war of America was fought. Following the victory of our independence, the writing of the Constitution confirmed our mutual belief in the Individual Conscience and specifically addressed it in the Religious Clauses. Our success in the American Revolutionary War did not come at the expense of violating the conscience, but rather in the defense of it. We win wars because we believe in the cause. George Washington shared with American patriots the Declaration of Independence as the cause for the conflict before them. This resonated in the soul, as true and God-given, and sustained Americans in the long and costly war. America did not make men free. Free-minded men made America. These men knew in their bosom that their freedoms and liberties come from our Creator and not from man-made governments. I submit the following quotes:

“**The cause of America is in a great measure the cause of all mankind.** Many circumstances hath, and will arise, which are not local, but universal, and through which the principles of all Lovers of Mankind are affected, and in the Event of which, their Affections are interested.” **Thomas Paine - *Common Sense***

“In that grand old document which our forefathers set forth as their bill of rights—the **Declaration of Independence**—they declared: ‘We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.’ And the **Constitution** guarantees, in the most explicit terms, the **inviolability of conscience**: ‘No religious test shall ever be required as a qualification to any office or public trust under the United States.’ ‘**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.**” *Great Controversy 295.2*

22. The Religious Clauses of the Constitution are based on the “**Inviolability of Conscience**”. This is a Natural Law that cannot be violated without inherent consequences. It is as true and sound as the law of gravity. The use of compelling power against the conscience creates slaves and rebels of good men. The **Inviolability of Conscience** is the **Law of Liberty**. It is our nation’s highest value and why we are willing to make the ultimate sacrifice. Violate the Religious Clauses in the military, and tyranny will follow in society.

23. O-5 Chaplains are encouraged to write a “Philosophy of Leadership in Military Ministry.” I submit the following paragraphs from my paper for further explanation of the importance of the Law of Liberty that is so dear to our country:

Confronted with tyranny, our forefathers’ declaration of war was the Declaration of Independence. Here the writers declare that there are “**powers of the earth,**” “**laws of nature**” subject to “**nature’s God,**” “**truth**” that is “**self-evident,**” that men are “**created equal,**” “**endowed by their Creator with certain unalienable rights**” of “**life, liberty, and the pursuit of happiness.**” These are declarations of universal laws, protocols for life, designed into our existence, that cannot be ignored without inherent consequences. These laws of cause-to-affect have no exemptions, exceptions or exclusions. Three are superior:

1. **The Law of Love: Disinterested Benevolence.** The “**pursuit of happiness**” is no trivial pursuit of self-gratification, rather, the right and responsibility to become “**a good soul**”, to produce good without ulterior motives, and when necessary, resist or restrain evil at one’s own risk, peril or sacrifice.

2. **The Law of Life: Reciprocal Service.** When love is reciprocal, “**life**” is created and sustained. All creation is designed on the great commandment, “**Love your neighbor as yourself.**” Love unreciprocated is death.

3. **The Law of Liberty: Inviolability of Conscience.** **Liberty** is essential for Love and Life. Compelling power cannot elevate man to the image designed by his maker. This law cannot be broken. To violate this law is to cause inherent damage to the soul, creating a defiant rebel or a captive in bondage. It is only by **Liberty of Conscience** that man has the power of self-determination, self-governance and self-reliance. Our Constitution was written to protect these Liberties for which life, safety and security are worthy sacrifices.

24. The Religious Clauses of the Constitution are not, as some think, referring to religious institutions, but rather, individual belief and practice. An Atheist or Secularist requires, and is entitled to Religious Accommodation, as is any Christian, Muslim, Jew, etc... It is the positive regard for the Religious Clauses that allows for diversity in religions and creeds to live and serve in mutual regard for one another. Every American, and indeed, all mankind, requires and is entitled to Religious Accommodation. Our Declaration of Independence declares it and the Constitution confirms it.

25. There are indicators everywhere that this Vaccine Mandate violates human rights without compelling justification. The global outcry over the past few months and the demonstrations around the world protesting the mandates are clear indicators that human rights are being ignored or violated in the absence of any substantial evidence that would justify mandates. An argument could be made that many governments around the world have failed to give **Informed Consent** or respect the **right to not consent**.

26. The narrative regarding the Vaccine Mandates and the state of Religious Accommodation is changing. There are lawsuits from reputable firms on the constitutionality of the mandates.

There are studies and reports, mountains of evidence coming to light, subject matter experts, (researchers, scientists, doctors, politicians, lawyers, and even insurance companies) all speaking out against the vaccine and the unconstitutional methods used to enforce the vaccine. At this point in the story it makes no sense to mandate vaccines, particularly if it violates the Constitution and risks the health and safety of service members.

27. My own observation, as a Navy Chaplain, regarding the effects of the Vaccine Mandate on our military, is that we have caused more harm than good. And instead of “mission accomplishment, military readiness, unit cohesion, good order and discipline, health and safety, on either the individual or unit levels” we are seeing low morale, and good men pitted against one another causing division among the troops at all levels. Recruiting numbers have pitched down, members are jumping ship if convenient, others are striving to stay afloat, good healthy competent people are being separated against their will, careers have been shattered, and retirements are threatened. There has been an increase in mental health issues, relationship issues, financial issues, unexplained deaths, and recently military whistle blowers have come forward with evidence that shows health and safety has been severely compromised. This does not support the “compelling government interest” argument.

28. As I consider the scope of problems threatening our nation and our military, I find it outrageous that the government would think to violate Religious Liberty over a virus that is the least of our concerns. To the conscientious man, it is clear that this Vaccine Mandate is more about political gain and power than it is about mission accomplishment or the health and safety of our military men and women. Time will reveal the truth, and when it does, the evidence will be convincing that there is no compelling justification for what is happening. We will all be held

accountable. I recommend that the Constitutional freedoms and liberties of our service members be respected without reservation, that vaccinations be *offered*, without force, coercion, or manipulation; not *mandated*. Informed Consent and the right to not consent must be an uncompromising standard.

29. Victory over the COVID-19 Vaccine Mandate must also include any and all vaccines. There is currently no federal law that allows even the annual Flu shot to be forced on service members. Yet the military has relied on the ignorance of service members regarding their rights. The Military has used compelling power to coerce, and manipulate service members into getting the flu shot without informing them of their right to decline. Over time we have just come to accept it as law and legitimized it by being compliant and complicit. It is not legal and most assuredly not constitutional, which brings up another point regarding the annual Flu shot requirement. There are concerns that the annual Flu shot will be replaced with the mRNA COVID-19 Vaccine. This is unacceptable and must also be addressed. The military assumes that just because they've informed you, you are therefore expected and required to get these shots. This lie must be exposed and not perpetuated any longer. Reeks

30. In reference to the FDA-approved vaccine, Comirnaty, I would still not take this vaccine. The entire pandemic is suspect and reeks of corruption, greed and a grab for power. The health and welfare of the world has been politicized and has had nothing to do with "Mission Accomplishment" or the health and safety of our service members. The pandemic is proving to be a hoax and the COVID-19 virus appears to be weaponized.

31. The fact that ivermectin, hydroxychloroquine, and other over-the-counter remedies are available, but ignored or censored, makes this pandemic suspect. And the evidence of serious

adverse reactions to the COVID-19 vaccines, including death, also makes this pandemic suspect. The enormous amount of money made by pharmaceutical companies and politicians at the cost of human life is reprehensible. My conscience tells me, “do not be deceived and do not deceive”. I will have nothing to do with taking this vaccine or promoting it.

32. From October 1, 2019 until September 30, 2021, I served as Chaplain to the Navy’s elite fighting force, Navy Special Warfare. Unexpectedly, my follow on orders were defunded and I was forced to return to the Navy Reserve Center Chattanooga. As a consequence of my decision to not get (or refuse) the COVID-19 Vaccine, I was refused funding and all opportunities for Annual Training, Active Duty Training, the opportunity to provide Funeral Honors or reschedule Drill dates, and any other opportunities to serve. However, I was still forced to show up for mandatory Drills, while everyone else was allowed to telecommute. As a matter of circumstance, I missed the Apply Board and was transferred from Select Reserve to unpaid VTU, Volunteer Status. This is similar to *administrative leave* in the civilian world where the Navy puts you to quietly disappear. This all happened in less than six months. Furthermore, as a result of being unvaccinated, I was singled-out from the herd, given a nasal swab, and forced to wear a mask which everyone knows does not protect from viral infection. For the record, I am in excellent health, with natural immunity that has protected me from many viruses. Science and history both confirm Natural Immunity is superior to vaccines. Natural immunity, along with a healthy lifestyle creates a winning combination. Our bodies were created to heal themselves. Feed it right, and it will do its part. “Let your food be your medicine and your medicine be your food.” Hypocrites.

33. The following retaliatory, career damaging, negative, punitive and administrative actions have been taken against me for refusing the alleged COVID-19 vaccine and for requesting a religious accommodation request: I received a report of misconduct, an Article 92 and was required to sign an Adverse Fitness Report.

34. The consequences of resisting the vaccine has not been determined. Currently, punitive measures have been put on hold due to current litigation; however, this could easily change. On February 12, 2022, I received an Adverse Fit Rep and an Article 92, or a Misconduct report for refusing the COVID-19 vaccine. This is on-hold at the moment. If it should go forward, I could very well be separated from the Navy with a general discharge, no separation pay, no retirement pay and no VA Benefits. Furthermore, as a result of this Mandate, I was unexpectedly unemployed on October 1, 2021. I have been applying myself to a new business, but it takes time to generate cash.

35 I make this declaration under penalty of perjury, that it is true and accurate to the best of my knowledge, and it represents the testimony I would give if called upon to testify in a court of law.

March 21, 2022

A handwritten signature in black ink that reads "Mark D. Cox". The signature is written in a cursive, slightly slanted style.

**Mark Devin Cox**



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/117438  
21 Dec 21

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: CDR Mark D. Cox, CHC, USN  
Via: Commanding Officer, Navy Operational Support Center Chattanooga

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS

Ref: (a) 42 U.S.C. §2000bb-1  
(b) DoD Instruction 1300.17 of 1 September 2020  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) MILPERSMAN 1730-020  
(f) United States Attorney General memo of 6 Oct 17  
(g) Your ltr of 27 Sep 21 w/ends  
(h) BUMED ltr 6320 Ser M44/21UM43526 of 15 Dec 21

1. Pursuant to references (a) through (h), your request for religious accommodation through waiver of immunization requirements is disapproved. You must receive all required vaccines. However, you are free to request from your healthcare provider alternative vaccines that are available and meet the Navy's immunization requirements, as determined by a credentialed military healthcare provider. You are free to choose which COVID-19 vaccine to take. If you choose a COVID-19 vaccine that requires two doses, you must receive your first dose within five calendar (5) days upon receipt of this letter and complete the series as prescribed. If you choose a one-dose vaccine you must receive the vaccine within five calendar (5) days upon receipt of this letter.

2. In line with references (b) through (d), I am designated as the approval authority for requests for religious accommodation.

3. Reference (a), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion and good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (f) emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there are alternatives available to meet the requested accommodation and
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (g), including the endorsements from your chain of command, the local chaplain and the advice of Chief, Bureau of Medicine and Surgery in reference (h).

a. A waiver of immunizations would have a predictable and detrimental effect on your readiness and the readiness of the Sailors who serve alongside you in both operational and non-operational (including training) environments. Primary prevention of disease through immunizations has been a key enabler for maintaining force health and avoiding disease-related non-battle injury. Granting your request will have a direct and foreseeable negative impact on the compelling Government interests of military readiness and health of the force.

b. While serving in the U.S. Navy, you will inevitably be expected to live and work in close proximity with your shipmates. I find that disapproval of your request for a waiver of immunization requirements is the least restrictive means available to preserve the Department of Defense's compelling interest in military readiness, mission accomplishment and the health and safety of military Service Members.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.

NOWELL.JOHN.BL  
ACKWELDER.JR.1  
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Digitally signed by  
NOWELL.JOHN.BLACKWELDER  
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JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)  
BUMED  
NAVREGSERCC Jacksonville

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CDR JOHN JACOB ISMACH-EASTMAN, CHC, USN**

Pursuant to 28 U.S.C. §1746 I, John Jacob Ismach-Eastman, declare as follows:

1. My name is John Jacob Ismach-Eastman. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Navy mandates requiring that I be vaccinated against COVID -19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I reside in Pensacola, FL 32506. This is my home of record, and I am domiciled in the state of Florida.
4. I am an active-duty chaplain in the United States Navy endorsed by the Associated Gospel Churches (“AGC”). I am serving at the rank of Commander and currently assigned to the Information Warfare Training Command, Pensacola, FL.
5. My military promotion and assignment history is as follows.
  - a. I served in the United States Air Force Reserve from February 1983 to February 1989 and left at the rank of Senior Airman (“SRA”), pay grade E-4.
  - b. I was a chaplain candidate in 2003. Upon graduation and commissioning, I was assigned to Marine Corps School of Infantry- East, Camp Geiger, NC as Battalion Chaplain. A year later, I reported to Courthouse Bay, Camp Lejeune, NC as Area Chaplain for the Marine Corps Engineer & Scout Sniper School, and Coast Guard Special Missions Training Center. In 2009, I deployed with 2nd Battalion, 2nd Marines to Helmand Province, Southern Afghanistan where my unit received meritorious commendation. I deployed again in 2011 with the 22nd Marine Expeditionary Unit (MEU) in support of operations Odyssey Dawn/Unified Protector- JOA Libya and National Tasking. In 2012, I was selected as the Command Chaplain for the

Coast Guard Training Center in Yorktown, VA. In 2014, I was selected for the Navy Advanced Education Program and earned a Th.M. in Ethics from Southeastern Baptist Theological Seminary, Wake Forest, NC. In 2015, I was selected as a “Plank Owner” and Personal Assistant to the Ship’s Chaplain aboard the USS GERALD R. FORD (CVN-78) as it underwent sea trials. In 2017, I deployed overseas as CREDO’ Deputy Director for Bahrain, UAE, and Djibouti. In 2019, I reported to my current position as the Command Chaplain for the Center for Information Warfare Training, and Information Warfare Training Command in Pensacola, FL, possessing top-secret clearance.

c. I was commissioned as a chaplain at the grade of Lieutenant Junior Grade (“LTJG”) April 25, 2004. I was promoted to Lieutenant in May 2006, Lieutenant Commander in September 2013, and Commander in May 2019.

6. As of March 1, 2022, I have over 18 years of active service. The Navy has opened an investigation to evaluate my broken/prior service to determine my total time of service and potential or actual retirement date. Ordinarily this would place me in what is called the “Sanctuary” zone meaning I am protected and would be allowed to reach 20 years of retirement absent a significant event that was a clear and serious threat to good order and discipline such as a major crime. The Navy has made it clear “Sanctuary” means nothing as I have been threatened with separation with a General Discharge and no separation pay for making a religious accommodation request.

7. My personal awards include the Navy and Marine Corps Commendation Medal (4 gold stars), Coast Guard Commendation medal (1 gold star), Navy and Marine Corps Achievement Medal and the National Bible Association’s 2007 Witherspoon Award.

8. I was selected by the Navy for postgraduate education with a concentration in Ethics and while assigned to the Fleet Marine Forces, I was selected to be a Warrior Toughness trainer.

9. On October 18, 2021, I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1 asking to be excused from taking the COVID-19 vaccination. That RAR was denied November 22, 2021.

10. A summary of those reasons in my RAR follows:

My Judeo – Christian religious beliefs inform and protect my conscience from *forcibly* receiving *any* substance from entering my body, in this case the COVID-19 vaccine, which has not yet proven to be 100% safe, effective nor without any potential harmful side effects especially for someone diagnosed with heart-related issues, as I am:

<https://www.cdc.gov/vaccinesafety/ensuringsafety/sideeffects/index.html>;

[https://www.algora.com/Algora\\_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative](https://www.algora.com/Algora_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative) <https://www.health.harvard.edu/blog/new-information-for-parents-on-myocarditis-and-covid-19-vaccines-20210701252>; <https://thetexan.news/wp-content/uploads/2021/09/Peter-Chambers-affadavit.pdf>.

It should be noted that a FOIA suit recently forced the CDC and FDA to reveal data showing major issues and medical complications in the vaccine trials. “When Pfizer applied for FDA approval, they were aware of almost 158,000 adverse events. This really does not paint them in a favorable light. And now, a 38-page report features an appendix with a list that says Pfizer’s COVID vaccine has 1,291 side effects.” <https://www.riotimesonline.com/brazil-news/modern-day-censorship/pfizer-covid-vaccine-has-1291-side-effects-reveals-official-documents>

11. I submitted my appeal of my RAR denial December 21, 2021. As far as I know it is still pending.

12. My medical record reveals that I am not opposed to vaccines. In the past, I have voluntarily submitted to the Anthrax vaccine which at the time was considered to pose numerous

risk factors. I have since received vaccines for yellow fever, flu and a host of others required to deploy overseas in both combat and non-combat zones without protest.

13. I object to the COVID-19 vaccination because the COVID-19 vaccines are not legitimate vaccines as that term has been historically and medically defined and presented to the public. Vaccine used to mean a medical procedure that protected you from the disease against which you were being vaccinated against. For example, the measles, shingles, and polio vaccines protect you from catching those specific diseases. These used to be called sterilizing vaccines, they prevent the vaccine recipient from contracting or spreading the disease they are vaccinated against (<https://pubmed.ncbi.nlm.nih.gov/31590667/>); (<https://www.verywellhealth.com/covid-19-vaccines-and-sterilizing-immunity-5092148#toc-what-is-sterilizing-immunity>).

14. The Covid-19 Vaccine does not immunize the vaccinated from Covid-19. Unlike sterilizing vaccines, which the COVID-19 vaccine recipients are widely known to continue to contract and spread the SARS-COV-2 virus which causes Covid-19 infections. The Associated Press reported on December 27, 2021, the fully vaccinated USS Milwaukee had “[a]bout two dozen sailors or roughly 25% of the crew — have now tested positive for COVID-19[.]” “Officials: Nearly 25% [of fully vaccinated] Navy warship crew has COVID-19”, Lolita C. Baldor, <https://apnews.com/article/coronavirus-pandemic-health-jacksonville-us-navycb7d190b7c1c1c52f5441b56740d44de>. The Navy also reported “the USS Halsey, a destroyer, delayed its homeport move from Pearl Harbor, in Hawaii, to San Diego because a significant number of the crew became infected with COVID-19. *Id.* The Navy further reported “roughly one-third of the Halsey crew tested positive for the virus” although “the crew was nearly 100% vaccinated.” *Id.*

15. Faced with the realization the COVID-19 vaccine would not provide classical immunity to the vaccinated and has not stopped the contraction or spread of COVID-19 among fully

vaccinated individuals, CDC changed the “vaccination” definition in 2021 from “The act of introducing a vaccine into the body to produce *immunity* to a specific disease.” (emphasis added) to “The act of introducing a vaccine into the body to produce *protection* from a specific disease.” (emphasis added). The change has made these two formerly different definitions equal. This change has legal implications without input from or notice to the public or Congress.

16. In other words, CDC changed the “vaccine” definition in 2021 from a medical procedure that protected the vaccinated against the disease by producing immunity to one that merely stimulates the immune system and provides partial protection.

Before the change [the Centers for Disease Control and Prevention modification of ‘its definition of the words “vaccine” and “vaccination” on its website’], the definition for “vaccination” read, “the act of introducing a vaccine into the body to produce immunity to a specific disease.” Now, the word “immunity” has been switched to “protection.” The term “vaccine” also got a makeover. The CDC’s definition changed from “a product that stimulates a person’s immune system to produce immunity to a specific disease” to the current “a preparation that is used to stimulate the body’s immune response against diseases.” Some people have speculated that the unannounced changes were the CDC’s attempt to hide the fact COVID-19 vaccines are not 100% effective at preventing corona virus infection.

<https://www.miamiherald.com/news/corona-virus/article254111268.html>.

CDC has effectively made two formerly completely different terms the same, destroying the old understanding of “vaccine”, one that protected a person from disease. I am not aware of any other disease for which this has been done. Under the pre-COVID-19 standard, the COVID-19 treatment would be called a prophylactic or a treatment, not a vaccine because it does not provide classic immunity.

17. This change appears to have been made by government medical or public health bureaucrats to cover up their own failure to provide the protection formally given by classic vaccines and yet it has been applied in a punitive manner contrary to well-established law.

18. I would gladly comply with vaccination requests to protect not only myself, but my fellow service members **if** the COVID-19 vaccines were a legitimate vaccine, *i.e.*, a sterilizing vaccine, as that term was formerly known and understood, and without the many known side effects established by the medical community, *e.g.*, myocarditis and pericarditis, *see* FDA Press Release dated August 23, 2021, that are a special danger to someone such as myself diagnosed with an athletic heart.

19. Since my father is one of the oldest living Holocaust survivors, I am keenly aware and sensitive to coerced, forced medical procedures that are experimental in nature and especially those imposed without consent which is what may have already occurred in my case. My medical record reflects that I received the first dose of the Pfizer vaccine on January 15, 2021, instead of the requested flu vaccine. If this is proven to be true it is a clear violation of what was established in the Nuremberg code.

20. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine:

a. My next assignment as the command chaplain of Pensacola Naval Air Station was cancelled, and I was told by my detailer to prepare for separation from the Navy this June.

b. My permanent change of station (“PCS”) orders were placed on hold causing major stress to my family as we are currently in limbo with orders expiring in May 2022.

c. My Commanding Officer’s (“CO”) written consideration for or comment on my appeal tarnished my reputation and contains error by denying his superiors issued, *blanket denial policy to subordinate commanders*; which has since proven to be false by Fox News contributor Liz Peek etc.

d. After being described as a *passionate, humble, and devoted to God* chaplain, my CO acknowledges the command's loss due to my presumed separation will only be impacted until my relief arrives in 05/22, just a few months from this writing, in other words I am of little value to the command.

21. The Command exerted significant pressure on me to ignore my religious and medical concerns, disrespecting my beliefs and ignoring concerns making it clear I was not a team player. I was just granted a "temporary" medical exemption due to my "athletic heart" condition I mentioned in ¶18.

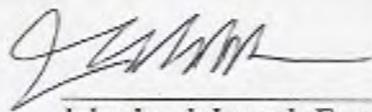
22. During the height of the pandemic when there were no vaccines, the prior school CO sent an 'All Hands' email to the command stating we had achieved 100% mission readiness.

23. Currently, with over 98% vaccination rates, somehow the unvaccinated are being accused of preventing mission readiness. This accusation sounds illogical, is not supported by science and facts, *e.g.*, USS Milwaukee, and is evidence there is a kind of psychosis occurring in the minds of those normally thought to be intelligent and thinking leaders.

24. My experience indicates to me Top Naval leadership have left no doubt that the mandate is not about the health and safety of service members but political objectives that are discriminatory and a grave danger to religious liberty.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

March 9<sup>th</sup>, 2022

  
\_\_\_\_\_  
John Jacob Ismach-Eastman



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser NI/115657  
22 Nov 21

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: CDR John J. Ismach-Eastman, USN  
Via: Commanding Officer, Center for Information Warfare Training

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS

Ref: (a) 42 U.S.C. §2000bb-1  
(b) DoD Instruction 1300.17 of 1 September 2020  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) MILPERSMAN 1730-020  
(f) United States Attorney General memo of 6 Oct 17  
(g) Your ltr of 18 Oct 21 w/ends  
(h) BUMED ltr 6320 Ser M44/21UM41771 of 4 Nov 21

1. Pursuant to references (a) through (h), your request for religious accommodation through waiver of immunization requirements is disapproved. You must receive all required vaccines. However, you are free to request from your healthcare provider alternative vaccines that are available and meet the Navy's immunization requirements, as determined by a credentialed military healthcare provider. You are free to choose which COVID-19 vaccine to take. If you choose a COVID-19 vaccine that requires two doses, you must receive your first dose within five calendar (5) days upon receipt of this letter and complete the series as prescribed. If you choose a one-dose vaccine you must receive the vaccine within five calendar (5) days upon receipt of this letter.

2. In line with references (b) through (d), I am designated as the approval authority for requests for religious accommodation.

3. Reference (a), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion and good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (f)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS

emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there are alternatives available to meet the requested accommodation and
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (g), including the endorsements from your chain of command, the local chaplain and the advice of Chief, Bureau of Medicine and Surgery in reference (h).

a. A waiver of immunizations would have a predictable and detrimental effect on your readiness and the readiness of the Sailors who serve alongside you in both operational and non-operational (including training) environments. Primary prevention of disease through immunizations has been a key enabler for maintaining force health and avoiding disease-related non-battle injury. Granting your request will have a direct and foreseeable negative impact on the compelling Government interests of military readiness and health of the force.

b. While serving in the U.S. Navy, you will inevitably be expected to live and work in close proximity with your shipmates. I find that disapproval of your request for a waiver of immunization requirements is the least restrictive means available to preserve the Department of Defense's compelling interest in military readiness, mission accomplishment and the health and safety of military Service Members.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.

NOWELL JOHN B. Digitally signed by  
ACKWELDER, JR. 1 7039911 JOHN.B.ACKWELDER  
057611825 dn: cn=JOHN B. NOWELL, o=USN, ou=USN, email=jnowell@navy.mil

JOHN B. NOWELL, JR.

Copy to:  
OPNAV (N131, N0975)  
BUMED

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF Ch, Maj Thomas E. Fussell Jr**

Pursuant to 28 U.S.C. §1746, I, Ch, Maj Thomas E. Fussell Jr declare as follows:

1. My name is Ch, Maj Thomas E. Fussell Jr. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.

2. I make this declaration in support of my challenge to the Department of Defense and Department of the Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.

3. I currently reside in Tipp City, Miami County, Ohio. My home of record is Georgia and am a legal resident of Alaska.

4. I am an active-duty Chaplain in the United States Air Force, serving in the rank of Major. I am currently assigned to the 88<sup>th</sup> Air Base Wing, Air Force Material Command, Wright-Patterson Air Force Base, Ohio.

5. I began my military service on 5 October 2005 when I commissioned into the USAF Reserves as an Individual Mobilization Augmentee (IMA) as a Chaplain in the rank of 1<sup>st</sup> Lieutenant. I served in the United States Air Force Reserves until 5 October 2007 when I was accessed into USAF Active Duty as a Chaplain in the rank of Captain.

6. My promotions were as follows:

1<sup>st</sup> Lieutenant – 5 October 2005

Captain – 5 October 2007

Major – 1 April 2018

I have approximately 14 years of service as of March 1, 2022.

7 During my military career, I have had the following deployment to a combat zone or foreign area: 1) 07/2010 – 01/2011 Ali al Salem, Kuwait.

8. I have received the following awards during my military career: Air Force Commendation Medal with four oak leaf clusters, Meritorious Unit Award, Air Force Outstanding Unit Award, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Ribbon, Nuclear Deterrence Operations Service Medal, Air Force Overseas Ribbon – Short, Air Force Expeditionary Service Ribbon with gold border.

9. I attended Commissioned Officer Training (2006), Basic Chaplain Course (2007), Squadron Officer School by correspondence (2009), Squadron Officer School in residence (2013), Chaplain Spiritual Leadership Course (2015), Deputy Wing Chaplain Course (2018), and Air Command and Staff College on-line (2018).

10. I submitted my Religious Accommodation Request (RAR) at Exhibit 1 asking to be excused from the Air Force's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: I am religiously opposed to vaccines and other vaccine requirements that were developed with, tested on, or contain aborted human fetal cells based upon my understanding that vaccines and medicines that contain, were developed with, or used in testing, aborted human fetal tissue violates the principles of God's Word and my conscience. I was tested and confirmed to be positive for COVID-19 in February 2021. As such, I now have natural immunity from COVID-19.

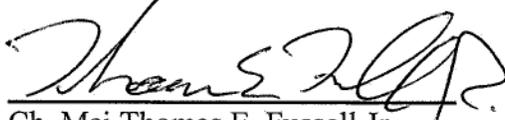
11. My RAR was denied on 27 April 2022, Exhibit 2. I submitted my RAR appeal, Exhibit 3, on 2 May 2022, which is "still pending".

12. The negative actions that have been taken against me for refusing the COVID vaccine and requesting a religious accommodation request: I was removed from being an alternate Religious Resolution Team (RRT) member due to my unvaccinated status. I was told that if I did not get vaccinated, I may have to separate from the Air Force, ending my 14-year Chaplaincy

career. I am restricted from traveling on Temporary Duty (TDY), even though I would be permitted to take ordinary leave to the same location, and therefore affecting my career progression.

13. I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

May 2, 2022



Ch, Maj Thomas E. Fussell Jr



**DEPARTMENT OF THE AIR FORCE**  
HEADQUARTERS 88TH AIR BASE WING (AFMC)  
WRIGHT-PATTERSON AIR FORCE BASE OHIO

20 September 2021

MEMORANDUM FOR AFMC/CC

FROM: Thomas E Fussell, Chaplain, Major, 88 ABW/HC, Wright Patterson AFB, OH

SUBJECT: Religious Accommodation Request re: Vaccine Waiver

1. I request an accommodation waiver of the COVID-19 vaccine requirement and other vaccine requirements that were developed with, tested on, or contain aborted human fetal cells based upon my understanding that vaccines and medicines that contain, were developed with, or used in testing, aborted human fetal tissue violates the principles of God's Word and my conscience.

- a. My DoD ID number is 1286532027.
- b. My Specialty Code is 52R3 - Chaplain.
- c. My unit of assignment is 88 ABW/HC.
- d. My faith group of preference is Christian.

2. This request is based on the fact that vaccines that use aborted human fetal tissue are morally reprehensible as it is using cells from a life that was killed for the sake of harvesting its parts. I believe, God our creator and the author of life, will hold me in judgement for knowingly participating in a vaccine program that destroys life for the sake of using its parts for my benefit. I have a sincerely held belief that vaccines and medicines that contain, were developed with, or used in testing, human fetal tissue violates the principles of God's Word and my conscience. Knowingly taking a vaccine that has anything to do with aborted fetal cells has significant spiritually condemning implications for me. There has to be a better way than harvesting baby parts to make anything. The end does not justify the means. I learned of this information in the Spring '21 from Dr Anthony Fauci, Chief Medical Advisor to the President, and the CDC.

3. Here are a few scriptures that teach that life is precious to God and how I form my perspective:

Jerimiah 1:5 "Before I formed you in the womb, I knew you". We were intentionally created for a great purpose of God's choosing. He knew our name and everything about us before we were formed in our mother's womb.

Psalms 139:13-14 "For you created my inmost being; you knit me together in my mother's womb. <sup>14</sup>I praise you because I am fearfully and wonderfully made; your works are wonderful, I know that full well." God knew us from the very beginning.

In Matthew 18:6, there is a warning to those who take advantage of 'little ones': "But if you cause one of these little ones who trusts in me to fall into sin, it would be better for you to have a large millstone tied around your neck and be drowned in the depths of the sea." (NLT) When we treat babies as spare parts for ourselves, we invite the judgement of God, not only upon ourselves, but also onto our nation.

In Luke 18:6, 'Jesus called them to Him and said, "Let the little children come to Me, and do not forbid them; for of such is the kingdom of God." Children are very precious in the sight of God.

4. All my life, I have trusted my medical providers to have my best interest at heart. I am disturbed to discover that there are many more vaccines that contain cells, cellular debris, protein and DNA from aborted babies. There has to be a better way than to use aborted human fetal cells, or derivatives thereof, to create medicines and vaccines. I wish I had this information years ago. I may have made different choices back then.

5. I understand I must arrange an in-person interview with a Department of the Air Force chaplain and an in-person appointment with an appointed Air Force medical provider as part of the process for requesting a religious accommodation.

6. I understand that I am not required to receive this vaccine while I await a decision on my request. If my request is disapproved, I understand I must comply with the aforementioned vaccine requirement. If my request is approved, I understand I remain subject to COVID-19 screening testing. The point of contact for this request is the undersigned at 937-713-3006 and thomas.fussell.2@us.af.mil.

FUSSELL.THOMAS.E<sup>2</sup> Digitally signed by  
FUSSELL.THOMAS.E.JR.1286532027  
.JR.1286532027 Date: 2021.09.20 19:18:53 -04'00'  
THOMAS E FUSSELL, Ch Maj, USAF



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT-PATTERSON AIR FORCE BASE OHIO

22 April 2022

MEMORANDUM FOR MAJ THOMAS E. FUSSELL

FROM: AFMC/CC

SUBJECT: Request for Immunization Exemption – Major Thomas E. Fussell, 88 ABW/HC

1. I have received your request for an exemption from Air Force immunization requirements based on your sincerely held beliefs. After carefully considering the specific facts and circumstances of your request, along with the recommendations from your chain of command and functional experts, I **disapprove** your request for exemption from immunization requirements, including the COVID-19 vaccine.
2. I understand your concerns about receiving vaccines and appreciate the gravity of these immunization requirements in light of your beliefs. However, when evaluating your request, I also had to consider the risk your exemption would pose for mission accomplishment, including readiness, unit cohesion, good order, discipline, and the health and safety of you and other Airmen. As a Chaplain, your duties require frequent and direct contact with Airmen and other personnel in large gatherings and private meetings. You are also subject to deployment and travel. Not being vaccinated restricts your role, increases the impact on others, tends to diminish unit cohesion, and limits your unit's ability to fully respond to mission or contingency requirements. Not being vaccinated also increases your risk for serious illness, hospitalization, or even death from contracting COVID-19, and/or spreading it to other vulnerable individuals in the workplace. This increased health risk elevates the threat to your unit's ability to accomplish its mission. I therefore find your vaccination furthers a compelling government interest. I also find that less restrictive means than vaccination are insufficient because the totality of mitigation measures like 100% telework, social distancing and masking at all times afford less health protection than vaccination and are not feasible considering your duties, while delayed readiness due to the time needed to become fully vaccinated and other mobility restrictions limit your role and degrade the operational effectiveness of your unit.
3. You have five (5) calendar days to begin a COVID-19 vaccination regimen, submit an appeal, or apply for voluntary separation or retirement if eligible. If you wish to appeal, you must provide your written appeal request to your unit commander. Your unit commander will route your appeal to the Air Force Surgeon General for processing. A copy of this memorandum will be placed in your automated personnel records.

BUNCH.ARNOLD.W.JR.1  
107808708  
ARNOLD W. BUNCH, JR.  
General, USAF  
Commander

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BUNCH.ARNOLD.  
W.JR.1107808708  
Date: 2022.04.22  
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1st Ind, Maj Thomas E. Fussell

MEMORANDUM FOR 88 CPTS/CC

I acknowledge receipt of decision on my religious accommodation request on  
\_\_\_\_\_ (DATE).

FUSSELL.THOMAS  
.E.JR.1286532027  
THOMAS E. FUSSELL, Maj, USAF

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 88TH AIR BASE WING (AFMC)  
WRIGHT-PATTERSON AIR FORCE BASE OHIO



2 May 2022

MEMORANDUM FOR AF/SG

FROM: Ch Maj Thomas E. Fussell Jr, 88 ABW/HC

SUBJECT: Religious Accommodation Request Appeal re: Vaccine Waiver

1. I hereby appeal the denial of my request for a religious accommodation waiver from the COVID-19 vaccine requirement based upon my religious beliefs.

- a. My DoD ID number is 1286532027.
- b. My Specialty Code is 52R3.
- c. My unit of assignment is 88 ABW/HC.
- d. My faith group of preference is Christian.

2. I am disappointed to learn that General Bunch, AFMC/CC, chose to deny my Religious Accommodation Request. I am appealing this decision on the basis that my First Amendment religious rights as an American citizen, an Airman, and a Chaplain were not fully considered and are in opposition to a vaccine that was developed using human embryos. If anyone should be able to receive a religious accommodation, it ought to be a chaplain. Chaplains were, in fact, purposefully recruited specifically for their faith and the skills that it brings. I raised my hand to swear an oath to uphold and protect the constitution. I ought not have to lay my American rights down in order to fight to maintain my American rights.

3. In March 2020, the U.S. went into lockdown due to the Coronavirus. There was great fear in America, as well as the world, over a new and little-known virus that was sweeping the land. Terror gripped the country as we placed our trust in the government to help keep us safe. We were told it would be a two-week lockdown. Most people thought, "Ok, we can do this for two weeks". Two years later, the Orwellian mandates remain in place even though we have learned much of the virus and a vaccine was quickly produced. Thankfully the emergency is over. All of the Covid numbers are down and the nation is back to as normal as allowed. But the military remains in the dark ages. Fear, confusion, and hypocrisy caused more damage than the virus itself – sharp rise in anxiety, domestic violence, academic progress for students stalls, spike in suicide, etc.

4. When the vaccine was initially offered to Americans in December of 2020, the media's mantra was the same across all platforms -- that it was "safe and effective". If it were truly so, it would be like other vaccines and it would effectively inoculate people from the virus. Case closed. As time progressed, it was discovered that the Covid-19 vaccine was neither safe nor effective. Thousands of vaccine-induced injuries we observed, per VAERS reporting – moreso than any other vaccine. We have all know someone who was fully vaccinated and boosted contract Covid, showing the shot to be ineffective. Even the current vaccine that is available is reportedly for the original Corona-19 virus and is not supposed to be effective against the variants.

*Strength Through Support*

5. The standard method of treatment was 1) if someone contracted the virus, they should get tested. 2) If they tested positive, they were sent home to quarantine for 14 days. No medicines given. No treatments. Just stay away from others at home. 3) If it got bad, they were to go to the Emergency Room at a hospital. If they could still breathe fairly well, they were sent home and told that if they went into respiratory distress, then they could return. 4) If they returned to the Emergency Room in respiratory distress, they would then be put on a ventilator and given Remdesivir. If someone recovered at this point, they were very weak and had multiple complications. Many died. This was the narrative that the media presented. It was not challenged by the administration, regardless of the logical statistics that if someone contracted the virus, they had less than a 1% chance of dying from the virus. Also regardless of the fact that many doctors were showing effective traditional medical treatments for virus recovery when offered at early onset of the illness.

6. Much has been learned about the virus. We have learned that when the virus mutates, although the new variant may become more contagious, it also becomes less potent. Once a person contracts it, their body creates antibodies to fight the virus. The body also remembers that virus and is able to fight future viruses. This miracle of the human body is natural immunity. I do not know why the American government will not recognize natural immunity with Covid-19 when they do recognize it with other illnesses. As a Christian, I trust the natural immune system God provided for our bodies to fight a common virus, even if it is a new common virus.

7. Spiritually speaking, fear and faith cannot reside in the same place. They are diametrically opposed to each other. I refuse to live in fear of coronavirus. I will not live recklessly. I will follow appropriate safety measures in all things. But the coronavirus is not something to fear. I and my family have all had the virus. With help from medicines, we recovered quickly and fully. In Gen Bunch's memo to me, he states that by not getting the vaccine, I could die. I am not concerned about death. I know where I am going after I die. Every person will eventually die of something. It is highly unlikely I will die of a virus which I have survived and now have antibodies against, and which has a greater than 99% chance of survival.

8. The point of contact for this request is the undersigned at 229-254-1867 and thomas.fussell.2@us.af.mil.

  
Thomas E. Fussell Jr, Ch Maj, USAF

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF LT NATHANAEL A. GENTILHOMME, CHC, USN**

Pursuant to 28 U.S.C. §1746, I, LT Nathanael A. Gentilhomme, CHC, USN, declare as follows:

1. My name is Nathanael A. Gentilhomme. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Navy mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I live in Spotsylvania County, VA. My home of record is Travelers Rest, Greenville County, SC.
4. I am an active duty Chaplain in the United States Navy endorsed by the Associated Gospel Churches (“AGC”). I am serving at the rank of Lieutenant and currently assigned to the Marine Corps Air Facility (“MCAF”), Quantico, Virginia.
5. I began my military service on 18 February 2009 when I was commissioned an Ensign in the Navy into the Chaplain Candidate Program Officer Program. I was later commissioned on 31 July 2014 and entered active duty in August 2014.
6. My promotions were as follows: Lieutenant (Junior Grade) O-2 with date of rank and effective date of 2/12/2011; Lieutenant O-3 with date of rank and effective date of 8/1/2015. I have approximately 13 years of service as of March 23, 2022.
7. During my military career, I have had the following deployments to foreign areas: 05/2015-07/2015 Japan, South Korea; 06/2016-08/2016 Philippines, Diego Garcia, India, Sri Lanka; 03/2017-04/2017 Marshall Islands; Hawaii; 10/2018-11/2018 TRIDENT JUNCTURE in Norway.

8. I have received the following during my military career: Two Navy and Marine Corps Commendation Medals and the Fleet Marine Force Qualified Officer pin.

9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1 on 16 September 2021, asking to be excused from the Navy's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: I hereby state that my request is based upon the fact that this particular vaccine was made possible from research which utilized cell lines from aborted babies. Early in the development of mRNA vaccine technology, cells from aborted babies were used as "proof of concept" (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein. As a Christian, I believe the murder of babies at any stage of development within a woman's womb is wrong, and using medicine, pills, or vaccines directly or indirectly linked to aborted babies should be avoided at all costs. As a Christian, my body is the temple of the Holy Spirit and by getting any FDA approved COVID-19 vaccine, I would be defiling my body. Receiving the COVID-19 vaccine would go against my deeply held religious and moral beliefs causing me to sin against God and my conscience.

10. My RAR was denied on 09 November 2021 Exhibit 2. I submitted my RAR appeal, Exhibit 3, on 02 December 2021, which still "remains under consideration."

11. "Vaccine" used to mean a medical procedure that protected you from the disease against which you were being vaccinated against whereas COVID-19 vaccines do not protect you but are in reality a treatment. In December 2020, I was diagnosed with COVID-19, got pretty sick and recovered. Later in October 2021, my wife was diagnosed with COVID-19, got pretty sick and recovered. During that same time, though we did not get them tested, five of our six children also got sick, most likely COVID, and recovered. All while my wife and children were sick, I continued to live and interact closely with them, and did not get COVID a second time. I

strongly believe since I had previously had COVID, I had developed strong, natural immunity against COVID. It is now March 2022 and I still have not been re-infected with COVID-19, though our own Navy Doc who is himself fully vaccinated, has already had COVID twice. Ironically, even though there are multiple authoritative studies concluding that natural immunity is as good as if not better than the shots, the Navy/Marine Corps still requires me to get the COVID shot and is actively trying to prevent me from obtaining religious exemption from the shot mandate.

12. In the spring of 2021, the DoD came out with a new, yet short-lived policy, based on the Center for Disease Control's "recommendation" that said Americans who were vaccinated, no longer needed to wear masks indoors, while those who remained unvaccinated, still had to wear masks indoors. This was prior to the DoD officially enforcing the COVID-19 shot mandate, but those of us with religious beliefs or matters of conscience that would not permit us to get the shot, immediately began to be publicly discriminated against. I would walk into meetings where most personnel were not wearing masks, but I had to wear one. Immediately, my private medical information was visibly on display since most knew I was not wearing the mask by choice. It was an intrusion on my medical privacy, and worse it was Government approved discrimination and "mask shaming." The military prides itself in combatting discrimination at all levels, yet when it comes to COVID mitigation policies and the vaccinated vs. unvaccinated, they did not bat an eye at the humiliating mask discrimination policies. It was done all in the name of "public health and safety" even though most people I talked to acknowledged that all the COVID "mitigations/restrictions" at that point were primarily political.

14. Thankfully, I have not experienced any retaliatory or punitive actions from my command for submitting a religious accommodation request, however, I have experienced negative actions for questioning COVID "mitigation" policies and also for informing our Marines/Sailors of their

right to utilize the Religious Accommodation Request process. In March 2021, the COVID-19 shot was still voluntary in the Navy and Marine Corps. When I learned that unvaccinated Marines were being barred from going on trips, I asked the Commanding Officer (CO) of one of the commands I provide Chaplain Support to why he was penalizing his Marines for not getting a shot that was presently voluntary. His response was to kick me out of his office and accuse me of “not supporting the mission.” He claimed “I am not penalizing my Marines. If they don’t want to get vaccinated, they can stay in the rear with the gear.” When September 2021 came along, and the COVID-19 shot became mandatory throughout the DoD, this same command would not permit me to be the interviewing Chaplain for their Marines/Sailors during the Religious Accommodation interview process. They thought I would simply “rubber stamp” recommend for approval all RARs. This was a false assumption on their part and an improper handling of the whole matter. It is my job, during the Religious Accommodation Request Chaplain Interview, to assess the sincerity of a service member’s belief, not whether I agree with it or not, and that is exactly what I do during every interview. They were trying their best to prevent their Marines from getting any kind of support in their pursuits of seeking exemption from the COVID-19 shot via the RAR process. They reached out to another Chaplain, who is actually an Army Chaplain, to conduct around 25 Religious Accommodation Request Interviews, instead of me, the Navy Chaplain assigned to cover down on their unit. It has almost been one year, and even though there is a new CO at this one command, he has never attempted to speak with me, and I am still not permitted to provide Chaplain Ministry of presence throughout his command spaces.

Next, recently I had to submit my annual LT Fitness Report (FITREP). Prior to this one, I had twelve excellent FITREPS signed by previous COs all with the promotion recommendation code ‘EP’ for ‘Early Promote.’ My present CO gave me a promotion recommendation of only ‘P’ which is ‘Promotable.’ Further, he downgraded most of the language highlighting my

accomplishments during the previous evaluation period, ensuring that I will not get promoted in the spring of 2023 (when I will be in-zone for promotion for the first time). He mentioned that one of the primary reasons for giving me such low scores on my FITREP was due to the fact that I am significantly underutilized, not having access to more than 80% of the personnel I am supposed to be providing Chaplain Ministry support to. This is a direct result of continuing to be barred from carrying out deckplate ministry to our primary tenant command as a result of the old CO erupting at me for daring to ask him why he was penalizing Marines not getting the then voluntary COVID-19 shot. Had that never happened, I have no doubt my present CO would have given me much higher scores on my most recent FITREP. I believe the two are directly linked.

Additionally, around the time the COVID-19 shot mandate was implemented, I sent out two ALL HANDS e-mails to each of the commands I cover sharing the policy about how to go about submitting a Religious Accommodation Request and what might qualify a service member to submit one. A couple Marines ended up complaining about my e-mail, so my CO had a meeting to let me know that he and some others were concerned that it appeared I was encouraging Marines/Sailors to seek exemption from the COVID-19 shot mandate. My CO explained that when it comes to publishing messages connected with policy, he wanted to be included so he could help craft the message. I believe it is because my wording was not “politically correct” in that it did not promote the vaccine, but rather gave Marines/Sailors with sincerely held beliefs a possibility of not getting the shot. I firmly believe that if I had sent out an e-mail with the policy about Chaplains and Confidentiality, nobody would have said a thing to me, but since my e-mail served to advocate for Marines/Sailors with religious beliefs or matters of conscience at odds with the COVID-19 shot mandate, I was targeted and it was made clear that my attempt to advocate for Marines/Sailors was not permitted. The only messaging that has been allowed at the two commands I serve is “get the shot,” “wear your mask,” and “social

distance.” Any attempt on my part to question past COVID policies and advocate for those not wanting the shot was only met with accusations of not upholding Navy/Marine Corps policy and that I was risking “the health and wellbeing of personnel” assigned to our commands. However, not at any point have I risked “the health and wellbeing of personnel.” Marines/Sailors all around me got COVID from other people and places, but never from me. As a direct result of the fact that I have not wholeheartedly embraced and supported COVID-19 policy restrictions and the COVID-19 shot mandate, I received one Letter of Instruction (LOI) and one Record of Informal Counseling from my past and present COs.

15. The Navy has put out guidance in the recent past that essentially said Navy Officers whose RARs are denied may elect to waive their right to a Board of Inquiry (BOI) and resign or retire to guarantee receiving an Honorable Discharge and not a General Discharge. According to LT Stephanie Moore at PERS-834, Navy Officers may elect a BOI, but at that point an Honorable Discharge could not be guaranteed, though she could not say for certain it was not possible. There is great uncertainty for Navy Officers in my position. If our appeals get denied, right now it seems the only way to be assured of an Honorable Discharge is to resign, and waive our right to a BOI.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

March 25, 2022

/S/ Nathanael A. Gentilhomme  
Nathanael A. Gentilhomme, CHC, USN



DEPARTMENT OF THE NAVY  
HEADQUARTERS, UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

1730  
MRA

NOV 09 2021

From: Deputy Commandant for Manpower and Reserve Affairs  
To: Lieutenant Nathanael A. Gentilhomme 1382899306/4100 USN

Subj: REQUEST FOR IMMUNIZATION EXEMPTION

1. I have carefully considered your request for an immunization waiver. Your request is denied.
2. In making this determination, I considered your request dated 16 September 2021, the command endorsements, advice from the Director, Health Services, Headquarters, U.S. Marine Corps, and the recommendation of the Religious Accommodation Review Board. Additionally, I considered your right to observe the tenets of your sincerely held religious beliefs, and the government's compelling interests in mission accomplishment, including military readiness and the health and safety of the Total Force. I also considered whether an exception to the vaccination requirement is the least restrictive means of furthering the government's compelling interest. Finally, I consulted with legal counsel.
3. Per DoDI 1300.17, my decision must be consistent with mission accomplishment, including consideration of potential medical risks to other persons comprising the unit or organization. Immunizations are a critical component of individual and unit readiness. This compelling interest is not unique to the COVID-19 vaccination, and cannot be accomplished with the requested exception. I find that there is no less-restrictive way of accommodating your request that ensures military readiness and the preservation of the health of the force.
4. You have the right to appeal this decision to the Commandant of the Marine Corps. Should you decide to appeal this decision, your appeal should be in naval letter format, from you, addressed to the Commandant of the Marine Corps. Forward your appeal to the point of contact below, for delivery to the Commandant.
5. Point of contact on this matter is Mr. Bill McWaters at (703) 784-9386 or william.mcwaters@usmc.mil.

A handwritten signature in black ink, appearing to read "DAVID A. OTTIGNON", with the word "for" written below it.

DAVID A. OTTIGNON

Copy to:  
Cmndr, MCINCR-MCBQ  
CO, MCAF

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CH (CPT) DOYLE G. HARRIS**

Pursuant to 28 U.S.C. §1746, I, Chaplain (CPT) Doyle G. Harris declare as follows:

1. My name is Doyle G. Harris. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.

2. I make this declaration in support of my challenge to the Department of Defense and Department of the U.S. Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.

3. I currently reside on Okinawa, Japan. My home of record is Indiana (Howard County) according to my official military file. My current residency is held in the state of Georgia, where I was last stationed. Georgia is where I hold a valid driver's license and where I vote.

4. I am an active duty chaplain in the United States Army, serving at the rank of Captain. I am currently assigned as the battalion chaplain for 78<sup>th</sup> SIG battalion, which falls under 516<sup>th</sup> SIG brigade and 311<sup>th</sup> SIG command, both located in Hawaii. I am stationed on Okinawa, Japan.

5. I began my military service on the 23<sup>rd</sup> of March 2003, in the U.S. Army Reserves while I was a seminary student at Asbury Theological Seminary. During the last 2 summers of seminary, I attended the Chaplain School house at Ft. Jackson. After graduation and marriage, I served in the local church as my denomination requires years of service for ordination. Upon ordination in 2010, I began actively drilling with the 983<sup>rd</sup> Engineer Battalion in Monclova, OH. In 2012, I submitted my accessioning packet with the hopes of transitioning to the active duty Army. I was selected in late 2012 and entered active duty service at Fort Carson, CO, on 13 May 2013.

6. My promotions were as follows: I swore into the Reserves as a 2<sup>nd</sup> Lieutenant and gained promotion to Captain on 23 March 2010, while still in the Reserves. I am currently in the promotion zone for possible selection to Major. The board met in March 2022, and the results are yet to be released. My time in the reserves, have earned me 5 years which will count toward the military's 20yr pension retirement. On 13 May 2022, I will have an additional 9 years of active duty service. These years combined, put me at 14 years of service.

7. During my military career, my family and I have been stationed at Fort Carson, Colorado (2013-2016); Fort Stewart, Georgia (2016-2019); and Okinawa, Japan (2019-present). I have had the following deployments to either combat zones or foreign areas: Kuwait/Jordan (October 2013-July 2014); Bulgaria/Romania (July 2016-October 2016); Korea (February 2018-October 2018).

8. During my military career, I have received 4 Army Commendation Medals, an Army Achievement Medal, a National Defense Service Medal, a Global War on Terrorism Service medal, a Global War on Terrorism Expeditionary Medal, the Korea Defense Service medal, an Armed Forces Service Medal, an Army Service Ribbon, and an Overseas Service Ribbon. Regarding postgraduate schooling, I have completed Captains Career Course, and 4 units of ACPE, CPE (Clinical Pastoral Education-while serving at a hospital).

9. I submitted my Religious Accommodation Request (RAR), **Exhibit 1**, asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs, to my immediate commander (per the AR 600-20 defined process) on 13 September, 2021. My RAR is based on three significant foundations, a summary follows: 1<sup>st</sup>) Scriptural Foundation, 2<sup>nd</sup>) Medical history, and 3<sup>rd</sup>) Dilemma of Conscience.

1<sup>st</sup>) I have always believed that I need to be careful what is put in my body. I have always held conservative religious beliefs that are tied to my Nazarene Holiness roots. I do not drink

alcohol or smoke, and I try to live a healthy life. In this, I am living out the call I sincerely believe God has placed in my heart confirmed through scripture. 1 Corinthians 6 and 10 issue cautions to recognize that our bodies are temples of the Holy Spirit and that what we choose to put in them should not be taken lightly. This scriptural foundation convicts me to abstain from these new COVID vaccines with their lack of long-term data, and divergence from the historical long standing vaccine approval process. Medical information continues to surface showing troubling and adverse side effects from these vaccines. As I stated in my original RAR, this vaccine mandate requires me to violate my personal religious conviction to treat my body “as a temple of the Holy Spirit” (1 Corinthians 6).

2<sup>nd</sup>) My Army medical file will show that I am currently being treated by the Army for an autoimmune disease (Chronic Pain/Chronic Fatigue linked to Fibromyalgia). Autoimmune diseases are not the same as immune deficiency diseases. Autoimmune diseases do not make their host more susceptible to infections, rather the body is in some ways attacking itself. My conviction was, and still is, that allowing this new vaccine into my body could exasperate my existing medical condition. This mandate requires me to accept unknown, and potentially detrimental, future effects concerning my autoimmune disease.

3<sup>rd</sup>) Army DODI 1300.17 section 1.2 (Policy) states, “Service members have the right to observe the tenets of their religion...” furthermore, para b, states “...The DOD Components will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, religious beliefs)...” While I have had many vaccines during my Army career, those vaccines were all proven through the long-standing multi-year FDA approval process. I believe it is morally and ethically wrong to impose any vaccine that does not have the backing of this historically followed approval process. This process was demonstrably shortened for any and all COVID vaccines which exist on our market. Therefore, this mandate places me in an ethical and

moral dilemma of conscience, which the Army's own regulations and instructions provide me an accommodation process for. After consulting with my primary care physician at the Naval Hospital on Okinawa, I submitted the required documents to request a medical exemption from the COVID vaccine as well. I do not have an approximate timeline this process will follow, but have been advised that most are either not approved or approved on a short-term basis.

10. In the days after I submitted my original RAR to my immediate commander (CPT Ryan Pidcock), I also obtained an official chaplain interview with CH (MAJ) Pottinger, who then submitted his official memo, concurring that my religious beliefs in this matter are sincere and stating that he deemed a denial of my RAR would significantly burden my sincerely held faith, forcing me into a position of moral compromise, (**Exhibit #2**). The required medical counseling was completed by my PCM, P.A. Sarah Begley, (**Exhibit #3**). The final document included in my initial RAR submission (more docs have been added since, that I do not have access to) was the counseling from my company commander, CPT Pidcock. When CPT Pidcock presented this document to me, I was asked to initial that I was refusing the vaccine. I found this self-incriminating statement to be an intolerable affront to my 1<sup>st</sup> Amendment, Free Exercise rights to seek a Religious Accommodation as outlined in Army Regulations and Policy. Therefore, I petitioned to have the statement changed to state that I "wished to seek an administrative exemption for Religious Accommodation" (as outlined in AR 600-20). These changes were made, and I signed (**Exhibit #4**). As my RAR packet made its way up the chain of command, I received a copy of my company commander's official memo. In this memo, dated 27 September, 2021, Captain Pidcock recommended denial of my religious accommodation (**Exhibit #5**). In a personal phone conversation, he shared with me that he did believe that I was completely sincere in my sincerely held religious belief, however, he had recommended denial on the basis of safety, health, and mission accomplishment, stating that my unvaccinated status "risk[ed] the

health of his team, peers, and community.” In stark contradiction to this argument in his memo, during my final TDY to his location on mainland Japan (Camp Zama) less than 2 months later (15-20 November 2021), he and his 1SG (Clyde Vaughan) picked me and my Religious Affairs Specialist up. Upon getting in his car, he informed us that we could remove our masks because, “Up in Zama, they were not needed anymore.” This was during the time of the “Delta-Variant” surge. In knowing that my mission for that trip was Battlefield Circulations, face to face time with Soldiers, and teaching marriage classes, his response shows the lack of sincerity of his memo arguments regarding health and safety of the overall force. It is ludicrous that he would recommend that I not wear a mask around Soldiers, if he truly felt my unvaccinated status made me a danger to those around me. It is this type of inconsistency between written word and action, that demonstrates pressure from high levels to come up with artificial reasoning for denial of RA requests. The lack of validity of CPT Pidcock’s argument is also demonstrated in the fact that from March 2020 (when infections started to hit Japan) until April 2022, I remained COVID free. During this same period of time, thousands of Soldiers and dependents in the USARJ footprint, many of whom were fully vaccinated (and some “boosted”), contracted and spread COVID. In this real-life situation, I was not the one who posed a “risk to [my] team, peers, and community.” In addition to these points, his argument that my unvaccinated status would remove me from “the human element” eventually resulting “in mission failure,” has never had any credible support. There has not been any circumstances in which I have been removed from face to face interactions any more than my vaccinated peers have been. Additionally, masks are not required on our military installation for unvaccinated and vaccinated alike.

11. While conducting a routine pre-operative COVID test on 13 April 2022, I tested positive and was immediately put into quarantine. I remained asymptomatic throughout the 10-day home isolation period. Should my original RAR be denied, I do plan on including this updated

information into my appeal as I now have natural immunity, and had no ill effects from the COVID infection. **Exhibit #6** is the Memorandum from US Naval Hospital Okinawa, documenting my recent COVID positive.

12. Even though my RAR was officially submitted to my immediate commander on 13 September 2021, I have recently found out that it was finally submitted to the Office of the Surgeon General (OTSG) on 8 March 2022. A USARJ legal representative stated in an e-mail that the USARJ commanding general recommended in writing to the OTSG that he recommended denial of my RAR, (**Exhibit #7**). (The opinion expressed in this email also gives some insight into the punitive mindset of the Army regarding those who are attempting to have their religious freedoms protected). I have not yet received any communication from the OTSG and furthermore have been told that it could take several more months. If denied, I do plan to submit an appeal as outlined in FRAGO 17 to HDQA 225.21.

13. In regard to the COVID vaccines themselves, I believe it is untenable and immoral that the DOD knowingly continues to push use of the “experimental use only” vaccines to fulfill this mandate in the absence of availability of the only officially mandated and labeled Comirnaty vaccine. Many locations in the US and abroad still do not have access to the Comirnaty-labeled vaccine. This is true for Okinawa, Japan as well; as of 26 April 2022, the Comirnaty vaccine is not available (**Exhibit #8**). This particular vaccine itself was artificially rushed through the FDA process for full approval in less than a year. This, combined with the shift away from the definition of vaccine that has been historically and medically accepted, to one that does not protect you from contraction of illness but simply lessens the symptoms in some cases, is abhorrent. Real time evidence of cases in the USARJ footprint shows that my vaccinated peers have continued to not only contract COVID, but have demonstrated symptoms that took them away from work for 10 to 14 days at a time. I, on the other hand, remained COVID free much

longer than most of my vaccinated peers, and upon finally contracting it in April 2022, I had no symptoms whatsoever.

14. Though I have never officially refused, but rather filed a RAR, I have been discriminated against in various ways. Beginning on 18 January 2022, I was required to arrive at work 30 minutes early on the first day of every work week to submit to a supervisor-witnessed “Antigen Nasal Test” prior to allowing me to work. This was an order directed in FRAGO 10 (19 November 2021). I have uncomfortably complied each week if not on Leave. This blatant discrimination which targets the few who have chosen to file for a religious accommodation, has proven futile. Vaccinated service members and other employees are not preemptively tested in this manner, but rather are allowed to work until they begin exhibiting symptoms. Literally thousands of vaccinated persons have tested positive during these months after beginning to experience symptoms. Yet somehow I am a threat to their health and safety without testing negative before each work week begins?

In May 2021 (a full 3 months before the FDA approved the Comirnaty vaccine) our outgoing battalion commander LTC Temko was visiting Okinawa from Camp Zama on his farewell tour. During this trip, a group formation of approximately 125 Soldiers, DACS, and Japanese Locals (LN’s) were gathered outside headquarters for a photograph and LTC Temko’s/CSM Stollings final words. Before those comments, LTC Temko walked up to me in public and asked me in the presence of other Soldiers and officers why I hadn’t taken the vaccine. This was a very public conversation initiated by my commander who far outranks me, which forced me to release personal and private medical information (regarding my autoimmune disease) to those around me who had no right or need to know my Personal Health Information (PHI). This is a HIPPA violation and one which I understood to be coercive in nature. As proof of this occurrence, I am including an e-mail which I sent to the USARJ/USARPAC IG hotline,

and the IG Update they emailed back to me (Exhibit #9). In that guidance it states that no one can “order or coerce their personnel to take the vaccine, nor create the perception that their personnel have to be vaccinated” among other guidelines. I believe the public shaming and intimidation involved in this public encounter with my commander was coercive. The IG SGM called me in response to my email, and during that conversation she told me that no less than 3 additional complaints had been filed regarding either that meeting or a similar meeting LTC Temko conducted at Camp Zama a few days prior.

Additionally, the element of coercion was used in the truncated timeline given to Soldiers in the official Order (78-2109-03) to begin the vaccination sequence (Exhibit #10). As per the Japan Standard Time date stamp on this order, it was disseminated at 1700 (Close of Business) on 20 September 2021. This order states that all first doses should be complete no later than 22 September 2021. As a battalion chaplain, I fielded multiply phone calls on 21 September as frustrated Soldiers first read this official order giving them only until the following day to get their first dose of the vaccination.

15. The following career damaging and negative situations have applied to my personal situation. To date I have been denied the opportunity to submit a TDY request at least four separate times. In late February 2022, there was a Leaders Week at Camp Zama on mainland Japan. All staff officers, company command elements, and a few key DAC’s traveled to Camp Zama for team building activities and meetings. I was told in late January that I would not be going because, “it would be too much trouble” to submit an unvaccinated travel memo to the appropriate level. Similarly, I was denied the ability to attend the late April 2022, ARCYBER UMT training in Georgia, because of my unvaccinated status. Due to this issue, I have also been denied twice the ability to travel to the Soldiers from my command that are stationed in Guam and Camp Zama. The Army order that leads to these denials has hurt my ability to minister to

Soldiers, to be a team player, and to enhance the operability and relationships between myself and other ARCYBER UMT teammates.

Additionally, my ability to PCS at all this Summer is growing slimmer and slimmer. I will complete my 3-year orders for my current position with 78<sup>th</sup> SIG in Okinawa, this July. I have been informed that due to the “pending” status of my RAR, I am required to receive an Exception To Policy (ETP) in order to action any PCS orders given to me. As of 25 April 2022, the Senior Army Mission Commander on Okinawa (COL Paone) has recommended denial of this ETP for no other reason than my non-vaccinated status, (**Exhibit #11**). Furthermore, I am being told that my RAR may not be adjudicated for several more months, at which point I will have to also wait through the separate RAR Appeals process if my original RAR is denied, further lengthening the time I am unallowed to PCS. The denial of my ETP to PCS means that I will be unable to leave this position, even though my replacement has already been identified and placed on orders to report early July 2022. This leaves me in a double-slotted position, which is disadvantageous for both myself and the incoming chaplain, as we will attempt to share the same job and get rated for one battalion chaplain slot. This will have a negative effect on my OER, with direct negative implications for my possibility of future promotion. This is also a detriment to the battalion I would have PCS'd to at Ft. Carson, CO, as they will now not have a chaplain assigned to their soldiers and families. The inability to PCS also places undue stress on my family. We have now served overseas, far away from extended family, for nearly 3 years. If I were allowed to PCS this summer, we would be able to visit family whom we have not seen since July 2019, enroute to our new duty station. (These family members have not been allowed to visit us here in Okinawa due to Japan's closed country status for tourists). In addition, the inability to PCS along with the upcoming end date of my current orders, prevents me from enrolling my children for the 2022-23 school year in any location. Army Regulation 600-20-24

requires that “[a] commander must then demonstrate how/why the government action furthers a compelling government interest and is the least restrictive means of furthering that interest.”

Denying an unvaccinated Soldier the ability to PCS, is not the least restrictive means available. Especially in light of the current worldwide COVID situation as its scope and severity continues to decrease, and the lack of any extra mitigation or restrictive requirements for unvaccinated personnel to travel other than providing proof of a negative test, which fully vaccinated personnel are required to do as well. To further illustrate the illogical and punitive nature of not allowing unvaccinated Service Members to PCS, is the fact that these same unvaccinated Service Members are freely allowed to take personal Leave for vacations both here in Japan and abroad, to any country currently open to tourist travel, to include the U.S. I pose the question: How am I such a risk and danger so as not to be allowed to PCS, but yet I can travel to the same places for vacation?

**Exhibit #12** is a name-redacted e-mail from another USARJ Legal person who desires anonymity, and suggests that they would be retaliated against if placed into the spotlight. I will let this email stand on its own merits as it sheds light on the coercive, petulant and penalizing nature that is being exhibited from command levels (and higher) toward unvaccinated Soldiers within the USARJ footprint, that are attempting to follow their sincerely held religious beliefs while following Army guidelines for requesting a Religious Accommodation.

16. All of the above instances of retaliation and prejudice against me and my family because of my status as an unvaccinated chaplain who exercised his constitutional and statutory rights to file a Religious Accommodation Request are also violations of the National Defense Authorization Act (NDAA). It is the duty and obligation of the Government to follow the laws they pass, and they have not done so. Section 533 of the 2013 National Defense Authorization Act (NDAA) is officially named “PROTECTION OF RIGHTS OF CONSCIENCE OF

MEMBERS OF THE ARMED FORCES AND CHAPLAINS OF SUCH MEMBERS.” Para A: states “The Armed Forces shall accommodate the beliefs of a member of the armed forces reflecting the conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such beliefs as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.”

The actions toward me by the Department of Defense are Religious Discrimination, and are anything but the “accommodation” spoken of in NDAA 2013, section 533. Senior Army Leadership is willfully blind to statutes protecting religious liberty and their obligation to obey the duly passed laws of the United States.

17. Throughout my years in the Chaplaincy, I have assisted Muslim Soldiers approaching Ramadan as they expressed their constitutionally protected right to free exercise. I have assisted Norse Pagans in their search for a higher power. I have met with Wiccan’s, and Sikh Soldiers to discuss how I can be of assistance to them in the practice of their chosen religion. I have assisted soldiers and families of various faiths, as well as no faiths at all, to provide for their needs when asked. I have assisted soldiers in receiving all manner of Religious Accommodations for needs related to their held beliefs. I have done this in good faith, always believing that Free Exercise for one means Free Exercise for all. Never in my wildest dreams did I believe that I would be filing for a Religious Accommodation of my own, to be allowed to abstain from having an unproven substance forcibly placed into my body in order to continue serving America with honor. **Exhibit 12** referenced above, describes in vivid detail the direction the Army is heading for those who will not “bend the knee.” Leaders from the SECARMY all the way down have stated their intentions. Army commanders are being pressured from above to make this as painful and punitive as they possibly can.

My annual Officer Evaluation Rating for the 2019-2020 year and the 2020-2021 year showed that I receive the highest rating of “Most Qualified,” for both (2021-2022 not yet concluded), yet there is now a very real possibility that I will receive a negative evaluation, General Officer Memorandums of Record (GOMOR), and a less than honorable discharge/dishonorable discharge when there is nothing in my record to warrant that characterization of my service. Should this happen, it would not only end my career, but would also have a significant impact upon future benefits such as the Post 9-11 GI Bill and future VA benefits. While my RAR has not been returned from the OSTG, I have been told that once it does, I will have 7 days to either begin the course of vaccination or file an appeal. If I file an appeal no one knows how long that will take, meanwhile I will remain locked into a no PCS status that continues to have negative consequences.

These last two years plus have taught me just how much can change while nothing changes at all. Seemingly every day there is updated news on masks, news regarding how breakthrough case numbers continue to rise, news on surging Cancer/Heart disease rates/and other conditions (DMED stats) which are way up among young healthy vaccinated military personnel. We have been told that vaccination is the key to full protection, then it changed to taking a second dose, and now an unforeseen number of boosters for protection. This begs the question: Where does this end? My office currently sits 15 miles from Hacksaw ridge where during the battle of Okinawa (WWII) a brave man named Desmond Doss saved 75 lives during one battle. For his bravery, President Harry S. Truman awarded him the Presidential Medal of Honor. Interestingly, nearly a year prior to that awful night the Army was ready to kick him out for following his conscience which was informed by his devoutly held religious faith. If the U.S. Army does not see the error of their ways and relent on this persecution then truly, we have not learned from our history and we will be doomed to repeat it.

These last two years I have seen the Army go to great lengths to accommodate the free exercise of sexuality. They have gone to great lengths to accommodate the free exercise of gender dysphoria. They have gone to great lengths to validate the voices of the victims of sexual abuse and assault. Yet in all of these strides toward equal opportunity for all, they seem to have no tolerance for those who hold genuine expressions of sincerely held religious beliefs. We have been labeled “anti-vaxxers” or “anti-science.” I feel I am neither, yet I have been made to feel like I am the dirty, unclean one over and over again. When I raised my hand and swore an oath to serve this country, I was not swearing to support any particular president. I have served under both liberal and conservative alike. I swore to uphold and defend the Constitution of the United States against all enemies foreign and domestic. Today, our country certainly has foreign enemies, but our most significant fight is not against the foreign but against the domestic. Our founding fathers were wise enough to see times like this coming. Our country was built upon free exercise of religion, and if we do not get this right, we will be changed to the core. If free exercise is allowed to die, the very foundation our nation was built upon will crack and disintegrate. May God help us. Pro Deo Et Patria!

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 27, 2022

  
Doyle G. Harris  
CH (CPT) USA

IN THE MATTER OF THE VACCINE MANDATE CHALLENGE

DECLARATION OF CH, CAPT JEREMIAH HENDERSON

Pursuant to 28 U.S.C. §1746, I, **JEREMIAH P. HENDERSON** declare as follows:

1. My name is **JEREMIAH P. HENDERSON**. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the **United States Air Force (USAF)** mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at **ALAMOGORDO, OTERO COUNTY, NM 88310**. My home of record and where I am domiciled is **ALAMOGORDO, OTERO COUNTY, NM 88310**.
4. I am an active duty chaplain in the United States **AIR FORCE** serving at the rank of **CAPTAIN**. I am currently assigned to the **HOLLOMAN AIR BASE, HOLLOMAN, NM, 88330**.
5. I began my military service on 26 AUGUST 2004 when I enlisted in the New York Air National Guard as a Chaplain Assistant. I served as an enlisted member until 12 JUL 2019 and left at the rank of Master Sergeant, pay grade E-7. I was commissioned on 13 JUL 2019 without a break in Service and entered Active Duty.
6. My promotions were as follows: **Airmen First Class (26 AUG 2004)**, **Senior Airman (11 MAY 2006)**, **Staff Sergeant (25 FEB 2009)**, **Technical Sergeant (25 MAY 2011)**, **Master Sergeant (21 AUG 2017)**, **First Lieutenant (13 JUN 2018)**, **Captain (13 JUN 2020)**. I have approximately **17.5** years of service as of 1 MAR 2022.

7 During my military career, I have had the following deployments to either combat zones or foreign areas: **06/2008-08/2008 – Aeromedical Evacuation Mission Ramstein AB, Germany, 04/2021-10/2021 – Al-Udeid AB, Qatar and Undisclosed location, Jordan.**

8. For my service, I have received the following: **Meritorious Service Medal, Air and Space Commendation Medal with two devices, Air and Space Achievement Medal, Meritorious Unit Award, Air and Space Outstanding Unit Award with four devices, Air Reserve Forces Meritorious Service Medal with three devices, Air and Space Recognition Ribbon, National Defense Service Medal, Armed Forces Expeditionary Medal, Global War on Terrorism Service Medal, Humanitarian Service Medal with device, Air and Space Expeditionary Service Medal with Gold Border with device, Air and Space Longevity Service Award with three devices, Armed Forces Reserve Medal with ‘M’ Device, USAF NCO PME Graduate Ribbon with device, Basic Military Training Honor Graduate Ribbon, Small Arms Expert Marksmanship Ribbon, Air and Space Training Ribbon with device, as well as the 2018 Minuteman Award given to the Most Outstanding Air National Guard Chaplain Assistant, 2018 109<sup>th</sup> Airlift Wing Wing Staff Non-Commissioned Officer of the Year, 2020 4<sup>th</sup> Quarter 49<sup>th</sup> Wing Staff Company Grade Office of the Quarter, 332<sup>nd</sup> Expeditionary Wing Staff Company Grade Officer of the Month (2x - June 2021/August 2021), and the 109<sup>th</sup> Command Chiefs Master Sergeant’s Guardian Award given for community service and professional development. I have been selected for and graduated Airmen Leadership School (Aug 2008), Air Force Non-Commissioned Officer Academy (Jun 2016), and Air Force Senior Non-Commissioned Officer Academy (Mar 2019).**

9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) on **18 Oct 21**, and was asked to resubmit with adjusted verbiage from a template on **19 Oct 21**, Exhibit 1 asking to be excused from the **USAF’s** COVID-19 vaccine mandate based on my

sincerely held religious beliefs. A summary of those reasons follows: 1) **the sanctity of human life and the use of aborted fetal cells, 2) the stewardship of my body as God's temple, 3) the sanctity of the human conscience and the call for the just to live by faith.**

10. My RAR was denied on **4 Mar 2022, served to me on 28 Mar 2022 upon return from leave**, Exhibit 2. I submitted my RAR appeal, Exhibit 3, on **6 Apr 2022**, which is **still pending**.

11. The following discriminatory, retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: COVID-19 testing only for unvaccinated members, masks only for unvaccinated members.

12. I was denied a Permanent Change of Station despite being on the Final Vulnerable to Move List (VML) due to guidance given by AF/A1 (23 Nov 2021). I contacted assignments and was told that the reason was my pending religious accommodation request. I was also advised that I am unable to attend my Chaplain Endorser-mandated training due to my vaccination status **(AFI 52-101, 3.1.1.5.2.1. Endorser-Mandated Events. When endorsing organization mandate attendance at trainings, meetings, consultations, or other events, the event is an Air Force requirement and temporary duty is authorized...3.1.1.5.1 Chaplains must comply with the requirements of their ecclesiastical endorsing organization (T-0)).** Further, DAFI 52-201, **"1.3 A Member's expression of sincerely held beliefs may not be used as the basis for any adverse personnel action, discrimination, or denial of promotion; and may not be used as a basis for making schooling, training, or assignment decision (T-0)."**

13. In my initial Commander counseling (20 Oct 22), I was informed that the vaccination was condition of employment and that "noncompliance with immunization requirements may adversely impact (my) ability to deploy, (receive) assignment, or international travel." I was also

informed “that if, after a thorough analysis of (my) request, the religious accommodation could not be met, administrative actions may be considered (to) include reassignment, reclassification, or separation.” **The Services have made it clear that resisting the vaccine, comes with a high price, including progressive discipline from Letter of Reprimand until administrative separation from the Department of Defense. A general discharge in this case is a punitive discharge because it is associated with people with discipline problems, will follow you all your life, demeans and mischaracterizes your service and denies VA benefits. That could be a problem for chaplains seeking to continue to do ministry as a civilian in addition to the loss of major veterans’ benefits and retirement. If given the choice, *i.e.*, accept vaccine or agree to an unqualified resignation or face discharge, this would threaten my calling as a Chaplain, and my ability to financially care for my wife and six children. This followed a more than ten-year journey of higher education (over 200 higher education credit hours) and a more than three year pastoral ordination process.**

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 8, 2022

  
**JEREMIAH P. HENDERSON**  
Ch, Capt, USAF



**DEPARTMENT OF THE AIR FORCE  
AIR EDUCATION AND TRAINING COMMAND**

4 March 2022

MEMORANDUM FOR CAPTAIN JEREMIAH P. HENDERSON

FROM: HQ AETC/CC  
1 F Street, Suite 1  
JBSA Randolph TX 78150-4324

SUBJECT: Decision Regarding Religious Accommodation Request

I have received your accommodation request for exemption from the COVID-19 immunization requirement based on your religious beliefs. After careful consideration of the specific facts and circumstances, I deny your request for exemption from Air Force COVID-19 immunization standards based on the recommendations from your chain of command and the Religious Resolution Team (any other religious exemption that you seek must be addressed in a separate, specific request). A copy of this decision memorandum will be placed in your automated personnel records.

I thoroughly reviewed your request, examined the comments and recommendations from the functional and legal experts, and considered the impact on you personally, the Airmen with whom you work and the mission. I find that your request, while sincere, does not meet the threshold necessary for an exemption.

First, the Air Force's compelling government interest outweighs your individual belief and no lesser means satisfy the government's interest. For the past 18 months, the Air Education and Training Command fought through the COVID pandemic by implementing several extreme measures and processes to ensure the health, safety and welfare of our Airmen. These measures included maximum telework, workplace occupancy limitations, extreme adjustments to Basic Military Training to include multiple training sites and modified training, and remote learning for most Professional Military Education to name just a few actions. Similar measures for the medical community included telehealth consultations and reduced in-person appointments. Despite these efforts, the Air Force remained in this posture until vaccinations became available and administered, and only then did our pandemic numbers begin to decrease. Continuing to implement these drastic measures detracts from the readiness, efficiency, good order and discipline of the force, and is unsustainable as the long-term solution.

When I reviewed your request, I used the same method as I did for requests from other similarly situated individuals, taking into account factors such as your duty position and rank. In your particular position as a Chaplain, there is a compelling government interest for you to receive the vaccine. Specifically, your job requires you to perform religious rites, conduct worship services, provide confidential counseling and advise commanders on religious, spiritual, and moral matters. An exemption will negatively impact unit cohesion as you must interact with the entire base populace, including elderly retirees. Your personal lack of readiness will impact

your ability to deploy, perform temporary duties away from your home station, and be transferred overseas. Even if you are permitted to travel on official orders with an exemption, your ability to perform the mission may be limited due to restriction of movement and isolation requirements that are inapplicable to vaccinated members. Finally, failure to get the vaccine increases the risk to both your own health and safety and that of those you interact with, including operators, support personnel, and the public.

Lesser means to accomplish the government's compelling interest are insufficient. You cannot accomplish your duties via telework as you are required to have close contact with others. Further, your ability to lead and mentor subordinates is not as effective if you must interact virtually or while remaining socially distanced. Finally, mask wear alone is an insufficient intervention.

Upon receipt of this decision, I expect you will take every action necessary to comply with the requirement for COVID-19 immunization as soon as possible. You have five (5) calendar days from receipt of this memorandum to accomplish one of the following: (1) receive an approved COVID-19 vaccination and provide proof of vaccination to your commander; (2) submit for retirement or separation; or (3) appeal this decision to the Air Force Surgeon General. Should you elect to appeal this decision, follow the procedures in AFI 52-201, *Religious Freedom in the Department of the Air Force*, Chapter 6. If you appeal this decision, submit your appeal to your commander in writing. Include in your appeal any additional matters you wish for the AF/SG to consider. Your commander will forward your appeal and any additional matters to HQ AETC/SG for further processing.

If you have any questions, contact HQ AETC/HC at 210-652-3822 (DSN 487), or email at [aetc.hc@us.af.mil](mailto:aetc.hc@us.af.mil).



MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:

Member's Unit

Member's Servicing FSS

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF Chaplain (CPT) Andrew Hirko**

Pursuant to 28 U.S.C. §1746, I, **Andrew Michael Hirko** declare as follows:

1. My name is **Andrew Hirko**. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of **The US Army** mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED] **Fort Campbell, KY 42223**. My home of record and where I am domiciled is **St. Augustine, St. John's County, Florida**.
4. I am an active duty chaplain in the United States **Army** serving at the rank of **Captain**. I am currently assigned to the **1-502D IN REGT, 2BCT, 101ST ABN DIV (AASLT) BLDG 7071 Fort Campbell, KY 42223**.
5. I began my military service on **21 JAN 2021** when I started my training at **Chaplain Basic Officer Leadership Course (CHBOLC)**. I was commissioned on **21 JAN 2021** and entered active duty on **21 JAN 2021**.
6. I have approximately **14 Months** years of service as of March 1, 2022.
8. I have received the following **a coin from the Chief of Chaplains (Maj. General for my work at CHBOLC and I was ranked the #1 active duty chaplain in my CHBOLC class that graduated in April 2021**.
9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1 asking to be excused from the **Army's** COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: **My Religious**

**accommodation and appeal is on the grounds that the COVID-19 vaccinations: a) utilize mRNA's unscriptural design; b) utilize aborted fetal tissue during the testing phase and c) the long term side effects are unknown. Also the current short term side effects from the current COVID vaccines (d) do present a real adverse impact to force readiness. DoD data suggests three-fold and 10-fold increased risk of cancer and neurological disorders, respectively, during COVID vaccine implementation. Additionally, a recent peer-review study from Lund University shows the mRNA Covid-19 vaccine does become DNA in liver cell. All of these facts violate my conscience.**

**Scripturally, this appeal is based on my strong Christian belief that: a) all humans are made in the image of God (Genesis 1:27); b) God creates humans who, have meaning even in the womb. (Psalm 139:13); c) I am fearfully and wonderfully made (Psalm 139:14) and my physical body is created by God and is the temple of the Holy Spirit (1 Corinthians 6:19-20). My Denominational Endorser also affirms that my objection is based on my firm religious beliefs.**

10. My RAR was denied on **Feb 23, 2022 but I wasn't notified until March 15, 2022** Exhibit 2. I submitted my RAR appeal, Exhibit 3, on **March 17, 2022**, which is **"still pending."** **I believe the appeal should be approved because Chaplains like myself, play a vital role in maintaining this all-important structure. One of the main roles of a chaplain is to provide pastoral counsel support to Soldiers of all faiths enabling them through counsel and encouragement, to act according to their conscience, especially when faced with apparent conflicts between doing what is right and following orders. Forcing chaplains to violate their own conscience renders them effectively useless to the men and women who look to them for support in maintaining their moral integrity. Congress has clearly demonstrated its intent to specially protect chaplains' rights of conscience in Section 533 of the National**

**Defense Authorization Act of 2013. Forcing me to take a COVID-19 vaccine against my conscience tramples on this clear Congressional intent and severely undermines the effectiveness of my chaplaincy. Reference DoDI 1300.17, Religious Liberty in the Military Services1.2.e states that the “burden of proof is placed upon the Department of Defense (DoD) Component, not the individual requesting the exemption” to show that the requirement to vaccinate is “the least restrictive means of furthering that compelling governmental interest. In fact, the denial is the most means of furthering the supposed governmental interest. Having been effectually accommodated for the past 14 months of the pandemic (since I joined the Army), the Chain of Command’s claim that least restrictive means short of vaccination (social distancing, mask wearing, testing) are not sufficient to the furtherance of compelling governmental interests, is untrue. I am successfully exercising these least restrictive means to complete all my duties; to not pose any transmission health risk to others; to remain healthily force ready; and to continuously support mission accomplishment. I also have natural immunity from contracting the virus which, the CDC has stated is superior to the vaccine.**

11. **As stated above I have a serious conviction about taking vaccines that may alter my DNA. A recent peer-review study from Lund University shows the mRNA Covid-19 vaccine does become DNA in liver cell. This facts violates my conscience.**

12. I have been absolutely denied the presumption of natural immunity established by AR 40-562. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request:

**I was removed at the last minute from our unit’s external evaluation training at the Joint Readiness Training Center (JRTC). All of the unvaccinated soldiers including myself were**

removed at the last minute for maximum embarrassment and coercion. This left our unit without a chaplain and without a plan for religious support because it was done within hours of us leaving for training. During that training period I was also denied leave to go pursue other job opportunities because of the prospect of being kicked out of the Army. This leave was then approved at 1900 on the first day that I requested after had already cancelled my flights. Additionally, I am required to submit a robust leave packet anytime that I want to take leave. This leave packet has to go through the division surgeon and be approved by the Brigade Commander. Also I have be publically and privately ridiculed and questions by other chaplains questioning the sincerity of my convictions. My wife and children have been deeply affected through this process of taking a stand against the vaccine. My wife has severe anxiety about me not being able to provide for my family and she cries on a daily basis due to the stress of the situation. There have been many situations that she has been excluded from chaplain's wife's events because they know that I am not vaccinated. My children have been under great stress because they have been told that we are going to get kicked out of the Army. Overall, this process has caused great angst, anxiety and stress on our marriage and or lives.

I deeply desire to continue to serve my country, and support and defend its sovereign Constitution, as I have for the last 14 months. I respectfully request that this appeal be approved, so that I may continue to honor my God and patriotically serve my country. If approved, the Army will retain a passionate chaplain and leader with over 20 years of ministry training, and experience. If denied, I may be involuntarily separated due to my sincerely held religious beliefs.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

March 30, 2022



Digitally signed by  
HIRKO.ANDREW.M.1588463601  
Date: 2022.03.30 17:22:49 -05'00'

**Andrew Hirko**



DEPARTMENT OF THE ARMY  
OFFICE OF THE SURGEON GENERAL  
7700 ARLINGTON BOULEVARD  
FALLS CHURCH, VA 22042-5140

DASG-ZA

23 FEB 2022

MEMORANDUM THRU Commanding General, 101st Airborne Division (Air Assault)  
and Fort Campbell, Fort Campbell, KY 42223

FOR Chaplain (CH) (Captain) Andrew Hirko, Headquarters and Headquarters  
Company, 1-502d Infantry Regiment, 2d Brigade Combat Team, 101st Airborne Division  
(Air Assault), Fort Campbell, KY 42223

SUBJECT: Denial of Request for Religious Accommodation

1. I reviewed your religious accommodation request for an immunization exemption from the COVID-19 vaccine mandate. Your request for exemption from the Army's COVID-19 vaccine mandate is denied.
2. I considered your request, based on your Presbyterian faith, and reviewed your specific case. This included an examination of your chain of command recommendations, your chaplain findings of a sincere religious belief, and your current military duties as a Chaplain. Your chain of command noted that your duties often require working in close proximity to other Soldiers while performing religious rites, conducting worship services, providing confidential counseling, and advising commanders on religious, spiritual, and moral matters. Additionally, remaining unvaccinated would impact deployability, risking other service-members and requiring potential evacuation in combat zones, as well as risking exposure to host-nation personnel.
3. COVID-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army's compelling government interests, which also includes protecting your health, the health of the force, and ensuring mission accomplishment.
4. You may appeal this decision through your chain of command to the Assistant Secretary of the Army for Manpower & Reserve Affairs. If you choose to appeal, you have seven calendar days from notification of my decision to submit matters.

A handwritten signature in black ink, appearing to read "RSD", written over the typed name of the official.

RAYMOND S. DINGLE  
Lieutenant General, U.S. Army  
The Surgeon General and  
Commanding General, USAMEDCOM

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CHAP, MAJ KRISTA DANIELLE INGRAM**

Pursuant to 28 U.S.C. §1746, I, Krista Danielle Ingram declare as follows:

1. My name is Krista Danielle Ingram. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED], Fairborn, Oh, 45324. My home of record and where I am domiciled is [REDACTED], Cedar Park, TX, 78613.
4. I am an active duty chaplain in the United States Air Force serving at the rank of Major. I am currently assigned to the 88<sup>th</sup> Air Base Wing, Air Force Material Command, at Wright Patterson Air Force Base, Ohio.
5. On 18 June, 2007, I was commissioned as a 2<sup>nd</sup> Lieutenant and Chaplain Candidate in the Air Force Reserves. I completed the Chaplain Candidate program and became an Individual Mobilization Augmentee (IMA) reservist in 2009. I continued to serve as a reservist until I entered active duty on 05 March 2012.
6. I have approximately 15 years of total federal commissioned service and over 10 years on active duty. My promotion dates are as follows:

2 <sup>nd</sup> Lieutenant	18 Jun 2007
1 <sup>st</sup> Lieutenant	05 Nov 2008
Captain	05 Nov 2010
Major	01 Mar 2021
7. During my military career, I have had the following assignments:

November 2009 – March 2012, IMA Chaplain, 37<sup>th</sup> Training Wing, Lackland AFB, Texas

March 2012 – June 2013, Chaplain, 375<sup>th</sup> Air Mobility Wing, Scott AFB, Illinois

June 2013 – April 2015, Chaplain, 8<sup>th</sup> Fighter Wing, Kunsan AB, Republic of Korea

June 2015 – July 2018, Chaplain, 30<sup>th</sup> Space Wing, Vandenberg AFB, Calif.

July 2018 – February 2019, Chaplain 35<sup>th</sup> Fighter Wing, Misawa AB, Japan

March 2019 – Present, Branch Chief, 88<sup>th</sup> Air Base Wing, Wright Patterson AFB, Ohio

8. During my military career, I have had the following deployments:

July 2017 – January 2018, Installation Chaplain, 407<sup>th</sup> Air Expeditionary Group, Ahmed Al Jaber AB, Kuwait

June 2020 – October 2020, Chaplain, 380<sup>th</sup> Expeditionary Wing, Al Dhafra AB, United Arab Emirates

9. I have received the following awards and decorations during my military career:

Air and Space Commendation Medal w/3 Oak Leaf Clusters

Air and Space Achievement Medal

Air and Space Outstanding Unit Award

Korean Defense Service Medal

Humanitarian Service Medal

Military Outstanding Volunteer Service Medal

Air and Space Longevity Service Award w/2 Oak Leaf Clusters

10. I submitted my Religious Accommodation Request (RAR) on 20 September, 2021, asking to be excused from the Air Force's COVID-19 vaccine mandate based on my sincerely held religious beliefs. My primary argument is the use of a fetal cell line in the testing, development, and/or production of the COVID-19 vaccines; this usage conflicts with my beliefs on the sanctity of life. Please see my included memo for additional information.

11. My RAR has been pending for over 7 months; I anticipate receiving the initial denial in May 2022. I intend to submit an appeal.

12. Until the recent downgrade to HPCON levels, I was required to complete two COVID-19 home tests per week. This practice negated any hope of maintaining privacy on the subject with peers or subordinates because 1) another staff member was required to observe the test, and 2) tests had to be obtained from the chapel superintendent's office on a regular basis.

Additionally, I contracted COVID in January 2022, but am still ordered to receive a COVID-19 vaccine and denied the presumption of natural immunity established by AR 40-562.

13. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request:

- Denied new assignment f/summer 2022

- Denied Professional Development Education f/summer 2022

14. As a ministry professional and ordained clergy, I must submit to rigorous background checks for any employment in the civilian sector. Anything other than an honorable discharge will result in many difficult conversations where I am forced to discuss/reveal confidential medical information with potential employers. Worse still, I will be eliminated from the candidate pool before ever getting to have those difficult conversations. Thus, the DoD's COVID-19 vaccine mandate, and the resulting consequences, effectively render me unemployable in ministry settings and substantially increase the difficulty of finding employment elsewhere.

15. Additionally, I am one of perhaps forty female Air Force Chaplains. I was the only female recruited in 2007, and remain the only female in my year (promotion) group. I am also an ordained elder in The United Methodist Church (UMC). Our clergy are valuable to the military due to the breadth of ministry we are able to provide and the training and experience required by our endorser prior to ordination and military service.

16. I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 23, 2022

  
Krista Danielle Ingram



**DEPARTMENT OF THE AIR FORCE**  
HEADQUARTERS 88TH AIR BASE WING (AFMC)  
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

20 September 2021

MEMORANDUM FOR AFMC/CC

FROM: CH, MAJ KRISTA D. INGRAM, 88 ABW/HC

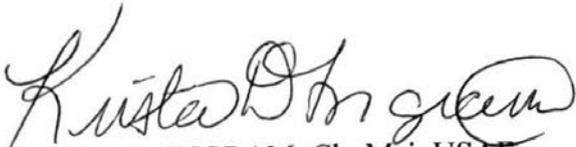
SUBJECT: Religious Accommodation Request re: Vaccine Waiver

1. I request an accommodation waiver of the COVID-19 vaccine requirement based upon my sincerely held religious beliefs.
  - a. My DoD ID number is 1168686729.
  - b. My Specialty Code is 52R3.
  - c. My unit of assignment is 88 ABW/HC.
  - d. My faith group of preference is Methodist.
  
2. While attempting to educate myself about the advantages and disadvantages of the multiple COVID-19 vaccines, I discovered that a fetal cell line obtained from an aborted child was used in either the development or testing phase of each vaccine. As a devout Christian and ordained military chaplain, I believe in the sacredness of human life from date of conception to date of death. Abortion is morally reprehensible and a sin in the eyes of God, in whose image we are all created. The Global Methodist Church, in its *Transitional Book of Doctrine and Discipline*, paragraph 202.2, states the following, "We believe that life is a holy gift of God whose beginnings and endings are set by God, and that it is the particular duty of believers to protect those who may be powerless to protect themselves, **including the unborn**, those with disabilities or serious illness, and the aged (*Genesis 2:7, Leviticus 19:32, Jeremiah 1:5, Luke 1:41-44*)."

My ordination as a United Methodist pastor requires rigorous theological training and an eight year ordination track; during this time my beliefs were routinely questioned, examined, and determined to be sincere. As an active duty Air Force chaplain for the past 10 years, the depth and sincerity of my beliefs has been on display since I was accepted into the Chaplain Corps over 14 years ago. The current USAF COVID-19 immunization requirements substantially burden my free exercise of religion by coercing me to support both the practice of abortion (regardless of the date of procedure) and the consumption of products brought to market through aborted fetal cell lines. As ordained clergy not only do I find this an impossible task, but I am required to stand against such sinful practices. The Case Fatality Rate of 1.62% for COVID-19 in the United States does **NOT** provide sufficient medical necessity for me to abandon my beliefs, my faith, or my God (<https://ourworldindata.org>), and I am fully prepared to leave military service if necessary.

3. I understand I must arrange an in-person interview with a Department of the Air Force chaplain and an in-person appointment with an appointed Air Force medical provider as part of the process for requesting a religious accommodation.

4. I understand that I am not required to receive this vaccine while I await a decision on my request. If my request is disapproved, I understand I must comply with the aforementioned vaccine requirement. If my request is approved, I understand I remain subject to COVID-19 screening testing. The point of contact for this request is the undersigned at 937-904-0524 and [krista.ingram.1@us.af.mil](mailto:krista.ingram.1@us.af.mil).



KRISTA D. INGRAM, Ch, Maj, USAF  
Branch Chief, 88 ABW/HC

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF Chaplain, Captain Ryan Peter Jackson**

Pursuant to 28 U.S.C. §1746, I, Ryan Peter Jackson declare as follows:

1. My name is Ryan Peter Jackson. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. My home of record and where I am domiciled is Wilmington, New Castle County, Delaware.
4. I am an active-duty chaplain in the United States Air Force serving at the rank of Captain. I am currently assigned to the 509<sup>th</sup> Bomb Wing, Whiteman AFB, Air Force Global Strike Command (AFGSC).
5. I began my military service on 24 February 1999 when I enlisted and served six years as a crew chief for F-15 aircraft and then two years as a loadmaster on C-17 aircraft after cross-training. Following my active-duty service commitment, I served eight years as a C-17 loadmaster in the Air Force Reserve. I was commissioned as a Second Lieutenant in the Chaplain Candidate program in 2015 and served two summer tours, followed by my re-appointment in 2018 and stationing at McConnell Air Force Base as an Individual Mobilization Augmentee Reservist. I was appointed to Active-Duty Regular Air Force August 2020.
6. My promotions were as follows: Senior Airman (Below the Zone) 2001, Staff Sergeant 2003, Technical Sergeant 2009, Second Lieutenant 21 February 2015, First Lieutenant 31 May

2018, Captain 31 May 2019. I have approximately 23 years total of active and reserve service as of March 2022. My Total Active Federal Military Service (TAFMS) is 13 years and 2 months.

7. During my military career, I have traveled on missions to combat zones and foreign areas: 07/2005-02/2015, I flew multiple missions on a C-17 crew in support of Operation Iraq Freedom and Operation Enduring Freedom (Afghanistan) as well as many other world-wide missions to include several presidential support missions.

8. I have received the two Air Force Commendation Medals, two Air Force Achievement Medals, four Air Force Outstanding Unit Awards, Basic Loadmaster Class Distinguished Graduate & Top Graduate awards, and Commissioned Officer Training Honor Flight during my military career.

9. I submitted my Religious Accommodation Request (RAR) on 16 September 2021 at Exhibit 1 asking to be excused from the COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: All vaccines do not burden my faith, but the COVID-19 vaccines substantially burden my practice of good faith and integrity before God; therefore, I cannot receive them into my body (Romans 14:23; 1 Timothy 1:18-19, 3:9).

According to the Word of God, if I went against my conscience after prayer and deliberation with God, it is sin for me. "If anyone, then, knows the good they ought to do and doesn't do it, it is sin for them," and "Each of them should be fully convinced in their own mind. Whoever eats meat does so to the Lord, for they give thanks to God; and whoever abstains does so to the Lord and gives thanks to God...Blessed is the one who does not condemn himself by what he approves. But whoever has doubts is condemned if they eat [or take something into their body], because their eating is not from faith; and everything that does not come from faith is sin" (James 4:17; Romans 14:5-23). The Scripture also states that our bodies, as believers in Jesus Christ, are the Holy temple of a Holy Lord. "Don't you know that you yourselves are God's temple and that

God's Spirit lives in you?" and "Do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore, honor God with your body" (1 Corinthians 3:16-17; 6:19-20). These Scriptures tell me I am to treat my own body as a house or resting place for the Almighty God. If I were to receive the new vaccines, knowing the adverse effects and acknowledging the unknown long-term effects to my body, I would be knowingly causing potential harm to my body.

10. My RAR was denied/disapproved on 28 February 2022, Exhibit 2. I submitted my RAR appeal, Exhibit 3, on 5 March 2022, which was also denied/disapproved 19 April 2022. I stated in my RAR that the experimental short-term testing and use of the vaccines, combined with their inability to prevent covid-19 or stop the spread create an unwise risk and substantial burden upon my faith for stewarding my body which belongs to God. For more information see Exhibit 1, attachment 1.

11. The AFGSC Commander disapproved my request, stating that the Department of Defense and the Department of the Air Force have a compelling interest in maintaining a healthy and ready military force through vaccination. The commander states that less restrictive means of ensuring military readiness for mission accomplishment, such as masking, physical distancing, and teleworking are insufficient and would not be as effective as vaccination because my duties require regular face-to-face counseling, spiritual care, spiritual resilience coaching, and conducting weekly religious services. The disapproval states that my job cannot be accomplished by teleworking or other remote means, and that I must physically interact with others on a frequent basis where I cannot always maintain adequate physical distancing.

12. My actions and personal state of readiness demonstrate the inaccuracy of the above conclusions. And respectfully, the statements about my duties are simply not true. My job never requires me to touch another person or be within 6 feet of them during in-person face-to-face

counseling, providing spiritual care, resiliency coaching, or conducting weekly religious services. There is no regulation requiring me to touch another individual or be within 6 feet of them. In reality, over the course of the pandemic, I have indeed operated with adequate distance and completed all my mission taskings successfully, conducting 204 face-to-face counseling sessions, conducting 13 weekly religious services (shared with other chaplains), engaging 6442 Airmen with spiritual care, and leading 160 spiritual resiliency events—all while maintaining social distance and without the need to telework. Before and since the mandate inception, my mission accomplishments have not been hindered with my unvaccinated status. However, my counseling load increased to accommodate the masses of distressed airmen uncomfortable with the new vaccine.

13. While the disapproval letter states that I cannot complete my job or the mission remotely, this holds no bearing on my COVID-19 vaccination status because I have not had to do my job remotely. In fact, I have been safer, healthier, and more ready than the majority of my coworkers during the pandemic, losing no time due to ROM or sickness. In January 2022, five fully vaccinated chapel staff members were out of work simultaneously due to COVID (either testing positive or contact-traced). Being one of the only chaplains in a state of readiness, I was able to happily carry the majority of their workload (including the weekly religious service I was not scheduled to preach) in addition to my daily tasks. Unvaccinated members of Whiteman's 20th ATK Squadron and 72nd Test and Eval Squadron report similar experiences: their health and readiness enabled mission execution while vaccinated Airmen missed work due to COVID.

14. The inferences made in my disapproval are *theoretical*—based neither on DAFI mission requirements nor demonstrative proof. In fact, during January 2022, the nation at large, and my surrounding co-workers in my squadron and base have seen that the less restrictive means have been not only been effective and adequate, but seemingly more effective. As stated before, there

is no regulation stating I must touch another airman or be within 6 feet to counsel them (even the smallest counseling rooms allow for 6 feet of separation). Regulation does, however, clearly state that the government's compelling interest must be real and not theoretical:

Commanders may only impose limits on such expressions when there is a *real (not theoretical)* adverse impact on military readiness, unit cohesion, good order and discipline, health or safety of the member or the unit. Any imposed limitations will employ the least restrictive means possible on expressions of sincerely held religious beliefs. (T-0). DAFI52-201 para 2.1 23 JUNE 2021

The Department of the Air Force will approve a member's request for religious accommodation unless the request would have a *real (not theoretical)* adverse impact on military readiness, unit cohesion, good order, discipline, health, or safety. DAFI52-201 para 2.3 23 JUNE 2021

15. To address travel, during the pandemic I have been TDY for 30 days with the 393rd BS (they did not require us to ROM before or after), taken leave via commercial air 5 times, and traveled 8 hours away by car on pass 2 times and never contracted COVID or missed work upon return. I followed all Public Health guidelines, finding these least restrictive means to be effective at safeguarding my health and readiness. The policy of vaccination for COVID-19 on paper is the only limiting factor. An approved exemption would check the vaccination box on my Individual Medical Readiness (IMR), while the military has the requirement, allow me to practice my sincerely held beliefs, not compromising my conscience before God, and allow me to travel freely on military orders. The purpose of a religious exemption is to give an exemption for what would normally be required by policy. If real (and not theoretical) reasons for compelling government interest and safety were presentable then an exemption would not be feasible. However, that is not the case here.

16. The appeal denial I received on 19 April 2022 did not address my appeal at all, but rather completely ignored my rebuttal and evidence that I did not work remote, take any time off, or have any issues with social distancing hindering my mission accomplishment (see appeal denial document). The appeal simply repeated what the initial denial read and added “real” to the government compelling interest. This is plainly a blanket denial utilizing verbiage of my job to give the appearance of substantiation.

17. The following retaliatory, career damaging, negative, punitive, or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: I have been told repeatedly by my leadership that my RAR will be disapproved, the appeal will be disapproved, and that my request to separate will be denied, and that I will receive disciplinary action for disobeying a “lawful” order. I was made to sign two documents stating that if my RAR is disapproved, I can face Uniform Code of Military Justice (UCMJ) legal punishment for not receiving the COVID-19 vaccination (see Exhibits 4 and 5). I was told to prepare for separation before April 1, 2022, and that separation after this time would result in disciplinary paperwork and therefore a less than honorable discharge for disobeying an order. I have been told I cannot deploy or go TDY or to any schools even stateside, even if I had a negative covid test. Despite traveling around the US via air travel and by car multiple times over the last 2 years (including one 30 day TDY in Jan-Feb 2021), I have been barred from even a one-week-long TDY for chaplain training at Maxwell AFB, AL. The coercion on our base has been extremely strong and many have abandoned their convictions for fear of losing their jobs. My fiancé has listened to me countless nights after work and prayed hours with me over the distress and internal turmoil from the threats that have been made to the security of my chaplain position and livelihood in the AF, and disregard of my sincerely held religious beliefs. I have stressed to the point of despair and even physical chest pain and sleepless anxiety over what will

happen to my reputation and plans for future with my family. If even a chaplain cannot practice his or her faith in the military, who can?

18. As stated above, I have a combined service time in the AF of 23 years. Because I do not have enough active-duty time (cumulatively 13 years and 10 months), I cannot retire on active-duty. With 23 years, I could retire with a reserve retirement but, Air Force Personnel Center (AFPC) states that I cannot retire with a reserve retirement while on active-duty; I must transition into the reserves to retire with a reserve retirement of which I will not receive until 59 years old. Furthermore, I cannot transition into the reserves until my Active-Duty Service Commitment (ADSC) has ended (29 Oct 2022). If I am forced out of Air Force active-duty and I am unable to rejoin the Air Force Reserves, I will lose *all 23 years* of my Service time and receive nothing for retirement now or later. The United States military would be terminating a 23-year veteran with no retirement compensation whatsoever. I serve in the USAF because God has been preparing me my whole adult life to be an AF chaplain and He made my calling confirmed. I entered the AF at age 18 and served as an F-15 crew chief for 6 years, then as a C-17 loadmaster for 10 years before commissioning to be a chaplain. I have previously experienced much of what Airmen go through in the AF. I counsel airmen and build them up for spiritual fitness in their personal faith and morale to be fit for duty. As I have been ministering to the airmen, God has shown me that my 23 years of service to our country has been vital to relating to airmen on a personal level. Furthermore, if I am forced out of the AF with nothing to show for my 23 years of service but a less-than-honorable discharge, I will face hardship in finding a professional ministry position or a job outside of ministry because of my record. Even if I were to get an honorable discharge, they would be denying me retirement I am entitled to for serving 20 years of military service and the benefits promised thereof.

19. I am grateful to serve with a deep faith in our nation and in God. Our nation was founded by our forefathers who sought religious freedom, and thus our nation's First Amendment is fundamental to our heritage. The First Amendment protects our religious freedom against government infringement. I have been honored to serve at home, on transport to Forward Operating Bases in the Area of Response (FOB AOR) and all over the world in defense of these fundamental liberties. I am honored and proud to be an American, where I am still free to worship God. Whereas I have had well over 204 counseling sessions and at least 8 suicide preventions just in the last two years, it would not benefit the AF to eliminate a seasoned prior-enlisted 23-year chaplain for an ineffective emergency use vaccination (that is no longer an emergency) and has proved itself *not* the least restrictive means to my faith. Not only would the AF lose a seasoned chaplain they have invested in for 23 years, but I would also be losing the livelihood for my family and me, now and also into our retirement years.

20. I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 20, 2022

  
Chaplain, Captain Ryan P. Jackson



**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE GLOBAL STRIKE COMMAND**



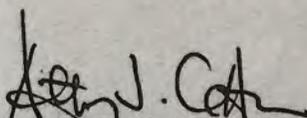
MEMORANDUM FOR CAPT RYAN JACKSON

FEB 28 2022

FROM: AFGSC/CC

SUBJECT: Decision Regarding Religious Accommodation Request – Capt Ryan Jackson, 509 BW/HC

1. I have received your request for religious accommodation to be exempt from the following Air Force immunization requirements: the COVID-19 vaccine.
2. After careful consideration of the specific facts and circumstances, I disapprove your request for the enumerated immunizations requirements listed above in paragraph 1.
3. I have disapproved your request for accommodation from the aforementioned immunization requirements because given the importance of our mission, the Department of Defense and the Department of the Air Force have a compelling government interest in maintaining a healthy and ready military force through vaccination. Any less restrictive means of ensuring military readiness for mission accomplishment, such as masking, physical distancing, and teleworking are insufficient and would not be as effective as vaccination because your duties require regular face-to-face contact with others. In your role as a Chaplain, you are required to provide in-person counseling, spiritual care, spiritual resilience coaching, and conduct weekly religious services. This job cannot be accomplished by telework or other remote means. It requires that you physically interact with others on a frequent basis where you cannot always maintain adequate physical distancing. You are also expected to maintain the ability to deploy at all times, which requires both medical readiness and to be free from limitations on travel. Failure to do so will create an additional burden on members of your unit and career field.
4. If you choose to appeal this decision, please address your written appeal to the appeal authority, AF/SG, and submit your written appeal to your unit commander. You have five (5) calendar days from receipt of this decision to file any appeal. The servicing FSS will ensure a copy of this decision is included in your automated personnel record. You should direct any questions to your squadron commander.

  
ANTHONY J. COTTON  
General, USAF  
Commander

cc:  
509 BW/CC  
509 FSS



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
Washington DC



APR 19 2022

MEMORANDUM FOR CAPTAIN RYAN P. JACKSON

FROM: HQ USAF/SG  
1780 Air Force Pentagon  
Washington, DC 20330-1780

SUBJECT: Decision on Religious Accommodation Appeal

Your final appeal is denied. In accordance with Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, paragraph 3.2, I have carefully reviewed your request for religious accommodation, specifically for an exemption from the COVID-19 immunization.

The Department of the Air Force has a compelling government interest in requiring you to comply with the requirement for the COVID-19 immunization because preventing the spread of disease among the force is vital to mission accomplishment. In light of your circumstances, your present duty assignment requires intermittent to frequent contact with others and is not fully achievable via telework or with adequate distancing. In addition, your duties require parishioner contact. Your leadership role was also taken into consideration. While some of these duties may be completed remotely, institutionalizing remote completion of those duties permanently would be detrimental to readiness, good order and discipline, and unit cohesion. We must be able to leverage our forces on short notice as evidenced by recent worldwide events. Your health status as a non-immunized individual in this dynamic environment, and aggregated with other non-immunized individuals in steady state operations, would place health and safety, unit cohesion, and readiness at risk. Foregoing the above immunization requirement would have a real adverse impact on military readiness and public health and safety. Masking, social distancing, and testing mitigate risk but not as effectively as vaccination in combination with additional measures determined by local spread. There are no less restrictive means available in your circumstance as effective as receiving the above immunization in furthering these compelling government interests.

A copy of this decision memorandum will be placed in your automated personnel records. Please contact your unit leadership with questions or concerns.

ROBERT I. MILLER  
Lieutenant General, USAF, MC, SFS  
Surgeon General

Mot.App.252a

Application252a

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CH (COL) JAMES B. LEE**

Pursuant to 28 U.S.C. §1746, I, Chaplain (COL) James Bradley Lee declare as follows:

1. My name is **James B. Lee**. I am 52 years of age and have personal knowledge of and am competent to testify on the matters stated herein.

2. I make this declaration in support of my challenge to the Department of Defense and Department of the Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.

3. I currently reside at [REDACTED] Honolulu, HI, 96819. My home of record is Indiana, according to my official military file. My current residency is in the state of Alaska, where I hold a current drivers license. Lastly, my wife and I own a small property in Florida giving us a legal interest in that state.

4. I am an active-duty chaplain in the United States Army, serving at the rank of Colonel. I am currently assigned to the 311<sup>th</sup> Signal Command (Theater), Fort Shafter, HI 96858.

5. I began my military service taking the Oath of Office and Commissioning on 4 April 1996. On 3 June 1996, I began the Chaplain Officer Basic Course, at Fort Jackson, SC, and completed the course at the end of that summer. As part of the Chaplain Candidate program, I attended seminary and served concurrently in the summers for active duty training. In the summer of 1997, I served as a Chaplain Candidate in the 2/47<sup>th</sup> Infantry Battalion, Fort Leonard Wood, MO, earning my first Army Achievement medal for my service. In the summer of 1998, I completed one unit of Clinical Pastoral Education (CPE) at St. Luke's Medical Center, Kansas City, MO. Upon completion of seminary, I was commissioned to active-duty service as a Captain on 3 July 1999, assigned to Fort Bragg, NC.

6. My promotions were as follows: to the rank of Captain effective 3 July 1999; to the rank of Major effective 4 November 2007; to the rank of Lieutenant Colonel effective 3 January 2015; and to the rank of Colonel effective 1 October 2020. At the signing of this declaration, I have approximately 23 years and 10 months of service as of 1 April 2022.

7 During my military career, my family and I have had the privilege to serve and be stationed in the following overseas locations: Fort Richardson, Alaska (June 2002 -July 2005); Joint Base Elmendorf-Richardson, Alaska (August 2009-February 2015); and Fort Shafter, Hawaii (July 2020-Present). I have had the following deployments to either combat zones or foreign areas: Afghanistan (October 2003-August 2004); Afghanistan (April-December 2006). I also have three other short deployments to Jordan and Afghanistan between August 2015 and April 2018. I have deployed to active combat for approximately 20 months between 2003 and 2018.

8. During my military career, I have received the following awards and decorations: the Bronze Star Medal, the Defense Meritorious Service Medal, the Meritorious Service Medal with 2 Oak Leaf Clusters, the Army Commendation Medal with 4 Oak Leaf Clusters, the Army Achievement Medal with 1 Oak Leaf Cluster, the Air Force Achievement Medal, the National Defense Service Medal, the Afghanistan Campaign Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, the Military Outstanding Volunteer Medal, the Army Service Ribbon, the Overseas Service Ribbon with 4 Device, the United States Air Force Meritorious Unit Award, the United States Army Master Parachutist Badge, the German Parachutist Badge (Bronze), and the Canadian Parachutist Badge.

9. I submitted my Religious Accommodation Request (RAR), Exhibit #1, asking to be excused from the Army's COVID-19 vaccine mandate based on my sincere and deeply held religious beliefs. A summary of those reasons follows: In short, I have come to the place in my

faith journey of more than 45 years, that I believe it to be a violation of my body as a temple of the Holy Spirit (I Corinthians 6:19-20). As such for me to continue to knowingly allow the injection of substances into my body that contain aborted fetal cells, carcinogens, and other harmful chemicals, is unacceptable and ultimately a sin. Additionally, while some vaccines may not necessarily be produced with aborted fetal cells, the research and testing of many vaccines do in other cases. When the mandate became official at the end of August 2021, there was much confusion that followed regarding timelines and organizational implementation. Many Commands utilized a "rodeo" concept, in which Soldiers are literally rounded up and otherwise given an appointed time and place to be in order to receive the vaccination. The rodeo date for my organization, the 311<sup>th</sup> Signal Command, occurred in mid-September 2021. At this point most SM's had voluntarily received the vaccine so very few many remained who were considered unvaccinated. Although I had no intention of receiving the vaccine, I showed up as instructed to at least learn how this coercive process functioned and learn what I could from the medical technicians administering the vaccine. I was also prepared to make my declaration to submit a RAR in lieu of receiving the vaccine. However, I was the sole person who showed up from my unit. There was no other leadership, there was no measure of accountability, which is nearly without fail a present element at any required event by any Command. I was astonished that an event and an issue of such importance was disregarded by the 311<sup>th</sup> leadership. As a senior officer, no one asked me what I was doing or asked me to leave. I was able to get close enough to the administration stations to clearly see that the Pfizer vaccine was being utilized and clearly not an actual FDA approved vaccine. I submitted an email stating my formal declaration on 22 September 2021, Exhibit #2. Attached to that email was also a modified counseling statement (DA 4856), Exhibit #3, which I had taken care to alter the wording in order to accurately align with my request for a RAR versus outright refusing. The template DA 4856,

Exhibit #4, was an incriminating document that as is often said in the Army, “sets Soldiers up for failure.” I found it intolerable to sign a document acknowledging that I was declining or refusing to receive the vaccine. As I understand religious accommodation, free exercise guaranteed by the Constitution sheds a different light on an issue when a SM declares their desire for an accommodation versus outright refusal. Furthermore, the template 4856 stated that my “continued behavior” could result in punitive action, etc. On 28 September 2021, I personally met with the Company Commander, CPT Francis L. Riveratorres, in order to discuss the matter. He was adamant that the template 4856 must be followed and that there was no allowance for altering the document to accommodate those who were not refusing but requesting a religious accommodation in lieu of receiving the vaccine. He insisted that he was following the guidance given and that I must sign the DA 4856 as is. I also insisted that I could not in good faith sign a document that was ultimately incriminating. I left his office and within a short time BG Norris emailed me (Exhibit #5) to inform me that the counseling statement had been legally adjudicated and that I must sign it as is without alteration. Despite going on leave for the next three days, 29 September-1 October 2021, BG Norris insisted that I “complete this action soonest” by signing the DA 4856. After my brief leave, at the end of the duty day on 4 October 2021, I was preparing to submit my DA 4856 to CPT Riveratorres. Before I could hit send however, BG Norris emailed me insisting that I complete my RAR and DA 4856 before 1200 the next day, 5 October 2021. Furthermore, he threatened that if I did not comply, he would initiate a General Officer Memorandum of Reprimand (GOMOR) and that I would then be flagged pending derogatory action (Exhibit #6). I did send CPT Riveratorres my signed DA 4856 and an attached Memorandum for Record (MFR) noting my addendum modifications to the DA 4856 thereby legally protecting myself, Exhibits #7 and #8 respectively. On 6 October 2021, I submitted my RAR to CPT Riveratorres (Exhibit #1). I later completed my medical interview and submitted

that documentation on 8 November 2021, Exhibit #9. Lastly, my Chaplain interview and recommendation was completed and sent to CPT Rivera on 6 December 2021, Exhibits #10 and #11 respectively. Despite being harassed about arbitrary timelines, my complete RAR packet was submitted well prior to the DoD deadline of 15 December 2021, which was in accordance with guidance contained in FRAGO 15.

10. On 19 April 2022, I received notification that my RAR had been denied, Exhibit #12. Having seven calendar days to do so, I will submit my Appeal to Denial of Request for RAR on 26 April 2022, Exhibit #13. My Appeal is lengthy and as such I will let it stand on its own merit for review and relevance to my overall complaint and this declaration statement.

11. While I am not inclined to receive the Comirnaty vaccine even if available, I will attest to the fact that our primary Medical Treatment Facility (MFT) does not carry Comirnaty and has otherwise enforced the vaccinations of all Service Members (SM) of all branches using alternate, non-FDA approved versions of the vaccine. To that point, I had opportunity to visit the vaccination clinic at the Tripler Army Medical Center (TAMC) in November 2021. I inquired of the individuals working there if they knew whether or not the Comirnaty vaccine available. I was informed that only had Pfizer available for use and was eventually directed to the clinic Officer in Charge (OIC). I cannot recall his name, but he was a medical doctor in the rank of major. I directly asked him if we had Comirnaty. He informed me that we did not and confirmed what I had been told at the time that Pfizer was the only vaccine on hand. At the time he seemed nervous that I was asking and inquired if I was asking for legal reasons or something else. I assured him I was asking out of curiosity. At that, he proceeded to inform me that medically the vaccines are all the same. Legally however, he acknowledged that Comirnaty is legally distinct from all of the other non-FDA approved vaccines. Lastly, I asked when he thought we would receive Comirnaty. He chuckled and said, "Sir, I have no idea. It could be

next summer (2022) or never.” I thanked him for his time and left the clinic. It was apparent to me that he knew and understood the legal distinction and difference in Comirnaty versus Pfizer and/or any of the other non-FDA approved vaccines. As such, I was all the more convinced that the DoD’s attempt to vaccinate all SM’s is in complete violation of its’ own mandate, policies, and ensuing FRAGO’s outlining the implementation of the vaccination campaign.

12. FRAGO 10, dated 19 November 2021, announced the testing requirement targeting the unvaccinated. Within our Command however, that guidance was not addressed until January 2022. On 10 January 2022, CPT Riveratorres contacted me via text message to inform me that testing was a requirement based on my status pending a RAR, which is blatant discrimination. I asked him to email me in writing and he obliged, Exhibit #14. The subsequent emails are my questions and the attempt by the company First Sergeant, ISG Ian Northup, to seemingly cover for the commander in his overstep (Exhibit #15). Eventually, BG Norris emailed me on 21 January 2022, and informed me that I was indeed subject to the testing requirement and “asked” me to comply with the requirement (Exhibit #16). On 7 February 2022, I submitted my second RAR, Exhibit #17, this one specifically for COVID testing. I would also like to highlight that my request was an attempt to comply, not refuse or avoid testing. Specifically, I asked for a modified test in which I could produce (via saliva) the test material versus allowing something to be inserted into my body to which I object. Initially, BG Norris instructed me to telework until such time as my RAR was approved or denied or achieved some resolution. In the interim, CPT Rivera harassed me with discriminatory inquiries regarding my RAR, and yet I attempted to assist the Command in the process as found in Exhibit #18. Eventually, FRAGO 17 was published on 17 February 2022, which clearly stated that even individuals pending a RAR for testing were still subject to testing requirements, a clear affront and disrespect to the individually held religious beliefs of those who specifically submitted RAR’s for testing. As such, BG Norris

quickly followed with a direct order on 19 February 2022, directing me to return to the workplace and comply with testing, and again threatened me with punitive action if I did not. He furthermore noted that my absence had had a “detrimental impact on your (my) warfighting function.” That email and attached MFR are Exhibits #19 and #20 respectively. Reluctantly, I submitted to testing for the first time on 22 February 2022. I did so with a memo (Exhibit #21) stating my position that requiring me to test was in violation of my religious beliefs. CPT Riveratorres, who administered the test, refused to sign acknowledging that I did indeed test as well as my position. His emailed response is Exhibit #22. The following Monday, 28 February 2022, I again tested as required, and again with an MFR stating my position and noted that since my last test I had had an unexplained nosebleed. Again, CPT Rivera refused to sign my MFR. The third week I showed up for testing, a civilian clerk, Ms. Kawaiola Nahale, administered the test and refused to sign my MFR as well. The following two weeks I was on medical leave and upon my return was not asked to test. On 4 April 2022, CPT Riveratorres announced in an email that testing was no longer “being required.” I was finally notified by CPT Riveratorres on 13 April 2022, “The HQDA SJA returned your Religious Accommodation ETP for the COVID-19 Testing without action.” My response is noted in that email chain as well pointing out the if testing were reinstated I would once again be subject to testing without sufficient time to resubmit my RAR for testing (Exhibit #23). I have yet to receive a response. My observation throughout this entire series of requirements and policy changes, that many Commands, and the 311<sup>th</sup> Signal Command specifically, have chosen to judiciously enforce certain requirements while ignoring others. For example, FRAGO 12, dated 3 December 2021, clearly stated that for meetings of more than 50 people, an ETP was required. This requirement was non-specific to vaccinated or unvaccinated individuals. I will attest that there have been many occasions in which well more than 50 people have been gathered for what many would understand to be a

meeting. The ludicrous nature of policies and guidance, however, is that while the Army has done its' level best to enforce force protection measures, those measures only apply to individuals and occasions which benefit the Army. Ironically, if a gathering is deemed a "training event," it is otherwise exempt from COVID force protection measures. But the real irony is that it has been during those "training events" as well, that COVID outbreaks have been clearly linked, at least within the 311<sup>th</sup> Signal Command footprint. Meanwhile, based on my status having submitted an RAR, I have been subject to testing, wearing a mask, and otherwise penalized for my religious stance.

15. At the time of submitting this declaration, I have been denied the opportunity for three different Temporary Duty (TDY) trips. The first was in February 2022 and was to attend the Family Life Annual Sustainment Training (FAST) at Fort Bragg, NC. FAST is an annual training event for Family Life qualified Chaplains, for the purpose of continued learning, training, and further development in pastoral and counseling skills. Additionally, as a senior Family Life Chaplain, I am part of a Senior Family Life Advisory Council, which shapes and molds the community of practice. FAST affords us the opportunity to conduct key discussions and make collective decisions regarding the overall Family Life community of practice literally impacting the entire Army. My Commander, BG Jan C. Norris, denied my request to go TDY to attend FAST informing me that he was concerned with "the precedent this would set for others in the command who are not vaccinated." (Exhibit #24). The second TDY trip that I was not afforded opportunity to attend was my Endorsers annual conference held 1-2 April 2022. As an ordained minister in the Church of the Nazarene, I am required to present a report and give an account, in person if at all possible, of my ministry to maintain my good standing with my denomination as well as maintain my endorsement. Thirdly, I was not afforded the opportunity to attend the Army Cyber (ARCYBER) Command Chaplain Training conference held in

Savannah, GA, 25-29 April 2022. This training conference was relevant not only to my current assignment but also the opportunity to develop key and essential relationships related to my next assignment at the 7<sup>th</sup> Signal Command, Fort Meade, MD. Regarding that assignment, however, Exhibit #25 is my Commander's memo informing me that he denied my request to submit an Exception to Policy (ETP) to move, otherwise called PCS (Permanent Change of Station). As such, without an ETP I am not allowed to move and otherwise confined to remain in place, along with my family. The immediate toll on my family of now "not knowing" what will happen, whether we will be allowed to eventually move, or face involuntary separation, is palpable and intense. Our family now cannot make any definitive plans regarding school enrollment, summer internships, and one child is tentatively slated to enter college, which requires planning and logistical considerations. Furthermore, the emotional toll of not being able to visit family during the pending move enroute to our next duty station, especially aging parents and a grandparent with failing health, is particularly hard on my wife to the point that she was recently ill as a result of the news and additional stress of being denied an ETP to PCS.

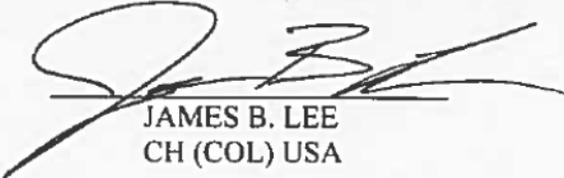
15. Having served this great nation in uniform for now close to 24 years, it grieves me that the last and ultimate course of action that I have in this matter is to file suit against the very Army that I have served and loved during that time. Early in my career, a friend and mentor once said to me, "The Army is not an easy life, but it is a good life." He was right. I have endured hardship, separation, loss, and I have experienced the unique experience of being shot at as well. But never would I have imagined that a shot would be the issue that threatens the very freedoms that I have sworn to protect and defend. With extreme prejudice, the Army and its leadership from the highest echelons to the lowest ranks, have coerced an illegal mandate utilizing an illegal substance and called it force protection. Those of us who have "followed the science," have watched that science unravel as the vaccinated contract COVID in droves while

the unvaccinated quietly keep pressing on with the mission. But even the blame has been placed on the unvaccinated. We have been subjected to testing and masked requirements that defy logic. And even in what would otherwise be the attempt to ask honest questions are simply told, "we're just following orders." Throughout our nation's history there come moments when men and women are seemingly called upon to stand, at great risk to their reputation and even livelihood, and proclaim that some orders are wrong. In fact, some orders are not simply wrong, they immoral, illegal, and unconscionable that we would even employ them. But even beyond that, those of us that have remained unvaccinated now do so predominately for medical or religious reasons. The policies and guidance given in recent FRAGO's, FRAGO 16 to be exact, already dispelled with those who refused the vaccine. FRAGO 17 continued the barrage of intolerable requirements naming the unvaccinated as the targets of those requirements. But if the Army has followed its own orders, the only remaining group of unvaccinated individuals are indeed those with medical or religious reasons. Both classes of individuals are protected classes by law. The Army has forgotten that however. Our Commanders have fashioned themselves into little gods pronouncing their judgements against the unvaccinated, initiating immediate separations, enforcing excruciating requirements even in addition to the ones contained in FRAGO's. As such, we have tramped on the religious freedoms of the very Soldiers that are willing to die for their country. Before COVID, Commanders were inclined to go to extreme lengths to grant RAR's, and expressed great respect for the religious beliefs of all faiths. But something has happened in the last two years. I am astounded and appalled that Commanders now have the audacity to believe that they have the ability to determine the sincerity of an individual Soldier's religious faith. Furthermore, even if they acknowledge a Soldier's faith, many have wielded power that is not theirs to wield in denying the Constitutional right to free exercise of the very Soldiers that they serve and command. While I could argue my worth and

value to the Army based on my experience and skillsets, my individual value and worth to the Army is insignificant compared to the worth of religious freedom for all. Make no mistake, our religious freedoms, within the context of the military at least, are at stake and on trial. If the Army does not somehow come to its senses and if a Federal Court fails to uphold the religious freedoms that our SM's defend through the very oath they swore to the Constitution, then we have sacrificed religious freedom in the name of science. That is not what our forefathers fought for. That is not what the framers of the Constitution penned when they signed that sacred document. But that is what is at stake. And if we as a nation, as an Army, and in this case as a court, get that wrong, religious freedom will no longer exist in our military, at least not in the sense that it has. Furthermore, if we allow religious freedom to die within our ranks, the Chaplaincy will no longer be needed and cease to exist in due time. What then stops that progression of smiting out religious freedom at the very doorsteps of every church, mosque, synagogue, and house of worship in our land? That is what is at stake. And that is why I freely and without reservation sign this declaration to the Glory of God and for the freedom of religion guaranteed by the United States Constitution.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 20, 2022



JAMES B. LEE  
CH (COL) USA



**DEPARTMENT OF THE ARMY  
OFFICE OF THE SURGEON GENERAL  
7700 ARLINGTON BOULEVARD  
FALLS CHURCH, VA 22042-5140**

DASG-ZA

**13 APR 2022**

**MEMORANDUM THRU Commanding General, 8th Theater Sustainment Command,  
Fort Shafter, HI 96858**

**FOR Chaplain (Colonel) James B. Lee, Headquarters and Headquarters Company,  
311th Signal Command (Theater), 8th Theater Sustainment Command, Fort Shafter, HI  
96858**

**SUBJECT: Denial of Request for Religious Accommodation**

1. I reviewed your religious accommodation request for an immunization exemption from the COVID-19 vaccine mandate and other various vaccines described in your request.

a. Your request for exemption from the Army's COVID-19 vaccine mandate is denied.

b. Your request for exemption from other various vaccines is overly broad as it relates to vaccines you have already received as well as possible future immunization requirements. If, in the future, your duties and circumstances change and you are required to receive any additional immunizations, you may submit a new religious accommodation request for adjudication at that time for those particular vaccines.

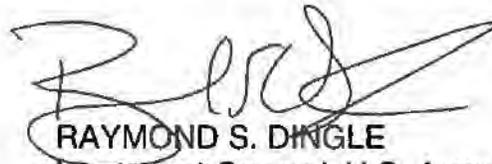
2. I considered your request, based on your Christian faith, and reviewed your specific case. This included an examination of your chain of command recommendations, your unit chaplain's findings of a sincere religious belief, and your current military duties as a 56A, Chaplain. Your chain of command noted that, as the command chaplain for the 311th Signal Command (Theater), you are a key member of the command group and must frequently participate in meetings with other senior members of the command. You must also conduct ecclesiastical duties, which can require you to both minister to large groups and conduct counseling sessions with individuals in confidential settings. These circumstances put both you and other Soldiers at risk if you remain unvaccinated. Moreover, given your unit's mission throughout the Pacific theater, failing to be vaccinated could render you unable to travel to certain areas if needed.

3. COVID-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army's compelling government interests, which also includes protecting your health, the health of the force, and ensuring mission accomplishment.

DASG-ZA

SUBJECT: Denial of Request for Religious Accommodation

4. You may appeal this decision through your chain of command to the Assistant Secretary of the Army for Manpower & Reserve Affairs. If you choose to do so, you have seven calendar days from notification of my decision to submit any matters.



RAYMOND S. DINGLE  
Lieutenant General, U.S. Army  
The Surgeon General and  
Commanding General, USAMEDCOM

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CH (COL) BRAD P. LEWIS**

Pursuant to 28 U.S.C. §1746, I, CH (COL) Brad Preston Lewis, declare as follows:

1. My name is Brad P. Lewis. I am 56 years old and have personal knowledge of, and am competent to testify on, the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at Carlisle Barracks, Pennsylvania, and am a student at the US Army War College and will graduate from that institution on 10 June 2022. My home of record is the State of Missouri as noted on my Officer Record Brief.
4. I am an active-duty chaplain in the United States Army, serving at the rank of Colonel. I am currently assigned to the United States Army War College, 46 Ashburn Drive, Carlisle, PA 17013.
5. I began my military service on 17 February 1987 as a Russian Voice Intercept Operator (98G) and remained in that position until October 1991, when I left the service at the rank of Sergeant (E-5) to attend Bible School and Seminary. Even then, my goal was to fulfill God's calling to become an Army Chaplain. I was commissioned in December 1994 and enrolled in the chaplain candidate program in preparation for full-time chaplaincy ministry. As part of my time in that program, which ran concurrently with seminary, I spent the summer of 1995 training at the 43<sup>rd</sup> Reception Battalion at Ft. Leonard Wood, MO where I was commended for quality service and awarded the Army Commendation Medal. The following summer I completed one unit of Clinical Pastoral Education (CPE) at Walter Reed Army Medical Center. After seminary,

I served in civilian ministry for three years before entering the Army Chaplaincy on 10 January 2001, completing a 15-year quest to military ministry.

6. As a commissioned officer, I was promoted to the rank of Captain effective 1 August 2001; to the rank of Major effective 3 March 2009; to the rank of Lieutenant Colonel effective 1 May 2016; and to the rank of Colonel effective 2 February 2020. According to my official Officer Record brief, on 1 October 2022 I will have twenty-six years and five months of active federal service.

7. During my military career, my family and I have been stationed overseas in locations such as Augsburg, Germany (October 1988-October 1991); Panmunjom, South Korea (unaccompanied July 2003-July 2004); Anchorage, Alaska (January 2008-June 2010) and Schofield Barracks, Hawaii (December 2019-June 2021). My combat deployments include six separate but relatively short deployments to Iraq and 5 to Afghanistan between 2005 and 2007 as well as year-long deployments to Khowst, Afghanistan (February 2009-February 2010) and Bagram AFB, Afghanistan (December 2018-August 2019). I have deployed to active combat for approximately 47 months between 2005 and 2019.

8. During my military career, for actions and service, I have been awarded the Bronze Star Medal with Oak Leaf Cluster, the Defense Meritorious Service Medal, the Meritorious Service Medal with 5 Oak Leaf Clusters, the Army Commendation Medal with 2 Oak Leaf Clusters, the Joint Service Achievement Medal, the Army Achievement Medal with 2 Oak Leaf Cluster, the Army Good Conduct Medal, the National Defense Service Medal with Star Device, the Afghanistan Campaign Medal with 4 Star Device, the Iraq Campaign Medal with 3 Star Device, the Global War on Terror Expeditionary Medal, the Global War on Terror Service Medal, the Korean Defense Service Medal, the Armed Forces Service Medal, the Noncommissioned Officer Professional Development Ribbon, the Army Service Ribbon, the Overseas Service Ribbon with

Numeral 4 device, the NATO Medal, the Joint Meritorious Unit Award, the Meritorious Unit Citation with Oak Leaf Cluster, the Army Superior Unit Award with Oak Leaf Cluster, the Air Force Meritorious Unit Award, the Army Staff Identification Badge, the Combat Action Badge, the Master Parachutists Badge, and the Latvian Parachutist Badge.

9. Additionally, in 2010 I was selected as one of eight, out of approximately 1500, Chaplains to attend the resident Command and General Staff College (AY 2011) and in 2021 as one of 4 Chaplains to attend resident US Army War College (AY 2022).

10. I submitted my Religious Accommodation Request (RAR) on 1 September 2021, asking for an exception to the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. As my request made its way through "the system," I received a phone call from Ms. Maddis (sic) at Dunham Health Clinic, Carlisle Barracks, PA, on 24 September 2021, who identified herself as a nurse. She indicated she was supposed to counsel me as part of my request. Her "counseling" amounted to telling me she needed a memo from my church and explaining my beliefs to her over the phone. At no time did she counsel me on the pros and cons of remaining unvaccinated. She ultimately told me she couldn't forward my packet until she got a memo from the Garrison Chaplains Office. I ended the call after informing her that she needed to do some homework regarding the RA process. I reported the incident to my Faculty Instructor, Mr. Mike Zick, who arranged for another counseling with an actual doctor a few days later. That went much better. Later, I was counseled by the USAWC Deputy Commandant, COL Kimo C. Gallahue, on 18 October 2021, six weeks after the initial submission of my accommodation request. He stated, in writing, that that "the COVID-19 vaccines are safe and effective at *preventing* the COVID-19 disease and reducing the risk of severe illness and death", "any side effects *should* go away within a few days," and that, "failure to obey this [lawful] order may result in punitive or adverse administrative action." Such action could range from "punitive

action under the UCMJ" to "involuntary separation" possibly under "Other Than Honorable" conditions, which could result in "difficulty in obtaining civilian employment." Nothing was said about my rights under the First Amendment or the Religious Freedom Restoration Act (RFRA). The Garrison Chaplain, CH (COL) Herb Franklin, counseled me, per regulation, later that same day.

11. On Sunday, 2 January 2022, I received an email from LTC Bradley Foose "reminding" me that, per Annex P (Screening Testing) to USAWC OPOD 21-25 (Operations Under COVID Conditions), all unvaccinated personnel were required to be tested twice weekly beginning the next day, 3 January 2022. I was tested on 3 January 2022, 5 January 2022, 10 January 2022, 12 January 2022, and 19 January 2022. All tests were returned negative. On 24 January 2022 the test returned positive and I was directed to go to Dunham Health Clinic for a follow-up PCR test to validate those results. That test came back positive, as well, and I quarantined at home for 2 weeks until 30 January 2022. Following that test, the record of that test found in my medical records indicated, "this test has not been FDA cleared or approved. This test has been authorized by FDA under an Emergency Use Authorization." At no time, following my positive diagnosis of COVID, was the issue of natural immunity, as established by AR 40-562, discussed or even posited as an option to vaccination.

12. I have requested a religious accommodation because I sincerely believe the Bible to be the authoritative and infallible Word of God, given to inform and instruct humanity regarding his past, present, and future plans to redeem his people and eternally save their souls. I am a 4<sup>th</sup> generation member of the Assemblies of God who grew up hearing regular sermons warning believers to keep a careful watch for the "return of the bridegroom." Those warnings included things to watch for and events to consider carefully. In the Bible, Revelation 13 and other passages, clearly warn of a future person, entity, or system that will set himself up as a false god

and demand worship. That person will use extremely coercive means, including marking followers, to prohibit anyone around the world who will not bow to him from “buying or selling” (see Revelation 13:11-18). He will stop the “unmarked” from travel, commerce, and maintaining a source of income. The COVID vaccine mandates have for the past two years have been both global and coercive to the point of restricting travel, isolating people, and slowing, if not prohibiting, commerce. What we see in the vaccine mandates may, or may not, be the beginning of the "return of the bridegroom." I honestly don't know. What I do know is that in keeping with my upbringing, when you play with fire you will get burned. To that end, I will never bow to the current global and coercive system that so closely resembles what I read about in scripture.

13. Following SECARMY Guidance in Army Directive 2022-02 (Personnel Actions for Active-Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals), on 17 February 2022 I submitted a request for an exception to policy to PCS IAW orders received to Ft. Benning GA following graduation from the War College. That request was denied on 25 March 2022 by the US Army War College Deputy Commandant, COL Kimo Gallahue, after consulting with the USAWC Commandant, MG David Hill, the Commanding General at Ft. Benning, GA, MG Patrick Donahoe, and the Army Chief of Chaplains, MG Thomas Solhjem. The denial of my request for an exception to policy essentially means I will be warehoused following graduation for an indefinite period.

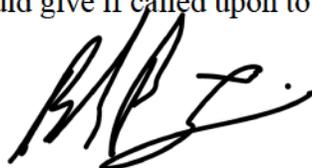
14. On 25 February 2022, I paid a visit to the USAWC Judge Advocate, LTC Kurt Perhach. I had to ask an administrative question while I was preparing to submit an Exception to Policy (ETP) request, per Army Directive 2022-02 (Personnel Actions for Active-Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals), signed by the Secretary of the Army, SEC Christine E. Wormuth, on 31 January 2022. This ETP is needed so that my wife and I can conduct official travel and PCS to Fort

Benning in the summer of 2022, as ordered. At that meeting, LTC Perhach informed me that the Office of the Surgeon General had denied my request for a religious accommodation and that I could expect written notification within 24 hours. Three weeks later, on 17 March 2022, I received an email from Ms. Angela Matheson, SACO for JTF-NCR and MDW, with the official notification from the Surgeon General denying my accommodation request. The denial memo was dated 24 February 2022. In that memo TSG indicated that the decision to deny was based on consideration my “Christian faith” and the “grave risk” COVID-19 poses to the force. That memo also gave me seven calendar days to appeal the denial, which I did on 20 March 2022.

15. These seemingly endless requirements to request and appeal with no hope of approval, coupled with the academic requirements placed on all War College students, are resulting in immense stress which, in turn, is translating into difficulty maintaining an academic level I believe I am capable of, placing undue stress on my marriage, and threatening an early end to my career.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 13, 2022

A handwritten signature in black ink, appearing to read 'B. P. Lewis', written in a cursive style.

BRAD P. LEWIS  
Chaplain (COL) USA



**DEPARTMENT OF THE ARMY  
OFFICE OF THE SURGEON GENERAL  
7700 ARLINGTON BOULEVARD  
FALLS CHURCH, VA 22042-5140**

DASG-ZA

24 FEB 2022

MEMORANDUM THRU Commanding General, U.S. Army Military District of Washington, Fort McNair, DC 20319-5031

FOR Chaplain (CH) Colonel (COL) Brad Lewis, U.S. Army War College, Carlisle, PA 17013

SUBJECT: Denial of Request for Religious Accommodation

1. I reviewed your religious accommodation request for an immunization exemption from the COVID-19 vaccine mandate. Your request for exemption from the Army's COVID-19 vaccine mandate is denied.
2. I considered your request, based on your Christian faith, and reviewed your specific case. This included an examination of your chain of command recommendations, your chaplain findings of a sincere religious belief, and your current military duties as a 56A, Chaplain, and student at the U.S. Army War College (AWC). Your chain of command noted that you are one of more than 350 resident students at the AWC, where you attend classes and seminars in-person with fellow students and faculty, as well as potentially participating in multiple in-person AWC social events.
3. COVID-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army's compelling government interests, which also includes protecting your health, the health of the force, and ensuring mission accomplishment.
4. You may appeal this decision through your chain of command to the Assistant Secretary of the Army for Manpower & Reserve Affairs. If you choose to appeal, you have seven calendar days from notification of my decision to submit matters.

A handwritten signature in black ink, appearing to read "R. Dingle", written over the printed name and title.

**RAYMOND S. DINGLE**  
Lieutenant General, U.S. Army  
The Surgeon General and  
Commanding General, USAMEDCOM

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CAPTAIN ROBERT J NELSON**

Pursuant to 28 U.S.C. §1746, I, Robert Jon Nelson declare as follows:

1. My name is Robert J Nelson. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of United States Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. My home of record where I am domiciled is San Antonio, Bexar County, Texas.
4. I am an active duty chaplain in the United States Air Force, serving at the rank of Captain. I am currently assigned to the 18 Air Support Operations Group, Air Combat Command, 1414 Reilly Rd, Bldg 539, Pope Army Airfield, NC 28308.
5. I began my military service on 28 Mar 2019 when I commissioned and entered Officer Training School at Maxwell Air Force Base, AL.
6. I was commissioned at the rank of Captain. As a professional, chaplains are automatically promoted to Captain if they have 7 year's professional experience. I entered with 15 years pastoral experience. I have over 3 years of service as a Chaplain in the USAF as of May 10, 2022.
7. I have received the Wing Staff Agency CGO Quarterly Award two times. I have received the Military Outstanding Volunteer Service Medal and the Air and Space Commendation Medal during my military career. In May 2021, I attended Squadron Officer School in residence and was selected to participate in the highly competitive Think Tank.

8. On November 15, 2021, I submitted my Religious Accommodation Request (RAR) at Exhibit 1 asking to be excused from the Air Forces's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: The COVID-19 shots were created by experimenting on fetal cells. This is evil and goes against my conscience to support this treatment. I believe that my body is a gift from God and that He dwells in me (1 Cor. 6:19-20). Studies have shown that COVID-19 shots administered to pregnant mothers are killing babies in the womb and many children are being stillborn. This goes against God's desire for life (Job 31:15). Studies show the COVID-19 shots are destroying reproductive organs, which are against God's desire to be fruitful, multiply and fill the earth (Genesis 1:28). The statistics about miscarriages and reproductive issues that are mentioned in my RAR from November 2021 are validated with more information over the past seven months.

9. As of the writing of this declaration my RAR is still pending.

10. I stated in my RAR that according to Dr. Robert Malone, the creator of mRNA technology, the COVID-19 shot has not been properly tested and there is not enough data to support the decision to use it. Since the COVID-19 shot is not yet proven, it is unknown how this experimental treatment will affect our military and its readiness. Many service members have been forced to take a shot to protect them from a sickness that has not resulted in the mass deaths that were expected to take place. Many service members receiving the shot are experiencing physically injuries and adverse reactions, but what is not discussed are the emotional and spiritual damage such as moral injury. Moral injury is often compared to post-traumatic stress but is distinct. Moral injury is suffered when someone participates in an action that goes against their moral or spiritual beliefs. People who go against their conscience experience guilt, shame, depression and lack of motivation. Many may experience suicidal

ideations and this unseen injury will have long-term effects on our military as more people experience physical injuries from the shot and are forced to take boosters.

11. Since I have submitted a RAR, I have been sidelined. I have not been able to participate in the Religious Accommodation support because higher leadership believed that I would not be able to do my job objectively. In September 2021, I was denied the ability to give Religious Accommodation interviews or sit on the Religious Resolution Team. I asked leadership to reconsider because I have been able to interview airmen who are Sikh, Norse Pagan and Jewish and objectively consider their beliefs and approve Religious Accommodations. When I asked why I cannot participate, I was told that “the optics would not look good with my religious accommodation in the pile with airmen whom I have interviewed.” Furthermore, I have been told to wear a mask even though the COVID-19 shot has not protected anyone from getting COVID.

12. I was required to go through an arduous approval process to get an exception to policy (ETP) to attend to my yearly Endorser Conference in May 2022. The Endorser Conference is required to maintain my certification to remain an approved Chaplain in the USAF. My ETP was reviewed at the Group, Wing, 15 Air Force, ACCCOM, and Headquarters Air Force (HAF) at the Pentagon. Finally, the undersecretary of the Air Force, Gina Ortiz Jones, signed and approved my request on May 5, 2022. During that process the ETP needed multiple revisions as leadership required more information. This gave the appearance they were trying to find any reason to deny this mission essential training. Endorser training should not be difficult to approve if required for certification to serve as a chaplain in the military.

13. My current assignment requires me to take multiple temporary duty trips (TDY). I have been unable to visit 8 geographically separated units because the Secretary of Defense has denied

TDYs without an ETP. I am allowed to take leave and travel wherever I choose, but I cannot travel for work based on the travel restrictions. This is discrimination.

14. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: A chaplain at my Wing has been divisive by trying to speed up the process to have my RAR processed and denied. I am told secondhand how he is undermining my work and slandering my capabilities to leadership. I have been denied the ability to travel, and because of the ETP process, I am unable to participate in courses with the Army (spiritual care in emergency situations) that would benefit my service and career. My wife and family have experienced great instability through this process. We moved in August 2021, selling our house in Las Vegas and purchasing a new one in North Carolina, under the assumption that we would have financial stability to live in our home. My wife and five children experience are experiencing financial and emotional insecurity because they do not know if I will have a job in the next few months.

15. The USAF by approving thousands of administrative and medical exemptions has shown that they view religious accommodations as inconsequential. The people who are receiving medical and administrative exemptions catch COVID like everyone else and recover. They are not restricted in travel. The COVID-19 shot does not protect people. The First Amendment of the Constitution is intended to protect people to be enable the free exercise of religion. Now I am being threatened with something other than Honorable Discharge for having integrity to my beliefs as a Chaplain. I have not done anything wrong do deserve punishment. Now the benefits of my service and my honor are at stake. I will lose years of security in pay and health care. I will lose VA benefits and the Post 9/11 GI Bill which I intended to give to my children.

16. I have served 3 years as a missionary in Japan and 15 years in two separate churches. In order to enter the USAF, I had to receive an age-waiver because I was beyond the recruitment age. However, the USAF was prepared to take the risk when I entered at 43. Now, I am seen as a risk for a sickness that is being recognized as endemic. I left a stable church that was doing well, because I wanted to serve my country and help Airmen who experience extraordinary pressures. I brought experience having led a church of nearly 200, which has a thriving Child Development Center. I led a staff of 25 and started multiple ministries. I launched a Celebrate Recovery Ministry and served as the Ministry Leader. This skill set prepared me to care for a families and people who struggle daily in the USAF.

17. My first assignment was to a high operations tempo base, Nellis AFB. I was given the task of caring for the Maintainers who are notorious for being difficult to connect with and work among. I loved it. Our chapel was constantly understaffed. Through the challenges and despite my inexperience in the military, my Wing Chaplain placed me in positions to lead the Protestant Services and cover additional demanding Intelligence units. In my time at Nellis AFB, I was able to help save many marriages heading for divorce and counseled airmen suffering with suicidal thoughts. I led two memorials and gave four death notifications to families that lost a service member. In this two-year span of time I excelled in counseling and began studying for an MA in Clinical Mental Health Counseling for licensure as a Licensed Professional Counselor at Liberty University.

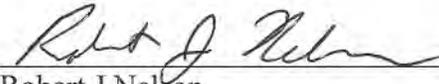
18. My assignment to Nellis AFB was cut short after a little over two years, when the USAF chose to move me early and assign me to serve as the first unit chaplain for the 18<sup>th</sup> Air Support Operations Group at Pope Army Airfield. This is the first True North chaplain team at Pope. The True North model is designed to embed chaplains directly in the units to care for airmen who are under extreme stress and demands. True North chaplains must be able to operate

independently and creatively because they do not have the support of a Chapel Staff or Wing Chaplain. My True North Group is even more unique because I support all the Airmen that are aligned with the XVIII Airborne Corps. The 18 ASOG primarily supports Tactical Air Control Party (TACP) members who are aligned with the XVIII Airborne Corps. These TACPs deploy with the Army and call in the Air Support. My airmen have demanding jobs and deploy often. They live in two worlds, in the Air Force and Army. They must go through extreme training and have multiple certifications to remain proficient at their job. I have 8 geographically separated units across the Eastern United States. While I can visit the squadrons that are located here at Pope/Ft Bragg, I am not able to travel to support the other 8 units because of the travel restrictions. Furthermore, it is inconsistent to allow me to take leave and travel wherever I chose, but I am not able to travel for my job.

19. What I am describing is the start of a very promising career. I have enjoyed all the ways I have served in the locations I have been called. I have done it well. But now it is being cut short. I have been limited in caring for my units and unable to receive extra training that would better equip me to support them and their families in their challenges. Countless members of the military continue to catch COVID-19 despite getting the shot. I am healthy and fit and yet I am told I am unfit to do my job. I have many years ahead of me, in what could be a supportive roll to people of faith and those who need emotional and spiritual support. I want this religious discrimination in the military to end.

20. I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

May 10, 2022

  
Robert J Nelson

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF MAJOR RICK HYOK PAK**

Pursuant to 28 U.S.C. §1746, I, Rick Hyok Pak declare as follows:

1. My name is Rick Hyok Pak. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of United States Army's mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED] Eschenbach, DE 92676. My home of record and where I am domiciled is Tacoma, Pierce County, Washington.
4. I am an active duty chaplain in the United States Army, serving at the rank of Major. I am currently assigned to the Headquarters and Headquarters Company, United States Army Garrison Bavaria, Grafenwoehr, Germany.
5. I began my military service on 24 August 1989, when I enlisted in the United States Army as an Infantryman and left at the rank of Private First Class, pay grade E-3 on 18 September 1991. I continued my military service in the Washington Army National Guard from 19 September 1991 to 19 January 1997 and left at the rank of Sergeant, pay grade E-5. I was commissioned to the rank of First Lieutenant on 13 November 2007 and entered active duty on 8 June 2008. Currently, I serve as the USAG Bavaria Family Life Chaplain, where I provide clinical pastoral counseling to Soldiers, Families and DoD Civilians within the USAG Bavaria footprint. I also train unit Chaplains and Religious Affairs Specialists/NCO on pastoral counseling techniques. Since my arrival in December 2019, I have successfully treated 22 clients covering various behavioral health issues. As of 24 April 2022, I have 23 active clients with

behavioral health issues: trauma, PTSD, anxiety, abuse, depression, sexual addiction, infidelity, marital, stress, grief, suicide, and anger. If separated from the Army, my absence will have a negative impact on these clients and readiness as a whole in the USAG Bavaria footprint.

6. My promotions were as follows: I was promoted to Captain on 8 December 2008 and to the rank of Major on 6 January 2018. I have approximately 16 years of service as of March 1, 2022.

7 During my military career, I have had the following deployments to either combat zones or foreign areas: 12/1990-05/1991 combat deployment to Iraq, 08/2009-08/2010 combat deployment to Iraq, 12/2011-12/2012 combat deployment to Afghanistan, and 04/2017-08/2017 deployment to Poznan, Poland.

8. I have received the following awards and commendations during my military career: 2x Bronze Star Medal, 3x Meritorious Service Medal, 3x Army Commendation Medal, 3x Army Achievement Medal, Good Conduct Medal, and the Army Reserve Components Achievement Medal. I was awarded the Combat Infantryman Badge on 12 March 1991 and the Combat Action Badge on 20 March 2012. I was awarded the Noble Patron of Calvary and Armor by the United States Cavalry and Armor Association in 2013. I was selected for postgraduate education in Marriage and Family Therapy at the Texas A&M-Central Texas from 06/2018-12/2019 where I earned a Master's of Science in Marriage and Family Therapy.

9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1, asking to be excused from the United States Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: My decision to decline the vaccine mandate is grounded in my faith in my Savior and Lord, Jesus Christ. The Holy Spirit has deeply impressed my heart that I must decline the mandated COVID-19 vaccines. This decision is rooted in my faith, and I am fully convinced that it is the will of God

for my life (Romans 14). To do otherwise is to sin against God willfully. I would be sinning and jeopardizing my relationship with God and violating my conscience. I am pro-life and believe wholeheartedly in the sanctity of the unborn life. I understand that the manufacturers of the COVID vaccines have used cell lines from aborted fetal cells as part of their development or testing. My faith prohibits me from participating in or benefiting from abortion, no matter how remote in time that abortion occurred. I had COVID from 30 August 2021 to 15 September 2021.

10. My RAR was submitted on 04 October 2021 and is still pending as of 24 April 2022.

11. I object to the COVID-19 vaccination because the COVID-19 vaccines are not legitimate vaccines as that term has been historically and medically defined and presented to the public, so state. *I.e.*, "Vaccine" used to mean a medical procedure that protected you from the disease against which you were being vaccinated against whereas COVID vaccines do not protect you but are in reality a treatment.

12. On 29 September 2021, I was told by the medical provider overseeing the COVID vaccine administration that "all natural immunity medical exemption requests would be denied." I was also told repeatedly within chaplain channels that "all religious accommodation requests will be denied." I was denied the presumption of natural immunity as established by AR 40-562.

13. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: I received my event-oriented counseling for refusing to take the COVID-19 vaccine on 29 September 2021. This counseling stated the following potential administrative actions: Involuntary separation under AR 600-8-24 with the possibility of receiving an Honorable, General Under Honorable Conditions, or Other Than Honorable discharge. I was denied participation in relevant training on "Sexual Assault Prevention" due to my unvaccinated status. For six months, masks were required for the unvaccinated during

worship services while the vaccinated participated mask free. The prolonged compliance to COVID-19 mitigation restrictions has negatively impacted my family. The stigma of wearing masks has created tremendous anxiety and stress for my wife and two teenage daughters. Army Directive 2022-02 (Personnel Actions for Active-Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals) states that unvaccinated Soldiers who are pending a medical or administrative exemption (to include religious accommodation) will not PCS. Since our arrive at USAB Bavaria in December 2019, our family has suffered severe emotional duress. My daughters found it extremely difficult to leave friends behind to move overseas. Not being able to PCS will have a harmful impact on my family's emotional wellbeing.

15. I have served honorably for over 16 years of active service and have never once disobeyed a direct order. I sincerely believe that the mandated order to vaccinate is an unlawful order. Being accused of disobeying an unlawful order has negatively impacted my well-being. I have increased anxiety and concerns for me and my family's future. If I am allowed to resign without separation pay or be discharged with a general discharge would be devastating to my family. A general discharge would deny my family and me the benefits that I have rightfully earned. I will not be able to transfer my G.I. Bill to my two daughters. This would limit my daughter's access to educational institutions and the quality of education they would receive. A general discharge will limit my willingness to continue in my calling as a minister and the ability to provide for my family. The financial burden from the lack of employment opportunities will be devastating. The cost of providing for daily needs and potential health care costs will be overwhelming especially in our current national economic situation. In recent months, both my daughters have received physical therapy and if separated, they would not be able to have access to this valuable resource.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 24, 2022

  
**RICK HYOK PAK**

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CH (MAJ) RANDY GENE POGUE**

Pursuant to 28 U.S.C. §1746, I, Randy Gene Pogue, declare as follows:

1. My name is Randy Gene Pogue. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. My home of record and where I am domiciled is in Williamsville, Butler County, Missouri.
4. I am a reserve chaplain in the United States Army serving at the rank of Major. I am currently assigned to the 209<sup>th</sup> Regional Support Group, under the 76<sup>th</sup> Operational Response Command, 15303 Andrews Road, Kansas City, MO 64147.
5. I began my military service on January 12, 2015, when I direct commissioned as a Captain in the Army Reserve.
6. My promotions were as follows: promotion to Major on July 1, 2021. I have approximately seven years and three months of service as of April 26, 2022.
7. During my military career, I have not yet deployed to either combat zones or foreign areas.
8. I have received the following awards, citations, commendations or special recognition(s) during my military career: Army Reserve Component Achievement medal, Army Achievement Medal, Army Commendation Medal.

9. I submitted my Religious Accommodation Request (RAR) (or religious exemption) at Exhibit 1 on November 2, 2021, asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: As an Assemblies of God endorsed military chaplain I adhere to my denomination's "Sanctity of Human Life" position paper adopted by the General Presbytery in session 9-11 August 2010: <https://ag.org/beliefs/position-papers/abortion-sanctity-of-human-life>. Per my faith tradition and personal religious belief, it is an unconscionable violation or transgression to profit or benefit from the murder or victimization of the "unborn" – human fetuses. The same applies to medical testing on human fetus tissue, stem cells, and embryonic genetic materials. Therefore, I cannot in good conscience receive the COVID-19 vaccine since it will substantially burden the exercise of my personal religious beliefs. Furthermore, I had COVID in November of 2021, confirmed by PCR test, and thus have natural immunity.

10. My RAR was submitted on November 2, 2021, and my RA packet was uploaded on February 28, 2022, but I have not yet received a formal denial by TSG. Therefore, my RA status is still pending. I have prepared an appeal memo in which I argue that the COVID-19 vaccine has not proven to be 100% safe and that the military has not effectively provided soldiers 'informed consent' regarding any potential harmful side effects.

11. I have no problem with "sterilized vaccines" like measles, mumps, polio, but have serious objections to a rapidly developed "experimental use only" vaccine without long-term studies that changes your DNA and whose effects have been suppressed. Furthermore, I object to the COVID-19 vaccination because the COVID-19 vaccines are not legitimate vaccines as that term has been historically and medically defined and presented to the public, i.e., the vaccines do not prevent COVID-19.

12. I believe it is unethical for military leadership to communicate to soldiers that they are receiving an FDA approved vaccine when in reality Comirnaty (the FDA approved vaccine) is not yet available here in the United States. Therefore, the vaccines being administered to soldiers are actually still only under Emergency Use Authorization thus, can only be mandated by the President of the United States.

13. Other issues associated with my refusal include the frequent threats of a GOMOR and a “less than honorable” discharge if I continue to assert my lawful right to refuse an experimental vaccine.

14. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request:

a. The medical interview that the division surgeon, COL Diane Godorov, conducted with me over the telephone on December 21, 2021, had a demeaning air to it throughout and her resulting medical counseling memo failed to adequately and accurately express my deep concerns and reasons for refusing the COVID vaccine. The telephone conversation also included veiled threats of a GOMOR and eventual “less than honorable” discharge if I persisted.

b. The memorandum prepared by Brigadier General Ernest Litynski on February 17, 2022, rashly recommends denial of my religious accommodation request while disregarding my natural immunity due to having contracted COVID-19 in violation of AR 40-562 which establishes the presumption of natural immunity for those who have contracted diseases such as COVID-19. This rejection also is contrary to the science showing that those who have natural immunity as a result of a previous infection have both better protection than those with a vaccine and increased health risks by being vaccinated despite their natural immunity.

c. Brigadier General Ernest Litynski made light of my sincerely held religious beliefs, ignoring their protection by the Religious Freedom and Restoration Act and the specific Title 10 protections that I have as a chaplain established by section 536 of the 2013 National Defense Authorization Act (NDAA), “Protection of Rights of Conscience of Members of the Armed Forces and Chaplains of Such Members”, as amended by Section 532 of the FY 23014 NDAA. He has violated Subsection (b) “Protection of Chaplain Decisions Relating to Conscience, Moral Principles, or Religious Beliefs.”

d. Brigadier General Ernest Litynski’s memorandum states, “MAJ Pogue’s refusal to become vaccinated presents unacceptable risk in terms of the military readiness, and health and safety of Service Members and civilian employees assigned to his unit” which will “limit his ability to perform his chaplain duties in person for the members of the 209<sup>th</sup> RSG and their families.” This ignores the actual facts which are specifically presented in my Religious Accommodation request, see also paragraph 16 below.

15. Brigadier General Litynski’s false, negative, and biased assessment is in fact retaliation. His statement reflects the Army leadership’s commitment to denying all religious accommodations and medical exceptions to an illegal mandate which relies on an illegal change of the definition of a vaccine from its historic understanding as a medical procedure that protected you against the disease you are being vaccinated against to merely a procedure that stimulates the recipient’s immune system. The effect of that change can be seen in the fact new COVID cases seem to be primarily arising from the vaccinated, not the unvaccinated, and to be “fully vaccinated” soldiers must now have boosters, the number of which has yet to be determined, constantly moving goalposts.

16. Brigadier General Litynski’s incorrect and biased assessment in paragraph 14.d above ignores the fact my ministry to my brigade soldiers as well as down-trace battalion soldiers has

not been limited in the least. Not only do I have natural immunity due to having contracted COVID-19, but the reality is that soldiers and other military members who have received the COVID vaccine are still contracting the disease themselves. Case in point, the Associated Press reported on December 27, 2021, the fully vaccinated U.S.S. Milwaukee had “[a]bout two dozen sailors or roughly 25% of the crew – have now tested positive for COVID-19[.]” “Officials: Nearly 25% [of fully vaccinated] Navy warship crew crew has COVID-19”, Lolita C. Baldor. <https://apnews.com/article/coronavirus-pandemic-health-jacksonville-us-navycb7d190b7c1c1c52f5441b56740d44de>. The U.S.S. Milwaukee was sidelined in port at Naval Station Guantanamo Bay in Cuba for a season until the disease was eliminated.

The Navy also reported “the U.S.S. Halsey, a destroyer, delayed its homeport move from Pearl Harbor, in Hawaii, to San Diego because a significant number of the crew became infected with COVID-19. *Id.* The Navy further reported “roughly one-third of the Halsey crew tested positive for the virus” although “the crew was nearly 100% vaccinated.” *Id.*

17. Military leadership has made it clear that resisting the vaccine comes with the high price of either resigning without separation pay or being discharged with a general discharge. This is further retaliation. A general discharge in this case is a punitive discharge because it is associated with people with discipline problems and will follow me throughout the remainder of my life, awarded for following my conscience in accord with the Religious Freedom Restoration Act and opposing a clearly illegal mandate based on a definition change to allow an administration to save face. Ultimately, the threat of a general discharge demeans and mischaracterizes my years of honorable service; it would deny any VA benefits I might incur and is motivated by the Army leadership’s hostility to religious belief. I am also concerned about how a “less than honorable” discharge might affect my civilian ministry moving forward, thus creating a potentially negative impact on my family both emotionally and financially.

Finally, it is neither logical nor rational to throw me out of the military for something so frivolous as refusing an unethical vaccination mandate for a product that has proven ineffective and even physically and mentally damaging for those experiencing adverse effects. My OER's (Officer Evaluation Reports) consistently and unquestionably demonstrate that my ministry as an Army Reserve Chaplain has been effective and greatly appreciated by military leadership. I have had great success at conducting relevant and beneficial life skill classes at each battalion I have had the privilege of serving in. These include instruction on relationship reinforcement, financial peace, moral leadership, etc. I have also successfully conducted multiple Strong Bonds (marriage enrichment) events which help fortify the force behind the force, i.e., the family.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

May 10, 2022

A handwritten signature in cursive script that reads "Randy Pogue". The signature is written in dark ink and is centered above the printed name.

Randy Gene Pogue

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CHAPLAIN, CAPTAIN, GERARDO RODRIGUEZ**

Pursuant to 28 U.S.C. §1746, I, Gerardo Rodriguez declare as follows:

1. My name is Gerardo Rodriguez . I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED], Kettering, Ohio 45409. My home of record and where I am domiciled is Kettering, Montgomery, Ohio.
4. I am an active duty chaplain in the United States Air Force serving at the rank of Captain. I am currently assigned to the 88 ABW, Wright Patterson AFB, Ohio.
5. I began my military service on June 1, 2005 when I enlisted as an Airman Basic in the United States Air Force. I served until May 31, 2011 when I left active duty at the rank of Staff Sergeant, pay grade E-5. I completed the remainder of my Military Service Obligation (MSO) in January 2013. I had a 16 month break in service until I was commissioned on April 23, 2014 in the United States Air Force Reserves and entered active duty on October 19, 2020.
6. My promotions were as follows: Airman Basic June 1, 2005, Airman First Class July 15, 2005, Senior Airman November 15, 2007, Staff Sergeant March 1, 2010, Second Lieutenant April 23, 2014, First Lieutenant December 11, 2016, and Captain December 11, 2017. I have approximately 15 years of service as of April 14, 2022.

7. I have received the following during my military career: AF Commendation Medal and 88 ABW Wing Staff Agencies Company Grade Officer of the Quarter - 4th Quarter 2021.

8. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1 asking to be excused from the United States Air Force's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: I'm an observant Jewish man and a rabbi. I hold by Torah based principles that guide my thoughts and actions. I was appointed to be an Air Force chaplain with the understanding that I would "represent my faith" to the Air Force and do so without violating my faith. That was true until the COVID-19 vaccine mandate was imposed.

9. I have a history of opposing vaccinations as their compulsory implementation usurps body sovereignty, a sacrosanct biblical imperative (Leviticus 25:55), denying the right to informed consent. Injecting directly into my bloodstream forbidden animal and human cell line mixtures, metals, and preservatives, challenges my belief that my soul is made in God's image and therefore I am commanded to guard my body and soul scrupulously (Deuteronomy 4:9).

10. Also, since I was diagnosed with cancer in 2018, now in remission, I have watched what I put into my body, from the foods that I eat to the medicines I consume. Since then, all my medical treatments have been accepted with informed consent, except I am now expected to comply with a highly questionable mandate.

11. Vaccinations have always contained the possibility of adverse reactions. Here, information about COVID-19 vaccine reactions is reportedly being highly suppressed. Yet there is this mandated attempt to force me to comply with this mandate, which if I submit, I assume all the risk. *The National Childhood Vaccine Injury Act of 1986* protects vaccine manufacturers

from civil liabilities and limits me and my family from adequate recourse in the event of injury or death. This holds true, unless “such manufacturer engaged in the fraudulent or intentional withholding of information; or such manufacturer failed to exercise due care.”

12. If this were the case, as the possibility does exist for such corruption, nobody should be taking such risks, at least not without informed consent and the freedom to choose. Therefore, the Shulchan Aruch, the authoritative rabbinical code accepted by every Torah observant Jew, states that if there is a dispute among the medical experts in which 100 doctors (majority of experts) claim a preventative act would be safe, yet just two doctors (minority of experts) claim the same act is unsafe while considering unknown risks, we do not take the risk. These two doctors are like witnesses in these matters and their opinions are on par with the majority (Orach Chayim 618:3-5). By the authoritative teachings of the Shulchan Aruch, I most definitely cannot receive such vaccines, even more so given that serious risks are known.

13. As of this date, my RAR is still pending a decision. The Air Force has made it clear that I should not expect a favorable response given its demonstrated hostility to religious accommodations.

14. The following retaliatory, career damaging, negative, punitive, or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: I have been restricted from traveling. I was denied a deployment to Saudi Arabia in October 2021. I am not able to attend Squadron Officer School (SOS), a Professional Military Education (PME) course required for U.S. Air Force Captains. Without this course, I will not attain the next rank of Major. Currently the AF Chaplain Corps College is

looking to fill slots for the next Spiritual Leadership Course, which is a chaplain specific development course. I also cannot apply due to travel restrictions on the unvaccinated.

15. All the above retaliatory actions have damaged my opportunity to complete a successful career as an Air Force Chaplain that is and will be difficult to remedy. In addition, I am being threatened with a “general discharge” for misconduct which, for a chaplain, would be a disgraceful comment on my 15 years of faithful service; limit my opportunity for follow on ministry; deny me VA benefits I have earned and remain a lifelong stigma for following the commands of my conscience as formed and directed by my Orthodox faith. This is unlawful and unjust.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 14, 2022



**GERARDO RODRIGUEZ**

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CH (CPT) Parker Schnetz**

Pursuant to 28 U.S.C. §1746, I, Parker John Schnetz declare as follows:

1. My name is Parker Schnetz. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED] Ansbach, GM 91522. My home of record and where I am domiciled is Lacey, Thurston County, Washington.
4. I am an active duty chaplain in the United States Army serving at the rank of Captain. I am currently assigned to the 5th Battalion, 4th Air Defense Artillery Battalion (5-4 ADAR), 10th Army Air and Missiles Defense Command (10AAMDC), USAG Ansbach, Shipton Kaserne, APO, AE 09177, Germany.
5. I began my military service on September 5, 2016 when I was commissioned as an active duty chaplain in the United States Army.
6. My promotions were as follows: Captain, September 3, 2017. I have approximately five years of service as of March 1, 2022.
7. During my military career, I have had the following deployments to either combat zones or foreign areas: 02/2018-11/2018, Republic of Korea; 01/2020-present, Germany.
8. I have received the following during my military career: Army Commendation Medal, Army Achievement Medal (1 OLC). Upon graduating the Chaplain Basic Officer Leader Course

(CH-BOLC), I received the Joshua Thomas Award for Excellence in Communication for Class 16-003.

9. I submitted my Religious Accommodation Request (RAR) at Exhibit 1 asking to be excused from the U.S. Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. It is my belief that receiving these immunizations would compel me to participate in what my faith teaches to be sinful. These immunizations burden the exercise of my religion by compelling me to participate in the sinful practices of murder, defilement, and conformity.

10. I tested positive for COVID-19 on October 18, 2021 at the USAG Ansbach Health Clinic. While infected, I did not spread COVID-19 to anyone else, as concluded by unit contact tracing. Additionally, I have a positive antibody test dated 23 February 2022. I am 37 years old and in great health. I have no pre-existing medical conditions and am not taking any medications. Based on my natural immunity, I believe that I should be exempt from the mandatory immunization in accordance with AR 40-562. This argument is not reflected in my RAR as the request was written prior to my infection. The Army in no way recognizes that I have natural immunity.

11. My RAR is still pending but I expect that it will be denied based on what I have heard from my chain-of-command and the Chaplain Corps. I was told by my battalion commander that RARs would most likely be disapproved and that I could expect to be separated soon. I understand that commanders have been instructed from higher to recommend disapproval. RARs in my command have routinely been sent back, instructing commanders to strengthen their language for disapproval. These memos are being updated with new information, however, I am unable to edit or adjust my request. This leads me to believe that this is not a fair process as the outcome has been gamed from the beginning.

12. I have a serious objection to using a rapidly developed vaccine without sufficient long-term studies to back its safety. As a Christian, I am called to use wisdom in every decision and consequent action that I take. I do not believe that it is wise to receive a vaccine that is ineffective in protecting from disease and thus does not meet the standard for what has historically been defined as a “vaccine.” Additionally, I do not believe that it is wise to receive a vaccine with known and yet unknown negative side effects for a disease to which I have natural immunity.

13. In early 2021, upon the initial roll-out of the EUA immunizations, I was challenged by my supervisory and command chaplain, as to when I would be getting vaccinated. I stated that I had not put too much thought into it at that time—since it wasn’t mandatory—and that I didn’t necessarily see an issue with getting the vaccine since I had received others in the past. He stated that if I was not vaccinated, I would be unable to participate in the upcoming multi-national training exercise, Saber Guardian 21. I responded that I would wait to decide on vaccination until it was mandatory. He threatened that if that was the case, I would not be able to fulfill my duty for the exercise and that he would have to report to the commanding general that he had a chaplain who could not provide religious support. He added, that if this was the stance I was going to take, that I should consider returning to civilian life and ministry.

14. During another conversation with my command chaplain and command surgeon I was again pressured to receive the EUA vaccines. They were dismissive of my concerns and reasons for waiting to make a decision until it was mandatory. One of the concerns I raised was that my wife was hesitant towards me getting the vaccine. The command surgeon said that there was a vaccine drive the following day and that I should just go and not tell my wife (on another

occasion the command chaplain stated that my wife should have no say in what medical care I get and that she doesn't even need to know). The command surgeon also warned that all the officers within the command would be evaluated based in their COVID vaccination status. No one who was unvaccinated would receive a Most Qualified (MQ) rating on their Officer Evaluation Report (OER). Of note, I did not receive a MQ on my next OER.

15. While the vaccines were voluntary, I was asked repeatedly by my command chaplain when I would be getting vaccinated, even though I had stated I would not decide until it was mandatory. During this period I continued to research the vaccines and pray about receiving them. My conviction grew that receiving these vaccines would be both unethical and opposed to my religious beliefs and practice. I am deeply troubled by the coercion, control, and fear that has accompanied the rollout of these vaccinations in the U.S. Army. This concern has only grown with time.

16. When the vaccines became mandatory, I included my name on a tracker requested by my higher headquarters (10AAMDC) of those who would be requesting a religious accommodation for the COVID-19 immunizations. When my command chaplain saw that my name was on this list, he was irate. He berated me for not having let him know beforehand, although the mandate was not yet in effect. He demanded that I send him my RA memo, even though it was not yet due for submission and he was not in the routing chain for approval. I pushed back on why he needed to see it, but he refused to change his mind and demanded I send it. He stated that when I sent it, he would offer feedback. I sent him the memo and he did not in fact offer any feedback. Also, he expressed that I should begin looking for another job because from what he was hearing from the

Chaplain Corps, these requests would not be approved. Once again, everything up to this point was before the mandate.

17. The chaplain interview for my RAR was conducted by a chaplain from United States Army Europe and Africa (USAREUR-AF). The interview lasted no more than five minutes, part of that time involved the chaplain hastily reading through my request. I received the memo back from the chaplain a few minutes after the interview. I was left with the clear impression that minimal effort was spent on supporting my request.

18. I was restricted from performing the required chaplain interview for the Soldiers within my unit. This is in direction opposition to the standard operating procedures developed by the Chaplain Corps for RA requests. I was warned by both my battalion commander and command chaplain that I needed to parrot the Army's position on vaccines when I interacted with Soldiers contemplating a RAR. The command chaplain told me that I had no say or voice when it came to medical decisions—as a chaplain this was out of my “lane.” He stated that it was my responsibility to assuage any religious concerns Soldiers might have to receiving the vaccine. He warned me that the battalion commander had doubts to whether I could continue performing my duties.

19. In our initial counseling from the battalion commander on vaccine refusal, a non-commissioned officer (NCO) stated that he would receive the vaccine if the bottle was labeled “Comirnaty.” The unit physicians assistant (PA) assured this NCO that the bottle would indeed be labeled “Comirnaty.” The USAG Ansbach Health Clinic did not have bottles labeled “Comirnaty.” During this counseling, I brought up the fact that this decision was placing a tremendous amount of strain on Soldiers and Families—the Army was making Soldiers choose

between what the Army wanted and what their spouse and family members wanted. The battalion commander replied that they can “get over it,” “stop being so afraid,” and it was no problem for them to “get out.”

20. I have personally counseled officers and NCOs who were threatened to not even submit a RAR. One such officer actually rescinded his request based on this pressure and coercion.

21. I have received no support or concern from the Chaplain Corps throughout this process. My command chaplain has repeatedly stated that this is not a religious issue and should not be one for me. He laughed out loud when I stated that I considered it a paramount ethical issue to forcibly require a medical treatment without consent. He has likened my RAR for these immunization to a Soldier putting in an RAR because they “didn’t want to wear pants to work.”

22. From October, 2021 to March 2022 I was required to wear a mask at all times, even though I had natural immunity. The vaccines have had no discernible affect on protecting from or stopping the spread of COVID-19 within my unit. In fact, our COVID-19 cases have increased since vaccination started. We are still in a steady-state of COVID positives. Despite this, the command team has repeatedly singled out the unvaccinated as the problem. At battalion formations, the battalion commander and command sergeant major regularly report on the number of unvaccinated Soldiers within the unit. Comments such as “most of you are doing the right thing, we just need a few more to get on board” have been routine. This issue was framed as selfless vs. selfish and team-player vs. self-focused. Additionally, Soldiers were warned that the unvaccinated could infect them even though they themselves were vaccinated.

23. Since March 4, 2022, there has been no requirement to wear a mask for either vaccinated or unvaccinated. Yet, my battery, battalion, and brigade commander's RAR memos still state that my unvaccinated status is a threat to unit readiness.

24. In addition to what has been mentioned, additional retaliatory, career damaging, and negative actions have been taken against me for refusing the alleged COVID-19 vaccine and requesting a religious accommodation request.

I have been restricted from performing essential duty requirements. Currently, I am unable to provide battlefield circulation to forward units due to the Department of the Army restriction on TDY travel. I can freely interact with Soldiers within garrison, but I cannot travel to do so. This make no sense whatsoever, and it has a direct impact on unit readiness. I am unable to provide spiritual and religious support to five platoons which are currently deployed to eastern Europe in order to deter Russian aggression. This inability has a tremendous negative impact on my officer evaluations and career. Successfully performing this battlefield circulation would be the highlight of my next OER.

I was selected to attend the resident Chaplain Captains Career Course beginning in January 2023, but am currently restricted from PCSing to due my unvaccinated status. Missing this required course would have a negative affect on my career timeline and promotion.

I have no reason to believe that my unvaccinated status will not have a direct impact on my next OER. It has been made clear that we, the unvaccinated, are not "good" leaders.

25. By not receiving this "vaccine," I am being threatened with a General Officer Memorandum of Reprimand (GOMAR) and general discharge. This is an incredible burden on my family and our future. I am married with five children with another child due in August 2022.

We are currently stationed overseas and have no home back in the states. I have no job to go back to. If discharged, we would essentially have to completely start over after leaving everything to serve our country in 2016. I am by no means wealthy, my father was a pastor and I paid my own way through college and a four-year seminary. Separation would have a long-lasting financial impact on the future of my family. A discharge in this way would make it difficult for me to find employment as my service would be tarnished and I will be characterized as disloyal and unwilling to obey orders.

26. For the last seven months, we have lived in fear that our livelihood could be pulled out from beneath us at any moment. This has put a tremendous amount of stress on my wife and children that cannot be overstated. Likewise, I have been burdened by the emotional weight of being forced to choose between standing for what I know to be right and supporting my family. No one should have to make that choice, especially one who's job description includes that he be a moral and ethical leader. Without question, this has been the most difficult year of my life.

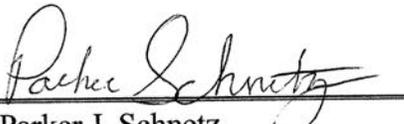
27. If the Army separates me they would sacrifice the spiritual readiness of my unit comprised of 570 Soldiers and their Families, as well as the readiness of a garrison of over 6,400 Soldiers, Families, and DA Civilians. I am a senior captain chaplain who has selflessly served both God and Country. I have been designated as having "unlimited potential" from my initial evaluation in BOLC through my subsequent OERs. I have always set the standard for what an Army officer and chaplain should be and do. I am a proven leader, counselor, and a subject matter expert in the prevention of suicide. I am dedicated to mentoring junior leaders and have created multiple programs to nourish character development. I am heavily invested in improving relationships and have created teaching materials used by numerous chaplains to train couples

during Strong Bonds events. I have been gifted in my ability to teach and communicate as a religious leader. I am unique in my commitment and dedication to the garrison religious support mission. I serve in chapel every Sunday—which far exceeds the standard. I sacrifice personal time, weekends, and holidays to produce excellent chapel messages. I regularly support the Protestant Women of the Chapel by speaking at events and weekly gatherings.

28. I joined the Army to serve my Country as a moral and ethical religious leader. The Army is demanding that I bend the knee and become an immoral, unethical follower. I can't help but feel that they want to eliminate either my faith and freedom, or my future.

29. I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 25, 2022

  
Parker J. Schnetz

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF LIEUTENANT RICHARD SHAFFER**

Pursuant to 28 U.S.C. §1746, I, Richard Shaffer declare as follows:

1. My name is Richard Shaffer. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Navy mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at Camp Lejeune, NC. My home of record and where I am domiciled is Placerville, El Dorado County, California.
4. I am an active duty chaplain in the United States Navy serving at the rank of Lieutenant. I am currently assigned with the United States Marine Corps at 1<sup>st</sup> Battalion, 2d Marines, Fleet Marine Force, PSC Box 20094, Camp Lejeune, NC 28542-0094.
5. I began my military service in March 2008 when I commissioned as a Navy Chaplain Candidate while a student at Denver Seminary. In November 2014, I commissioned through the Direct Commission Officer program as a chaplain in the Navy Reserves. On April 14, 2016, I began Active Duty Service. My date of rank is November 2015.
6. I have approximately 6 years of service as of April 18, 2022.
7. I have received the following awards: Navy and Marine Corps Achievement Medal and the Navy and Marine Corps Commendation medal.
8. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1 asking to be excused from the Navy's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: I believe that a public

religion has emerged surrounding COVID 19 and the vaccine is the central right of that public religion. To receive the vaccine would be to affirm this public religion and akin to idol worship, thus violating my deeply held Christian beliefs that I am not to engage in idol worship.

Furthermore, I believe that fear has placed an outsized and significant role in policy, attitude, and approach in response to the virus. This fear so prevalent, contradicts the core tenet of my faith that I will not live by fear. To receive the vaccine would be to directly contradict this.

Additionally, I cannot in good conscience receive the vaccine because fetal cell lines from an abortion were used in the early testing phases of the vaccine's development. I cannot knowingly or willingly participate in any medical intervention that uses aborted fetal cell lines in any phase of its development or creation.

I was infected with COVID 19 in July 2020, and again with the Omicron variant in January 2022. I believe that this natural immunity provides me equal to or superior protection against future serious COVID 19 infection which would result in serious illness or death.

9. My RAR was denied on 30 November 2021, Exhibit 2. I submitted my RAR appeal, Exhibit 3, on 20 December 2021, which is still pending.

10. I have serious objections to rapidly developed 'experimental use only' vaccines due to safety concerns that cannot be known until the appropriate time has passed to ensure their safety. The ever changing 'science' on the COVID 19 vaccines, coupled with the emerging data about DNA conversion, adverse events, and potential long term problems, are just a few of the reasons I object to the COVID 19 shot. Moreover, I object to the COVID 19 vaccination because they are not legitimate vaccines as that term has been historically and medically defined and presented to the public. "Vaccine" used to mean a medical procedure that protected you from the disease against which you were being vaccinated against, whereas COVID 19 vaccines do not protect

you from acquiring the virus, but are in reality a treatment to try and prevent serious illness or death.

11. I would accept Comirnaty if it were available no earlier than 5 years after its first manufacturing and official FDA licensing, but most likely not until after the 8 year mark, which is the average time that the FDA has taken to approve almost all 'vaccines' during the years 2010-2020. If at that point, it is has been demonstrated to be safe and effective, and I am comfortable with its side effects, there is a high probability I would take it.

12. As with all other Service Members, I have been denied the presumption of natural immunity by the Department of Defense. While no official action has yet been taken against me, it has been expressed to me by my supervisory chain of command that I will be moved out of my current position sometime in May 2022 and will not deploy to Okinawa with 1<sup>st</sup> Battalion, 2<sup>nd</sup> Marines in August for the single reason that I am unvaccinated. To the best of my knowledge, this is in some way connected to the Navy's COVID 19 guidance published in NAVADMIN 092/22. I have not been given any formal written guidance or any other document that established official Marine Corps policy related to COVID 19, nor is there a MARDAMIN message available or published which provides such guidance.

13. I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 18, 2022



Richard Shaffer



DEPARTMENT OF THE NAVY  
HEADQUARTERS, UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

1730  
MRA  
NCV 30 2021

From: Deputy Commandant for Manpower and Reserve Affairs  
To: Lieutenant Richard P. Shaffer 1380589725/4100 USN

Subj: REQUEST FOR IMMUNIZATION EXEMPTION

1. I have carefully considered your request for an immunization waiver. Your request is denied.
2. In making this determination, I considered your request dated 27 September 2021, the command endorsements, advice from the Director, Health Services, Headquarters, U.S. Marine Corps, and the recommendation of the Religious Accommodation Review Board. Additionally, I considered your right to observe the tenets of your sincerely held religious beliefs, and the government's compelling interests in mission accomplishment, including military readiness and the health and safety of the Total Force. I also considered whether an exception to the vaccination requirement is the least restrictive means of furthering the government's compelling interest. Finally, I consulted with legal counsel.
3. Per DoDI 1300.17, my decision must be consistent with mission accomplishment, including consideration of potential medical risks to other persons comprising the unit or organization. Immunizations are a critical component of individual and unit readiness. This compelling interest is not unique to the COVID-19 vaccination, and cannot be accomplished with the requested exception. I find that there is no less-restrictive way of accommodating your request that ensures military readiness and the preservation of the health of the force.
4. You have the right to appeal this decision to the Commandant of the Marine Corps. Should you decide to appeal this decision, your appeal should be in naval letter format, from you, addressed to the Commandant of the Marine Corps. Forward your appeal to the point of contact below, for delivery to the Commandant.
5. Point of contact on this matter is Mr. Bill McWaters at (703) 784-9386 or william.mcwaters@usmc.mil.

  
DAVID A. OTTIGNON

Copy to:  
CG, 2D MARDIV  
CO, 2D Mar  
CO, 1ST Bn

Enclosure 1

IN THE MATTER OF THE VACCINE MANDATE CHALLENGE

DECLARATION OF LT JONATHAN C. SHOUR, CHC, USN

Pursuant to 28 U.S.C. §1746, I, Lieutenant Jonathan C. Shour, Chaplain declare as follows:

1. My name is Jonathan C. Shour. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Navy mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at Jacksonville, NC. My home of record and where I am domiciled is Coeur d' Alene, Kootenai County, Idaho.
4. I am an active duty chaplain in the United States Navy serving at the rank of Lieutenant. I am currently assigned to the United States Marine Corps at the Marine Corps Installation – East Chaplain's Office at Marine Corps Base Camp Lejeune, 67 Virginia Dare Blvd, Camp Lejeune, NC.
5. I enlisted in August of 2005 and served as a Foreign Language Analyst in the U.S. Air Force after graduating Basic Military Training with honors and completing the Defense Language Institute/Foreign Language Center's Korean Basic course in the top of my class. I served six years on Active Duty as a language analyst during which time I was called to become a chaplain. I left the Air Force at the end of my enlistment, selected for Technical Sergeant (pay grade of E-6), in the pursuit of my education and training to become a chaplain. I completed my Bachelor of Arts in Ministry with honors and later achieved my Master of Divinity, graduating Summa Cum Laude. I was commissioned in March of 2014 into the Chaplain Corps in the U.S.

Air Force and completed the Chaplain Corp's College's Basic Chaplain Course with Academic Honors (the only award offered that cycle). I served as an Air Force chaplain until July of 2021 when I commissioned into the U.S. Navy as an Active Duty Chaplain to continue my ministry with the Sailors, Marines, and Coastguardsmen.

6. As a Chaplain, I assist members in their free exercise of religion, and help to ensure the constitutional rights of the military force as a whole. I serve to provide religious rites and services in accordance with the tenets of my faith and provide for the religious and spiritual needs of all through referral, counseling, and other services to ensure their care. As a Chaplain, I advise leadership at many levels on a variety of religious needs as well as ethical, moral, and morale issues. I have approximately 16 years of service as of 1 April 2022. I have not pursued anything other than honorably serving 20+ years of military service to retirement or beyond. I have often said that I will serve as long as "God and the Air Force (now Navy) have need of me" and I plan to continue serving so long as God calls me to do so.

7. During my military career, I have been assigned to seven different duty stations around the continental United States and overseas, serving in both training and operational environments. I have also deployed from Jul 2020 to Jan 2021 to Qatar during the COVID pandemic in support of Operations Spartan Shield, Inherent Resolve, and Freedom's Sentinel.

8. I have received Air Force Commendation Medals, Air Force Achievement Medals, AF Outstanding Unit Awards, Global War on Terrorism Expeditionary Medal, Armed Forces Service Medal, Military Outstanding Volunteer Service Medal, and NATO Medal among others.

9. I submitted medical and religious exemption requests to the COVID-19 vaccination mandate as ordered by the Secretary of Defense and Secretary of the Navy based on my sincerely held religious beliefs. Additionally, I have positive serology for natural immunity to COVID-19 as evidenced by T-Detect™ T-cell test, conducted by the Adaptive Biotechnologies Corporation;

I believe that I was designed by a Creator who knows what He was doing when He gave us our immune system and I do not believe that any tampering from some fallen and sinful human creator is necessary or wise. I also believe that at least temporary exemption should have been considered based on my history of adverse reactions to previous vaccinations, the increased risk of adverse events for my age group, and unknown risk of spreading to my pregnant wife and young children which is in line with Navy guidelines in BUMEDINST 6230.15B which details Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases. I requested medical exemption on 10 November 2021.

10. On 18 November 2021, I received a call from the medical provider at the Naval Health Clinic New England (NHCNE) to whom I submitted my exemption request. He informed me that the request was denied, but refused to provide any documentation. I requested documentation of the reasoning for the denial. He declined to provide any and referred me to the Chief Medical Officer (CMO) of NHCNE. The CMO called me shortly after and he also verbally informed me that my request was declined. I again requested a reason and a written response to my request. He was unprofessional and reluctant, but indicated that I would receive something. The next day, on 19 November 2021, I received a written response. The denial was not properly formatted, did not include any clarifying information, and was not complete. The response was a single entry, entered into my record after the fact stating 'patient is healthy' and disregarded any of the concerns in my request or subsequent request for clarification. I inquired about receiving a second opinion and was informed that anyone can deny the medical exemption request and that there was no appeal.

11. After my medical exemption request was denied, I inquired about the supply of vaccines at the Naval Health Clinic New England (NHCNE), I learned that the only vaccines being offered were only authorized for use under Emergency Use Authorization (EUA). On 24

November 2021 I requested temporary exemption under DoD/Navy guidance outlining temporary exemption for a lack of vaccine supply. On 30 November 2021, the Chief Medical Officer (CMO) of NHCNE responded via email to my Commanding Officer and said “Here is the BUMED Memo that authorizes the use of either Pfizer vaccine as they are the same composition to meet the mandatory vaccination requirement. As well we have the FDA-approved vaccine in stock that he could get.” The CMO indicated that there are two Pfizer vaccines, then specifically went on to say that they did have the ‘FDA-approved’ vaccine clearly indicating a difference while falsely stating which of the two they had in stock.

12. In response to the Chief Medical Officer (CMO)’s email on 30 November 2021, I reported to the the Naval Health Clinic New England (NHCNE) on 2 December 2021 to confirm the availability of the ‘FDA-approved vaccine.’ I was told by multiple staff members that they had the ‘FDA-Approved vaccine,’ but they consistently referred to the Pfizer-BioNTech COVID-19 EUA vaccine product (hereafter referred to as the Pfizer EUA vaccine). I asked for the FDA-Approved vaccine, Comirnaty (COVID-19 Vaccine, mRNA). I was offered to see the vials for the vaccine they claimed was ‘FDA-Approved’, the same vials of the vaccine product they said that they had been using that very day. The product offered to me as the ‘FDA-Approved vaccine’ by the `staff/provider(s) at NHCNE was the Pfizer EUA vaccine from a lot that was not compliant with the Biologics License Application (BLA) for Comirnaty (COVID-19 Vaccine, mRNA). There was no doubt that this product offered to me was not FDA-approved. It was clear that after engaging medical professionals at NHCNE, they did not have the FDA-approved vaccine; however, they were claiming that they had the FDA-approved vaccine and were offering a clearly EUA vaccine product to service members. Even worse, the vial that the corpsman said they just used that day, was expired and I was offered no explanation for the expiration. I took photographs of the vials, clearly marked EUA, NDC: 59267-1000-1, Lot

Number: 30135BA, Exp Date: 11/21. It was clearly not FDA-approved, nor was it one of the 'BLA-compliant lots' that could remotely be considered for mandatory use without presidential waiver.

13. On 10 December 2021, I initiated a religious accommodation (RA) request for exemption from the COVID-19 vaccination mandate and subsequent policies. I have always expressed that for me my concerns have been both with prior medical issues and a matter of conscience. My RA was submitted on 21 December 2021. It was later returned for corrections and resubmitted on 12 January 2022. On 16 February 2022, I received back an initial denial of my RA from the Deputy Chief of Naval Operations (DCNO N1) dated 6 February 2021. The denial did not address my individual case. Nor did the denial demonstrate on any level how the compelling interest of the government was furthered in anyway by the substantial burdening of my sincere and deeply held religious beliefs. Additionally, the denial was not a complete package as the Navy failed to return documents that were used in the decision. I was also given an arbitrary time restriction by my command to submit an appeal, two days of which were on the weekend. I appealed the initial denial on 20 February 2022. I am pending my appeal's denial. My experience has shown the religious accommodation process in the Navy to be 'mere theater,' and I have witnessed the documents that confirm this belief. I am anticipating orders to get the first COVID shot within five business days of the denial, a report of misconduct, notification of separation proceedings, and administrative separation unless there is court intervention.

14. Since the beginning of the Secretary of Defense and Secretary of the Navy's mandate, I have been assigned to in three different commands and have experienced coercive, abusive, and discriminatory actions in each.

15. On 22 August 2021, I began the Officer Development School (ODS) at Officer Training Command Newport (OTCN) in Newport, RI. On 23 August 2021, the Food and Drug

Administration (FDA) approved the Biologics License Application for Comirnaty, (COVID-19 Vaccine, mRNA). That same day, all the unvaccinated members in ODS were pulled aside by OTCN staff and told of the approval and told that the vaccine was now mandatory and asked if anyone wanted to receive the shot. Of the original 11, six submitted to vaccination under the guise that it was 'approved'. Later that week the remaining five unvaccinated members of ODS were pulled out again. The harassment and coercion was consistent at OTCN. I was counseled that I stood to lose my career, retirement, and benefits from my service, I was separated from the vaccinated population, subjected to 'short term enhanced monitoring' only for the unvaccinated, made to submit to discriminatory COVID testing every other day for a period of time while the vaccinated were not, made to eat separately from others or not able to utilize the galley for meals with the vaccinated, made to wear a mask differently than the vaccinated, threatened to be held over in training simply because of my vaccination status, threatened to have my orders cancelled because I was not vaccinated, refused medical testing for COVID antibodies, told I was an "issue" by the Director of ODS and that I had a "rigorous road" ahead of me because I am unvaccinated, disallowed from having my wife come see my course graduation, pulled out of class to get 'counseling' regarding vaccinations, and more. The vast majority of these events happened within three weeks of the FDA 'approval' as it emboldened mandates and other leadership to push the issue to coercive levels. By the end of the five week training course, only four of the original 11 unvaccinated members remained after the extensive harassment of the OTCN staff.

16. On 23 September 2021, I completed training at Officer Training Command Newport (OTCN) and transferred for additional training at the Naval Chaplaincy School (NCS)'s Basic Leadership Course (BLC). Upon entry into BLC, the entire class was pushed to get the 'vaccine' and to have their vaccination cards available at all times. The instructor said that upon

graduation, anyone without the COVID-19 vaccine would be held over after training, pay out of pocket for lodging, and would be assigned whatever “menial tasks they could find” to occupy time. Later policy and guidance informed me that I would receive an adverse fitness report, be separated, lose educational benefits, transition assistance, career credit, and more.

17. During my time in the Naval Chaplaincy School (NCS)’s Basic Leadership Course (BLC), I was frequently pulled out of class by the NCS staff and harassed about my vaccination status, my intentions to be vaccinated, and my private medical concerns. I was questioned by NCS staff about whether or not I would even be allowed to submit a religious accommodation request. The NCS staff shared my private health information widely with other members without any need to know. Some days it was multiple times a day that I was pulled from training to be micromanaged and harassed about my vaccination status. I heard many NCS staff members and high-ranking leaders of the Navy chaplain corps express their support of coercive policies, their complicity in the abusive mandate, and disregard for the religious freedom of the force. I have even heard senior members of the chaplain corps revel in the release of the Navy policy outlining the harsh and abusive measures that would be taken against the ‘refusers’; the chaplain was happy that people would be able to see the high cost of applying for religious accommodation so that less people would come to request accommodation and the chaplain corps would have less work to process the requests.

18. While at the Naval Chaplaincy School (NCS), I was ordered by my command on multiple occasions to report to the medical clinic to meet with medical providers who had no patience for anything other than people lining up to get the shot. I tried to engage with the providers and voice my concerns and they all disengaged. When asked if I could send them questions of my concerns, they would not provide a means for me to do that or would direct me to someone else. I requested a certain medical provider and my request was diverted; I later found out that the

provider I requested was loyal to their Hippocratic Oath and the ethical principle of ‘do no harm’ and I was instead directed to the director of the immunizations clinic who would be better willing to push the vaccination. Later, upon reviewing my medical records, I saw unprofessional and inaccurate entries entered into the system from doctors that I was made to see.

19. On 5 November 2021, I was informed by the Naval Chaplaincy School (NCS) staff that told me we would get to execute our change of station (PCS) down to Camp Lejeune, NC, but that my orders would be changed. Because of my vaccination request, my orders were changed from the School of Infantry – East (SOI-E) to the main installation’s chaplain office. The reassignment was to a lower priority of assignment. I was originally assigned to SOI-E because of my prior experience because it was a higher priority assignment. The reassignment to a lesser assignment does unknown future harm to my career that can likely not be undone. This change was made solely because of my desire for exemption from the COVID-19 vaccination requirement.

20. Shortly after this change, during the week of 15 November 2021, we coordinated for our move, we packed our stuff, rented a U-Haul trailer, canceled our lodging reservations, etc. in line with the direction that we received on 5 November 2021. On 17 November 2021, the evening before my graduation, I was instructed to stay late after class by the Naval Chaplaincy School (NCS) staff and told that I would be held over at NCS pending the results of my request for exemption from the COVID-19 vaccine. I asked for, but was not given any written guidance to this at the time and have not received it since. I was held over without official notification from the assignments officer in violation of Navy regulations. My leadership refused to share communication and documentation regarding my hold over so that I could file for reimbursement of lodging and per diem expenses.

21. On 24 November 2021, I requested Captain's Mast, a meeting with my Commanding Officer (CO), the CO of the Naval Chaplaincy School (NCS), and requested exception to policy (ETP) from the change of station (PCS) hold so that my family and I could complete our move already in progress to NC as originally ordered. The CO denied my ETP request, he denied to even make a call to inquire about ETP on my behalf as I requested.

22. Because of my exemption request, I was held over by the Naval Chaplaincy School (NCS) for months. While held over, my family of five – myself, my pregnant wife, three children ages 7, 5, and 2 – and our dog – had to live in a hotel for months with no end in sight. In total we were held over 100 days in the hotel after training, paying out of pocket, and not allowed to proceed on to our next duty station. My wife was forced to home school our children as they were unable to attend local schools. My wife is due with our fourth child and we anticipated having the child while there, bringing the baby 'home' to a hotel room. My wife struggled to keep some semblance of a schedule and regular life while confined to a single hotel room with limited resources. We spent Thanksgiving, Christmas, and New Years, as well as most of our family birthdays this past year there in the hotel. We were unable to obtain suitable housing there while temporarily assigned, as my status did not allow us Basic Allowance for Housing for the area or access to military housing. Additionally, our household goods were already in storage at our next duty station and we were not allowed to transfer our household goods to NCS for access to any of our household goods (clothing, baby items, etc). We had to spend over \$2,500 dollars to purchase replacement household necessities for our family because we were not able to get to our household goods in storage. The Navy's heavy-handed vaccine mandate, and the Navy's treatment of my family made them effectively homeless for over seven months doing immeasurable harm to my wife and children's emotional wellbeing and mental health. The abusive hold over turned what should have been a relatively brief three months of training en

route to my next duty station into an indefinite detention while we waited for adjudication of my exemption request.

23. Additionally, while held over at the Naval Chaplaincy School (NCS), I was not able to perform my duties as a Chaplain. I was ordered by the Commanding Officer of NCS to ‘telework’ but assigned no work. I tried to find useful projects that I could do in holdover status, but did not receive any responses from proposals that I sent to the NCS staff. I was not gained to a unit nor did they grant me correction of basic administrative assistance to correct my personnel record and basic pay issues; to date the Navy owes me approximately \$50,000 in back pay and travel reimbursement. I was even excluded from performing religious rites and services that were offered to the other members of my command; as a result events went unsupported when I was willing and able to assist.

24. I repeatedly tried to engage my command members at the Naval Chaplaincy School (NCS) on concerns such as the legalities of EUA and FDA-Approved products, medical negligence, and religious discrimination by the military. My concerns fell on deaf ears, were ignored, and I was dismissed with an “I care, but I don’t care” attitude. That being an actual quote from one of the members of NCS staff when I expressed my legal concerns about mandatory testing.

25. After months of probably illegal hold over, on 28 February 2022, I received a call from my supervisor and was told that Navy Personnel Command approved my exception to policy (ETP) that I requested on 3 February 2022. I was told that I would be detaching on 3 March 2022. My family and I were given no notice and only two days to pack, vacate, and move on to our next duty station. I was not given the option to extend or have any additional time. A mentor suggested that we were pushed out so quickly as a punitive measure; given my wife being nine

months pregnant at the time, we could have been given consideration as there was no operational reason that my family had to move so quickly.

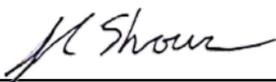
26. On 5 March 2022 I checked into my current command, Marine Corps Installation – East Chaplain’s Office at Marine Corps Base Camp Lejeune. It has been made clear to me that the command is treating me differently because of my pending exemption request. I have not been assigned any primary duties. I have not been given a fully functional computer with which to do work. Everything has been discussed as ‘short-term’ as it seems quite obvious that my leadership is expecting denial and is limiting my duties because they know the appeal is prejudged to denial. My command chaplain (supervisor’s supervisor) openly questioned my purchasing of a home because he alluded to the prejudged denial; I had to defend my personal choices to him. I have been told that I will only be assigned to cover for others as needed ‘until my exemption request is resolved’. I have been approached by other chaplains and asked about my ‘holding pattern’ which makes it clear that my private health information is being shared in violation of law and regulation.

27. The Navy seems intent to cause as much harm as they can through administrative action. The laws seem clear that they cannot take punitive action such as Article 15 or Courts Martial against those of us who are still working through the limited administrative avenues that we have. While we stand up for our beliefs and the freedom for those who come after us to have their own beliefs at all, they cannot ‘punish’ us, but they can take coercive and abusive ‘administrative’ action. I have been told over and over that the ‘administrative’ actions including the Navy’s holding me in limbo are not ‘punitive’ under Navy definition, but they stem from abusive policies that are inflicting very real and very defined harm on my family, myself, and others.

29. My vaccination status did not prevent me from continuing to execute my mission as a

chaplain while a member of two different branches of service over the past two years all during the ‘pandemic.’ I have completed temporary duty assignments and Permanent Changes of Station for the Air Force and the Navy, deployment overseas, cross-country and international travel for personal and mission-essential travel, and other tasks and projects as required to accomplish the mission and care for those in need. The only impact to the mission has been from the completely unnecessary and wholly self-inflicted harm caused by the services’ own policies. I have heard that “The courts do not make good generals”, but I pray for the courts intercession regardless, because currently the ‘generals’ are shooting themselves in the foot. It does not take any military experience to see that it needs to stop for the thousands of service members who have submitted an exemption request, for the tens of thousands – if not hundreds of thousands – more who would have if not for the coercive and abusive policies, and for the innocent families who have become collateral damage in the ‘generals’ war against their own military service members.

I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge. Executed this 1st of April 2022.

  
\_\_\_\_\_  
LT Jonathan Shour, CHC, USN



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON DC 20350-2000

1730  
Ser N1/118077  
6 Feb 22

From: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
To: LT Jonathan C. Shour, CHC, USN  
Via: Commanding Officer, Naval Chaplaincy School (NCS)

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF  
IMMUNIZATION REQUIREMENTS

Ref: (a) 42 U.S.C. §2000bb-1  
(b) DoD Instruction 1300.17 of 1 September 2020  
(c) SECNAVINST 1730.8B  
(d) ASN (M&RA) memo of 6 Jun 13  
(e) MILPERSMAN 1730-020  
(f) United States Attorney General memo of 6 Oct 17  
(g) Your ltr of 21 Dec 21 w/ends  
(h) BUMED ltr 6320 Ser M44/22UM40293 of 24 Jan 22

1. Pursuant to references (a) through (h), your request for religious accommodation through waiver of immunization requirements is disapproved. You must receive all required vaccines. However, you are free to request from your healthcare provider alternative vaccines that are available and meet the Navy's immunization requirements, as determined by a credentialed military healthcare provider. You are free to choose which COVID-19 vaccine to take. If you choose a COVID-19 vaccine that requires two doses, you must receive your first dose within five calendar (5) days upon receipt of this letter and complete the series as prescribed. If you choose a one-dose vaccine you must receive the vaccine within five calendar (5) days upon receipt of this letter.

2. In line with references (b) through (d), I am designated as the approval authority for requests for religious accommodation.

3. Reference (a), the Religious Freedom Restoration Act (RFRA), states that the Government may substantially burden an individual's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Reference (b) incorporates the RFRA and notes that the Government has a compelling interest in mission accomplishment, to include military readiness, unit cohesion, good order and discipline, health and safety, on both individual and unit levels. Additionally, unless it will have an adverse impact on mission accomplishment, including military readiness, unit cohesion and good order and discipline, the Navy will accommodate individual expressions of sincerely held beliefs of Sailors. Reference (f) emphasizes that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION THROUGH WAIVER OF IMMUNIZATION REQUIREMENTS

4. All requests for accommodation of religious practices are assessed on a case-by-case basis. In line with references (b) and (c), determination of a request for religious accommodation requires consideration of the following factors:

- a. Impact on military readiness, unit cohesion, good order and discipline, health and safety
- b. Religious importance of the request
- c. Cumulative impact of repeatedly granting similar requests
- d. Whether there are alternatives available to meet the requested accommodation and
- e. How other such requests have been treated

5. In making this decision, I reviewed reference (g), including the endorsements from your chain of command, the local chaplain and the advice of Chief, Bureau of Medicine and Surgery in reference (h).

a. A waiver of immunizations would have a predictable and detrimental effect on your readiness and the readiness of the Sailors who serve alongside you in both operational and non-operational (including training) environments. Primary prevention of disease through immunizations has been a key enabler for maintaining force health and avoiding disease-related non-battle injury. Granting your request will have a direct and foreseeable negative impact on the compelling Government interests of military readiness and health of the force.

b. While serving in the U.S. Navy, you will inevitably be expected to live and work in close proximity with your shipmates. I find that disapproval of your request for a waiver of immunization requirements is the least restrictive means available to preserve the Department of Defense's compelling interest in military readiness, mission accomplishment and the health and safety of military Service Members.

6. The Navy is a specialized community governed by a discipline separate from that of the rest of society. While every Sailor is welcome to express a religion of choice or none at all, our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.

NOWELL.JOHN.BL  
ACKWELDER.JR.1  
057611835

Digitally signed by  
NOWELL.JOHN.BLACKWELDER  
JR.1057611835  
Date: 2022.02.10 13:16:51 -05'00'

JOHN B. NOWELL, JR

Copy to:  
OPNAV (N131, N0975)  
BUMED

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF MAJOR JEREMIAH DOUGLAS SNYDER**

Pursuant to 28 U.S.C. §1746, I, Jeremiah Douglas Snyder declare as follows:

1. My name is Jeremiah Douglas Snyder. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. My home of record is Killeen, Bell County, Texas.
4. I am an active-duty chaplain in the United States Army serving at the rank of Major. I am currently assigned to the United State Army Garrison Command, Fort Polk, Louisiana.
5. I began my military service on June 2001 when I began as a chaplain candidate while completing my theological training and completed chaplain candidate training in 2003. I commissioned as a chaplain to the United States Army Reserve (USAR) in late 2006 and deployed to Iraq 2008-2009; serving honorably in the USAR until transferring to Regular Army in the rank of Captain as an active-duty chaplain (RA) in 2013 to current (April 2022) now in the rank of major.
6. My promotions were as follows: Captain USAR 2007; made the major's board USAR in 2013 just prior to transferring to RA and did not accept the promotion for the purpose of transferring to RA. Transferred to RA as Captain in 2013 and promoted to Major in 2020. I have approximately 20 years of (USAR, IRR, and RA) service as of March 1, 2022. I have approximately 11 years toward active retirement and wish to continue with the United States Army until mandatory retirement.

7. During my military career, I have had the following deployments to either combat zones or foreign areas: Iraq 05/2008-04/2009; rotation to South Korea 06/2017-02/2018; and rotation to Netherlands, Poland, and Germany 10/2019-06/2020.

8. I have received the following: Meritorious Service Medal, Army Commendation Medal, Meritorious Unit Commendation Medal, National Defense Service Medal, Iraq Campaign Service Medal (x2), Global War on Terrorism Service Medal, Korea Defense Service Medal, Army Service Ribbon, and Overseas Service Ribbon (x2). Five of the six active-duty company grade officer evaluations earned Most Qualified and the sixth Battalion grade officer evaluation, the Brigade Commander's comment stated, "...in the top 2% of all officers I have served with in 24 years". I was selected for Advanced Civil Schooling in 2020 and in 2021 completed a Master of Applied Science in Marriage and Family Therapy.

9. I first submitted my Religious Accommodation Request (RAR) by email 26 OCT 2021, Exhibit 1, asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows:

1. Redress for religious exemption to the 24 AUG 2021 COVID-19 shot mandate (and subsequent amendments) in accordance with:

- a. The First Amendment of the U.S. Constitution: "...and to petition the Government for a redress of grievances";
- b. The First Amendment of the U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof";
- c. Army Regulation 600-20-3 (a) (Army Command Policy) 6 NOV 2014.
- d. Standards provided in Army Directive 2018-19 (Approval, Disapproval, and Elevation of Requests for Religious Accommodation), 8 NOV 2018.
- e. Army Regulation 40-562 (Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases-10 JUL 2013).
- f. Army Regulation 165-3-3 (Army Chaplain Corps Activities), 23 JUN 2015.
- g. The Belmont Report: The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 18 APR 1979.

2. This request is based upon the conflict between my deeply held religious beliefs as it relates specifically to the three COVID-19 therapeutic shots that are available.

a. **Regarding the Johnson & Johnson, Moderna, and Pfizer COVID-19**

**therapeutic shot:** As a Christian, chaplain, father, grandfather, husband to one spouse, and community-citizen; my religious convictions are consistent with my patterned life practice and behavior in being an advocate for the value of life from conception to death. I hold a religious belief that my Creator began life at humanity's inception. I can't thus be complicit and violate my Creator's design for human conduct if I take part in this particular therapeutic treatment understanding that the undergirding research consisted of a prematurely terminated fetal life whereby that fetus(s) did not have say into life termination (this concept is taken from one of many supporting Scripture passages; Psalm 139, "For You formed my inward parts; You knitted me together in my mother's womb...I am fearfully and wonderfully made. My frame was not hidden from You, when I was being made in secret, intricately woven in the depths... Your eyes saw my unformed substance; in Your book were written, every one of them, the days that were formed for me, when as yet there was none of them" (ESV) as well as Exodus 21, "When there's a fight and in the fight the pregnant women who is hit miscarries...the one responsible has to pay...if there is serious damage, you must give life for life..." (MSG)).

b. **Morality and Ethics:** This concern is also supported by the **United States Standards for Research Ethics in the Belmont Report** when it states, "Respect for persons incorporates at least two ethical convictions: first, that individuals should be treated as autonomous agents, and second, that persons with diminished autonomy are entitled to protection. The principle of respect for persons thus divides into two separate moral requirements: the requirement to acknowledge autonomy and the requirement to

protect those with diminished autonomy” (The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, April 18, 1979). I thus believe that I will be committing sin by being complicit with the approach to the formation of this shot and violating my Creator’s intention for life and the preservation of life as well as violating the ethical and moral standards for research established in the Belmont Report. Lastly, my deeply held religious conviction is that when I am made aware of a sin of my past, that I must turn from continuing in the sin (wrong behavior) or pattern of sin and turn toward God. In the past 12 months (+/-), I have become increasingly aware of the history and undergirding process by which most vaccines and medications as marketed are created for which I was previously unaware. I have a longstanding life approach of aligning my outward behavior with my inward Christian beliefs and shaped conscience as I deepen my faith and convictions.

c. **Alignment of behavior with belief:** My deeply held religious conviction is that when I am made aware of a wrong, I have committed; I must cease from continuing in that sin (wrong behavior) or pattern of sin and turn toward God. In the past 12 months (+/-), I have become increasingly aware of the history and undergirding process by which most vaccines and medications as marketed are created for which I was previously unaware. I have a longstanding approach of aligning my outward behavior with my inward religious beliefs and shaped conscience as I deepen my faith and convictions.

d. **Regarding the Moderna and Pfizer mRNA therapeutic COVID-19 shot:** A key foundation consistent with my Christian faith and Scriptures is that a believing Christian is a living inhabitant of the Holy Spirit as a temple (one of several Scriptures related to this belief is from 1 Corinthians 6, “Do you not know that your body is a temple of the Holy Spirit within you, whom you have received from God? You are not

your own, for you were bought with a price. So, glorify God in your body” ESV).

Similarly, according to the tenants of my faith, from the inception of humanity, we believe that our Creator made humanity in His replicative image to represent Him on earth to glorify Him through our bodies, (Genesis 1:27, “God created humankind in His own image, in the image of God He created them; male and female He created them”). The process by which the Moderna and Pfizer operate in the human body fundamentally changes my Creator’s handiwork and how He genetically created me (Psalm 139, “You formed my inward parts; You knitted me together in my mother's womb” ESV). If I take this shot, I thus believe that I will be committing a sin by violating my Creator’s intended design for my body and will incur moral injury.

e. **Other Vaccines:** Should another vaccine be provisionally approved and available in the U.S. whereby there is no discoveries regarding the shot that conflicts with my deeply held religious beliefs; I am obliged to comply for the greater wellbeing of the formation and Army’s mission.

f. **Follow-On Assignment:** My follow-on assignment (projected 3 years) has me a Garrison asset as a Family Life Chaplain with limited close contact. I would thus be able to comply with safe distancing and still be an effective asset to the Army.

g. **My Health:** I am in top Army fitness and condition with NO comorbid health issues for risk of natural recovery should I succumb to the virus as indicated by the attached medical memo. Other unvaccinated close family members have become ill with COVID-19 as well as having comorbid conditions and have recovered without hospitalization and only home-based therapeutics.

10. The COVID-19 vaccine has not yet proven to be 100% safe, effective nor without any potential harmful side effects”, *see*

<https://www.cdc.gov/vaccinesafety/ensuringsafety/sideeffects/index.html>;

[https://www.algora.com/Algora\\_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative](https://www.algora.com/Algora_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative).

The Associated Press reported on December 27, 2021, the fully vaccinated USS Milwaukee had “[a]bout two dozen sailors or roughly 25% of the crew — have now tested positive for COVID-19[.]” “Officials: Nearly 25% [of fully vaccinated] Navy warship crew has COVID-19”, Lolita C. Baldor. <https://apnews.com/article/coronavirus-pandemic-health-jacksonville-us-navycb7d190b7c1c1c52f5441b56740d44de>. The Navy also reported “the USS Halsey, a destroyer, delayed its homeport move from Pearl Harbor, in Hawaii, to San Diego because a significant number of the crew became infected with COVID-19. *Id.* The Navy further reported “roughly one-third of the Halsey crew tested positive for the virus” although “the crew was nearly 100% vaccinated.” *Id.*

11. Between the months of September and October 2021, I had written and submitted via email, my request, Exhibit 1, to the U.S. Army Student Detachment. However, I was notified that the prescribed first official step needed to be a DA Form 4856 of the RAR, Exhibit 2, and was submitted to the U.S. Army Student Detachment via email on or about late October 2021, but I was notified by the intended receiver of the email that the government computer (this was in a location where there was no technical support with the troubled systems) stripped out of my PDF the information I had supplied. I resubmitted (DA Form 4856) via email using my personal email on or about 03 November 2021, Exhibit 3. In this email, I had requested to speak with both the first and second responsible commanders in the chain as related to my request and I received no opportunity to have a verbal with the decision makers in the process of my RAR. Later, when at my gaining unit (United States Army Garrison), I was required to again, resubmit a new RAR

(DA Form 4856) on or about 25 February 2022. My RAR is still pending any official notification.

12. **Alignment of behavior with belief:** My deeply held religious conviction is that when I am made aware of a wrong, I have committed; I must cease from continuing in that sin (wrong behavior) or pattern of sin and turn toward God. In the past 12 months (+/-), I have become increasingly aware of the history and undergirding process by which most vaccines and medications as marketed are created for which I was previously unaware. I have a longstanding approach of aligning my outward behavior with my inward religious beliefs and shaped conscience as I deepen my faith and convictions.

a. Since my progressive awareness of the history undergirding the research influencing most vaccines as well as some medications (such as Motrin); I have ceased taking these products and vaccines. Many purport that the ‘aborted fetal cell research’ is old research from the 1960’s and 70’s and no longer takes place in the U.S. However, this is NOT the case. I have learned that as recent as 2019, the University of Pittsburg and its medical researchers were conducting research from harvested living fetuses (from within the past ten years); having received financial grants for such medical research from the National Institute of Allergy and Infectious Diseases (NIAID).

b. I am NOT anti-medicine nor am I an ‘anti-vaccine’ individual, however, my conscience is deeply and sorrowfully disturbed to learn and now know that I have unknowingly partaken in the benefit of this research conducted from these aborted fetuses. I can no longer be complicit by benefiting through the research from unwilling harvested fetuses.

c. This concern is also supported by the United States Standards for Research Ethics in the Belmont Report when it states, “Respect for persons incorporates at least two ethical convictions: first, that individuals should be treated as autonomous agents, and second, that

persons with diminished autonomy are entitled to protection. The principle of respect for persons thus divides into two separate moral requirements: the requirement to acknowledge autonomy and the requirement to protect those with diminished autonomy” (The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, April 18, 1979), Exhibit 4.

d. I thus believe that I will be committing a religious sin by being complicit with the approach to the formation of this shot and violating my Creator’s intention for life and the preservation of life as well as complicit in violating the ethical and moral standards for research established in the Belmont Report.

e. I also believe that the mandated vaccination applied practice of this experimental and unproven vaccination therapeutic upon the American public as well as within the Army has violated The Belmont Report in principle, by not providing proper disclosure of risks and adverse harms upon the human body nor the proper time for study of this rapidly developed shot as well as the liberty of conscious choice to receive or deny “experimental use only” research within my body. Much of the leadership in the Army has by outspoken or subtle threat, forced individuals to take the shot. By reason of my purpose, commission as a Chaplain in the United States Army Chaplain CORP, and Army Regulation (AR 165), Public Law 10 USC 3073, 10 USC 3547, and 10 USC 3581, I am required to uphold the Constitution, First Amendment of religious liberty, but a major component of AR 165.3.3 is under the realm of “Chaplain as professional military religious advisor”.

f. By the standards set forth in The Belmont Report, I hereby reject the legitimacy of this “experimental use only” COVID-19 as a ‘vaccine’ in the traditional and historical use of the term “vaccine” as listed by the Center for Disease Control (CDC) until within the past months; the CDC recently changed the definition of the traditional term of vaccine. Historically, “vaccine”

used to mean a medical procedure that protected you from a particular disease against which you were being vaccinated, whereas COVID experimental shots, have not protected against contracting COVID.

13. Comirnaty (the FDA approved vaccine) is not available as purported, again violating the principles of The Belmont Report. Many leaders in the chain of command in the Army, convince their Service Members that what is being offered is the same. However, this would NOT pass a Truth or Lie test with any Departments of Motor Vehicles should any one of the digits be missing or misaligned with a presented vehicle title versus what exists imprinted on the vehicle. The truth is at stake.

14. I have experienced being ordered proof of vaccination in violation of Health Insurance Portability Accountability Act (HIPAA) and under General Order denied use of facilities such as on post gymnasiums. Again, violating HIPAA, I have experienced having to report weekly on my status of shot as well as boosters through the chain of lower enlisted to command. I have also been denied the presumption of natural immunity established by AR 40-562. The first commander in the chain of command at the Student Detachment, Fort Jackson, SC, had no communication with me about my request nor was there a response to any of my emails by him, nor was I counseled by him and was only counseled by the First Sargent, which to my understanding of the protocol, violates the established procedure in order of the Chain of Command (COC) which is Company, Battalion (BN), and Brigade (BDE) for which I never experienced this protocol, Exhibit 5. Neither was I counseled nor given an opportunity to speak with the second commander in the chain of command, the equivalent of either the Brigade or Garrison Commander to state the concerns of my RAR as requested.

15. During the course of 2019-2022 (present), I have either experienced or witnessed the prohibition or hinderance of carrying out (myself or other chaplains similarly) the prescribed

duties under Title 10 USC 7217 as well as the restrictions of Service Members ability to assemble and receive religious support from their chaplain(s) because of the restrictive measures placed by the highest echelons of DOD upon commanders to carry out Title 10 USC 7217. These restrictive measures on the assembly of religious services were in stark contrast and inconsistent with the purported spirit of ‘decreasing the spread of COVID’ to contrasting liberties granted by the same highest echelons of DOD upon commanders to permit the assembly of larger masses of Service Members under the guise of ‘training’. By all appearance, this practice is inconsistent and seems targeted at religious liberty granted under the Constitution.

16. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: without notification or due process as expressed under the terms of requesting the religious accommodation, my Officer Record Brief (ORB) has been flagged as “pending action”. By measure of other chaplain’s that have similar remarks on their ORB, because I submitted a Religious Accommodation Request, I face adverse actions: *e.g.*, denied special school, bad fitness or officer efficiency report, counseling letters, told to prepare for separation, assignments denied, demeaned in front of staff or in private, removal from duty or special assignments, counseling, letter of reprimand or counseling, GOMOR, loss of benefits, restrictions on travel, told not a team player, singled out for special treatment or denied same accommodations as other people, etc. I thus believe that I am experiencing subtle retaliation, a negative or adverse employment action. These actions all violate the fiscal year (“FY”) 2013 and 2014 National Defense Authorization Acts specific statutory protections for chaplains from retaliation and/or negative, career damaging actions consistent with my faith and my endorser’s doctrine and religious beliefs.

17. **Family:** The Army has **not only** ordered myself to be vaccinated, but my “FAMILY MEMBERS MUST BE AVAILABLE TO RECEIVE A FULL COVID-19 VACCINATION SERIES FROM THE SAME MANUFACTURER WITHIN A 45-DAY WINDOW AT THE SAME DUTY LOCATION” as prescribed in my Permanent Change of Station (PCS) ORDERS 277-152, Dated: 4 OCTOBER 2021, Paragraph (y), Exhibit . None of my family members are uniformed Service Members in any branches of service. My family as described in the orders consists of my civilian spouse and 8 civilian minor children. I believe this is an unlawful and unconstitutional overreach by any branches of the Department of Defense to order civilians to be subject to the COVID-19 shot.

18. The Services and the Army have made it clear that resisting the vaccine will result in dismissal from service to the Army with a General discharge, Exhibit 2. This type of discharge is in fact a punitive discharge for a chaplain. This type of discharge is associated with Service Members who exhibit discipline problems, and it will follow me my entire life, demeaning and mischaracterizing my service while denying me my earned VA benefits. Again, this type of discharge does not align with my Army annual service records and is a mischaracterization of my service to the Nation and the Army. This will certainly be a problem for a chaplain seeking to continue to do ministry as a civilian in addition to the loss of major Veterans benefits and retirement.

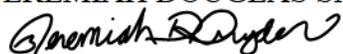
19. If given the choice, *i.e.*, accept vaccine or agree to an unqualified resignation or face discharge with a general discharge, this would certainly challenge my family. However, I must remain consistent with truth, my faith; my oath to the U.S. Constitution, Army Regulation and the standards for an U.S. Army Officer; the ethical standards set forth for research in The Belmont Report; and my conscience in alignment with and formed by my faith. Sun Tzu wrote over 2,000 years ago in The Art of War as studied at West Point, that the number one principle,

must be a moral army. I have observed that this mandate has been a forcible violation of so many Services Member's moral conscience by forcing submission against known truth in order to keep supporting their existence and families.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

12 May, 2022

JEREMIAH DOUGLAS SNYDER

A handwritten signature in black ink that reads "Jeremiah Snyder". The signature is written in a cursive style with a large, stylized initial 'J'.

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CH (CPT) David H. Troyer**

Pursuant to 28 U.S.C. §1746, I, CH (CPT) David Huber Troyer declare as follows:

1. My name is David H. Troyer. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside in Vicenza, Italy. My home of record and where I am domiciled is Baker, Okaloosa County, Florida.
4. I am an active duty chaplain in the United States Army serving at the rank of CH (CPT). I am currently assigned to HHD, 522<sup>nd</sup> MI BN Kaserne Ederle, Vicenza, Italy.
5. I began my military service at the rank of Specialist (SPC) on 19 September 2011 as an Intelligence Analyst (35F). I graduated from Basic Training as the Soldier of the Cycle which is a very distinct honor. After Basic and AIT I was stationed at Shaw AFB with Army Central Command. During this time I deployed twice, once to Jordan and once to Kuwait. While serving in active duty and deploying I also completed my Masters of Divinity degree with a 3.55 GPA. I was promoted to the rank of Sergeant after 18 months time in service/time in grade which is the soonest possible in accordance with Army regulations. At the rank of Sergeant (E-5) I transferred to the Army reserves commissioning at the rank of CH (1LT) on 25 September 2015. During my time in the reserves I was the full time senior pastor of a civilian church and the Chaplain for the 365<sup>th</sup> Engineer Battalion. I also attended and completed Chaplain Officer Basic Leader Course

(CH-BOLC). After 3 years in the reserves, I entered the Active Duty Army Chaplaincy on 17 January 2019 at the rank of CH (CPT).

6. As a commissioned officer, I was promoted to the rank of CH (CPT) on 10 May 2018. I have 10 years of military service with almost 8 years of that being active duty as of March 1, 2022.

7 During my military career my family and I have been stationed overseas in Wiesbaden, Germany (June 2021-January 2022) and Vicenza, Italy (January 2022-Present. Both of these overseas moves were conducted during a global pandemic without any issues arising from my unvaccinated status. My combat deployments include: Jordan (November 2012 - March 2013), Kuwait (December 2014-March 2015), and Afghanistan (February 2019-October 2019).

8. I have received the following: the Meritorious Service Medal, the Army Commendation Medal with 2 Oak Leaf Clusters, the Army Achievement Medal with 2 Oak Leaf Clusters, the Meritorious Unit Citation, the Army Good Conduct Medal, the National Defense Service Medal, the Afghanistan Campaign Medal, the Global War on Terrorism Expeditionary Medal with two Star Devices, the Global War on Terrorism Service Medal, the Non-Commissioned Officer Professional Development Medal, the Army Service Medal, the Overseas Service Medal with Numeral 2 Device, the NATO Metal, two Certificates of Achievement, and the Driver's/Mechanic's Badge. During my time at Fort Riley I received the Military Outstanding Volunteer Service Medal for volunteering over 500 hours in the community. My family and I were also honored to be awarded the Fort Riley Volunteer Family of the year for 2020. This was due to our volunteer efforts during the pandemic.

9. I submitted my Religious Accommodation Request (RAR) at Exhibit 1 asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows :My sincerely held religious belief is that God

bestows personhood at conception, which is when human life begins, and that a believer's body is God's temple. I have held to these Christian beliefs since childhood which make the use of fetal cells or any other similar human tissues/materials undeniably incompatible with my faith. In the past I was not aware of the role fetal cells play in the development and production of vaccinations. Now that I am aware of this information, I must act in accordance with my conscience and cannot continue to receive these vaccinations/immunizations.

10. My RAR was denied on 04 February 2022, Exhibit 2. I submitted my RAR appeal, Exhibit 3, on 22 February 2022, which is still pending. I have many different reasons for appealing this denial, all of which are listed in my appeal. A summary of some of these points is as follows:
11. With my original packet I submitted three supporting documents (letters from some of the pastors I have served with since childhood) those documents do not appear to have been included with my original request and my chain of command never replied to my inquiry for clarification.
12. On 17 February 2021 Major General Jeff Taliaferro, Vice Director of Operations at the Pentagon testified, under oath, that the unvaccinated are deployable see <https://www.youtube.com/watch?v=G1qlm4z8oQ0> 35:00 Timestamp.
13. I have been granted a DE FACTO Religious Accommodation. This DE FACTO Religious Accommodation has been established through precedence set over the last two years throughout every level of Army leadership I have served under, worldwide, in the form of a continuous and unbroken state of STATUS QUO COVID Mitigation and ministry. Never have I been ordered to avoid “close contact” with Soldiers or Family Members, nor have I been asked to refrain from distributing home-made baked goods,

resiliency items, etc. In fact, my presence and encouragement has been welcomed at all levels.

14. On 21 September 2022 I tested positive for Covid (evidence included in my appeal) and since then I have not had to report to sick call for any cold or illness. In the Fall of 2021 my health care provider tested my blood for antibodies and they were still present in my blood. This information supports the Army's own principle of serological testing testing as described in AR 40-562. As may be confirmed by my medical records, I have already had immunity for some of the Army's required vaccinations. According to data within the CDC Morbidity and Mortality Weekly Report, dated January 19, 2022 natural immunity is as strong, or even stronger than vaccinated immunity. In this report, the CDC studied people in California and New York and found that those who contracted a natural infection from COVID had more protection than those who were only vaccinated. Furthermore, those suffering from a natural infection and were later vaccinated did not gain any significant additional protection than that which already existed from their natural immunity. Therefore, according to the CDC's own data, I would not benefit from a COVID booster.
15. A vaccine, once injected, cannot be removed, whereas, the current STATUS QUO Mitigations can be altered at any time. Also, a therapeutic that can be taken after a COVID diagnosis to lessen symptoms would be considered the "least restrictive means." As of January, the FDA had given Emergency Use Authorization to two antiviral oral medications in the event of a severe case of COVID and the reported efficacy rivals that of the reported efficacy of the vaccine ([https://emergency.cdc.gov/coca/ppt/2022/011222\\_slide.pdf](https://emergency.cdc.gov/coca/ppt/2022/011222_slide.pdf))

It is extremely unlikely that even the antiviral would be necessary since the Omicron variant phase is very mild (<https://pubmed.ncbi.nlm.nih.gov/35098543/>)

16. It is important to note that the CDC has held the position since July of 2021 that vaccinated person still do transmit the virus to others (Dr. Anthony Fauci Interview through Yahoo Finance, <https://youtu.be/mP9iHyj1uiU>) Also, the Pentagon's own Press Secretary, John F. Kirby, when, on August 20, 2021, he stated that, “there is a Religious Exemption possibility for any mandatory vaccine, and there's a process that we go through to counsel the individual both from the medical and from a command perspective about using a religious exemption.” He went on to say, “We take freedom of religion and worship seriously, in the military, it's one of the things that we sign up to defend, and so it's something that's done very carefully.” (<https://www.defense.gov/News/Transcripts/Transcript/Article/2726868/pentagon-press-secretary-john-f-kirby-holds-an-off-camera-press-briefing/>) Since the date of my appeal submission the Army has reportedly only granted one religious accomodation even though they have granted numerous medical and administrative exemptions.

17. Ever since this past summer signs have been posted on all fitness facilities, on post, requiring proof of vaccination in order to use the facility. From January to May signs have been posted on every on post facility to include the PX, the Bank, the gym, the recreational facilities, etc. The only facility not posted was the commissary. The bank on post, which makes it possible to pay my rent, twice tried to deny me entrance because I did not have a vaccine pass. They finally agreed to assist me, “Just this once.” In August 2021 my executive officer said during a meeting, in front of everyone, “I did not wear a mask all the time, but I did when I was down south around all those people I thought were a bunch of anti-vaxxers.”

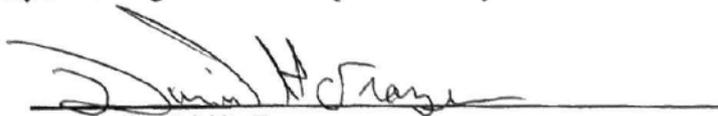
18. To this point I have not been offered separation but if I was to be separated from the military it would mean the loss of any and all potential retirement benefits that I might earn. Along with

all the time, but I did when I was down south around all those people I thought were a bunch of anti-vaxxers.”

18. To this point I have not been offered separation but if I was to be separated from the military it would mean the loss of any and all potential retirement benefits that I might earn. Along with the challenge of moving my family back to the states with no permanent residence to return to or job waiting for me. Essentially my family would be homeless and without a means of support, at least on a temporary basis. The complexity of this situation might also be compounded if the discharge was anything less than honorable due to difficulties finding employment with that classification. Above and beyond the physical effects a separation would mean for me and my family, this will effect my ministry to soldiers at my unit who will be without a Chaplain. Before I joined the military, I felt the call to ministry as an Army Chaplain. During my time as a Chaplain I have received 8 Strong Bonds (married and single soldiers relationship training) certifications, suicide prevention training, and practical experiences which have been invaluable in deescalating crisis situations. This skill set and the thousands of tax payer dollars spent in the acquiring of it, is not easily and quickly replaced and will effect the readiness of the force.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

May 4, 2022

  
\_\_\_\_\_  
**David H. Troyer**



**DEPARTMENT OF THE ARMY  
OFFICE OF THE SURGEON GENERAL  
7700 ARLINGTON BOULEVARD  
FALLS CHURCH, VA 22042-5140**

DASG-ZA

4 FEB 2022

**MEMORANDUM THRU Commanding General, United States Army Southern European Task Force- Africa, APO AE 09630**

**FOR Captain David H. Troyer, Headquarters and Headquarters Detachment, 522d Military Intelligence Battalion, 207th Military Intelligence Brigade, United States Army Southern European Task Force- Africa, APO AE 09630**

**SUBJECT: Denial of Request for Religious Accommodation**

1. I reviewed your religious accommodation request for an immunization exemption from the COVID-19 vaccine mandate and other various vaccines.

a. Your request for exemption from the Army's COVID-19 vaccine mandate is denied.

b. Your request for exemption from other vaccine requirements is overly broad as it relates to vaccines you have already received as well as possible future immunization requirements. If, in the future, your duties and circumstances change and you are required to receive any additional immunizations, you may submit a new religious accommodation request for adjudication at that time for those particular vaccines.

2. I considered your request, based on your Christian Baptist faith, and reviewed your specific case. This included an examination of your chain of command recommendations, your unit chaplain findings of a sincere religious belief, and your current military duties as a 56A, Chaplain. Your chain of command noted that your duties include routine close proximity with the Battalion's assigned and attached personnel and their families during counseling sessions, Strong Bonds seminars, religious services, and other events hosted by the ministry team. Your chain of command explained that your duty location is indoor, with limited space for social distancing.

3. COVID-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army's compelling government interests, which also includes protecting your health, the health of the force, and ensuring mission accomplishment.

DASG-ZA

SUBJECT: Denial of Request for Religious Accommodation

4. You may appeal this decision through your chain of command to the Assistant Secretary of the Army for Manpower & Reserve Affairs. If you chose to do so, you have seven calendar days from notification of my decision to submit matters.

A handwritten signature in black ink, appearing to read 'R. S. Dingle', written in a cursive style.

RAYMOND S. DINGLE  
Lieutenant General, U.S. Army  
The Surgeon General and  
Commanding General, USAMEDCOM

Pursuant to 28 U.S.C. §1746, I, Seth J. Weaver declare as follows:

1. My name is Seth J. Weaver. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. My home of record and where I am domiciled is Taylors, Greenville County, SC.
4. I am a reserve chaplain in the United States Army serving at the rank of 1st Lieutenant. I am currently assigned to the 812th Transportation Battalion, 1330 Westover St, Charlotte, NC 28205
5. I began my military service on 24-January-2018 when I commissioned and entered reserve.
6. My promotions were as follows: 23-July-2019. I have approximately 4 years of service as of March 1,2022.
7. During my military career, I have had the following deployments to either combat zones or foreign areas: None.
8. I have received the following: the National Defense Service Medal, the Army Service Ribbon during my military career.
9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1 asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs on 08-Dec-2021. A summary of those reasons follows: This request is based on the Biblical mandate to abstain from any medicines which are the product of immoral production, and the religious advisory of the pastor of Summit View Baptist Church against the COVID-19 vaccine.

We believe that human life begins at conception and that the unborn child is a living human being. Abortion constitutes the unjustified, unexcused taking of unborn human life. Abortion is murder. We believe that abortions of pregnancies due to rape, incest, birth defects, gender selection, birth or population control, or the physical or mental wellbeing of the mother are not acceptable (Job 3:16; Ps. 51:5; 139:14-16; Isa. 44:24; 49:1, 5; Jer. 1:5; 20:15-18; Luke 1:44).

Section 19. Euthanasia

We believe that the direct taking of an innocent human life is a moral evil, regardless of the intention. Life is a gift of God and must be respected from conception until natural death. All our days are ordained by God. He is the author and Lord of the day of our birth and the day of our death. Thus we believe that an act or omission which, of itself or by intention, causes death in order to eliminate suffering constitutes murder contrary to the will of God. Discontinuing or declining medical procedures that are extraordinary or disproportionate to the expected outcome can be a legitimate refusal of over-zealous treatment (Ex. 20:13, 23:7; Matt. 5:21; Acts 17:28).

10. My RAR is still pending. Also, COVID-19 vaccines have not yet proven to be 100% safe, effective nor without any potential harmful side effects, see

<https://www.cdc.gov/vaccinesafety/ensuringsafety/sideeffects/index.html>;

[https://www.algora.com/Algora\\_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative](https://www.algora.com/Algora_blog/2021/10/02/dod-data-analysis-shatters-official-vaccine-narrative)

11. I have no problems with “sterilized vaccines” like measles, mumps, polio, but have serious objections to a rapidly developed “experimental use only” vaccine without long-term studies that changes your DNA and whose effects have been suppressed.

I object to the COVID-19 vaccination because the COVID-19 vaccines are not legitimate vaccines as that term has been historically and medically defined and presented to the public.

13. The form filled out by the army medical doctor that interviewed me as part of the religious exemption process said that I would be nondeployable if I get an approved religious exemption. The process has been added to quite a bit since my interview with my supervising chaplain in December 2021. I was going to be going on a JRTC annual training. I got switched to a different annual training a couple months after this was set up. They said it was because they already had enough chaplain coverage for the JRTC. But I know of another chaplain who was not allowed to go on JRTC because he had a pending exemption and therefore unvaccinated. I was also going to attend some battle focused training at Fort Jackson. However when funding was being discussed, my supervising chaplain said she was told I could not attend because I was not vaccinated.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

March 31, 2022

Seth J. Weaver



**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CAPTAIN JUSTIN RONALD WINE**

Pursuant to 28 U.S.C. §1746, I, JUSTIN RONALD WINE declare as follows:

1. My name is JUSTIN RONALD WINE. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED], Huntington, WV. My home of record and where I am domiciled is [REDACTED], Huntington, Cabell County, West Virginia 25705.
4. I am a reserve chaplain in the United States Air Force serving at the rank of Captain. I am currently assigned to the 17th Training Wing, Air Education and Training Command, Goodfellow Air Force Base, San Angelo, Texas.
5. I began my military service on 12 September 2003 when I enlisted in the United States Air Force Reserve at the rank of Airman First Class, pay grade E-3, as an Aircraft Structural Maintenance Apprentice assigned to the 445th Airlift Wing, Wright-Patterson Air Force Base, Dayton, Ohio. I continued to serve as an enlisted Airman in the United States Air Force Reserve and in the West Virginia Air National Guard until 20 October 2018. I ended my enlisted service as a Technical Sergeant, pay grade E-6 . During this period of time I served in a variety of capacities. I was commissioned on 20 October 2018 and entered Reserve duty as a Chaplain Candidate. On 13 January 2021 I reappointed as a Chaplain in the United Stated Air Force Reserve after successful completion of the Chaplain Candidate Program.
6. My promotions were as follows: Airman First Class, 12 September 2003; Senior Airman, 12 September 2004; Staff Sergeant, 29 October 2008; Technical Sergeant, 01 February 2016; Second Lieutenant, 20 October 2018; First Lieutenant, 13 January 2021; and Captain, 13 January 2022. I have approximately 18 years of service as of March 1,2022.

7 During my military career, I have served on numerous contingency orders in support of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Coronet Oak.

8. I have received the following awards and decoration during my military career: Air Force Outstanding Unit Award with three oak leaf clusters; Air Reserve Forces Meritorious Service Medal with four oak leaf clusters; National Defense Service Medal; Global War on Terrorism Service Medal; Air Force Expeditionary Service Ribbon; AF Longevity Service with three oak leaf clusters; Armed Forces Reserve Medal with 1 bronze hourglass and 2 'M' Devices USAF NCO PME Graduate Ribbon; Small Arms Expert Marksmanship Ribbon (Rifle); AF Training Ribbon with one oak leaf cluster. I have also received the following special recognitions: Honor Graduate, Louis F. Garland DoD Fire Academy, Goodfellow AFB, Texas, 2006; Top Graduate, Public Health Apprentice Course, United States Air Force School of Aerospace Medicine, Wright-Patterson AFB, Ohio, 2014; Professional Image Award, Public Health Apprentice Course, United States Air Force School of Aerospace Medicine, Wright-Patterson AFB, Ohio, 2014.

9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Exhibit 1 asking to be excused from the United States Air Force's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: My request is a religious accommodation due to the fact that receiving the vaccination would violate my conscience, transgress my sincerely held religious beliefs, and cause me to willfully sin against God. I believe that God has created me with natural protections against disease. God, in His grace, has provided me with an immune system that is specifically created to, when working properly, protect me from various agents that are deleterious to my health. Not only do I know this from my studies, I also know it from experience. In August 2021 I was diagnosed with COVID-19 after a positive COVID-19 test. I was ill and experienced various symptoms yet, my body did exactly what it was supposed to do. It recognized the virus, created antibodies, and fought off the infection. Praise God, I recovered from my illness and now have natural immunity to the virus which is in accordance with the Armed Services regulations which presume natural immunity from the exposure of a contagious disease, *e.g.*, AR 40-562. As an Air Force Chaplain, I must remain true to my convictions lest I

completely undermine my ministry and become utterly ineffective at fulfilling my duty to provide religious support and spiritual care to Airmen and their authorized dependents; safeguard their constitutional right to the free exercise of religion; and advise leaders at all levels on matters of religious accommodation, mental and spiritual readiness, ethical decision making, moral reasoning, and morale concerns.

10. I believe that a Christian can rightly submit to medical care, such as taking medications and vaccinations, while thanking God who has ordered His creation to allow such blessings to exist. Nonetheless, there are many credible reasons for a Christian to refuse such treatments. These reasons include, but are not limited to, a lack of long-term safety information, the possibility of dangerous side-effects, the possibility of unknown impacts upon pre-existing medical conditions, and the use of fetal cell lines from abortion used in the development, manufacturing, or testing processes. Further, a person may be genuinely convinced that a demanded procedure does not come from a true public health concern, but from schemes and ventures that are opposed to God's truth and ways, and therefore must be resisted. This comes down to a matter of faithful stewardship over my God given life, resources, and responsibilities. Not only do I have a responsibility to exercise faithful stewardship over my own body, I also have a responsibility to exercise faithful stewardship of my family and ministry. Based on the extensive research that I have done, counsel from other believers, meditation on God's word, and prayer I believe that receiving any of the currently available COVID-19 vaccinations would place not only myself but also my family in danger. Knowingly taking an action that I believe could harm my wife, children, and other family members when there are preferable alternatives to such action would be the equivalent of me denying my faith. Further, I must also be a faithful steward to the ministry that God has given me outside my home which I cannot do while sinning against God by violating my conscience and acting contrary to God's word and the leading of the Holy Spirit in my life.

11. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request: While on duty at the 17th Training Wing, Goodfellow AFB, Texas in August

2021 I was repeatedly told by my supervisor that I would need to prepare for separation if I refused the COVID-19 vaccination. This was also intimated to me in a number of subsequent phone calls after the completion of my tour in August 2021. I was repeatedly demeaned in front of staff for my reservations regarding the vaccination. It was also repeatedly insinuated that I was not being a team player because of my reservations about the vaccination. This behavior took place while on duty at the 17th Training Wing, Goodfellow AFB, Texas in August 2021. Further, I was not notified of my promotion to Captain and that promotion has yet to be recognized in any way by my supervisor or any other staff member despite numerous interactions with them subsequent to my promotion. While a direct link to my refusal of the vaccination has not been made I cannot fathom any other reason for this neglect of military custom and courtesy. In my eighteen years of service I have never witnessed a promotion unrecognized.

12. I have been approached by United States Air Force Reserve Chaplain Corps leadership regarding my RAR and refusal to submit to the vaccination mandate. I was contacted on 15 March 2022 by USAFR Chaplain Corps leadership to inquire about the status of my RAR. During the course of our conversation I was presented with a series of options for abandoning my RAR moving forward by either complying with the mandate or resigning my position. Those options included the following: spending my own money to travel to a foreign country and receive a vaccination that would be amicable to me in the hopes that the Air Force would accept that vaccination as sufficient; transitioning to the IRR and taking a Letter of Counseling for refusal to be vaccinated in the process and in the hopes that I could return to active service within a period of three years; contacting my ecclesiastical endorser and having him pull my endorsement so that I would be relieved of my duty without punitive measures being taken. None of these options are palatable and are actually insulting. I was also informed during this conversation that the odds of my RAR being approved were not in my favor. I was told this despite the fact that this Chaplain had neither read nor heard the contents of my RAR.

13. I have served my nation in the United States Air Force for eighteen years with honor. During that time I have not had a single disciplinary action taken against me. I have diligently sought to embody the Air Force core values of integrity first, service before self, and excellence in all we do

throughout the duration of my military career. The United States Air Force has invested considerable resources in my professional development and I have sought to leverage the knowledge, wisdom, and experience that I have garnered from that development for the benefit of the nation, the Air Force, and my brothers and sisters in arms. To rid the military services of faithful service members because of their sincerely held religious beliefs is to partake in the waste of valuable government resources and to contribute to a lack of military readiness.

14. I have served faithfully for eighteen years and my family, friends, and employers have supported me in that service. I had, and still have, every intention of completing at least twenty years of honorable service before I retire from the United States Air Force. My family and I have given our lives to this calling and I have no intention of simply abandoning it because of the unjust and unconstitutional actions of men. Further, I do not intend on looking for and/or taking an "easy" way out. I understand that this decision may come with consequences such as the demeaning and/or mischaracterization of my service, the loss of pay, and/or the loss of benefits. However, the options that have been presented as "outs" for those who have resisted the vaccination mandate undoubtedly result in all of those things. I will not willingly submit to or give credence to those options. I have taken an oath to support and defend the Constitution of the United States of America against all enemies foreign and domestic and that is what I intend to do as long as it is within my power to do so. My hope and prayer is that mine and others' constitutionally protected right to religious liberty will be honored and upheld.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

March 25, 2022



**Justin Ronald Wine**

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CH (MAJ) THOMAS JOHN S. WITHERS**

Pursuant to 28 U.S.C. §1746, I, THOMAS JOHN S. WITHERS declare as follows:

1. My name is THOMAS JOHN S. WITHERS. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside in San Antonio, Bexar County, TX.
4. I am an Army National Guard Chaplain in the Texas Army National Guard serving at the rank of Major. I am currently assigned to the Headquarters and Headquarters Company, 71<sup>st</sup> Expeditionary Military Intelligence Brigade, 4255 I-35 S San Antonio, TX.
5. I began my military service on 21 Feb 2013 when I was commissioned as a 1LT, Commissioned Officer in the US Army (National Guard).
6. My promotions were as follows: CPT on 15 Jan 2015, and MAJ on 8 June 2021. I have approximately nine (9) years of service as of April 6,2022.
7. During my military career, I have had the following deployments to either foreign areas or CONUS/DSCA areas: Naval Station Guantanamo Bay, Cuba, 04/2019-01/2020; JTF-TX TF COVAX, San Antonio, TX, 02-2021-08/2021. And currently I am serving on the Texas Military Department Operation Lone Star, aka the border mission.
8. I have received the following Army Commendation Medal, Army Achievement Medal (1 oak leaf), National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Armed Forces Service Medal, Army Service Ribbon,

Overseas Service Ribbon, Armed Forces Reserve Medal w/ M Device, Military Outstanding Volunteer Service Medal during my military career.

9. I submitted my Religious Accommodation Request (RAR) (or religious exemption) on November 14, 2021, found at Exhibit 1, asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: 1) the argument from silence (The Lord Jesus Christ nowhere commands His followers to inject themselves with anything); 2) the Christian commanded to trust & obey Scripture; 3) the Christian's response to fear (and the use of fear by the government to manipulate the masses); 4) the body as the temple of the Holy Spirit; 5) the Christian's response to the world's use of sorcery ('pharmacopeia' in the Greek Scriptures); 6) aborted fetal cell lines used in the 'vaccines. I also had COVID19 illness from August 11 – August 26 and subsequently took an antibody test to prove natural immunity and submitted that positive antibody test result along with my religious exemption request, as per AR 40-562. Furthermore, because of having the positive antibodies for the SARS-COV2 virus, my medical provider advised me against receiving the vaccine because of the high likelihood the vaccine itself could cause autoimmune injury (at the least). However, he was restricted from writing a written exemption memo to that effect because of the AMA & CDC restriction against medical professionals issuing anything other than a temporary 90-day exemption.

10. On August 24, 2021, the date SECDEF Austin's order was published, I submitted my "Transfer to IRR Request", having already firmly decided I would not comply with the order to be injected with what I knew then to be a gene-therapy bioweapon. By the end of that same week, I had already turned in my assigned equipment and was prepared for my exit from the service. The only thing lacking was my Brigade Commander's approval. COL Novotny called me a couple weeks later and asked me to reconsider and to have patience as he believed by June

30, 2022 (by then this date had been published as the comply-by date for the Army National Guard) we would see a change and perhaps exiting the Army this early would be a preventable loss. He stated I was one of the good Chaplains, that he did not want to lose me, that I was an asset to his organization and command advisement, that he needed me to help him rebuild the Brigade once “things” settled back down to normal. Furthermore, COL Novotny said he would go to bat for me and do whatever in his power he could do to protect me and to advocate for me. He asked me to trust him, his experience and his instinct, and that if on June 30, 2022, there was no change to the order or a reasonable accommodation granted, he would do what he could to amicably accept my request to leave the military for the IRR (or even to resign my commission). I accepted his offer of trust and since that time, he has repeatedly had opportunity to affirm me in my position and expressed his gratitude and pleasure that I did accept his offer. My organization has been very supportive of me in this process and has done everything in their ability to promptly process my religious exemption request and the paperwork necessary to comply. Despite that, the State has seemingly and repeatedly not known how to give direction and there have been many apparent changes which could be viewed as discriminatory (using bureaucracy as a weapon). At present, my religious exemption packet is undergoing a third revision due to changed documentation requirements from the State of Texas Military Department.

11. In my religious exemption request, I stated I oppose the use of the mRNA technology but have no objection to a traditional inoculation, such as an attenuated virus, with the caveats being it must not have any link to fetal cell lines in either its development or testing and it should have been tested for the normal period comparable with other vaccines (8-10 years). Furthermore, I mentioned in my memo the fact the COVID19 vaccine does not protect against either transmission of or from developing the COVID19 illness. For example, the USS Milwaukee was 100% vaccinated but had to detour into port at Guantanamo Bay, Cuba because 25% of the crew

came down with COVID19 illness. Additionally, having natural immunity to COVID19 (as previously mentioned), AR40-562 presumes I would not need an injection to immunize me for something for which I have proven immunity. My medical provider told me if I took the shot I would most likely experience a vaccine-induced injury to my body and health. Since the three vaccines available are still under experimental authorization use only, and because they do not meet the above standards, the Army is attempting to coerce me into not only violate my religious conscience but to inject myself with a substance that won't provide immunity or prevent transmission. But the Army is also attempting to retaliate against me and force me out of the Army for not complying with an injection which could even kill me. Furthermore, should I catch COVID19 illness the quarantine time of 5 days is not comparable to being permanently discharged. The Army would lose all of its investment in me and my own gained experience as a Chaplain in a time when Chaplains are in high demand and the Texas Army National Guard is operating with 60% end strength in its Chaplain Corps.

12. I am told by the Army National Guard I will be non-deployable, unable to advance in my career progression through barring me to take professional military education for my next promotion ("ILE" for LTC). Even the state Chief of Chaplains said he would have no need for a Chaplain who is non-deployable, thus marking those of us who refuse to be vaccinated as useless to him. As an additional note, the requirement for vaccination cannot be for a compelling governmental purpose in view of the fact the President has refused to require illegal aliens to be tested, treated, or vaccinated. And, he has shipped these unvaccinated individuals all over the country, many of which have other diseases and illnesses that could pose a detriment to the permanent residents of those areas involuntarily receiving those millions of illegal aliens.

13. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious

accommodation request: my leadership told me if a National Guard member were to remain unvaccinated after June 30, 2022, they could be marked AWOL even if they showed up on time for regular drill (IDT) and would not be allowed to be paid. Furthermore, if said members continued in that status for three drills, they would be involuntarily discharged from the military.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 6, 2022



\_\_\_\_\_  
**Thomas J Withers**  
**MAJ, CH**  
**71<sup>st</sup> Expeditionary Military Intelligence Brigade**

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CCPO MATHEW BRANDON WRONSKI**

Pursuant to 28 U.S.C. §1746, I, Mathew Brandon Wronski declare as follows:

1. My name is Mathew Brandon Wronski. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Navy mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside in Prattville, Alabama. My home of record and where I am domiciled is Prattville, Autauga County, Alabama.
4. I am a current Chaplain Candidate Program Officer in the United States Navy with the current rank of Lieutenant Junior Grade. I am currently assigned to the Individual Ready Reserve (IRR).
5. I began my military service on June 3<sup>rd</sup>, 2009, when I enlisted in the U. S. Navy. I served in the Navy as a Hospital Corpsman from June 2009 to July 2014 and left at the rank of Hospital Corpsman 3<sup>rd</sup> Class (HM3). I was commissioned on May 21<sup>st</sup>, 2019, into the Individual Ready Reserve. I completed Officer Development School in July 2021.
6. I have approximately 8 years of service as of April 14,2022.
7. During my military career, I have had the following deployments to either combat zones or foreign areas: Helmand Province, Afghanistan (03/2013-10/2013).
8. I have received the following personal awards, citations, commendations, or special recognition(s) during my military career: Academic Achievement Awards in both Naval Hospital

Corpsman School and Field Medical Training Battalion; Navy and Marine Corps Achievement Medal; and Enlisted Fleet Marine Force Warfare Specialist (GCE).

9. I submitted my Religious Accommodation Request (RAR) (or religious exemption request) at Exhibit 1 asking to be excused from the Navy's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows: As a Christian who bases his faith and practice on the clear teachings of Scripture, there are three religious beliefs I hold that are relevant to my vaccine exemption request for all versions of COVID-19 vaccines. (1) I must not subject my body to unnecessary harm or degradation (1 Cor 6:19–20). (2) To the best of my ability, I am to provide for my family physically and spiritually (Deut 6:7; 1 Tim 5:8). (3) In anything I do, I must be convinced in my own mind that it is acceptable in the sight of God (Rom 14:5, 22–23; 1 John 3:21).

10. As a Naval Officer, I fully recognize that military service and its requirements involve risk. Such risk may result in bodily harm or the inability to provide for my family through death or permanent disability. However, according to my beliefs outlined above, I must be fully convinced that the assumption of such risk is both warranted and acceptable in the sight of God. In situations where an associated risk is outweighed by potential benefits, and these potential benefits do not dishonor God, then I would consider the risk acceptable. Therefore, when it comes to receiving any version of the COVID-19 vaccine, I am conscience-bound to make an informed risk decision.

11. According to NAVADMIN 190/21 reference 3.f.(2), “vaccine administrators must report vaccine administration errors, serious adverse vaccine reactions or clinically significant adverse events in the Vaccine Adverse Event Reporting System.” According to the Vaccine Adverse Event Reporting System (VAERS), there are at least 18,078 deaths and 88,910 hospitalizations associated with the COVID-19 vaccines reported through October 29, 2021. VAERS is not an

infallible reporting system, and it is not possible to verify every report filed in the system.

However, research suggests that VAERS accounts for a very small percentage of adverse events that occur. Therefore, it is not unreasonable to believe that the actual numbers of deaths and hospitalizations associated with COVID-19 vaccines are much higher than the numbers above.

12. In addition to the VAERS data, recent research suggests that COVID-19 vaccination leads to a general weakening of the body's immune system and the body's ability to repair DNA. More could be said about reports of myocarditis, coagulopathies, and other negative consequences associated with the COVID-19 vaccines. The bottom line is that all COVID-19 vaccines involve legitimate risk to the general health of recipients, and there is reason to believe the risk is much higher than popularly reported.

13. According to NAVADMIN 190/21, the COVID-19 vaccines are said to be the most effective defense against serious illness from COVID-19, and it is implied that the vaccines are an effective tool in reducing the spread of COVID-19. These claims are debatable. First, it must be said that the risk of COVID-19 infection among younger populations has been exaggerated. Among those between the ages of 18 and 49, the cumulative hospitalization rate for COVID-19 stands at around 0.46% according to CDC data. This low rate includes those with pre-existing conditions that make one vulnerable to more severe cases of COVID-19.

14. In addition to the overstated risk of COVID-19 to young and healthier populations, breakthrough infections and waning immunity are being reported among vaccinated populations. Emerging studies are also suggesting that natural immunity is just as effective if not more effective at preventing infection and hospitalization than vaccine-induced immunity. Finally, new antiviral drugs (Paxlovid) and existing antiviral drugs (Ivermectin) have proven to be effective at treating COVID-19 and preventing both hospitalizations and deaths. Considering the already low rates of COVID-19 hospitalizations among young and healthy populations, the

questionable efficacy of COVID-19 vaccines, and the emerging benefits of natural immunity and certain antiviral medications, the necessity of COVID-19 vaccination becomes questionable.

15. Based on the data and sources outlined above, and my current life situation, it is my personal conviction that the risks of COVID-19 vaccination far outweigh any potential benefits. If another person concludes that the benefits of vaccination outweigh the risk for them, then I would not judge that person for accepting vaccination. As for me, before God and my family, I cannot accept any of the COVID-19 vaccines in good faith.

16. As it currently stands, my RAR for exemption from the COVID-19 vaccine mandate has not been approved or denied by the U. S. Navy. However, I am anticipating that my RAR will be denied based on observable trends within the U. S. Navy and broader Department of Defense (DoD). I am under the impression that the current military COVID-19 policy is politically motivated, and I do not believe my religious convictions will be addressed seriously at the highest levels of the U. S. Navy or DoD.

17. Since I am in the Chaplain Candidate Program, I have not faced any immediate negative career consequences for my refusal to receive COVID-19 vaccination. However, during my time in Officer Development School (June to July 2021), before COVID-19 vaccines were even mandated, I did experience discrimination for being unvaccinated. For example, those of who were unvaccinated were subjected to COVID-19 testing when the vaccinated were not. Those of us who were unvaccinated were also required to wear masks during the entire course of training when the vaccinated were not. This policy was in place despite consistently testing negative for COVID-19 and having no off-base liberty for the entire ODS class. If the Navy believes that vaccination prevents the spread of COVID-19, it is not clear why those of us who were unvaccinated were required to wear masks during the entire course of training. We tested

negative for COVID-19 multiple times, had no off-base liberty, and were only exposed to other vaccinated servicemembers.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

April 14, 2022

A handwritten signature in cursive script that reads "Mathew B. Wronski".

Mathew B. Wronski

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CHAPLAIN (MAJ) JERRY B. YOUNG**

Pursuant to 28 U.S.C. §1746, I, Jerry Barton Young declare as follows:

1. My name is Jerry B. Young. I am 51 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED] My home of record is Texas according to my official military file, my driver's license and my voting registration.
4. I am an active duty chaplain in the United States Army serving at the rank of Major. I am currently assigned to the United States Army – Institute of Religious Leadership (USA-IRL), 10100 Lee Road, Fort Jackson, SC 29207. USA-IRL is formerly known as the US Army Chaplain Center and School.
5. I began my military service July 6, 2007 as a first lieutenant by direct commission to Active Duty Army. I swore my oath to office “to support and defend the Constitution of the United States” as administered by my grandfather, Herbert Bailey (Ret Lt. Col. AF), who served in World War II as a glider pilot, flying missions into Bastogne, Market Garden, and Germany. I began full-time active duty service on January 6, 2008 at the Chaplain Basic Officer Leadership.
6. My promotions were as follows: to the rank of Captain July 5, 2008 and to the rank of Major October 12, 2017. I have approximately 14.5 years of service as of April 24, 2022 toward active retirement and I am called to continue to serve as a chaplain in the US Army until mandatory retirement.

7 During my military career, I have served for a total of 83 months (~7 years) overseas. My overseas time includes: forward deployed in Iraq (12 months) 05/2009-05/2010; Germany (40 months) 12/2011-4/2015 (includes NATO orders to Turkey 2012); Belgium (31 months) 4/2014-11/2016.

8. I have received the following awards: Defense Meritorious Service Medal (1), Meritorious Service Medal (3), Army Commendation Medal (2), Army Achievement Medal (1), Meritorious Unit Commendation Medal (1), National Defense Service Medal, Iraq Campaign Service Medal (2), Global War on Terrorism Service Medal, Armed Forces Service Medal, Army Service Ribbon, and Overseas Service Ribbon (3), Basic Army Instructor Badge. I was selected for Advanced Civil Schooling in 2017 and in 2019 graduated *summa cum laude* with a Masters of Applied Science in Marriage and Family Therapy. I was selected for a nominative assignment at the US Army Institute of Religious Leadership (USA-IRL) as the Marriage and Family Life Instructor, Writer, Developer and Subject Matter Expert. Further, due to my Master's dissertation and research on Army suicide prevention and my expertise as an Applied Suicide Intervention Skills Training (ASIST) master-level T4T instructor since 2010 (Exhibit #1), I was selected to serve as the Suicide Prevention Officer for USA-IRL where I have led numerous initiatives from 2020 to present. My most recent officer evaluation on January 11, 2022 at the USA-IRL rates me most qualified and states "CH Young is a masterful instructor, unlimited potential, promote immediately to LTC." Over the past 14.5 years, I have an exceptional service record with no blemishes.

9. I submitted my Religious Accommodation Request (RAR) on October 27, 2021 (Exhibit #2, RAR) requesting accommodation from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follow:

a. I am a follower of Jesus Christ, born again since the age 13. Christ has provided me salvation and His own righteousness which daily invigorates my life with freedom and joy. My highest allegiance is to follow Christ and His commands. My highest goal is to live forever with Christ and receive his seven word senior rater report which says, "Well done, thou good and faithful servant!" I must follow Christ wherever he leads by faith. I must follow His clear commands and His leading in accordance with His Word. I have wrestled over the current vaccine mandate until my conscience is completely clear. I am 100% convicted by a clear word from God (Ephesians 1:17) that my material participation with the current COVAX would be an intentionally, sinful act of rebellion against my God. In this critical decision, I have studied the Scriptures thoughtfully, refused to rush to judgment, looked at both sides of the issue, prayed, fasted, and come to absolute clarity on God's will for me. When it comes to matters of faith and worship, God alone is the Lord of my conscience, and has left my believing conscience free of the "doctrines and commandments of men." Because God alone is Lord of my conscience, I alone will answer to God for all the decisions I make according to His good purposes (Romans 14:10-12, 2 Corinthians 5:10). No mortal man or representative group will stand with me on that day, only my Lord and Savior Jesus Christ, my Great High Priest and Advocate, who presented Himself as a just and righteous sacrifice in my place. If I reject Jesus Christ, His sacrifice and His leading, God help my soul, my family, and my future ministry. In summary, I cannot compromise in a manner which condemns my soul; this would be spiritual suicide (Mark 8:36).

b. It is sinful for me to willfully participate in the destruction of human life through the production and testing of vaccines from babies.

c. It is sinful for me to inject mRNA gene-therapy with spike proteins into my healthy body and God-designed immune system with natural COVID immunity (AR 40-562). I had COVID-19 December 2021 while on personal leave and easily recovered on quarantine within a

few days of therapeutics while not infecting anyone. Reference in Exhibit #35 my T-detect bloodwork on May 5, 2022 by Dr. Walter Smith verifying positive COVID-19 antibodies acquired from my December 2021 infection (AR 40-562). The CDC has no documented cases of an unvaccinated person with natural immunity infecting others with COVID (Exhibit #36) . Furthermore, I am in excellent physical health with a very strong immune system; I cannot recall missing one day the past 14.5 years in the Army due to illness.

d. It is sinful for me to willfully take a product which has not been tested for its effect on male fertility and may adversely affect my fertility.

e. It is sinful for me to dishonor God with my body, the temple of the Holy Spirit, by willfully injecting a medical therapy in my body which has numerous problematic facets.

f. It is sinful for me to dishonor God by disobeying His clear Word to me after 18 months of prayer, research and fasting regarding COVAX.

g. It is sinful for me to ignore the detrimental vaccine health effects on those within my own family after receiving vaccines in 2021: one deceased from a stomach ulcer; one experienced explosive cancer growth and life-threatening pulmonary embolism; another experienced severe pulmonary embolism. It is reckless and sinful for me to ignore my own doctors' advice on October 22, 2021 regarding the prevalence of myocarditis and pericarditis given my family's history of heart issues (Exhibit #3). All of my siblings have heart issues.

h. It would also be sinfully negligent and reckless for me to ignore these long term consequences above to my soul and body in light of the ongoing health issues I have from a series of six anthrax vaccines. Furthermore, I have a vaccine-injured child.

i. Additionally, the COVID-19 vaccine has not yet proven to be 100% safe, effective, nor without any potential harmful side effects, see <https://www.cdc.gov/vaccinesafety/ensuringsafety/sideeffects/index.html>

j. It is sinful for me, not only due to the personal problematic reasons stated above, but also it is sinful for me to receive a vaccine which I do not need in order to appease a newly established religious system which has framed COVAX therapy like a religious sacrament and moral imperative. Not only for myself, but for all due to my position, I must uphold the free exercise of religion in my *official capacity* as an US Army chaplain.

10. I have witnessed enormous havoc and moral injury from many who took the COVAX against their conscience under duress because of the coercive threats and manipulative methods of their chain of command which eviscerated their informed consent, their religion and all the Army values. Many of my chaplain peers caved under pressure because of threats to lose their esteemed positions, career, and accumulated military benefits. There has been a failure of mission command and loss of trust so large that many chaplains are planning their exit strategy now. This will severely impact readiness at a time in the Army when suicide is already at its highest since September 11, 2001, currently at 36.18 suicide deaths per 100,000 soldiers.<sup>1</sup>

11. The greater issue, however, is the demise of religious freedom. Without religious freedom, the chaplaincy could become irrelevant, our sacred US Constitution could lose its cornerstone, and our Army and nation could become ripe for attack. What makes America great is not our technology or vast resources, but our Constitution which has been dearly fought for, for the sake of our people and our freedoms.

12. My RAR was submitted on October 28, 2021 with strong recommendations for approval by both the interviewing chaplain (Exhibit #4) and company commander (Exhibit #5). I was informed on October 29, 2021 that the USA-IRL Commandant would meet with me after my packet had been reviewed. According to USA-IRL Policy, my RAR had to be routed to the Office of the Chief of Chaplains (OCCH) “to evaluate the religious basis and sincerity of the

request, and to ensure consistency and fairness across the force review” (Exhibit #6). This routing was unique to the chaplain schoolhouse. There is also a white paper by OCCH that requests that brigade level chaplains “forward accommodation packets for immunizations to OCCH for situational awareness,” although I learned from OCCH that this took place for USA-IRL but not for most RARs (Exhibit #7). Bottom line, all chaplain RARs were met with additional scrutiny at OCCH. I met with the Chaplain School Commandant on November 1, 2021 and was immediately met with a cheerful predetermined response, “You can always appeal.” The Commandant recommended disapproval on his first letter dated October 28, 2021 (Exhibit #8) which was identical to all the other disapproval letters he wrote for chaplains at USA-IRL (Exhibit #9). After six months of processing, the Commandant recommended disapproval a second time on a memo dated October 28, 2021 again which included new criteria and information such as “...if CH (MAJ) Young is *seriously* infected by COVID-19 it *could potentially* have an adverse impact on is (sic) ability to perform his duties and support the commander’s mission” (Exhibit #10). There is no basis for this hypothetical eugenic claim; in fact, it runs antithetical to my natural immunity (AR 40-562), my free exercise of religion, any evidence-based scientific support, and my past two years at USA-IRL and Fort Jackson amongst a largely vaccinated population. I requested an open door policy meeting regarding my RAR with the Fort Jackson Commanding General (CG) on November 23, 2021 and the Staff Judge Advocate, MAJ Felecia Grant, has said multiple times a meeting will occur prior to the CG making his recommendation on my RAR. As of May 1, 2022, five months later, I am still waiting for this meeting to occur.

13. I am not against vaccines as they have been historically defined (to protect people against a particular disease) provided they do not alter my God-given immune system with spike protein

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<sup>1</sup> <https://www.armytimes.com/news/your-army/2022/04/01/army-suicides-hit-new-post-911-peak-in-2021/Exhibit>

mRNA gene therapy or use fetal cells or damage my body. I certainly believe in the right treatment for the right disease, but it's never good when the cure is ethically problematic and worse than the disease itself. I was not previously aware of the ongoing connection between fetal tissue research from live babies and the vaccine industry. For this reason, I ensured that the flu vaccine which I took last year did not use fetal cells in the process. I believe pharmaceutical corporations should use animals for vaccine cell lines since God has given man dominion over animals (Genesis 1:26). My conscience is clear with the Flucelvax Quadrivalent (Influenza vaccine) which I received again this year which utilizes Madin Darby Canine Kidney (MDCK) cells. As a comparison, a total of 99 elective abortions were used by Merck to create the cell line for their rubella vaccine, whereas Kiasato in Japan ethically uses a rabbit cell line for its rubella vaccine. In fact, many vaccines have an ethical alternative which does not involve child sacrifice and ongoing fetal tissue research.

14. This revelation troubles me deeply, and I do not believe my conscience can be coerced to believe otherwise, for I cannot *unknow what I now know*. As 1<sup>st</sup> Corinthians 13:6 declares, "love...it does not rejoice at evil, but rejoices with the truth." I cannot bear the thought of participating in the ongoing torture of helpless living babies in labs by adults. The collaboration between abortionists and those wanting organs is actively in full force today and is especially sinister since vaccine producers do *not* have to use a fetal cell line in their production. After over 100 years of fetal tissue research at a cost of \$100 million per year of federal funds from NIH grants and others, no therapies have been discovered that required aborted fetal tissue. Even if a therapy was discovered that could not come another way, I cannot accept the means. I believe that vaccine manufacturers with current vaccines revenues approaching \$100 billion annually, have a civic duty under the Health and Human Services in the United States (which includes the FDA and NIH) to be transparent and fund vaccines free from child sacrifice. Even if the only

FDA approved, Comirnaty, truly existed today, I am disinclined to this vaccine for the religious reasons stated above.

15. As General George C. Marshall, chief of staff of the Army during World War II said in his 1941 speech at Trinity College, “The soldier’s heart, the soldier’s spirit, the soldier’s soul, are everything. Unless the soldier’s soul sustains him, he cannot be relied on and will fail himself and his commander and his country in the end.” Not only must I guard my conscience and soul from sin, but my explicit duty as a chaplain in the US Army is to guard the “free exercise of religion” for all (FM 1-05, January 2019; AR 165-1, June 2015). The government is not allowed to establish its own religion and coerce Soldiers into compromise and moral injury. This is an extremely dangerous road. As a spiritual scout, I exhort the military and civilian leaders to change course immediately.

16. I have experienced open religious persecution as described below:

a. By the continual order to provide proof of vaccination, which is also a violation of Health Insurance Portability Accountability Act (HIPAA).

b. I have been denied the use of gymnasiums, swim pools, auditoriums, and other social functions, such as outdoor tree lighting ceremonies.

c. I have had to report my status through the chain of command and be available for covid testing and masking.

d. I have been denied official travel to perform my job and have been restricted on unofficial travel. I have also been denied the presumption of natural immunity as established by AR 40-562.

17. Every Service Member’s RAR case is unique. Ironically, my three consecutive company commanders during my RAR process (all 42A MOS), CPT Lease, LT Snyder, and CPT Cerqueira have treated me with genuine dignity and respect. Regretfully though, my technical

chaplain chain of command (all 56A MOS) which affects my daily work environment, my reputation, evaluations, and future assignments has handled my RAR with prejudice. Since I work at USA-IRL, my entire chain of command is comprised of only chaplains. Though I should be treated no different due to my RAR, my technical chain of command and other senior chaplains have sought to convert me, intimidate, punish, reassign, threaten, belittle, discourage, dismiss, and bully me. Many have made themselves into mini-gods charged with investigating my faith and punishing me for not being a “team player.”

18. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine as a matter of faith, *i.e.*, for religious reasons, and requesting a religious accommodation request in violation of the Religious Freedom Restoration Act and Sec. 533 of the fiscal year (FY) 2013 National Defense Authorization Act (NDAA) as amended by Section 532 the FY 2014 NDAA, “(b) PROTECTION OF CHAPLAIN DECISIONS RELATING TO CONSCIENCE, MORAL PRINCIPLES, OR RELIGIOUS BELIEFS” (Exhibit #11).

a. I have received ongoing pressure personally and from the general command climate to compromise my faith from as early as January 22, 2021 when we were first required to provide a reason to our chain of command for why we decline to receive the voluntary EUA vaccine. I stated at that time by email to my chain of command, “I am waiting for a vaccine that does not utilize aborted baby cells” (Exhibit #12). The punishment for being unvaccinated increased from January 2021 to now in May 2022.

b. For several months I was required to wear a mask while others did not, both at work and at chapel, while preaching and providing liturgy. This made me a marked target. Even though I would have a RAR in process by Fall 2021, have natural immunity (AR 40-562), and have not had one sick day since reporting to USA-IRL, I was treated as unclean and less than. I

attended meetings masked up in rooms which were thick with Lysol. As recent as April 29 2022, I attended an individual meeting with a masked civilian educator in a 400 square foot room which smelled like an entire can of Lysol was just sprayed.

c. On August 20, 2021, USA-IRL held a formation wide personnel asset inventory (PAI) where everyone was required to indicate their vaccine status (Exhibit #13). Then on August 24, 2021, the Secretary of Defense by EXORD IAW HQDA FRAGO 5 directed the entire force to receive the EUA Pfizer-BioNTech vaccine after the Pfizer Comirnaty was approved by the FDA the day prior. I had already begun preparing my RAR with a level of assurance and benevolence. Then, on September 10, 2021 after a morning staff breakfast, I overheard the Commandant telling the Training Director (TD) that he would not endorse any exemptions for the covid vaccine, except perhaps in extremely rare circumstances, **but certainly not for Christian objections**. He referred to a time when he was the Fort Jackson Garrison Chaplain and how he approved RAs for distinctive faith groups, but how medical immunizations are absolutely required for readiness.

d. On the morning of September 20, 2021 at 1117, I received an order from the Commandant to get vaccinated at the Solomon center no later than 1530 or receive punitive counseling from him (Exhibit #14). In the afternoon of September 20, 2021, I was hurriedly escorted into the Chaplain Training Director's (TD) office for developmental counseling (Exhibit #15). The TD, a chaplain without command authority, raised his voice and ordered me to sign the development counseling stating that I was refusing a lawful order IAW FRAGO 46 to 2005001 OP Victory Phoenix 17SEPT to receive the covid vaccine. His tenor was tense and harassing. I replied that I intended to submit a religious accommodation. He said this was the wrong answer. He asked me louder if I was going to refuse a lawful order. I replied that I was unable to receive the vaccine due to my faith.

e. Though the completion date for beginning an RA or vaccination was December 15, 2021 IAW FRAGO 5 to HQDA EXORD 225-21, the post CG FRAGO 46 to 2005001 OP Victory Phoenix 17SEPT moved the suspense up six weeks, stating my RA packet had to *begin* by October 31, 2021. The DA Form 4856 from the TD further changed the suspense to require that my RA packet needed to be *complete* and submitted by October 31, 2021 or face UCMJ punitive action (Exhibit #17). Essentially, there were three different dates in the orders for submitting an RAR (FRAGO 5 to HQDA EXORD 225-21 indicated RAR NLT 12/15/2021; Fort Jackson FRAGO 46 said RAR begun NLT 10/31/2021; Unit DA 4856 states RAR complete NLT 10/31/2021). CH (LTC) Douglas Weaver, who was present, also noted the obvious discrepancies. After three requests to the TD, the discrepancy was never clarified nor was it clear what a complete packet entailed. Ultimately, I was rushed (Exhibit #17) to have my RAR complete by October 27, 2021 so it could be reviewed, as I was told, by senior chaplains at a senior leader conference with the Chief of Chaplains.

f. After FRAGO 47 on September 27, 2021, a tracker was sent out to leaders with all the names of the “refusers” and a timelines from refusal to GOMAR to separation (Exhibit #18). I was informed at this time that I could be dishonorably discharged, have to repay my Advance Civil Schooling (ACS), lose my GI Bill, loose 14.5 years toward pension and medical benefits, lose 2<sup>nd</sup> amendment rights, lose my right to claim disability and my right to receive separation pay. A few of these have since been retracted, but the pressure has not changed. My current Additional Service Obligation (ADSO) for ACS is through May 29, 2024 and my service obligation for the GI Bill is February 21, 2023 (Exhibit #19). My ORB in section X says, “Pending COVID-19 VACC Action.” This is a punitive flag on my official record brief for any favorable actions (assignment, evaluation, promotion, schooling, etc.).

g. I was publicly called out in mass emails by my chain of command several times in October 2021 as a “refuser.” One email on October 15, 2021 was sent while I was on the platform instructing about eighty students in which the Commandant directed that I be removed while instructing immediately “to comply with all refusal related administrative requirements” and to see a doctor at the Army clinic regarding my “refusal” (Exhibit #20). Clearly, I am not a “refuser,” but simply in process of obtaining a religious accommodation IAW Army regulations, the U.S. Constitution, and RFRA.

h. On October 7, 2021, our Chief of Chaplains addressed us in a townhall concerning the vaccines and implied that if you didn’t agree with the mandate, you can easily exit the military because it is an all-volunteer Army. He showed no consideration for the free exercise of religion, it was framed as “comply or get out.” By implication, he also conflated vaccine hesitancy with extremism, which he identified as the number one problem in the military. He said chaplains should be part of the healing, rather than part of the problem. I have heard from the OCCH that the Chief sees RARs among chaplains as problems and sought to move all chaplains with RARs to non-deploying units before this was squashed by legal. It was also said leaders lead, and by this I heard him say that leaders don’t have RARs. While speaking to students, the Chief of Chaplains said there are no boundaries to what chaplains should offer religiously, that endorsers agreed to this when they initially signed on, and if he continues to hear “excuses” for not performing, then there will be further discussion with their endorser as to why this is the case. While I enjoy serving in a pluralistic environment to “provide or perform” services in the free exercise of religion, the current push is actually promoting and forcing certain ideological and theological positions contrary to the Constitution’s Establishment Clause. Concerning the vaccines, the Office of the Chief of Chaplains said on November 15, 2021 that the new “free exercise of religion” actually takes place when the “chaplain interview memorandum includes a

well-written summary of the interview, a thorough, well-written assessment of the religious basis of the request, and a through, well-written assessment of the sincerity of the requester's belief" (Exhibit #21). In reality, the interview felt more like an invasive colonoscopy than "free exercise of religion," and I have experienced nothing but punishment since exercising my right to **not compromise** my sincerely held religious beliefs.

i. I was not allowed official travel to training pertinent to my official duties. I was not allowed travel to my annual endorser training for which I am required to maintain endorsement.

j. I was also prevented from attending the Family Life Annual Sustainment Training (FAST) which is key to my role as a writer, developer and instructor of Family Life curriculum.

k. My unofficial travel was restricted by mileage and purpose, and I required an interview with the commandant in order to travel to visit relatives with serious health issues.

l. Personal travel for personal leisure was prohibited while others were free to travel. My family felt increasingly isolated and segregated as time progressed.

m. The key religious leaders of USA-IRL were continually pronouncing the "pandemic of the unvaccinated." For example, a memo dated November 17, 2021 for the Chief of Chaplains circulated concerning the planning of the Chaplain Winter Formal which recommended "unvaccinated individuals should attend virtually" since a "negative test may represent a false negative" and "having unvaccinated individuals present increases the risk of transmission to everyone" (Exhibit #22). Ironically, even though FRAGO 12 limited gatherings to no more than 50 people, there were other gatherings that clearly exceeded 50 people.

n. Not only have I experienced discrimination but also my wife and our entire family. In December 2021, our family of six was prepared to attend the annual Christmas tree lighting outside at usual. Just a few hours before the ceremony, USAG Fort Jackson posted the Tree Lighting on Facebook, "UPDATED TREE LIGHTING ATTENDANCE REQUIRMENTS:

Attendees are required to be vaccinated to attend today's Fort Jackson community holiday tree lighting, Face masks are also required. #FortJackson #VictoryStartsHere #HappyHolidays." My family and I were demoralized and unwelcomed to join with the Army community (Exhibit #23). My wife of Jewish heritage was reminded of how her relatives were treated by the Nazis in the 1940's in Holland. She is particularly attuned to religious persecution.

o. Marian Turski, A Jewish-Polish Auschwitz survivor, recently spoke at the 75<sup>th</sup>

Anniversary of the Liberation of Auschwitz. Mr. Turski, said of Auschwitz:<sup>2</sup>

Of course, [Auschwitz] it didn't appear from nowhere.

One day in the early 1930s a sign suddenly appears on the park benches saying: "Jews are forbidden to sit on these benches." A bit later the sign appeared at the swimming pool: "Jews are forbidden to enter the swimming pool." And then the sign appears: "Bread and food products will only be sold to Jews after 5 p.m."

But be careful, be careful, we are already beginning to become accustomed to thinking, that you can *exclude someone, stigmatize someone, alienate someone*. And slowly, step by step, day by day, that's how people gradually become familiar with these things. Both the victims and the perpetrators and the witnesses, those we call bystanders, begin to become accustomed to the thoughts and ideas, that this minority that produced Einstein, Nelly Sachs, Heinrich Heine and the Mendelssohns is different, that they can be expelled from society, that they are foreign people, that they are **people who spread germs, diseases and epidemics**. That is terrible, and dangerous. That is the beginning of what can rapidly develop.

The rest follows in swift succession: the ban on employing Jews, travel prohibition. And this is quickly followed by deportation to ghettos...where they are murdered in trucks using the exhaust fumes, and the rest go to Auschwitz, where they are murdered in modern gas chambers, gassed by Zyklon B.

Don't be complacent, whenever any kind of minority is discriminated against. The essence of democracy lies in the rule of the majority. But democracy itself lies in the fact that the rights of minorities must be protected. Don't be complacent, whenever any government violates already existing, common social contracts. Remain faithful to the Eleventh Commandment: **Never be a bystander**. Because, if you become complacent, before you know it, **some kind of Auschwitz will suddenly appear from nowhere**, and befall you and your descendants.

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<sup>2</sup> <https://www.auschwitz.info/en/commemoration/commemoration-2020-75th-anniversary-of-the-liberation/2020-01-27-marian-turski-the-eleventh-commandment.html>

p. Other off limits locations included: Knight Pool (the only pool), gymnasiums, and different auditoriums. For example, Knight Pool is the only pool available on base for me to train for the swimming portion of the upcoming Army Combat Fitness Test (ACFT) which determines whether I am fit to stay in the military or not. The lifeguards were not required to be vaccinated nor wear masks, and so the discrimination was apparent against unvaccinated service members where there was no health threat of someone swimming in a chlorinated pool with one person per lane (Exhibit #24).

q. On the morning of October 20, 2021, a mass email was sent from the Deputy Commandant that commended with blessings those who were vaccinated and suggested compliance by October 31 to avoid unnecessary curses, i.e., “needless punitive action” (Exhibit #25).

r. I received a phone call from my supervisor during lunch on October 20, 2021 that the date for me to submit my RAR had moved up again to October 27, 2021, so that the Commandant could submit everything on October 31, 2021. Remarkably, the Commandant would take another five months to complete his RAR role of rubber stamping (exactly the same initial memo for all USA-IRL chaplain RARs, Exhibit #9) his memo recommending disapproval after my RAR was returned back from JAG due to legal insufficiency.

s. From the highest level of the branch, chaplains were coached and resourced from a pro-vaccine viewpoint on how to combat potential vaccine “refusers” and conduct in-depth interviews to verify that a RAR was not a ruse. Invasive interviews of Soldier’s individual faith expression with a “thorough, well-written assessment” of their sincerity was reframed by the branch as upholding the “free exercise of religion” (Exhibit #21). Many chaplains took this task to the extreme. My 90-minute chaplain interview was guided entirely by the branch RA scripted questionnaire specifically for COVAX (Exhibit #26) along with a coercion guide (Exhibit #27)

which required detailed information about my belief system and a circular line of vaccine questioning.

t. A FORSCOM white paper entitled, “Ethical Considerations Regarding the COVID-19 Vaccines” (Exhibit #28) which was a pro-vaccine apologetic from a particular Anglican and Roman Catholic perspective was widely disseminated prior to the chaplain rodeos in order to demolish potential theological arguments. Several leaders in my chain of command used their own such ethical arguments to proselytize me so I would let go of my faith.

u. Many in my chain of command pressured me to place my career over my conscience and one said he hated to see me take this path because I wouldn’t be here next year. Another said, “It is just two stem cells from a long time ago, what is the big deal?” And yet another in my chain of command said, “You are the one who has to explain why you took all the other vaccines but not this one.”

v. My chain of command told me my RAR would not make it past the commandant, and it would certainly result in failure, *i.e.*, expulsion from the military. Later, one would tell me it was not necessarily a set up for failure, but intended to achieve 100% compliance regardless. Truly, the stacked-up constitutional and equal opportunity violations against me are too numerous to remember them all. The environment has been anything but inclusive to those with a valid RAR pending.

w. There are many other examples for which I have witnesses, who, if subpoenaed will verify the veracity of my claims. Many chaplains admitted to me that they were religiously opposed to the vaccine but caved under the pressure knowing they would lose their nominative position and ultimately their career if they didn’t go along with the failed plan.

19. Especially since the August 2021, my chaplain chain of command has called me out publicly for being unvaccinated and all my resulting lack of privileges (restricted travel, masks,

subject to testing, counseling, evaluations, etc.). Many have vented their frustration with the pandemic on the unvaccinated, and my chain of command is weary of the reporting requirements. In multiple staff meetings, my chaplain supervisor said I cannot do certain things because I am not vaccinated. My supervisor often came and spoke to me about unvaccinated reporting requirements in our open air environment where everyone can hear. I told him that I was uncomfortable discussing my personal medical in public. He replied that my immunization status is not protected by HIPPA in the Army, because I am Army property. The implication through multiple words and emails is that I am not a team player and I am making unnecessary waves.

20. When I was completing my RAR packet, my supervisor initially said it would surely stop with the commandant's disapproval and that would be the end of the battle. As such, all of this has damaged my reputation, my credibility and my career. People have said to me and my wife, "Oh I heard you are leaving the Army." Many expect me to be separated by July 1, 2022 and my chain of command appears to be working in line with this timeline. Before I even met with my personnel manager on April 20, 2022, I received word that a female family life chaplain in Texas had been contacted by personnel three weeks prior to my meeting regarding replacing me, and she then called my colleagues inquiring about the situation. I have been in the Army nearly 15 years and I have never seen anything like this. Mental health in the force is at a low point, and ethical conduct appears to be even lower.

21. As the USA-IRL Suicide Prevention Officer, I am aware of how the Command and General Staff College (CGSC) Director, COL Scott Green, regularly went from classroom to classroom to intimidate CGSC students to "take the damn shot," and then how he took his own life on June 15, 2021, in his office at Fort Leavenworth. Evil actions done in the dark will always come home to roost because, apart from Divine intervention, we reap what we sow.

22. As President Biden said on April 27, 2022, “I think the greatest sin anyone can commit is the abuse of power.” Indeed, there can be a few key moments in an officer’s career where they know without a shadow of a doubt that something is clearly wrong, and the officer has a duty to exercise critical thinking and act with personal courage and integrity. One such time in history was December 17, 1944 in Malmedy, Belgium when German officers ordered the soldiers of Waffen-SS to execute 84 U.S. POW’s in a farmer’s field because they were a nuisance. Mass psychosis and group-think prevented anyone from challenging these unlawful orders. Likewise, military leaders have received little critical feedback in the way they have treated Soldiers with sincere RAR in process. I am certain the reprisals against those with RARs will continue without the court’s intervention.

23. I was also required to attend DEI (diversity, equity, and inclusion) training on February 23, 2022, in an auditorium with signs which read “Proof of Full Vaccination Required for Entry” (Exhibit #29). When I asked my chain of command for guidance, they had no comment, “no words” (1 Kings 18:21). Ironically, I was required by my chain command to instruct BOLC again in this same “vaccinated only” auditorium on February 15-16, 2022. On those days, I was instructing the students on the importance of chaplain identity and other sensitive topics such as suicide prevention, pastoral care to sexual assault and domestic violence victims, and yet I was treated like an “unclean” person who should have been wearing a yellow star on my chest.

24. In a recent meeting on April 12, 2022, the new Training Director (my senior rater) as of January 2022, said he was unaware that I had a RAR in process. This was very surprising to me given the weekly reporting requirement for command to track unvaccinated people and that I had an outstanding request to see the CG. He then said right in line with the Anglican white paper, “Well, you are the one who has to explain why you received all the other vaccines but not this one.” Speaking from his own theology and immunization experience, he also ignored the fact the

previous vaccines protect me from what I was being vaccinated against while the COVID-19 alleged vaccine does not. Ironically, I was aware that he contracted COVID immediately upon arriving at USA-IRL even though he was triple vaccinated. Like others in my chaplain chain of command, the vaccine is not truly about health, but about taking care of business, regardless of its moral or physical harm or effectiveness. The Chaplain O-5's are pressured by Chaplain O-6's to get the booster shot even though it is not required.

25. The Training Director made it clear that I was unlikely to receive a "cookie," meaning a good or "most qualified" officer evaluation. He said, "You should not be here," while qualifying that it was not my fault, and then asked me, "Where do you want to go next?" Though I was not slated to move until July 2023, I received a surprising email from the personnel manager two days later on April 14, 2022 that my move cycle was changing as well as the location for which he approved for me on September 7, 2021. It was apparent that personnel wanted to move me even though they knew that all Exception to Policy Requests (ETPs) for RAR service members are being denied (approximately 7000-9000 now). When I met with my personnel manager, he lifted up his hands and said, "I am just the middle man here." He told me the inability to obtain an approved ETP is a "Big Army" problem, not a personnel problem. I explained that is unethical for Army to require something that Army will not provide. The common refrain I hear from chain of command is, "We are just following orders," but it really goes further than that to actually leading the charge. The chief of chaplains says chaplains should lead the way (in the context of vaccination) in this new era which involves a complete transformation of thinking.

26. The commandant has openly voiced his disapproval toward incoming Chaplain Captain Career Course (C4) students with a RAR in process, saying, "We don't want them here." Indeed, all Chaplains with RARs have been prevented from attending in the Chaplain Basic Officer Leader Course (CHBOLC) in 2022. There is open and increasing religious discrimination in both

big Army and within USA-IRL against those who have a RAR. We are often labeled as extremist and viewed as the potential “insider threat” who may flip out and become an active shooter, as observed in our USA-IRL active shooter training on April 29, 2022 and other active trainings scenarios where the unvaccinated person is the potential insider to be viewed with great suspicion.

27. On September 2, 2021, USA-IRL hosted an Army doctor, MAJ Guido, as an expert preventative medicine physician to present vaccine into to the formation (Exhibit #30). The presentation exhorted all to be vaccinated and included strategies for promoting vaccination of junior Soldiers. We were told that there was no difference between the EUA Pfizer BioNTech and legally FDA-approved Pfizer Comirnaty and the medical informed consent was identical. We were told the efficacy for the EUA Pfizer BioNTech was over 95 percent. In his slide presentation, MAJ Guido told us to teach students that vaccination will “stop trainees from getting sick and being pulled out of training” and if they do somehow get sick, their symptoms “maybe even less severe than the common cold” (Exhibit #30, Slide 2 notes). He also said what was repeated many times by my chain of command, that “unvaccinated people are 5 times more likely to be infected with COVID-19 and 29 times more likely to be hospitalized for COVID-19 than vaccinated people” (Exhibit #30, Slide 3). There was no talk or evidence-based science presented about natural immunity, obesity and comorbidity or prevention and treatment. It was like the Institute of Religious Leadership just hosted a sales pitch from an questionable pharmaceutical sales representative. By October 2021, the Commandant reported that 12 out of 13 COVID cases in the school were vaccinated individuals.

28. If my Religious Accommodation is not approved, I will be forced to separate from the military service, likely under a general discharge. Historically, a general discharge was created, apart from a discharge package under AR 635-212, to easily rid itself of soldiers who show

patterns of indiscipline and resent authority. Since the DOD was prevented by the NDAA from using dishonorable discharges for a soldier merely having a denied RAR, the DOD has implemented honorable or general discharges with negative re-entry coding RE-3 or RE-4 (RE-1 is no issues; RE-2 is some issue like overweight but can be waived by recruiting command; RE-3 requires high command to waive because something bad was done; RE-4 is a straight up no for re-entry due to felonies). Additionally, many also have negative comments that say "MISCONDUCT – SERIOUS OFFENSE." All service members who have already been separated with this general discharge have additional coding on their DD 214 which bars them from ever reenlisting in the military again, as well as ever working for the federal government. The code also prevents one from receiving unemployment benefits. The code is extreme prejudice which essential equates the service member to one who committed a felony such as murderer or rape. Service members with such general discharges also have their Tricare insurance immediately terminated instead of receiving the usual 90 days extra. My GI Bill benefits would also be lost. I might also be required to pay back the Family Life ACS which the Army required of me and updated my ADSO through May 29, 2024.

29. With this negative code on my discharge paperwork, I will have a difficult time finding employment to provide for my family of six, including four young children. The negativity surrounding the discharge will mar my reputation. A general discharge would also have a detrimental effect on my ability to work as a Texas-licensed Marriage and Family Therapist. Negative coding on my discharge would hound me for life and make employment and provision for my family extremely difficult.

30. The effects of this discharge would have a life-long impact on my family. I am almost 52 years old now with four children ages 6, 5, 3, and 1. It is impossible for me to replace the last 14.5 years which I have invested in the Army chaplaincy. I would be forced out of the military

with no pension, no medical, and no means to provide for my family, including my children's educational expenses. The irony of this can't be missed, as one who is charged with defending the Constitution with my very life as an officer, defending the free exercise of religion for all in the Army's pluralistic environment as a chaplain, upholding the 'Hippocratic code" and informed consent in my clinical counseling, thinking critically, and living by the Army values.

31. It is also nonsensical and wasteful for the military to force me out considering my 14.5 years of extensive experience and the highly specialized training I have in Marriage and Family Therapy and working as both the Family Life Instructor at the Chaplain Institute for Religious Leadership and Suicide Prevention Officer. Mental health, suicide, domestic violence, and sexual assault are at historic highs in the Army and yet the DOD is ready to flush the hundreds of thousands of tax payer money invested in me. I am specifically trained and experienced in assisting service members with life-altering trauma as well as those with suicidal ideations. A new chaplain, assuming they can be recruited after the Army's disgraceful conduct of punishing people of faith for living what they believe, would take years to acquire my experience. I have invested much study and research in the suicide epidemic currently ravaging our military and I am devoted to doing my utmost to help curtail and prevent it. The suicide problem in the military is a real pandemic today. We are losing more to suicide in the Army today because of the rapidly declining mental, spiritual, and social health than we ever will lose of healthy people to a flu virus with a 99.9% survival rate. My clinical supervisor, Chaplain (COL) Steven Moser, the former director of the Fort Hood Chaplain Family Life Training Center, said in his letter dated September 2, 2021, Chaplain (MAJ) Jerry Young "has shown himself to be a valuable asset to the Corps and Soldiers and their families" (Exhibit #31). Chaplain (COL) Moser was my counseling clinical supervisor for the last four years (2018-2022).

32. Not only am I a master Applied Suicide Intervention and Skills Trainer (ASIST) for 14 years, but I have made it my chaplain calling to train up as many chaplains as possible to combat the growing suicide problem (Exhibit #32) which is at a high point of 176 confirmed Army suicides in 2021 (this is a 45 Soldier or 23% increase from the 3 year average prior to the pandemic). I have personally trained over 800 chaplains in the past two years in suicide prevention using Joiner's Interpersonal Theory of Suicide (IPTS) and other evidence-based models. I have not missed one day of instruction or work at USA-IRL since reporting January 10, 2020. I pray that my religious accommodation will be granted so that I may continue serving in the Chaplain Corps with my unique skillset, experience, and training.

33. I would also point out the insanity of the Army's false position about no reasonable alternatives to throwing me out and harming itself. First, their argument is that I'm a threat or potential COVID carrier to those who are vaccinated while at the same time they're arguing that the vaccinated are a threat to me. That's absurd but true because the vaccine does not protect those who have taken it nor prevent them from becoming COVID transmitters; protection of the force can't be a valid compelling government purpose under the circumstances because the vaccines do not provide protection.

Second, if I were to get COVID a second time (which is rare), I would lose at most 5 to 10 days of time at work (which has never happened to me in 14.5 years), but then I would be back at work. On its face, that scenario shows that it's a much more reasonable alternative than throwing me out the service because the Army has not lost a dedicated chaplain with 14.5 years of experience in highly specialized training in areas for which the Army has great need.

34. Attached as Exhibit #33 is a copy of Congress's specific direction to the Department of Defense in FY 2016 addressing the importance of chaplains and their protection as representatives of their denomination.

The committee expects that commanders will ensure a chaplain's right to religious expression and to provide religious exercise and guidance that accurately represent the chaplain's faith are protected, respected, and unencumbered by any means contrary to section 533 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239) as amended by section 532 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66).

35. That same directive language also addresses the need for greater and more thorough training for chaplains in the area of suicide prevention, my specialty.

The committee also notes the results of a RAND Corporation survey of Army chaplains published on April 7, 2015 which concluded that 44 percent of chaplains and 57 percent of chaplain assistants believe they need more training in suicide prevention treatment. No later than 180 days after the enactment of this Act, the Department of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives a report on shortfalls in suicide prevention training for the chaplain corps in each service branch and a strategy to address these shortfalls.

36. At Exhibit #34, is Congress's FY 2018 NDA directive language to the Armed Forces reminding them of "the importance of protecting the rights of conscience of members of the Armed Forces" which is quoted below.

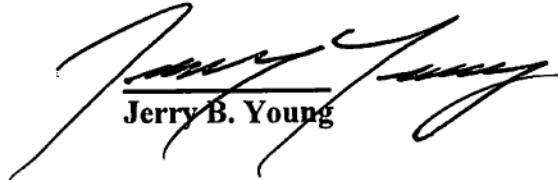
The committee continues to recognize the importance of protecting the rights of conscience of members of the Armed Forces, consistent with the maintenance of good order and discipline. The Congress has expressed this view in title 42, United States Code, section 2000bb, et seq. [RFRA] and in section 533 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239) as amended by section 532 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66). Complying with this law requires an intentional strategy for developing and implementing a comprehensive training program on religious liberty issues for military leadership and commanders. The committee urges the Department, in consultation with commanders, chaplains, and judge advocates, to ensure that appropriate training on religious liberty is conducted at all levels of command on the requirements of the law, and to that end the committee directs the Secretary, in consultation with the Chief of Chaplains for the Army, Navy, and Air Force, to develop curriculum and implement training concerning religious liberty in accordance with the law. Recipients of this training should include commanders, chaplains, and judge advocates.

Despite the clear command, neither DOD nor any Service has developed an "intentional strategy for developing and implementing a comprehensive training program on religious liberty issues for military leadership and commanders." Neither have they "develop[ed] curriculum and implement training concerning religious liberty in accordance with the law" nor appropriate

training on religious liberty at all levels. This is not happening at the Chaplain School and the religious retaliation documented above shows open contempt for both the law and Congress's instructions.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

May 5, 2022



**Jerry B. Young**



## DoD INSTRUCTION 1300.17

### RELIGIOUS LIBERTY IN THE MILITARY SERVICES

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<b>Originating Component:</b>	Office of the Under Secretary of Defense for Personnel and Readiness
<b>Effective:</b>	September 1, 2020
<b>Releasability:</b>	Cleared for public release. Available on the Directives Division Website at <a href="https://www.esd.whs.mil/DD/">https://www.esd.whs.mil/DD/</a> .
<b>Reissues and Cancels:</b>	DoD Instruction 1300.17, "Accommodation of Religious Practices Within the Military Services," February 10, 2009, as amended
<b>Incorporates and Cancels:</b>	Assistant Secretary of Defense for Force Management Policy Memorandum, "Sacramental Use of Peyote by Native American Service Members," April 25, 1997
<b>Approved by:</b>	Matthew P. Donovan, Under Secretary of Defense for Personnel and Readiness

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**Purpose:** In accordance with the authority in DoD Directive 5124.02, this issuance:

- Establishes DoD policy in furtherance of the Free Exercise Clause of the First Amendment to the Constitution of the United States, recognizing that Service members have the right to observe the tenets of their religion, or to observe no religion at all.
- Establishes policy, assigns responsibilities, and provides procedures for the accommodation of religious practices of Service members.
- Establishes DoD policy on the accommodation of individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs), which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety.
- Establishes DoD policy providing that an expression of sincerely held beliefs (conscience, moral principles, or religious beliefs) may not, in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.
- Implements requirements in Section 2000bb-1 of Title 42, United States Code (U.S.C), also known as "The Religious Freedom Restoration Act" (RFRA), and other laws applicable to the accommodation

*DoDI 1300.17, September 1, 2020*

of religious practices for DoD to provide, in accordance with the RFRA, that DoD Components will normally accommodate practices of a Service member based on a sincerely held religious belief.

- Requires DoD Components to oversee the development and provision of education and training on the policies and procedures pertaining to the accommodation of religious practices of Service members to commanders, judge advocates, chaplains, recruiters, and other personnel as deemed appropriate by the Military Department or Military Service concerned.

## TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION ..... 4

    1.1. Applicability. .... 4

    1.2. Policy. .... 4

SECTION 2: RESPONSIBILITIES ..... 6

    2.1. Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA))..... 6

    2.2. DoD Component Heads Other than the Secretaries of the Military Departments..... 6

    2.3. Secretaries of the Military Departments. .... 6

SECTION 3: PROCESSING ACCOMMODATION REQUESTS ..... 9

    3.1. Accommodation Requests. .... 9

    3.2. Review of and Action on Requests for the Accommodation of Religious Practices..... 9

        a. Adjudication Authority. .... 9

        b. Delegation. .... 9

        c. Review and Action Timelines..... 10

        d. Factors for Consideration..... 10

        e. Notice of Resolution. .... 11

        f. Administrative Appeal Process. .... 11

        g. Accommodation Duration and Proposals to Rescind a Granted Accommodation. .... 11

        h. Accommodation Modification or Suspense Under Exigent Circumstances..... 12

        i. Pre-accession Procedures..... 13

    3.3. Required Principles and Rules for Military Regulations and Policies..... 14

    3.4. Additional Guidance Regarding the Use of Peyote. .... 15

GLOSSARY ..... 17

    G.1. Acronyms. .... 17

    G.2. Definitions..... 17

REFERENCES ..... 19

TABLES

Table 1. Review and Action Timeline for Processing Accommodation Requests ..... 10

*DoDI 1300.17, September 1, 2020*

## SECTION 1: GENERAL ISSUANCE INFORMATION

### 1.1. APPLICABILITY.

a. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. The definitions, policies, procedures, and assignments of responsibility prescribed in this issuance apply only to the accommodation of religious practices of Service members and in no other context.

### 1.2. POLICY.

a. Pursuant to the Free Exercise Clause of the First Amendment to the United States Constitution, Service members have the right to observe the tenets of their religion or to observe no religion at all, as provided in this issuance.

b. In accordance with Section 533(a)(1) of Public Law 112-239, as amended, the DoD Components will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety. A Service member’s expression of such beliefs may not, in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

c. In accordance with Section 533(b) of Public Law 112-239, as implemented by DoD Instruction 1304.28, no Service member may require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain, nor may any Service member discriminate or take any adverse personnel action on the basis of the refusal by the chaplain to comply with such requirements. This does not preclude disciplinary or administrative action for conduct by a Service member that is proscribed by Chapter 47 of Title 10, U.S.C. (the Uniform Code of Military Justice), including actions and speech that threaten good order and discipline.

d. Requests for religious accommodation will be analyzed under the standard in Paragraph 1.2.e. of this issuance using the process in Section 3 of this issuance. Accommodation of practices reflecting a Service member’s sincerely held conscience or moral principles will be governed by the policies of the DoD Component concerned.

e. DoD Components have a compelling governmental interest in mission accomplishment at the individual, unit, and organizational levels, including such necessary elements of mission accomplishment as military readiness, unit cohesion, good order and discipline, and health and safety. In accordance with RFRA and the guidance in this issuance, DoD Components will normally accommodate practices of a Service member based on sincerely held religious belief.

*DoDI 1300.17, September 1, 2020*

Accommodation includes excusing a Service member from an otherwise applicable military policy, practice, or duty. In accordance with RFRA, if such a military policy, practice or duty substantially burdens a Service member's exercise of religion, accommodation can only be denied if:

(1) The military policy, practice, or duty is in furtherance of a compelling governmental interest.

(2) It is the least restrictive means of furthering that compelling governmental interest.

In applying the standard in Paragraphs 1.2.e.(1) and 1.2.e.(2), the burden of proof is placed upon the DoD Component, not the individual requesting the exemption.

f. Requests for the accommodation of religious practices will be reviewed and acted on as soon as possible, in accordance with this issuance and any DoD Component implementing guidance.

g. In accordance with provisions in Paragraphs 1.2.e and 1.2.f of this issuance, immediate commanders may resolve requests for accommodation of religious practices that do not require a waiver of DoD Component policies regarding the wearing of military uniforms, the wearing of religious apparel, or Service grooming, appearance, or body art standards.

*DoDI 1300.17, September 1, 2020*

## **SECTION 2: RESPONSIBILITIES**

### **2.1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS (ASD(M&RA)).**

Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, the ASD(M&RA):

a. Is responsible for the administration of this issuance and for oversight of the implementation of the policies and procedures it establishes. Issues guidance to the DoD Components, as necessary, concerning the accommodation of religious practices and the implementation of the policies in this issuance.

b. Acts on Military Department requests regarding limitations on the use, possession, or transportation of peyote cactus for religious practices, in addition to those already listed in Paragraph 3.4. of this issuance, in accordance with Paragraph 3.4.a.(4) of this issuance.

### **2.2. DOD COMPONENT HEADS OTHER THAN THE SECRETARIES OF THE MILITARY DEPARTMENTS.**

The DoD Component heads other than the Secretaries of the Military Departments:

a. Ensure that requests for the accommodation of religious practices are processed or forwarded for review and action in accordance with this issuance and the implementing regulations and policies of the Military Department and Military Service to which the Service member belongs.

b. Establish component regulations and policies to address the Service member's sincerely held conscience or moral principles in accordance with Paragraph 1.2.d. of this issuance.

### **2.3. SECRETARIES OF THE MILITARY DEPARTMENTS.**

The Secretaries of the Military Departments:

a. Adhere to all provisions of this issuance.

b. Administer their respective programs and update existing regulations and policies, or develop and distribute new guidance, as appropriate, to implement the provisions of this issuance. Implementing issuances will, consistent with this issuance:

(1) Establish controls to ensure compliance with established procedures and processing timelines applicable to accommodation requests.

(2) Designate appropriate agency officials to review and act on the following:

*DoDI 1300.17, September 1, 2020*

(a) Requests for the accommodation of religious practices.

(b) Requests for an exemption to an otherwise applicable Military Department or Military Service policy in support of the requesting Service member's exercise of religion or furtherance of religious practices, including, but not limited to, requests pertaining to:

1. Religious apparel, including religious body art.

2. Grooming.

3. Medical practices, including DNA (deoxyribonucleic acid) specimen sampling and immunizations.

(c) Requests from a Service member's command to rescind a previously granted accommodation.

(3) Ensure, to the greatest extent practical, the consistent application of the policies and procedures prescribed by this issuance to similarly situated requests for the accommodation of religious practices throughout their respective Military Departments.

(4) Develop and implement a standards-based approach to the review of, and final action on, requests for the accommodation of religious practices to promote predictable outcomes for the same or similar requests. Such standards will be evidence-based and address commonly requested accommodations. The Military Departments and Military Services will issue or update applicable regulations and policies to authorize officers or officials at the lowest appropriate level of command or supervision to review and take final action on requests for accommodations covered by such standards, in accordance with this issuance. The absence of a standards-based approach to a requested accommodation will not, standing alone, serve as the basis for denying the request. Such a standards-based approach may include:

(a) A list of accommodations of religious practices that may, in ordinary circumstances, be granted to a member serving in a particular military occupational specialty, rating, specialty code, or duty assignment.

(b) Specific guidance on factors to be considered in making individual determinations with regard to a commonly requested or other accommodation of religious practices. Such factors may include those enumerated in Paragraph 3.2.d. of this issuance.

(c). Provide information about the policies and procedures governing the accommodation of religious practices and religious expression to prospective Service members, in accordance with Paragraph 3.2.i. of this issuance.

(d) Request, as appropriate, approval from the ASD(M&RA) regarding limitations on the use, possession, or transportation of peyote cactus for religious practices, in addition to those already listed in Paragraph 3.4. of this issuance, in accordance with Paragraph 3.4.a.(4) of this issuance.

*DoDI 1300.17, September 1, 2020*

(5) Oversee the development and provision of education and training on the policies and procedures pertaining to the accommodation of religious practices of Service members to:

- (a) Commanders.
- (b) Judge advocates.
- (c) Chaplains.
- (d) Recruiters.
- (e) Other personnel as deemed appropriate by the Military Department or Military Service concerned.

*DoDI 1300.17, September 1, 2020*

## **SECTION 3: PROCESSING ACCOMMODATION REQUESTS**

### **3.1. ACCOMMODATION REQUESTS.**

a. Service members submitting a request for accommodation will continue to comply with the policy, practice, or duty from which an accommodation has been requested unless and until informed that the request has been approved by the appropriate authority. Exceptions to this requirement may only be granted in exceptional circumstances, in accordance with the implementing regulations and policies promulgated by the Military Department and Military Service concerned.

b. Requests for accommodation submitted by a cadet or midshipman enrolled at a Military Service Academy or in a Senior Reserve Officers' Training Corps program will be addressed in accordance with this issuance and the implementing regulations and policies promulgated by the Military Department and Military Service concerned.

c. Nothing in this issuance precludes disciplinary or administrative action for conduct by a Service member that is prohibited by Chapter 47 of Title 10, U.S.C., also known as "The Uniform Code of Military Justice."

### **3.2. REVIEW OF AND ACTION ON REQUESTS FOR THE ACCOMMODATION OF RELIGIOUS PRACTICES.**

#### **a. Adjudication Authority.**

Requests for the accommodation of religious practices that can be approved consistent with Military Department and Military Service regulations or policies, (e.g., current uniform and grooming standards) will be reviewed and acted on at the lowest appropriate level of command or supervision, as provided in the regulations and policies of the Military Department and Military Service concerned and in accordance with this issuance. Requests for the accommodation of religious practices that require the waiver of otherwise applicable Military Department and Military Service regulations and policies will be forwarded to the Secretary of the Military Department concerned. Records concerning requests for accommodations will be maintained in accordance with DoD Instruction 5400.11.

#### **b. Delegation.**

The Secretary of a Military Department may delegate, in writing, the authority to act on requests for the accommodation of religious practices that require the waiver of otherwise applicable Military Department and Military Service regulations and policies only as described in Paragraph 3.2.b.(1) through 3.2.b.(3).

##### **(1) Department of the Army.**

Delegation may be no lower than the Deputy Chief of Staff, G-1.

DoDI 1300.17, September 1, 2020

## (2) Department of the Navy.

Delegation may be no lower than the Chief of Naval Personnel, or the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs, as appropriate.

## (3) Department of the Air Force.

Delegation may be no lower than the Air Force Deputy Chief of Staff for Manpower, Personnel, and Services, or the Deputy Chief of Space Operations for Personnel and Logistics Services, as appropriate.

**c. Review and Action Timelines.**

Requests for the accommodation of religious practices will be reviewed and acted on as soon as practicable, and no later than the timelines provided in Table 1. Exceptions to this review and action timeline may be granted only in exceptional circumstances, as determined by the regulations and policies of the Military Department and Military Service concerned.

**Table 1. Review and Action Timeline for Processing Accommodation Requests**

Action to be Taken	For Requests Within the United States	For Requests Outside the United States or for Reserve Component Service Members Not on Active Duty
<b>Action on Requests for Religious Accommodation that Can Be Approved Consistent with Existing Military Department or Military Service Regulations or Policies</b>		
Review and final action completed and written notification to requesting Service member provided	No later than 30 business days from Service member submission	No later than 60 days from Service member submission
<b>Action on Requests for Religious Accommodation that Require the Waiver of Otherwise Applicable Military Department or Military Service Regulations or Policies</b>		
Written request for accommodation received by the Office of the Secretary concerned <sup>1</sup>	No later than 30 days from Service member submission to commander or supervisor	No later than 60 days from Service member submission to commander or supervisor
Review and final action completed and written notification to requesting Service member provided	No later than 60 days from receipt by the Office of the Secretary concerned. <sup>1</sup> Must be provided to the Service member within 5 days of final action	
1. Unless authority is delegated to a subordinate official in accordance with Paragraph 3.2.b of this issuance.		

**d. Factors for Consideration.**

Officials charged with making recommendations or taking final action on a Service member's request for the accommodation of religious practices will review each request

*DoDI 1300.17, September 1, 2020*

individually, considering the full range of facts and circumstances relevant to the specific request. Factors to consider include:

(1) The compelling governmental interest in mission accomplishment, including military readiness, unit cohesion, good order and discipline, or health and safety.

(2) Alternate means available to address the requested accommodation. The means that is least restrictive to the requestor's religious practice and that does not impede a compelling governmental interest will be determinative.

#### **e. Notice of Resolution.**

A Service member will be promptly informed of the approval or disapproval of his or her request for accommodation in accordance with Table 1.

(1) A Service member's request for the accommodation of religious practices may be granted in whole or in part. The Service member will be informed in writing of any conditions or limitations placed on the grant that are necessary to meet the DoD's compelling governmental interest in mission accomplishment, such as, for example, conditions related to:

(a) Deployment;

(b) Health and safety issues relative to particular assignments or types of assignments; or

(c) Training events or ceremonial occasions that require a Service member to conform to military standards to protect health and safety, or maintain good order and discipline.

(2) A Service member whose request is granted in part will be informed, in writing, of the specific elements of that approval.

#### **f. Administrative Appeal Process.**

The regulations and policies of a Military Department or Military Service implementing this issuance will provide a process for Service members to appeal the denial of a request for accommodation of religious practices, or any condition on such accommodation. Appeals will be sent to an official in the chain of command or chain of supervision above the officer or official who took final action on the request. No further administrative appeal will be available for a decision made by the Secretary of the Military Department.

#### **g. Accommodation Duration and Proposals to Rescind a Granted Accommodation.**

An approved request for accommodation will remain in effect during follow-on duties, assignments, or locations, and for the duration of a Service member's military career, including after promotions, reenlistment or commissioning, unless and until rescinded in accordance with the requirements of this issuance.

*DoDI 1300.17, September 1, 2020*

(1) In accordance with this issuance and the implementing policies and regulations of the Military Department and Military Service concerned, an approved accommodation may be subject to review and rescission, in whole or in part, at any time, based upon a determination that the circumstances under which the grant of accommodation was approved have changed (e.g., deployment, new duties, or other material change in circumstances). The Military Department or Military Service concerned—not the individual Service member—bears the burden of initiating a proposal to review and rescind an accommodation previously granted.

(2) When a Military Department or Military Service initiates a proposal to review and rescind an accommodation previously granted, an appropriate officer or official will forward a written summary of the nature of the materially changed circumstances that require such review and repeal to the Service member concerned for comment.

(a) The Service member will be:

1. Allotted no fewer than 10 days to review and comment on the proposed rescission of the accommodation.

2. Afforded the opportunity to review and comment on any endorsements of this proposal from the chain of command.

3. Afforded, subject to security classification requirements, the opportunity to review and comment on any documents or attachments to the proposal or subsequent endorsements.

(b) Any comments submitted by the Service member will be forwarded for consideration by the appropriate official authorized to act on the matter, in accordance with this issuance.

(3) A proposal to review and rescind a previously approved accommodation must be acted on at a level of authority no lower than that at which the accommodation was granted, in accordance with this issuance and the regulations and policies of the Military Department and Military Service concerned implementing this issuance. The standard for repealing a previously granted accommodation, in whole or in part, is the same as the standard for denying a request for the accommodation of religious practices in the first place, and the same factors must be considered, as appropriate.

#### **h. Accommodation Modification or Suspense Under Exigent Circumstances.**

Under exigent circumstances and in furtherance of a compelling governmental interest due to operational necessity, when time is of the essence and no less restrictive means of religious accommodation are available, a commander at a level determined by the Military Department or Military Service concerned may temporarily modify or suspend accommodations granted, upon notice to the Service member concerned and without benefit of appeal. The level of this commander must be no lower than the officer exercising Summary Court-Martial Convening Authority over a Service member who has previously been granted an accommodation of religious practices.

*DoDI 1300.17, September 1, 2020*

(1) To the extent practicable, the commander concerned, if not a general officer or flag officer, or member of the senior executive service, will notify, in advance, the first general officer or flag officer, or member of the senior executive service, as appropriate, in the affected Service member's chain of command or supervision, of the commander's intent to modify or suspend a previously granted accommodation. When such advance notice is not practicable, the commander concerned will notify the appropriate general officer or flag officer, or member of the senior executive service, as appropriate, as soon as circumstances permit.

(2) The Service member concerned may be required to immediately comply with the modification or suspension of an accommodation, if circumstances so warrant.

(3) The modification or suspension of the accommodation will apply for only the minimum period required by the circumstances.

#### **i. Pre-accession Procedures.**

(1) Applicants to the Military Services will be informed of the policies and procedures for the accommodation of religious practices in accordance with this issuance, and as implemented by the Military Department or Military Service concerned. These applicants include individuals who apply for:

- (a) A commissioning program;
- (b) A warrant officer program;
- (c) Enlistment or entry in the Military Services;
- (d) Reenlistment (or reentry) in the Military Services;
- (e) Enrollment in a Military Service Academy or a Senior Reserve Officers' Training Corps program (including Military Service Academy preparatory schools); or
- (f) The award of a scholarship or other benefit that requires a commitment to serve as a Service member.

(2) The Military Departments and Military Services will develop processes for the review and action on pre-accession requests for the accommodation of religious practices and establish those processes in appropriate regulations and policies. Such processes must provide applicants the opportunity to submit a request for accommodation of religious practices, and receive a final decision on that request, before participation in the commissioning program, warrant officer program, enlistment, reenlistment, enrollment in a Military Service Academy or a Senior Reserve Officers' Training Corps program, or award of such scholarship or benefit. The review and processing of such requests must be consistent with this issuance.

*DoDI 1300.17, September 1, 2020*

### **3.3. REQUIRED PRINCIPLES AND RULES FOR MILITARY REGULATIONS AND POLICIES.**

DoD Component regulations and policies must include the following principles and rules:

a. Worship practices, holy days, and Sabbath or similar religious observance requests will be accommodated to the extent possible, consistent with mission accomplishment and will normally not require a religious accommodation request.

b. A Service member's religious practices will be considered in acting on a request for separate rations. Accommodation requests for separate rations may be adjudicated at the command level.

c. A Service member's religious practices will be considered in acting on a request for exemption from required medical practices. Action on a request for medical exemption must be consistent with mission accomplishment, including consideration of potential medical risks to other persons comprising the unit or organization.

d. The following rules govern the wear of items of religious apparel:

(1) In accordance with Section 774 of Title 10, U.S.C., Service members may wear items of religious apparel while in uniform, except in circumstances in which wearing the item would interfere with the performance of the member's military duties or the item of apparel is not neat and conservative. The Military Departments and Military Services will prescribe regulations governing the wear of such items. Factors that may be considered in determining whether an item of religious apparel interferes with military duties include, but are not limited to, whether the item:

(a) Impairs the safe and effective operation of weapons, military equipment, or machinery.

(b) Poses a health or safety hazard to the Service member wearing the religious apparel or to others.

(c) Interferes with the wear or proper function of special or protective clothing or equipment (e.g., helmets, protective masks, wet suits).

(d) Otherwise impairs mission accomplishment.

(2) Religious items or articles not visible or apparent may be worn with the uniform, provided they do not interfere with the performance of the Service member's military duties, as described in Paragraph 3.3.d.(1) of this issuance, and do not interfere with the proper wear of any authorized article of the uniform.

(3) Under regulations and policies of the Military Department and Military Service concerned, religious headgear may be worn with the uniform whenever a military cap, hat, or other headgear is not prescribed. Religious headgear may also be worn underneath prescribed

*DoDI 1300.17, September 1, 2020*

military headgear, provided it does not interfere with the proper wear, function, or appearance of the headgear, as described in Paragraph 3.2.d.(1).

(4) Notwithstanding any other provision in this issuance, while conducting worship services and during the performance of rites and rituals associated with his or her religious faith, a chaplain may wear with the military uniform any required religious apparel or accouterments associated with the traditions or practices of his or her religious faith.

(5) In evaluating requests for the accommodation of religious practices related to body art, these factors will be among those considered:

- (a) Whether the body art is neat and conservative.
- (b) The location of the body art, including whether the body art is visible when the Service member is wearing the military uniform.

### **3.4. ADDITIONAL GUIDANCE REGARDING THE USE OF PEYOTE.**

a. There are additional rules governing the use of peyote in religious practices. In accordance with Section 1996a of Title 42, U.S.C. (also known as the “American Indian Religious Freedom Act Amendments of 1994”), Service members who are members of Indian tribes as defined in that statute may use, possess, or transport the peyote cactus as a religious sacrament in connection with the bona fide practice of a traditional Indian religion, and will not be penalized or discriminated against on the basis of such use, possession, or transportation. Reasonable limitations on the use, possession, transportation, or distribution of peyote may be imposed to promote military readiness, promote safety, or comply with international law or laws of other countries. The Secretaries of the Military Departments will prescribe regulations authorizing the use, possession, or transportation of peyote cactus and imposing limitations on such use, possession, or transportation including, but not limited to, the following:

- (1) Peyote will not be used on duty or within 24 hours before scheduled military duty.
- (2) Peyote may be possessed in amulet form, not for ingestion, and such an amulet may be worn as an item of religious apparel subject to Military Service uniform regulations. Otherwise, peyote will not be used, possessed, distributed, or introduced aboard military vehicles, vessels, or aircraft or, except when permitted by the installation commander, on military installations.
- (3) A Service member who has used peyote will promptly notify their commander upon return to duty after such use.
  - (a) The Secretary of the Military Department concerned may require pre-use notification by Service members performing designated duties when it is in the interest of military readiness or safety to notify commanders of a Service member’s intent to use peyote.

*DoDI 1300.17, September 1, 2020*

(b) Upon notification of use or intended use of peyote, the Service member will provide documentation verifying membership in an Indian tribe as defined by Section 1996a(c)(2) of Title 42, U.S.C.

(4) The establishment by the Secretary of a Military Department of limitations on the use, possession, or transportation of peyote cactus, in addition to those already listed in Paragraph 3.4. of this issuance, must be consistent with RFRA, the Free Exercise Clause of the First Amendment to the Constitution of the United States, any other applicable statutes such as the American Indian Religious Freedom Act Amendments of 1994, and this issuance. Any such additional limitations must be approved, in advance, by the ASD(M&RA). Before approving any additional limitation proposed by the Secretary of a Military Department, the ASD(M&RA) will consult with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice, pursuant to Section 1996a(b)(7) of Title 42, U.S.C.

b. Requests by Service members for the accommodation of a religious practice involving the use, possession, or transportation of any substance other than peyote, the use, possession, transportation, manufacturing, or distribution of which is prohibited by law or policy, will be forwarded to the Secretary of the Military Department concerned for resolution. Before taking final action on any such accommodation request, the Secretary of the Military Department concerned will notify the ASD(M&RA).

*DoDI 1300.17, September 1, 2020*

## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
RFRA	Religious Freedom Restoration Act
U.S.C.	United States Code

### G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
<b>compelling government interest</b>	In the DoD, a military requirement that is essential to accomplishment of the military mission. In accordance with Paragraph 1.2.e. of this issuance, DoD Components have a compelling governmental interest in mission accomplishment at the individual, unit, and organizational levels, including such necessary elements of mission accomplishment as military readiness, unit cohesion, good order and discipline, and health and safety.
<b>neat and conservative</b>	In the context of the wear of a military uniform, items of religious apparel that: <ul style="list-style-type: none"> <li style="margin-left: 40px;">Are discreet, tidy, and not dissonant or showy in style, size, design, brightness, or color.</li> <li style="margin-left: 40px;">Do not replace or interfere with the proper wear of any authorized article of the uniform.</li> <li style="margin-left: 40px;">Are not temporarily or permanently affixed or appended to any authorized article of the uniform.</li> </ul>
<b>pre-accession</b>	The period of time before a prospective Service member's participation in a commissioning program, warrant officer program, enlistment (or entry), reenlistment (or reentry), or enrollment in a Military Service Academy or a Senior Reserve Officers' Training Corps program.

*DoDI 1300.17, September 1, 2020*

<b>TERM</b>	<b>DEFINITION</b>
<b>religious apparel</b>	Articles of clothing, jewelry or other such accoutrements the wearing of which is part of the observance of the religious faith practiced by the Service member.
<b>religious body art</b>	Temporary or permanent tattoos, piercings through the skin or body parts, or other modifications to the body that are a part of a Service member's religious practice.
<b>religious practice</b>	An action, behavior, or course of conduct constituting individual expressions of religious beliefs, whether or not compelled by, or central to, the religion concerned.
<b>substantial burden</b>	<p>A governmental act is a substantial burden to a Service member's exercise of religion if it:</p> <ul style="list-style-type: none"><li>Requires participation in an activity prohibited by a sincerely held religious belief;</li><li>Prevents participation in conduct motivated by a sincerely held religious belief; or</li><li>Places substantial pressure on a Service member to engage in conduct contrary to a sincerely held religious belief.</li></ul>

*DoDI 1300.17, September 1, 2020*

## REFERENCES

- DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- DoD Instruction 1304.28, “Guidance for the Appointment of Chaplains for the Military Departments,” June 11, 2004, as amended
- DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019
- Section 533 of Public Law 112-239, the “National Defense Authorization Act for Fiscal Year 2013,” December 18, 2012, as amended
- United States Code, Title 10
- United States Code, Title 42
- United States Constitution

**DECLARATION OF COLONEL KEVIN J. MAHONEY**

I, Colonel Kevin J. Mahoney, hereby state and declare as follows:

1. I am currently employed by the U.S. Army as the Chief, G-33 Operations Division, Office of The Army Surgeon General (OTSG) and U.S. Army Medical Command (MEDCOM), located in Falls Church, Virginia. I have held this position since June 14, 2021. As part of my official duties, I am a senior medical plans and operations officer on the Army staff, representing The Surgeon General (TSG) to the Army operations staff for medical aspects of Army missions. In this capacity I assist in developing the Army plans to implement directives related to COVID-19 and vaccination efforts. I am part of a team that facilitates the processing, evaluation, and adjudication of requests for exemptions from vaccination requirements for reasons of religious accommodation as well as for medical reasons. I consolidate current status of requests received for processing and keep Army senior leaders informed.

2. This declaration is based on my personal knowledge, as well as knowledge made available to me during the routine execution of my official duties. Attached to this declaration are authentic copies of relevant military regulations, instructions, and directives, referenced throughout.

**Mandatory Coronavirus Disease 2019 (COVID-19) Vaccination**

3. On August 24, 2021, the Secretary of Defense issued a directive ordering the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under Department of Defense (DoD) authority on active duty or in the Ready Reserve, including the National Guard (Secretary of Defense Memorandum,

“Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members,” dated August 24, 2021) (“the directive”).

4. Under the directive, Service members are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine series (e.g., Moderna or Pfizer-BioNTech (COMIRNATY<sup>®</sup>) vaccines) or two weeks after receiving a single-dose COVID-19 vaccine (e.g., Johnson & Johnson/Janssen vaccine). Those Service members with a history of previous COVID-19 infection are not exempt from the full vaccination requirement.

5. In accordance with the directive, mandatory vaccination against COVID-19 will only use vaccines that received full licensure from the U.S. Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance. However, Service Members who are voluntarily vaccinated by another vaccine that has been granted either FDA Emergency Use Authorization (EUA) or World Health Organization (WHO) Emergency Use Listing (EUL) are considered fully vaccinated for the purposes of the mandate. The directive authorizes the Military Departments to promulgate appropriate guidance to execute the stated objectives. It further directs that mandatory vaccination requirements will be implemented consistent with DoD Instruction (DoDI) 6205.02, “DoD Immunization Program,” dated July 23, 2019. Finally, the directive states that Military Departments should use existing policies and procedures to manage the mandatory vaccination of Service members to the extent practicable, and that mandatory vaccination of Service members will be subject to any identified contraindications, as well as any administrative or other exemptions established in Military Department policy.

**Army Policy Gives Commanders Authority to Immunize Soldiers**

6. The Military Vaccination Program and associated Army immunization programs, which include the processes and procedures by which vaccines and vaccinations are managed, as well as those by which vaccines are administered and exemption requests are reviewed and adjudicated, are implemented in accordance with several DoD, Defense Health Agency (DHA), Multi-Service, and Army Instructions, Regulations, and other publications. In particular, Army Regulation (AR) 600-20, “Army Command Policy,” dated July 24, 2020, authorizes Commanders to administer immunizations to Soldiers required by the Multi-Service Regulation (AR 40–562, BUMEDINST 6230.15B, AFI 48–110\_IP, CG COMDTINST M6230.4G), “Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases,” dated October 7, 2013, or “other legal directive,” unless Soldiers are medically or administratively exempted from the immunization requirements. AR 600-20, paragraph 5-4.g.(2) reads that Commanders will continually educate Soldiers “concerning the intent and rationale behind both routine and theater-specific or threat-specific military immunization requirements.” Furthermore, “The intent of this authorization is to protect the health and overall effectiveness of the command, as well as the health and medical readiness of the individual Soldier.”

7. On September 14, 2021, the U.S. Army implemented the Secretary of Defense’s August 24, 2021 directive by way of Fragmentary Order 5 (FRAGO 5) to Headquarters Department of the Army (HQDA) Execution Order (EXORD) 225-21, “COVID-19 Steady State Operations.”<sup>1</sup> Per FRAGO 5, paragraph 3.D.8.B.4., involuntary (i.e., forcible) COVID-19 immunization is prohibited.

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<sup>1</sup> The Army has since published FRAGOs 6-27, which include various additions and modifications to FRAGO 5. Although none of those orders alter the substantive requirements of the provisions of FRAGO 5 cited throughout this declaration, FRAGOs 6-26 are attached to this

**Army Implementation Order for Mandatory COVID-19 Vaccination**

8. Pursuant to FRAGO 5, per paragraph 3.B.3., every Soldier who is not otherwise exempt will be fully vaccinated against COVID-19 to ensure Soldiers and units are ready to fight and win. As the order makes clear in paragraph 3.B.3., “[t]his is a readiness, health, and welfare priority for the total Army.” Paragraph 3.B.3 further reads that because the Secretary of Defense has issued a lawful order, “the Army has a responsibility to ensure good order and discipline.”

9. Per FRAGO 5, paragraph 3.B.3.A.1., the Army is executing the mandatory COVID-19 vaccination order in two phases: phase 1 began immediately upon the publication of FRAGO 5, and phase 2 began on February 3, 2022. In accordance with paragraph 3.D.8., the Army will conduct mandatory COVID-19 vaccination operations of unvaccinated Soldiers with the FDA-approved vaccine, and continue voluntary vaccination with other vaccines authorized for emergency use. Per paragraph 3.D.8.B.1., Commanders will vaccinate all Soldiers who are not otherwise exempt. Soldiers requesting an exemption are not required to receive the vaccine pending the final decision on their exemption request. Likewise, paragraph 3.D.8.B.1.F. notes Commanders will not take adverse action against Soldiers with pending exemption requests. Finally, per paragraph 3.D.8.B.4., there will be no involuntary (i.e., forcible) immunizations.

10. FRAGO 5 paragraph 3.D.8.B.5. provides that if a Soldier declines immunization, the Commander will counsel the Soldier in writing, then direct the Soldier to view a mandatory educational video on the benefits of the vaccine. Following the mandatory video, the Soldier’s

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declaration for completeness. To the extent that FRAGOs 6-26 include notable procedural changes, they are cited accordingly below. Any reference to a “FRAGO” herein refers to a Fragmentary Order to HQDA EXORD 225-21.

Commander “will order the Soldier to comply with the order to receive the vaccine.” Paragraph 3.D.8.B.5.A. reads that if the Soldier declines again, the immediate Commander will direct the Soldier to meet with a medical professional (i.e., physician, physician assistant, or nurse practitioner) to further discuss the benefits of vaccination and address the Soldier’s concerns. The Soldier’s Commander will then order the Soldier again to receive the vaccine. If the Soldier declines immunization again, the Commander will consult with their servicing legal advisor.

**Army Procedures Allow Soldiers to Seek Immunization Exemptions**

11. Soldiers may request exemptions from immunizations. There are two types of exemptions: medical and administrative. FRAGO 5, paragraph 3.D.8.B.6.A. reads that for medical exemptions, healthcare providers will determine a medical exemption based on the health of the vaccine candidate and the nature of the immunization under consideration. Per the Multi-Service Regulation (AR 40–562, BUMEDINST 6230.15B, AFI 48–110\_IP, CG COMDTINST M6230.4G), paragraph 2-6a, medical exemptions may be temporary (up to 365 days) or permanent. Per paragraphs 2-6a(1)(a)-(c) of this same regulation, general examples of medical exemptions include (1) the underlying health condition of the vaccine candidate (e.g., based on immune competence, pharmacologic or radiation therapy, pregnancy and/or previous adverse response to immunization), (2) evidence of immunity based on serologic tests, documented infection, or similar circumstances, and (3) if an individual’s clinical case is not readily definable.

12. Exemptions are not presumptive in nature, but rather are granted after review of an individual’s circumstances and the nature of the request on a case-by-case basis. For example, as stated in FRAGO 5 paragraph 3.D.8.B.6, Soldiers with previous infections or positive

serology are not automatically exempt from full vaccination requirements and should consult with their healthcare provider. To date, the Army does not consider previous infections or positive serology a basis for exemption from the COVID-19 vaccine.

13. Per FRAGO 5, paragraph 3.D.8.B.6.A., for all medical exemptions, Soldiers should consult with their healthcare provider. If the provider indicates a temporary exemption is valid, he or she will approve it. If, on the other hand, no temporary exemption is identified, the provider will disapprove the request and administer the vaccine if the Soldier agrees to voluntarily receive it. If the Soldier declines to be vaccinated by the healthcare provider, the Soldier will be referred back to his or her Commander for further action. Appropriate exemption codes indicating temporary or permanent reasons for medical exemption are to be annotated in the individual's Service-specific Immunization Tracking System. Any adverse events following receipt of a vaccine are to be reported to the Department of Health and Human Services' Vaccine Adverse Event Reporting System (VAERS). Medical exemption codes are to be revoked if they are no longer clinically warranted.

14. As stated in FRAGO 5, paragraph 3.D.8.B.6.A.1. and 3.D.8.B.6.A.2., the approval authority for permanent medical exemptions is the TSG. TSG has delegated this authority to Regional Health Command-Commanding Generals (RHC-CG), with no further delegation authorized. All requests for permanent medical exemptions must be staffed to the RHC-CG with the healthcare provider's recommendation either to approve or deny the permanent exemption. If the RHC-CG disapproves a permanent medical exemption, the Soldier can appeal to TSG, who is the final appeal authority. If TSG disapproves the permanent medical exemption and the Soldier still refuses vaccination, the Commander will consult with his or her legal advisor.

15. The provisions of FRAGOs 5, 6, and 9 also address the procedures for Soldiers to submit requests for religious exemptions. Most notably, FRAGO 6, paragraph 3.D.8.B.6.B. implements the procedures outlined in Appendix P-2b of AR 600-20, which describes the requirements for processing requests for religious exemptions from immunizations. In particular, Soldiers who believe their religious practices conflict with immunization requirements may request an exemption through command channels, which is then processed from their company, or immediate Commander, through their battalion, brigade, division, and General Court-Martial Convening Authority Commanders (typically a General Officer) to TSG. Intermediate Commanders may provide recommendations about whether to approve or deny, but they are not permitted to approve or deny requests for religious exemptions from immunizations. Exemption requests are submitted in memorandum format. AR 600-20, Appendix P-2b(1) notes exemption requests must include the Soldier's name, rank, military occupational specialty, and a description of the religious tenet or belief that is contrary to the immunization. Other documentation, such as a letter from a religious leader, is optional, but may assist Commanders in evaluating the request.

16. Per AR 600-20, Appendix P-2b(2), once such a request is submitted, the Commander will arrange for an in-person or telephonic interview between the Soldier and the assigned unit chaplain. The chaplain must provide a memorandum that summarizes the interview and addresses the religious basis and sincerity of the Soldier's request. The chaplain is not required to recommend approval or disapproval, but may do so. Memoranda from other chaplains or religious leaders may accompany the request as optional attachments, but do not meet the requirement for interview by the assigned unit chaplain.

17. Additionally, when a religious exemption request is submitted, a licensed healthcare provider must counsel the Soldier to ensure that he or she is making an informed decision. Pursuant to AR 600-20, Appendix P-2b(3), the healthcare provider should address, at a minimum, specific information about the disease concerned; specific vaccine information, including the benefits and risks of vaccination; and the potential risks of infection that may be incurred by unimmunized individuals. AR 600-20, Appendix P-2b(4) notes that likewise, the Soldier's Commander must counsel the Soldier and recommend approval or denial of the exemption request. The Commander must also counsel the Soldier that noncompliance with immunization requirements may adversely impact deployability, assignment, or domestic and international travel,<sup>2</sup> and that the exemption may be revoked under imminent risk conditions.

18. FRAGO 6, paragraph 3.D.8.B.6.B, notes TSG is the only approval or disapproval authority for religious immunization exemption requests and the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA (M&RA)) is the final appeal authority. Per FRAGO 9, paragraph 3.D.8.B.6.B.2., exemption requests are routed through the chain of command to TSG for decision. The Commander, through the General Court-Martial Convening Authority, must review the request and recommend approval or denial to TSG, and must address the factors of military necessity. A legal review must also accompany the request to TSG. Upon completion, the packet must be uploaded into the Army's system of record for tracking such requests to TSG. FRAGO 5, paragraph 3.D.8.B.6.C. states that as with medical exemption requests, Soldiers with pending requests for religious immunization exemptions are temporarily deferred from immunization, pending the disposition of their request or any appeal

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<sup>2</sup> Under FRAGO 6, government funded official travel by Soldiers is limited to *mission critical* travel. The determination of whether travel is mission critical has been delegated by the Secretary to the Undersecretary of the Army and is not further delegable.

of a denied request. That is to say, the Army will not take any adverse action against a Soldier who has an exemption request pending or on appeal.

19. As for the criteria by which religious exemption requests are resolved, AR 600-20 sets forth the Army's policy. As stated in paragraph 5-6a of that Regulation, "The Army places a high value on the rights of its Soldiers to observe tenets of their respective religions or to observe no religion at all; while protecting the civil liberties of its personnel to the greatest extent possible, consistent with its military requirements." Thus, pursuant to federal law and Department of Defense Instruction (DoDI) 1300.17, "Religious Liberty in the Military Services," dated September 1, 2020, requests for religious accommodations from a military policy, practice, or duty that substantially burdens a Soldier's exercise of religion may be denied only when the government action furthers a compelling government interest and is the least restrictive means of furthering that compelling government interest. Per AR 600-20, paragraph 5-6a(2), it is the Soldier's responsibility to demonstrate he or she has a sincerely held religious belief and that the government policy, practice, or duty substantially burdens their religious exercise. As it relates to the religious exemption process described above, that may be accomplished through the Soldier's request and the chaplain's interview.

20. If the Soldier demonstrates a sincerely held religious belief and a substantial burden on his or her religious exercise, then the Army will only require COVID-19 vaccination if the Commander or other official demonstrates how the government action furthers a compelling government interest and is the least restrictive means of furthering that interest. As reflected in AR 600-20, paragraph 5-6a(4), a religious exercise includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief. Likewise, compelling governmental interests may include safety, health, good order, discipline, uniformity, national

security, and mission accomplishment. All requests for religious exemptions must be assessed on a case-by-case basis. Likewise, each request must be considered based on its unique facts, the nature of the requested religious exemption, the effect of approval or denial on the Soldier's exercise of religion, and the effect of approval or denial on military necessity. Per AR 600-20, Appendix P-2b(5), TSG will approve or disapprove each religious exemption request and return the decision to the Soldier's Commander through command channels, at which point the Soldier may appeal to the ASA (M&RA) for a final decision. As with the exemption request itself, the chaplain's review, and the chain of command's recommendations, all decisions by TSG and the ASA (M&RA) are memorialized in memorandum format, not specific forms.

21. The authorities described above are also set forth in Army Directive 2021-33, "Approval and Appeal Authorities for Military Medical and Administrative Immunization Exemptions" dated September 24, 2021. In addition, FRAGO 5 (Annex XX) contains a depiction of the exemption process described above, as well as sample counseling statements (Annexes NN and OO) for Commanders to use if a Soldier initially declines immunization. FRAGO 5, paragraphs 3.D.8.B.1. and 3.D.8.B.4. again note that Soldiers requesting an exemption are not required to receive the COVID-19 vaccine pending the final decision on their exemption request and that involuntary (i.e., forcible) immunizations are prohibited.

22. To date, TSG has approved 16 requests for religious accommodation to receiving the COVID-19 vaccine. ASA M&RA has approved 3 appeals of TSG's denial decisions. Each of these actions is addressed on an individual basis and no uniform policy of presumptive approval or denial exists.

**Adverse Administrative Actions Will Be Taken Against Soldiers Who Refuse Full Vaccination and Have No Exemption, Pending Exemption Request, or Appeal**

23. As described above, the Army has provided Soldiers the opportunity to seek medical and administrative, to include religious, exemptions from the requirement to be vaccinated. However, for those who do not seek an exemption or who have their exemption requests denied and still refuse to be immunized, the Army has outlined an approach for the administration of adverse actions in furtherance of the maintenance of good order and discipline and the health of the force, which will be considered and adjudicated on a case-by-case basis.<sup>3</sup> After following the steps in paragraph 10 above, if a Soldier refuses vaccination and does not have a pending medical or administrative exemption request, commanders must carry out certain administrative steps based on the Soldier's refusal to comply with a lawful order. Each of these steps can be lengthy, and all are accompanied by significant administrative due process.

24. Under FRAGO 5, paragraph 3.D.8.B.1.D., commanders must request that a General Officer Memorandum of Reprimand (GOMOR) be initiated for all Soldiers not pending a final decision regarding an exemption request for refusing vaccination. The processes and procedures for issuing a GOMOR are governed by Army Regulation (AR) 600-37, "Unfavorable Information," dated October 2, 2020. When a General Officer notifies a Soldier of a GOMOR, that Soldier is provided an opportunity to respond to the information in the reprimand. Once the Soldier has been afforded an opportunity to respond, the issuing General Officer will then decide whether to file the GOMOR in the Soldier's permanent file, held within Army Military Human Resources Records (AMHRR), or whether to file it temporarily in the Soldier's "local" file to be destroyed upon the Soldier's departure from their current command.

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<sup>3</sup> To Include National Guard and Reserve Soldier's after the National Guard and Reserve Component mandatory vaccination deadline of 30 June 2022.

25. After a filing decision is made, the Soldier may appeal a decision to file a GOMOR in their AMHRR, or request to transfer it to the restricted portion of his or her personnel file. Appeals are presented to the Department of the Army Suitability Evaluation Board (DASEB), which has the authority to revise, alter, or remove the unfavorable information if it is determined to be untrue or unjust. AR 600-37 ¶¶ 6-2, 6-3, 7-1, 7-7. Further, a Soldier may appeal an adverse DASEB decision to the Army Board for Correction of Military Records (ABCMR). Chapter 2 of AR 15-185, “Army Board for Correction of Military Records,” dated March 31, 2006, contains the policy and procedures for applying to the ABCMR for the purpose of correcting military records. Pursuant to 10 U.S.C. §1552, and per AR 15-185, paragraph 2-2a., the ABCMR may correct Department of the Army records, including GOMORs, in order to remove an error or injustice. This includes the authority to remove a GOMOR entirely from a Soldier’s records, which would eliminate future consideration of the removed record by promotion or other selection boards.

26. In addition to a reprimand, under FRAGO 22 paragraph 3.B.7., commanders must initiate separation or disenrollment proceedings for Active Soldiers, as well as National Guard or Reserve Soldiers serving for more than thirty days on Active Duty pursuant to Title 10 of the U.S. Code, U.S. Military Academy Cadets, and Senior Reserve Officer’s Training Corps (SROTC) Cadets who refuse the lawful order to vaccinate and do not have an approved or pending exemption request. Under Army Directive 2022-02, “Personnel Actions for Active Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals” dated January 31, 2022, the characterization of service for Soldiers separated for refusing the lawful order to be vaccinated will be no less than an Honorable or General (under honorable conditions) characterization of service.

27. Separation of enlisted Soldiers is governed by AR 635-200, “Active Duty Enlisted Administrative Separations,” dated June 28, 2021. Enlisted Administrative Separation begins when the Soldier is formally notified in writing of the intent to separate them. Those Soldiers with less than six years of total active and reserve service are afforded the opportunity to consult with military counsel, to submit statements on their own behalf, and to obtain copies of the information that will be sent to the separation authority supporting the proposed separation. Soldiers with more than six years of total active and reserve service are afforded the additional protection of the option to have their separation adjudicated by an Administrative Separation Board.

28. If the Soldier elects an Administrative Separation board, the Soldier’s command must then notify them of the time and place of the hearing at least 15 days prior to its commencement. The Soldier may submit requests for additional delays, which will be granted if warranted to ensure a full and fair hearing. Soldiers being considered for separation are entitled to representation by counsel and are afforded an opportunity to submit evidence and arguments on their own behalf, request witnesses, examine witnesses who testify before the board, and challenge evidence offered against them. Of note, expert medical testimony routinely may be presented in the form of affidavits, however, if the Soldier desires to present such evidence, he is entitled to have the witnesses appear in person if they are reasonably available. At the conclusion of the board proceedings, the board members make a recommendation to the appropriate approval authority as to whether separation is warranted. If separation is recommended, the approval authority may accept the board’s recommendation and separate the Soldier, or they may elect to retain the Soldier despite the board’s recommendation to the contrary. If the board does not recommend separation, the separation

authority is bound by this decision. If a board recommends separation for a Soldier who has completed more than 18 years of active military service, that recommendation must be forwarded through the Commander of U.S. Army Human Resources Command to the Secretary of the Army, or their designee, for decision on whether the Soldier will be separated.

29. Separation of officers is governed by Army Regulation 600-8-24, “Officer Transfers and Discharges,” dated February 8, 2020. Army Officers are “permitted to serve in the Army because of the special trust and confidence the President and the nation have placed [in their attributes] . . . [and are] expected to display responsibility commensurate to this special trust and confidence. However, an officer who will not or cannot maintain those standards will be separated.” AR 600-8-24, 4-1.

30. Commissioned officers on the Active Duty List with less than 6 years active commissioned service; commissioned Reserve officers with less than 6 years commissioned service; and warrant officers who have less than 3 years’ service since original appointment in their present component are probationary officers and are afforded the following rights prior to any elimination: Notification by the General Officer Show Cause Authority (GOSCA) of the reasons supporting elimination and factual allegations supporting them; their right to tender a resignation in lieu of elimination or to apply for retirement if eligible; their right to consult with counsel; and their right to rebut the reasons for elimination to the GOSCA in writing within thirty calendar days. If the GOSCA finds that elimination is not warranted, they may close the case and retain the officer. If the GOSCA finds elimination is warranted, they will forward the action to the Deputy Assistant Secretary of the Army (Review Boards) (DASA (RB)) who, acting for the Secretary of the Army, may direct retention, discharge, or referral to a Board of Inquiry.

31. Non-probationary officers on the active duty list are afforded the additional procedural due process of a Board of Inquiry (BOI) to determine whether their facts and circumstances warrant elimination. The BOI is made up of three officers senior in rank to the officer pending elimination. The BOI's purpose is to give officers a fair and impartial hearing determining if the officer will be retained in the Army. The BOI affords the officer the right to be represented by appointed military counsel (or civilian counsel at his own expense), to examine the government's evidence against them, to present evidence to the board rebutting or mitigating the allegations against them—including raising religious freedom defenses or otherwise contesting any conclusions by the ASA (M&RA) regarding a religious exemption request—to cross-examine the government's witnesses, to call witnesses on their own behalf, and to testify before the board if they so choose.

32. At the conclusion of the BOI, the board's findings and recommendations are sent to the GOSCA. If the board recommends retention, the GOSCA closes the case without further action and the officer returns to duty. If, on the other hand, the BOI recommends elimination, the GOSCA makes their own recommendation to retain or eliminate the officer to the final approval authority, the DASA (RB).

33. Ultimately, Army officers processed for involuntary separation retain extensive administrative due process rights throughout the proceedings. In addition to the rights described above, an officer may appeal adverse BOI decisions to the Army Board for Correction of Military Records (ABCMR). Pursuant to 10 U.S.C. § 1552, and Army Regulation 15-185, Army Board for Correction of Military Records, 2-2a (Mar. 31, 2006), the ABCMR may correct Army records in order to remove an error or injustice. This includes the authority to remove an involuntary separation action entirely from an officer's records.

34. The Secretary of the Army has withheld the authority to impose any non-judicial or judicial actions based solely on vaccine refusal. Put another way, only the Secretary may punish a Soldier through a Court Martial, or through non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for refusal to be vaccinated against COVID-19.

35. To date, the Army has not issued guidance on Administrative Actions for members of the National Guard and Reserve Component who refuse mandatory COVID-19 vaccination. However, pursuant to the Secretary of Defense's memorandum of November 30, 2021, "Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve," implemented by the Army in FRAGOs 13 and 26, there will be no DoD funding for pay for National Guard and Reserve Soldiers who do not comply with the vaccination requirement by 1 July 2022 and who do not have a pending or approved exemption request. Further, those National Guard and Reserve Soldiers will not be allowed to participate in drills, training, or other duty conducted in a Title 10 or Title 32 U.S. Code status. As with the Active Component, any National Guard or Reserve Soldier with a pending or approved Religious Accommodation or Medical Exemption are not affected by this policy and will be allowed to serve as they had prior to the vaccine mandate. Further, these policies do not apply to members of the National Guard serving in a purely State Active Duty status performing State military service.

36. I am aware that this declaration may be filed in multiple cases for the purpose of defending the Secretary of Defense's directive to vaccinate Service members against COVID-19.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11 July, 2022, in Falls Church, Virginia

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 Date: 2022.07.11 15:41:38  
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 Kevin J. Mahoney  
 Colonel, Medical Service Corps,  
 Plans and Operations Officer,  
 U.S. Army Medical Command,  
 Falls Church, Virginia

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE MIDDLE DISTRICT OF FLORIDA**  
**TAMPA DIVISION**

**ISRAEL ALVARADO, et al.**

Plaintiffs,

v.

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

Defendants.

Case No. 8:22-cv-01149-WFJ-CPT

**DECLARATION OF WILLIAM MERZ**

I, William Merz, hereby state and declare as follows:

1. I am a Vice Admiral in the United States Navy, currently serving as the Deputy Chief of Naval Operations, Operations, Plans and Strategy (“OPNAV N3/N5”), located in Arlington, Virginia at the Pentagon. I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. I have been assigned to my current position since August 6, 2021. Prior to my current assignment, I served as Commander, U.S. SEVENTH Fleet, the Deputy Chief of Naval Operations for Warfighting Requirements, the Director, Undersea Warfare Division, and Commander, Naval Mine & Anti-Submarine Warfare Command. I graduated from the U.S. Naval Academy in 1986, and earned master’s degrees from Catholic University and the Naval War College. As part of my duties currently, I am responsible for serving as the principal

advisor to the Chief of Naval Operations<sup>1</sup> (“CNO”) on operational matters, strategy, policy, and plans; international politico-military matters; and, the current operational status of naval forces. As part of my responsibility for the current operational status of naval forces, CNO delegated responsibility to me for the Navy’s COVID-19 policies. Those responsibilities include tracking the number of COVID-19 cases across the Navy, implementing Secretary of the Navy COVID-19 plans and policies, planning for and ensuring the appropriate initial distribution of COVID-19 vaccines, coordinating across the Navy and with the other services on COVID-19 plans and policy, and providing input to the Secretary of the Navy on proposed COVID-19 plans and policy.

3. On August 24, 2021, the Secretary of Defense directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve. The Secretary of the Navy directed implementation of the Secretary of Defense’s COVID-19 vaccination directive<sup>2</sup> via a Department-wide administrative message (“ALNAV”) on August 30, 2021. The ALNAV applies to both Services within the Department of the Navy (“DON”), the United States Navy and the United States Marine Corps. The ALNAV requires all active duty DON service members, who are not already vaccinated, exempted, or currently seeking an exemption, to be fully vaccinated with an FDA-approved COVID-19 vaccine within 90 days. ALNAV 062/21 ¶ 4. Active duty service members were therefore required to become fully vaccinated by

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<sup>1</sup> The CNO is the senior uniformed officer in the United States Navy. *See* 10 U.S.C. § 8033(b) (“The Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade. In the performance of his duties within the Department of the Navy, the Chief of Naval Operations takes precedence above all other officers of the naval service.”).

<sup>2</sup> “Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency, and DoD Field Activity Directors,” (Aug. 24, 2021).

November 28, 2021. The requirement to obtain full vaccination constitutes a lawful order<sup>3</sup> under Article 92 of the Uniform Code of Military Justice (UCMJ), and failure to comply may result in punitive or adverse administrative action, or both. ALNAV 062/21 ¶ 5.

4. The United States Navy issued service-specific guidance via a separate administrative message (“NAVADMIN”) on August 31, 2021. NAVADMIN 190/21 outlines Navy policy concerning the mandatory vaccination of Navy service members, vaccination administration and reporting requirements, and general guidance related to logistics and distribution of vaccines. The policy reiterates that COVID-19 vaccination “is mandatory for all DoD service members who are not medically or administratively exempt” under existing Navy policy. NAVADMIN 190/21 ¶ 2, 3.a. Refusal to be fully vaccinated against COVID-19 without an approved or pending exemption constitutes a failure to obey a lawful order and is punishable under Article 92, UCMJ. Ordinarily, any officer with authority to convene courts-martial or administer non-judicial punishment under Article 15 of the UCMJ may dispose of alleged violations of the UCMJ. Manual for Courts-Martial (“MCM”), Part II, Rules for Court Martial, 401. However, authority to initiate courts-martial or non-judicial punishment for failure to become fully vaccinated is withheld to the Vice Chief of Naval Operations, and authority to initiate administrative separation processing for failure to become fully vaccinated is withheld to a designated COVID Consolidated Disposition Authority (“CCDA”).<sup>4</sup> NAVADMIN 190/21 ¶ 3.e.(5); NAVADMIN 225/21 ¶ 5.b. Withholding this authority from service members’ commanders precludes administrative separation or disciplinary action without elevated review and direction by the CCDA or VCNO, respectively.

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<sup>3</sup> Although refusal to receive the vaccine may subject a member to adverse administrative or disciplinary action, the vaccine will not be forcibly administered to any member who refuses.

<sup>4</sup> On October 13, 2021, the Chief of Naval Personnel (“CNP”) was designated as the CCDA. NAVADMIN 225/21 ¶ 1.

**Medical Exemptions to Vaccination**

5. NAVADMIN 190/21 ¶ 3.d. provides that service members may seek two types of exemptions, medical and administrative. Medical exemptions are governed by Army Regulation (AR) 40-562, which is a consolidated Military Services regulation implemented by the Navy and Marine Corps via Bureau of Medicine (BUMED) Instruction 6230.15B (hereinafter BUMEDINST 6230.15B). Medical personnel are responsible for reviewing and granting medical exemptions, whereas non-medical personnel (sometimes with the assistance of advising medical personnel) are responsible for reviewing and granting administrative exemptions. BUMEDINST 6230.15B, 2-6.

6. BUMEDINST 6230.15B provides the following with respect to medical exemptions:

a. Medical exemptions. A medical exemption includes any medical contraindication relevant to a specific vaccine or other medication. Health care providers will determine a medical exemption based on the health of the vaccine candidate and the nature of the immunization under consideration. Medical exemptions may be temporary (up to 365 days) or permanent. Standard exemption codes appear in appendix C.

(1) General examples of medical exemptions include the following—

- (a) Underlying health condition of the vaccine candidate (for example, based on immune competence, pharmacologic or radiation therapy, pregnancy and/or previous adverse response to immunization).
- (b) Evidence of immunity based on serologic tests, documented infection, or similar circumstances.
- (c) An individual's clinical case is not readily definable. In such cases, consult appropriate medical specialists, including specialists in immunization health care.

BUMEDINST 6230.15B, 2-6a.(1).

7. Service members who seek a medical exemption first submit their request to Navy medical providers who follow BUMED policy when processing those requests. A Navy medical

provider is defined as any uniformed, Navy-employed civilian, or contract-licensed independent medical practitioner whose scope of practice encompasses immunization healthcare delivery, and Independent Duty Corpsmen. BUMED Notice (“BUMEDNOTE”) 6300, *Clinical Consultation Guidance for COVID 19 Vaccine Permanent Exemption* (Sept. 3, 2021) ¶ 7.b. Navy medical providers have the authority to grant temporary medical exemptions for pregnancy or other temporary medical contraindications as determined by a medical provider. BUMEDNOTE 6150, *Guidance for Coronavirus Disease 2019 Vaccination Deferral Status Reporting* (Sept. 21, 2021). Such temporary medical exemption would receive a “Medical Temporary (MT)” designation and such designation will be in effect for only 30 days. After 30 days, the Service member will need to either receive the vaccine or update their deferral status. BUMEDNOTE 6150, ¶ 5.b.(5). Navy medical providers have authority to disapprove temporary or permanent medical exemption requests that do not meet clinical contraindications for the COVID-19 vaccine. BUMEDNOTE 6300, ¶ 6.c.

8. For either a temporary or permanent medical exemption request, Navy medical providers evaluate the patient for medical contraindications based on documented medical history and/or clinical evaluation, and an assessment of the benefits and risks to the patient. BUMEDNOTE 6300 ¶ 7.a.-b. Additionally, Navy medical providers are encouraged to request expert consultation by an immunizations specialist, when necessary. Medical contraindications for the COVID-19 vaccine include:

- (a) Anaphylaxis from a previous COVID-19 vaccine or COVID-19 vaccine ingredient;
- (b) Myocarditis or pericarditis after COVID-19 vaccine administration or infection;

(c) Temporary association of Stevens-Johnson Syndrome or Guillain-Barré Syndrome that cannot be attributed to another underlying cause within 6 weeks of COVID-19 vaccine administration or infection;

(d) Thrombosis with Thrombocytopenia Syndrome (TTS) after COVID-19 vaccine administration;

(e) Persistent clinical symptoms lasting 4 or more weeks following a COVID-19 infection that cannot be attributed to another underlying cause after evaluation and focused workup (“Long COVID”). *Id.*

In the *Clinical Consultation Guidance*, Navy medical providers are also encouraged to consult CDC guidance.

9. BUMEDNOTE 6300 outlines the process for Navy medical providers recommending approval for a permanent medical exemption for COVID-19 vaccination. Where a provider recommends such an exemption, the provider drafts an initial permanent exemption letter and routes the letter to the appropriate flag officer as well as the member’s commanding officer. BUMEDNOTE 6300, ¶ 6.c. A temporary medical exemption is granted pending the approval or disapproval decision of a permanent medical exemption.<sup>5</sup> If the permanent medical exemption is approved, a formal letter of approval is forwarded to the initial recommending Navy provider. BUMEDNOTE 6300, ¶ 7.j.

10. Vaccinations and vaccine exemptions are entered into the member’s Electronic Health Record (EHR), or the Medical Readiness Reporting System (MRRS) where entry in the EHR is impracticable. BUMEDNOTE 6150, ¶ 5.b. During the pendency of a temporary

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<sup>5</sup> No disciplinary or administrative action will be initiated while a permanent medical exemption request is pending.

exemption, or once a permanent exemption is approved, the member is not subject to disciplinary action for vaccine refusal.

**Administrative Exemptions and Religious Accommodation**

11. Generally, administrative exemptions may be granted for enumerated reasons, including pending separation or retirement or because the Service member is unavailable to receive the vaccine because he or she is on emergency leave, executing a permanent change of station move, incarcerated, on unauthorized absence (UA), or on terminal leave. BUMEDINST ¶ 6230.15B, 2-6.b; BUMEDNOTE 6150. Administrative exemptions are time-limited and are designed simply for the service member's command to enter in MRRS to track the member's vaccination each month. Updated guidance in BUMED Notice 6150 directed the expiration of administrative exemptions in 30 days in order to ensure individual vaccination status is updated at least every month.<sup>6</sup> BUMED Notice 6150 ¶ 5.

12. Members may also seek religious accommodations as an exemption. BUMEDINST ¶ 6230.15B, 2-6.b. Navy policy concerning requests for the accommodation of religious practices generally, including immunizations, is outlined in BUPERSINST 1730.11A, while specific guidance related to immunization exemptions for religious beliefs is found in the Naval Military Personnel Manual (MILPERSMAN), Article 1730-020.

a. An active duty member seeking an exemption of immunization for religious reasons must submit the request in accordance with BUPERSINST 1730.11A, ¶ 5.e. The requirements include: (1) a written request via his or her commander stating the waiver sought; and (2) an interview with a Navy Chaplain, who assesses whether the requestor's

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<sup>6</sup> The two exemptions with an "indefinite" duration instead of a 30 day duration include deferral codes pertaining to Sailors who are deceased and those who have a permanent medical exemption.

beliefs appear sincerely held for recommendation to the commander.<sup>7</sup> BUPERSINST 1730.11A, ¶ 5.e.

b. The approval authority for immunization exemptions is the Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (hereinafter CNO N1).<sup>8</sup> BUPERSINST 1730.11A, ¶ 5.a.(4). Commanders routing requests to CNO N1 must forward the matter within 7 days from the date of the member's request in accordance with BUPERSINST 1730.11A, ¶ 5.c. The commander's endorsement must include information as required under MILPERSMAN 1730-020 ¶ 5, including: (1) the negative effect (if any) of the requested accommodation on the unit's military readiness, health, or safety; (2) the number of service members in the command that have been granted a similar exemption; and (3) if recommending denial, a determination that the denial furthers a compelling government interest and there is no less restrictive means of accommodating the request. MILPERSMAN 1730-020 ¶ 5. a.-b. Action on a service member's written request for accommodation must be in a timely manner, generally no later than 60 days from receipt by the Office of the Secretary of the Navy.<sup>9</sup> DoD Instruction 1300.17, ¶ 3.2.c., Table 1. A member may appeal CNO N1 decisions to the Chief of Naval Operations (CNO). BUPERSINST 1730.11A, ¶ 5.f.

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<sup>7</sup> The Navy chaplain interview assesses the sincerity of the requestor's religious belief(s) using based on factors outlines on a standard checklist found in BUPERSINST 1730.11A, enclosure (2). A requestor is not required to provide responses to each of the factors in order to show a sincere religious belief, and chaplain may find the requestor's beliefs sincere based on any individual factor. The chaplain does not assess the validity of the requestor's beliefs, but does provide the commander with a written an assessment of the sincerity of the Service member's personal religious belief. The chaplain's conclusion of the sincerity of the requestor's religious beliefs is not binding on either the approval or appeal authority.

<sup>8</sup> CNO N1 is identified by the alternate designation of CNP (Chief of Naval Personnel) in MILPERSMAN 1730-020). CNO N1 and CNP interchangeable acronyms and refer to the same position and official.

<sup>9</sup> No disciplinary or administrative action will be initiated while a request for an exemption for religious accommodations is pending.

c. Requests for religious accommodation are evaluated using criteria outlined in paragraph 5 of the instruction. Specifically, each request is evaluated on a case-by-case basis considering the following factors:

(1) applicable operational or regional policies,

(2) importance of the military policy, practice or duty in terms of mission accomplishment, including military readiness, unit cohesion, good order, discipline, health, or safety,

(3) importance of the practice to the requestor,

(4) cumulative impact of repeated accommodations of a similar nature,

and

(5) alternate means to fulfill the request.

d. Commanders will not deny or recommend denial of a religious accommodation unless the denial furthers a compelling governmental interest and is the least restrictive means of furthering that compelling government interest. Factors for commanders to consider include (but are not limited to) whether approving the accommodation would pose a health or safety hazard, or otherwise impair mission accomplishment, good order, discipline, morale or unit cohesion. BUPERSINST 1730.11A ¶ 5.a.(2).

e. Navy service members assigned to another military service who request a religious accommodation must route their request to the authority specified in the policies of that military service. BUPERSINST 1730.11A ¶ 5.e.(7)A.

**Refusal to Comply with Vaccination Requirement**

13. NAVADMIN 225/21 provides guidance for disposition of offenses involving Navy service members who are not fully vaccinated as required by NAVADMIN 190/21. Navy service members refusing the COVID-19 vaccine, absent a pending or approved exemption, are required to be processed for administrative separation.<sup>10</sup> NAVADMIN 225/21 ¶ 2. A Navy service member is considered to be “refusing the vaccine, if: (1) the individual has received a lawful order to be fully vaccinated, (2) is not or will not be fully vaccinated by the date required, and (3) does not have a pending or approved exemption request.” NAVADMIN 225/21 ¶ 3.c. The policy designates CNP as the CCDA to ensure fair and consistent administrative processing across the service. NAVADMIN 225/21 ¶ 5.b. For disciplinary matters, authority to initiate disciplinary proceedings, either non-judicial punishment or court-martial, is withheld to the Vice Chief of Naval Operations. *Id.* NAVADMIN 256/21 provides additional guidance on administrative separation processing for those refusing the vaccine, as well as guidance on other potential administrative actions (which can include, for instance, recoupment of unearned portions of special pay or educational benefits).

14. Prior to the initiation of administrative or disciplinary action, Navy service members are formally advised of the order to be fully vaccinated using a NAVPERS 1070/613, “Administrative Remarks” form (commonly known as a “Page 13”). NAVADMIN 225/21 ¶ 7.e.(1). The inclusion of this Page 13, by itself, is not considered to be an adverse matter and will not affect a member’s career. The Page 13 provides guidance to the Navy service member and serves to document that the member has been advised of his or her acknowledgement of the lawful order to be vaccinated against COVID-19. It also provides the service member with an

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<sup>10</sup> Although processing for separation is required, this does not automatically result in a member actually being separated. Members processed for separation may ultimately be retained in the service.

opportunity to notify his or her commander of the member's intent to seek a medical or religious exemption.

15. Initiation of administrative or disciplinary action does not automatically mean that the action will occur, nor does it mean that the action is imminent. The specific and lengthy procedures involved with processing an officer for misconduct are outlined in SECNAVINST 1920.6D, Enclosure (6), "Policy Governing Involuntary Separation for Cause or Parenthood", Enclosure (7), "Guidelines on Separations for Cause", and Enclosure (11), "Board of Inquiry Procedures. Officers without an approved exemption from the COVID-19 vaccine are processed for separation on the bases of Misconduct, Moral or Professional Dereliction, and Substandard Performance. NAVADMIN 225/21 ¶ 7.a.

a. Officer administrative separation is initiated by a formal report of misconduct to Navy Personnel Command (NAVPERS), as required by the Naval Military Personnel Manual (MILPERSMAN) 1611-010, and governed by the procedures in SECNAV Instruction 1920.6D (hereinafter SECNAVINST 1920.6D). Absent other arrangement, officers have ten days to respond to the report of misconduct before the report and the officer's response, if any, are forwarded to NAVPERS. MILPERSMAN 1611-010 ¶4.d.(3). The purpose of the report of misconduct is to provide a designated Flag Officer with "show cause authority" with sufficient information to make a decision on whether to process an officer for administrative separation. The report of misconduct itself does not constitute a separation decision. For COVID-19 separation processing, the CCDA serves as the "show cause authority" under SECNAVINST 1920.6D.

b. Once the report of misconduct is transmitted to NAVPERS and the show cause authority determines that administrative separation processing is appropriate, NAVPERS

notifies the officer subject to the action that he or she is being recommended to show cause. The specific procedures involved with processing an officer for misconduct are outlined in SECNAVINST 1920.6D, Enclosure (6), "Policy Governing Involuntary Separation for Cause or Parenthood", and Enclosure (7), "Guidelines on Separations for Cause". The applicable procedures may vary in certain respects depending on the officer's type of appointment, years of service, and record of performance, amongst other factors. Probationary officers (i.e., officers with fewer than 6 years of service) may be processed without a Board of Inquiry (BOI) when the show cause authority determines that an Honorable or General (under honorable conditions) characterization of service is appropriate. SECNAVINST 1920.6D, Encl (2), ¶ 25; Encl (7), ¶ 3.a. The officer concerned has the right to see all materials that will be forwarded to the separation authority for consideration, the right to submit matters regarding why they should be retained or given a certain characterization of service, and to consult with qualified counsel. *Id.*, Encl (10), ¶ 2.a.-h. In the case of COVID-19 vaccine refusals, probationary officers will be given an Honorable characterization of service unless there are extenuating circumstances (*e.g.*, collateral misconduct). NAVADMIN 283/21 ¶ 4.c.(1). Absent extenuating circumstances, probationary officers who are eligible to and voluntarily agree to separate on or before June 1, 2022 will receive an Honorable characterization of service. *Id.*, at ¶ 2.a.

c. Non-probationary officers must be processed using BOI procedures, which entails a formal administrative hearing over which a panel of no fewer than three senior officers preside in order to make findings with respect to the reason(s) for separation, and recommendations with respect to retention or separation, and characterization of service.

*Id.*, Encl (7) ¶ 4; Encl (11). A BOI is a formal administrative hearing before a panel of at least three senior officers, in which the Navy bears the burden of proving by a preponderance of the evidence that the basis for separation is met and that the respondent should be recommended for separation. SECNAVINST 1920.6D, Encl (7) ¶ 4; Encl (11). The panel of senior officers makes findings with respect to the bases for separation, and recommendations with respect to retention or separation, and characterization of service. *Id.* At the BOI, the respondent has many rights, including but not limited to the right to be represented by legal counsel, right to present evidence, right to cross-examine witnesses, and right to present any arguments against separation and the identified basis for separation. *Id.*

d. Once the BOI is complete, the officer will also have an opportunity to provide a written comment on the proceedings. If the Board finds no basis for separation or that the officer should be retained, the case will be closed and the report of misconduct will generally not be entered into the officer's official file.<sup>11</sup> If the Board recommends the officer be separated, the record of proceedings and the officer's written comment, if any, will be forwarded to the Assistant Secretary of the Navy for final decision, memorialized in writing on whether the officer should be separated. SECNAVINST 1920.6D, Encl. 11 ¶15. Upon receipt of the BOI's recommendation to separate the officer, the Assistant Secretary of the Navy may nevertheless decide to retain the officer in the Navy.

e. Separation is the final decision made in an officer misconduct or substandard performance case determining whether an officer must be involuntarily discharged or

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<sup>11</sup> As a non-adjudicated adverse action, the report of misconduct "will only be included in an officer's OMPF if a follow-on administrative action is approved (e.g. [Detached for Cause] approval, probationary [officer] show cause approval, retirement or resignation in lieu of BOI, a BOI which finds a basis for separation, etc.)" MILPERSMAN 1611-010 ¶4.d.

retained. SECNAVINST 1920.6D Encl. (11) ¶17. Separation will only occur *after* an officer shows cause for retention *and* is further recommended for separation. *Id.* The separation authority for officers is delineated by statute as the Secretary of the Navy and this authority is further delegated by Navy policy to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)). MILPERSMAN 1611-010 ¶ 2(b)(1). Discharge from the naval service only becomes final upon that Secretarial action. *See* SECNAVINST 1920.6D Encl. (11) ¶15.

f. For COVID-19 vaccine refusals, the least favorable characterization of service<sup>12</sup> for which non-probationary officers processed for administrative separation will be eligible is General (under honorable conditions).<sup>13</sup> Requests to waive BOIs in

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<sup>12</sup> A characterization of service is assigned to a service member upon separation from the military and generally reflects the quality of an individual's military service. The highest characterization of service is Honorable, followed by General (Under Honorable Conditions), Other Than Honorable, Bad-Conduct, and Dishonorable. Officers may be awarded a Dismissal, which is akin to a Dishonorable discharge. The first three types of characterization may be awarded using administrative procedures, whereas Bad Conduct and Dishonorable discharges, as well as an officer's Dismissal, are considered "punitive discharges." These types of discharges may only be awarded by a court-martial sentence and imposed after appellate review is complete.

<sup>13</sup> SECNAVINST 1920.6D, Enclosure (8), "Guidelines on Characterization of Service" paragraph 2 describes the administrative discharge characterizations of service applicable to officers being processed for separation:

a. Honorable. Officers whose quality of service has generally met the standards of acceptable conduct and performance of duty for officers of the naval service, or is otherwise so meritorious that any other characterization would be clearly inappropriate, will have their service characterized as Honorable.

b. General (Under Honorable Conditions). If an officer's service has been honest and faithful, but negative aspects of the officer's conduct or performance of duty outweigh the positive aspects of his or her conduct or performance of duty as documented in the officer's military record, it is appropriate to characterize that service as General (Under Honorable Conditions).

c. Under Other Than Honorable Conditions. This characterization is appropriate when the officer's conduct or performance of duty, particularly the acts or omissions that give rise to the reasons for separation, constitute a significant departure from that required of officers of the naval service. Examples of such conduct or performance include acts or omissions which, under military law, are punishable by confinement for six months or more; abuse of a special position of trust; an act or acts which bring discredit upon the armed services; disregard by a superior of customary superior-subordinate relationships; acts or omissions that adversely affect the ability of the military unit or the organization to maintain discipline, good order, and morale or endanger the security of the United States or the health and welfare of other members of the Armed Forces; and deliberate acts or omissions that seriously endanger the capability, security, or safety of the military unit or health and safety of other persons. An officer being separated

exchange for a recommended Honorable characterization of service will generally be favorably endorsed absent additional misconduct or unique circumstances. NAVADMIN 283/21 ¶ 2.b.(2). Absent extenuating circumstances, non-probationary officers who are eligible to and voluntarily agree to separate on or before June 1, 2022, will receive an Honorable characterization of service. *Id.* ¶ 2.a.

16. Timelines to complete administrative processing vary depending on whether the service member is an officer or enlisted, the efficiency of administrative processing within any given command or unit, and what specific procedures apply to the member's case. For cases involving a naval officer's vaccine refusal and no other misconduct or basis for separation, it generally takes between 6 to 12 months from the time the officer is notified to show cause to the officer's approved separation. It takes approximately 86 days from notification of officer misconduct to NAVPERS before the officer is notified to show cause. The officer ("respondent") normally has 10 working days to respond to the notice, and an extension of time may be granted for good cause. The commanding officer must forward the case to ASN (M&RA) via NAVPERS and CNP. Review of the case at each level of review takes approximately 50 to 75 days. In cases where a BOI is required, it typically takes another 120 days to complete all phases of the BOI process. The respondent is afforded a minimum 30 days notice prior to when the board convenes, and may request a continuance not to exceed 30 days for good cause. After review is completed and if the officer's separation is approved, the decision is communicated to the command via naval message. The officer is generally required to complete separation requirements within 60 days of the approved separation notice.

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under Other Than Honorable conditions must be informed, in writing, that he or she may petition the Veterans Benefits Administration of the Department of Veterans Affairs (VA) for certain benefits under the laws administered by the Secretary of VA, despite the characterization of the officer's service.

17. While NAVADMIN 225/21 withholds authority to initiate either non-judicial punishment or courts-martial for cases involving vaccine refusal, commanders generally possess a wide array of administrative and disciplinary options with which to dispose of service members' offenses under the UCMJ. Subject to the limits of the commander's authority, the commander's administrative corrective measures include formal or informal counseling, non-punitive letters of caution or censure,<sup>14</sup> withholding of privileges, and extra-military instruction, as governed by the relevant service policy. Disciplinary options include non-judicial punishment under Part V of the MCM, disposition of the charges by court-martial where the commander has the authority to do so, or forwarding of charges for trial by court-martial where the commander does not.

a. Non-judicial punishment is a forum generally reserved for minor offenses, or those offenses for which the maximum sentence would not include a Dishonorable Discharge or confinement for greater than one year if tried by a general court-martial. MCM, Part V ¶ 1.e. Punishments are limited by the rank and position of the cognizant commander, as well as the rank of the person accused of misconduct. *Id.* ¶ 2, 5. Punishments and service limitations are outlined in MCM Part V and the Manual of the Judge Advocate General (JAGMAN), but commonly include some combination of the following: admonishment or reprimand, extra duties, restriction, reduction in rank, or forfeiture of pay. MCM, Part V ¶ 5; JAGMAN, 0111. Commanders are encouraged to permit the accused to speak with counsel subject to the immediate availability of counsel, the delay involved, and operational commitments or military exigencies. JAGMAN 0108

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<sup>14</sup> Non-punitive letters of caution or censure are matters between the issuing authority and the counseled member and do not become part of the member's official service record. Manual of the Judge Advocate General (JAGMAN) 105 ¶b.(2).

¶ a.(1). Service members not attached to a vessel have the right to refuse non-judicial punishment and request trial by court-martial. MCM, Part V ¶ 3; JAGMAN 0108 ¶ a. Following imposition of non-judicial punishment, the service member has five working days to submit an appeal, and may request additional time for good cause. MCM, Part V ¶ 7. The member's appeal is forwarded, along with the commander's endorsement, to the cognizant general court-martial convening authority for action. MCM, Part V ¶ 7; JAGMAN, 0117.

b. More serious offenses under the UCMJ may be subject to trial by court-martial. There are three types of courts-martial: summary court-martial, special court-martial, and general court-martial. Depending on the rank and position of the commander, he or she may or may not be authorized to convene certain types of courts-martial. UCMJ, 10 U.S.C. § 821-24. Further, the nature of the proceedings and punishments available are limited depending on the forum and rank of the accused. *See* UCMJ, 10 U.S.C. Chapter 47, Subchapters IV, VIII. The most severe punishments, such as the death penalty, a Dishonorable Discharge, Dismissal, or extended periods of confinement, are only available at general courts-martial, and certain offenses are only permitted to be tried by general courts-martial. *Id.* Summary courts-martial are less formal than either special or general courts-martial, which are equivalent in formality and procedure to civilian criminal courts; however, each court-martial forum is governed by the procedures outlined in the MCM, Part II, Rules for Court Martial. Special courts-martial and general courts-martial, in particular, have substantial legal and procedural

requirements with respect to pre-trial, trial, and post-trial judicial proceedings.<sup>15</sup> The adjudication of trials by court-martial generally take months before the court is convened, and may take several additional months, depending on the matters involved in the case and the court's docket, prior to the trial date. Upon conclusion of the trial, the member may appeal the findings or sentence as provided in Chapter XI and XII of the MCM.

18. Any service member who believes he or she has been wronged by his or her commanding officer may seek redress from the commanding officer's immediate superior in command under UCMJ, Article 138, Complaints of wrongs. 10 U.S.C. § 938. In addition, the Department of the Navy also offers two other distinct avenues for Sailors to either seek redress for a wrong or speak directly to their commanding officer. Any Sailor who believes he or she has been wronged by a superior who is not their commanding officer may submit a complaint of wrong under U.S. Navy Regulation Article 1150 in order to seek redress. Additionally, Sailors have the right to speak with their commanding officer and may do so by requesting mast under U.S. Navy Regulation Article 1151. These avenues for complaint and discourse can provide higher level review and opportunities for redress for issues raised.

#### **Injunction for Navy Class Members**

19. Pursuant to a court order in *U.S. Navy SEALS 1-26 v. Biden*, the Navy is presently enjoined from applying MANMED § 15-105(3)(n)(9) (relating to special operations duty); NAVADMIN 225/21; Trident Order #12 (relating to special operations forces); and NAVADMIN 256/21 to members of the certified Navy Class and Subclasses. F.Supp.3d---, 2022 WL 3443 (N.D. Texas Jan. 3, 2022). The Navy Class includes all Navy service members

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<sup>15</sup> Relevant to a charge of violation of Article 92 (disobeying a lawful order) for refusal to receive the COVID-19 vaccination, an accused member could choose to raise all available affirmative defenses, including the lawfulness of the order, at court-martial.

who have not received the COVID-19 vaccine and submitted a request for religious accommodation. To comply with the order, the Navy issued NAVADMIN 083/22 on March 30, 2022, which suspended all adverse administrative consequences for failure to become fully vaccinated as required by NAVADMIN 190/21. The suspension only applied to Navy service members who submitted requests for religious accommodation from the COVID-19 vaccine, whereas adverse administrative consequences continue to apply to Navy service members who did not submit RA requests. NAVADMIN 083/22 provided that additional guidance concerning the implementation of the Navy vaccine mandate would be provided at a later date.

20. On April 22, 2022, the Navy issued NAVADMIN 102/22, which provided greater detail concerning both voluntary and involuntary administrative separation processing for Navy service members who had submitted RA requests that were denied or disapproved on appeal. The policy suspended officer and enlisted involuntary separation processing, and prohibited the issuance of DD-214s for members with approved separation notices. NAVADMIN 102/22 ¶ 4.b.1.a. Cases involving a basis for administrative separation other than misconduct due to COVID-19 vaccine refusal were authorized to proceed on the separate, distinct basis. *Id.* 4.1.b.c. Voluntary separations (including those eligible for a military retirement) were permitted to continue and service members who submitted requests for religious accommodation were permitted to cancel or amend previous voluntary retirement requests. *Id.* ¶ 4.b.1.b. Commands were directed to inform the appropriate personnel office in cases where service members awaiting involuntary separation still desired to separate, but the NAVADMIN did not direct specific action at that time. 4.b.1.a.

21. As explained further below, a voluntary separation is a legal term of art that is defined by statute and regulation. Because a person who joins the armed forces incurs a required

period of obligated service, a service member typically cannot voluntarily separate from the military without first fulfilling that term of obligated service. Accordingly, as a general matter, service members with continued obligated service who have been separated for refusal to receive the COVID-19 vaccine have been processed for separation using involuntary administrative separation procedures (even though they may waive their rights to administrative separation proceedings).

22. On June 24, 2022 the Navy issued NAVADMIN 139/22, which provided additional guidance for Sailors within the Navy Class who desire to “exit the class” in order to be involuntarily separated from the Navy. Sailors may withdraw their RA request by executing an additional “Page 13” with their command to acknowledge they understand that withdrawing their request will subject them to all administrative measures associated with vaccine refusal, including administrative separation.

23. Administration of Navy service members assigned to other services outside the Department of the Navy is governed by MILPERSMAN 1300-060.<sup>16</sup> While RA requests for Navy service members assigned to other services are processed in accordance with the policy of the respective service they are assigned to, members subject to administrative or disciplinary action are typically relieved from duty with the respective service and returned to the Navy in order to take the appropriate corrective action. CNP is designated as the Show Cause Authority

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<sup>16</sup> In general Commanders from other services only exercise court martial jurisdiction over Navy service members when the service member cannot be delivered to the Navy without manifest injury to the service or services involved. Under these circumstances a Commanders may convene a Court Martial to avoid manifest injury but should notify CNP and the Chief of their respective service. In all other circumstances a request should be made to have the Navy service member relieved from duty with the respective service and returned to the Navy. Non-judicial punishment (NJP) should not be imposed by a commander of one service upon a member of another service. When it is determined that a Navy service member should receive NJP, a request is made to CNP to have the member relieved of duty with their respective service or be given Temporary Additional Duty Orders to the geographically nearest Navy command capable of imposing NJP. If such a transfer is impractical and the need to impose NJP is deemed urgent, a Commander of another service may impose NJP on a Navy service member but a report of circumstances will be sent to the CNP as soon as practical. MILPERSMAN 1300-060 ¶ 5.a-b.

for separation of officers in the Navy and has been delegated authority to convene Boards of Inquiry and review records to determine if officers must show cause for retention in the naval service. SECNAVINST 1920.6D ¶ 11.c. In accordance with the NAVADMINS that ensure compliance with the court order in *U.S. Navy SEALS v. Biden*, the Navy is not separating or taking adverse action against any Navy service members who have submitted RA requests, including those assigned to other branches of service. Additionally, the Navy would be enjoined from taking action contrary to the class-wide preliminary injunction in the event a member of the Navy class is returned to the Navy from another Service.

#### **Post-Discharge Corrective Measures**

24. Discharged service members may seek a review of their discharge through the cognizant Discharge Review Board (“DRB”). 10 U.S.C. § 1553. The DRB is empowered to change and issue a new discharge on grounds of equity or propriety. 32 C.F.R. § 70.9. DRBs may consider factors such as the applicant’s service history, awards and decorations, letters of commendation or reprimand, wounds received in action, acts of merit, length of service, convictions by court-martial or civilian convictions, non-judicial punishments, records of unauthorized absence, or records relating to the member’s discharge. *Id.* Discharged service members may also seek an upgraded discharge from the appropriate Board for Correction of Military Records (“BCMR”), which is the Board for Correction of Naval Records (“BCNR”) for Navy personnel. 10 U.S.C. § 1552. The BCNR has extensive authority to upgrade discharges, void discharges, alter reenlistment codes, and remove otherwise inaccurate or adverse documents from a service member’s record. Additionally, Navy personnel who have not yet been discharged may petition the BCNR for relief. The BCNR may correct any military record when it is necessary to correct an error or remove an injustice. *Id.* The BCNR’s action may result in a

member being reinstated in the Navy. If a Service member is unable to obtain relief through the appropriate DRB or BCMR, the service member may elect to challenge the agency's decision and administrative proceedings in federal court under applicable federal law.

**Harm to Readiness from COVID-19 and Non-Vaccination**

25. The Department of the Navy comprises the Nation's principal maritime forces. Their missions, in sum, are to "secure the Nation from direct attack; secure strategic access and retain global freedom of action; strengthen existing and emerging alliances and partnerships; establish favorable security conditions; deter aggression and violence by state, non-state, and individual actors and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests." *See* Department of Defense Directive (DoDD) 5100.01, Change 1, 09/17/2020, Encl. 6, ¶ 5.a. –b. The effective execution of all of these discrete functions is vital to the national security of the United States, the Navy and Marine Corps provide forces to joint commanders<sup>17</sup> to deter aggression and, if required, engage in combat operations and win decisively.

26. Every year, the Navy executes tens of thousands of steaming days, millions of flight hours, and untold hours on duty in order to protect America, deter conflict and keep the sea lanes open and free. These military operations are performed by hundreds of thousands of Sailors, both officers and enlisted, serving in many capacities, ranging from Sailors in the deck department of our warships, pilots and aircrew operating our aircraft, information technicians operating our networks, and doctors and corpsman staffing our hospitals and medical clinics,

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<sup>17</sup> Joint commanders are the combatant vested with authority and responsibility for military operations within their area of responsibility. The Navy and other branches of the Armed Forces provide forces to the combatant commanders to execute those responsibilities and functions. The combatant commanders exercise authority, direction and control over the commands and forces assigned to them and employ those forces to accomplish missions assigned to the combatant commander. Department of Defense Directive (DoDD) 5100.01, Change 1, 09/17/2020, Encl. 1, ¶1.a through d.

among many other jobs. Our operations are interconnected; every Sailor is vital to our mission, whether they are assigned to a shore command or on deployment at sea.

27. Communicable diseases such as COVID-19 can interfere with the ability of Service members to accomplish the Navy's mission at the individual, unit, and organizational levels, decrease the overall health of the force, degrade military readiness, and place additional strain on already limited medical resources. Spread of communicable diseases among Sailors who live and work in confined quarters aboard ships, or in austere deployed environments with limited access to immediate medical care, or for those who live or work in close proximity to others in the shore establishment, has the potential to cause mission failure if one or more personnel become too sick to perform their jobs. Logistical challenges inherent in moving personnel to and from deployed ships and other deployed environments makes it difficult, if not impossible, to quickly evacuate sick personnel and replace them with healthy personnel. Navy ships have limited medical and long-term placement capabilities. If even one Sailor infected with a communicable disease requires treatment beyond the capabilities of a ship's medical department, or if multiple Sailors must be placed in critical care, a decision will have to be made whether the ship may have to abandon its mission and transit to a location that offers more adequate treatment. Transit time is not instantaneous and depends on factors such as ship location, current mission requirements, and port access or availability. That time variable creates additional health risk for infected Sailors and the potential for disease transmission to the remaining crew. Finally, the spread of communicable diseases from U.S. Navy personnel to foreign or host-nation personnel would have a detrimental impact on U.S. foreign relations, especially if the illness was viewed as preventable.

28. As the COVID-19 pandemic unfolded, the Navy was compelled to implement stringent restrictions across the force to protect the health of the force and ensure military readiness. For all personnel, severe restrictions were imposed on travel (both official and unofficial), permanent change of station (PCS) transfers, and activities such as dining in restaurants or engaging in activities outside of military installations. Sailors on deployment or preparing for deployment were ordered to quarantine within “bubbles” for two weeks before getting underway (this quarantine is referred to as Restriction of Movement (“ROM”)). Additionally, all quality of life port visits were prohibited, further exacerbating the mental and physical toll of the deployment. Personnel at sea and ashore were ordered to adhere to health protection policies, to include requirements to sanitize workspaces, wash hands frequently, wear masks, and maintain 6-foot social distancing.

29. The effectiveness of these measures is extremely limited on ships and submarines, where Sailors must live, work, eat, and sleep in close proximity to other Sailors. On board a ship or submarine, Sailors must navigate narrow passageways that do not permit sufficient social distancing. Ships have almost no windows, and fresh air circulation is intentionally limited, as ships are designed to be able to seal off compartments to protect against water intrusion or chemical, biological, or radiological weapons attacks. Though Sailors work to keep their ships clean, safe transit up and down ladders and through watertight doors requires everyone to touch all of the same handrails and handles frequently. Ships typically have limited space to quarantine Sailors from the rest of the crew, if such facilities exist at all. Frequent handwashing is not generally feasible because Sailors have to transit up and down ladders, using those shared handrails, to get between their workspaces and the restrooms (“heads”) in which they can wash their hands. Almost all enlisted berthing compartments feature three-foot by six-foot bunks

(“racks”) that are generally stacked three high with narrow passages between rows. Enlisted berthing compartments have as few as 12 and as many 210 personnel sleeping in the same space. Sailors in larger berthing compartments are typically never alone in the head when they use the facilities, shower, or brush their teeth, because the head is a shared space used by 200 or more personnel.

30. Health protection measures are more feasible ashore, but the effectiveness is highly dependent on the type of work a Sailor does and the configuration of their workspace. Additionally, even for shore-duty commands, COVID-19 restrictions imposed a substantial and unsustainable administrative cost. Commands across the Navy Service were obligated to adopt telework policies, where feasible,<sup>18</sup> or implement staggered shift rotations to avoid possible exposure of personnel. For Sailors placed on ROM, commands are required to track and report their status, as well as provide rooms, meals and essentials to Sailors in a ROM status.<sup>19</sup> Restrictions on official travel limited training opportunities for Sailors, while restrictions on unofficial travel limited, and in some instances precluded, personal leave for Sailors outside of extremely circumscribed geographic areas. Finally, Sailors’ assignments typically alternate between sea duty and shore duty; however, every Sailor must be deployable. *See* OPNAVINST 1300.20, Deployability Assessment and Assignment Program (requiring administrative separation processing or referral to the Disability Evaluation System for any Sailor who is undeployable for 12 months or longer). Sailors assigned to shore duty or the Navy Reserve need

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<sup>18</sup> Telework is not an option for many Sailors, including those performing work using classified networks, those who work with specialized equipment, or for any work, training, or maintenance on military assets (e.g. ships, aircraft, submarines).

<sup>19</sup> The DoD even instituted a new pay entitlement, “Hardship Duty Pay – Restriction of Movement (HDP-ROM),” in order to compensate Service members for the hardship associated with being ordered to self-monitor in isolation (i.e., restriction of movement) somewhere other than at their home or a government-funded lodging facility, if such facilities were unavailable.

to be ready to deploy at a moment's notice. Even a Sailor on shore duty pending retirement can be called up to deploy if necessary to achieve mission requirements.

31. Vaccination against COVID-19 has been proven to be the most effective way to prevent serious illness and death, to keep Navy units on mission, and expediently halt the spread of COVID-19 within the Force. Having fully vaccinated naval forces is essential to ensure maximum health and readiness of forces to carry out our mission throughout the world and, if required, engage in combat operations. Unvaccinated Sailors pose a risk to other personnel, and any restriction on the Navy's ability to reassign unvaccinated personnel to other units in order to mitigate COVID-19 imposes a risk to naval units, personnel, and military operations. This harm is not lessened by the fact that the vast majority of the force is vaccinated; the presence of unvaccinated members of the forces still poses a significant threat to the success of Navy's mission.

32. Based on my military experience, I cannot overstate the importance of vaccination in addition to other mitigation measures to reduce the impact of the COVID-19 virus to operations and mission accomplishment. An order directing the Navy to allow personnel to remain unvaccinated while maintaining the status quo, including unvaccinated personnel remaining in deployable units, would cause irreparable harm and unnecessarily endanger readiness and Sailors' lives. Two years into this pandemic, the medical evidence is beyond dispute that fully unvaccinated personnel develop severe symptoms requiring hospitalizations and emergency medical evacuation or death at a significantly higher rate than their vaccinated peers. The difference is even more dramatic when comparing those fully vaccinated with a booster dose with the unvaccinated. The bottom line is the COVID-19 vaccine is keeping ships at sea, submarines on patrol and aircraft flying to protect and defend the Nation's and our

partners' and allies' interests. Directing the Navy to allow thousands of unvaccinated personnel to remain in deployable units puts the Nation's ability to respond to crises around the world at unnecessary and self-inflicted risk.

33. The USS THEODORE ROOSEVELT (CVN 71) provides an example from before implementation of the Navy's vaccine requirement and illustrates the harm that COVID-19 and non-vaccination poses to readiness and service member health. In mid-March 2020, the aircraft carrier USS THEODORE ROOSEVELT (CVN 71) was deployed to the Western Pacific Ocean, a vital geo-political center of gravity with several of the world's largest militaries and five nations allied with the U.S. through mutual defense treaties. The leadership of USS THEODORE ROOSEVELT (CVN 71) began to see several COVID-19 cases among the crew. By April 1, 2020, USS THEODORE ROOSEVELT (CVN 71) had approximately 1,000 crew removed from the ship with a small skeleton crew remaining to maintain the nuclear reactor and other essential systems. At this time, this ship was off mission in port in Guam. By April 20, 2020, 4,069 Sailors had been removed from the ship out of a crew of approximately 4,800. This event highlights the risk COVID-19 has for operations. The ship was unavailable for 51 days to partner with allies, maintain presence in the maritime commons which include the world's busiest sea lanes and, if required, engage in combat operations, creating a national security vulnerability in an area vital to the United States' national interests. The extended absence and unavailability of the aircraft carrier could likely embolden potential adversaries and sets the conditions for instability in an area essential to global commerce. Even when USS THEODORE ROOSEVELT (CVN 71) got underway on May 21, 2020, approximately 1,800 Sailors remained in Guam. Tragically, one Sailor succumbed to the COVID-19 virus and died.

34. A second example of the harm that COVID-19 and non-vaccination poses to readiness and service member health involves the cruiser, USS PHILIPPINE SEA (CG 58). In February 2021, the ship was on mission in the strategically important Fifth Fleet area of operation before a COVID-19 outbreak occurred. The ship, with limited medical facilities onboard, was forced into port in Bahrain on February 26 and remained there restricted in an isolated bubble – unable to accomplish its mission during such time. About 20 of the approximately 380 members on board tested positive for COVID-19 before finally returning to sea on March 21.

35. In fact, the most recent Omicron variant has had less of an impact on naval operations *because* the Navy is now requiring 100% vaccination of its service members. The facts and results fully support this conclusion. The outbreak on the USS Milwaukee (LCS 5) in late 2021 and early 2022 is an example that a 100% vaccinated force is the best way to mitigate COVID-19's impact on the force. Although approximately one-third of the 100% vaccinated crew tested positive in January 2022, all positive personnel experienced *only* mild symptoms or were asymptomatic. Because the vaccine kept service members from getting seriously ill and therefore minimized the operational impact, the ship encountered minimal disruption. Compared to the Navy's experience with the earlier outbreaks on the USS THEODORE ROOSEVELT (CVN 71) and USS PHILIPPINE SEA (CG-58), this only further demonstrates the Navy's compelling interest in mandating the COVID-19 vaccine.

36. A judgment requiring the Navy to permit unvaccinated service members to embark operational vessels and interact with operational units risks jeopardizing the unit's full operational status, returning Navy units to a condition before the vaccine mandate and presenting an unacceptable risk to naval operations. For example, the risk of severe illness from COVID-19

is greatly reduced for vaccinated people, thus minimizing the need for a unit to remain within a certain distance of medical care (which limits what a unit can do) or incurring the cost of diverting that unit to remove Sailors who become severely ill or ill to a point beyond which organic resources can handle their medical care. It is significantly less expensive to separate a sailor than to conduct a medical evacuation due to a COVID-19 outbreak. The Navy has a compelling interest in the vaccination of its forces and its units. Finally, the health impact of any COVID variant on any unvaccinated individual is not predictable, and could be fatal even absent pre-conditions. Because sailor health has been the driving concern, having any unvaccinated sailors onboard forces the Navy to adjust operations to ensure medical care is within reach. Just one unvaccinated sailor can derail an operational plan.

37. Navy leadership owes a sacred duty to the Sailors who have voluntarily raised their right hand to serve and wear the uniform of our country. That sacred duty is also owed to those Sailors' families. That duty is for Navy leadership to do everything within its power to ensure Sailors are safe and can succeed – both personally and at the unit level. Seventeen Sailors have died from COVID-19 and all of those Sailors were not fully vaccinated. Over 600 Sailors have been hospitalized; 578 of the personnel hospitalized were not fully vaccinated. There have been nearly 85,000 infections, resulting in over one million lost days in which Sailors were unable to perform duties or train. These are significant costs that are preventable with vaccination, and the significance of the Navy's mission and its commitment to the health and safety of its members cannot accept the preventable risk that non-vaccination poses.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of July, 2022.

X   
\_\_\_\_\_  
W. R. MERZ  
Vice Admiral, U.S. Navy

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE MIDDLE DISTRICT OF FLORIDA**  
**TAMPA DIVISION**

**ISRAEL ALVARADO, et al**  
Plaintiffs,

v.

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

Defendants.

Case No. 8:22-cv-01149-WFJ-CPT

**DECLARATION OF DAVID J. FURNESS**

I, David J. Furness, hereby state and declare as follows:

1. I am a Lieutenant General in the United States Marine Corps, currently serving as the Deputy Commandant for Plans, Policies, and Operations, Headquarters Marine Corps, located in Washington, D.C. I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. I have served in the Marine Corps since 1987, and I have been assigned to my current position since August 2021. Prior to my current assignment, I served as the Assistant Deputy Commandant for Plans, Policies and Operations from August 2020 to August 2021. Throughout my career I have served in a variety of command and staff billets in both the operating forces and supporting establishment.

(a) Within the operating forces, as a Lieutenant I served as a rifle platoon commander and an 81mm mortar platoon commander in the Second Marine Division with 3d Battalion, 4th

Marines and 2d Battalion, 8th Marines. As a Captain and Major, I served in the 1st Marine Division as the Commanding Officer of Company K, and the Operations Officer of the 3rd Battalion, 7th Marines. As a Lieutenant Colonel, I again served in the 1st Marine Division as the G3 Plans Officer, Deputy G-3, Commanding Officer of 1st Battalion, 1st Marines, and then as the Executive Officer of the 1st Marine Regiment. As a Colonel, I commanded the 1st Marine Regiment. As a General Officer, I commanded Combined Joint Task Force-Horn of Africa, and the 2d Marine Division. In the course of my career I participated in contingency operations in the Republic of Panama, and in the following named operations: Operation Provide Comfort, Operation Unified Assistance, Operation Iraqi Freedom, and Operation Enduring Freedom.

(b) In the Supporting Establishment, I have served on the staff of The Basic School as a Staff Platoon Commander and as a Tactics Instructor for both the Basic Officer and Infantry Officer Course; as Commanding Officer of Recruiting Station Sacramento, California; as the Director, Marine Corps Legislative Liaison Office, United States House of Representatives; as the Director of Expeditionary Warfare School; as the Legislative Assistant to the Commandant of the Marine Corps; and as the Assistant Deputy Commandant for Plans, Policy and Operations, Headquarters, United States Marine Corps. My professional military education includes The Basic School, the Infantry Officer Course, the U.S. Army Infantry Officer Advanced Course, the Marine Corps Command and Staff College, the School of Advanced Warfighting, and the National War College. I earned Masters Degrees from both the Marine Corps Command and Staff College and the National War College.

(c) As part of my duties currently, I am responsible for coordinating the development and execution of Marine Corps plans and policies related to the structure, deployment, and employment of Marine Corps forces in general. I am also the Operations Deputy for the

Commandant on all Joint Chiefs of Staff matters. In this capacity I serve as the focal point for the interface between the Marine Corps and the other joint and combined activities of the Joint Chiefs of Staff and the unified Commanders-in-Chief, and various allied other foreign defense agencies.

**U.S. Marine Corps COVID-19 Vaccination Policy**

3. On August 24, 2021, the Secretary of Defense (SECDEF) directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve. The Secretary of the Navy directed implementation of SECDEF's COVID-19 vaccination mandate<sup>1</sup> via a Department-wide administrative message (ALNAV) on August 30, 2021. The ALNAV applies to both Services within the Department of the Navy (DON), the United States Navy and the United States Marine Corps. The ALNAV requires all active duty DON service members, who are not already vaccinated, exempted, or currently seeking an exemption, to be fully vaccinated with an FDA-approved COVID-19 vaccine within 90 days, and all Reserve Component personnel to be fully vaccinated within 120 days. ALNAV 062/21 ¶ 4.

4. Active duty Sailors and Marines were therefore required to become fully vaccinated by November 28, 2021, and Reserve Component Sailors and Marines were required to become fully vaccinated<sup>2</sup> by December 28, 2021. The requirement to obtain full vaccination constitutes a lawful order under Article 92 of the Uniform Code of Military Justice (UCMJ), and failure to comply may result in punitive or adverse administrative action, or both. ALNAV 062/21 ¶ 5.

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<sup>1</sup> Memorandum from SECDEF, "Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency, and DoD Field Activity Directors," (Aug. 24, 2021).

<sup>2</sup> Although refusal to receive the vaccine may subject a member to adverse administrative or disciplinary action, the vaccine will not be forcibly administered to any member who refuses.

5. The USMC issued service-specific guidance via a separate administrative message (MARADMIN) on September 1, 2021. MARADMIN 462/21 outlines Marine Corps policy concerning the mandatory vaccination of USMC service members, vaccination administration and reporting requirements, and general guidance related to logistics and distribution of vaccines. The policy reiterates that all Marine Corps active and reserve personnel must become fully vaccinated against COVID-19, unless medically or administratively exempt. MARADMIN 462/21 ¶ 3.a.-3.b. The requirement to become fully vaccinated is a lawful order, punishable under Article 92 of the UCMJ. *Id.* ¶ 3.1.; 10 U.S.C. § 892. Ordinarily, any officer with authority to convene courts-martial or administer nonjudicial punishment under Article 15 of the UCMJ may dispose of alleged violations of the UCMJ. *See* Manual for Courts-Martial (“MCM”), Part II, Rules for Court Martial, 401. However, the authority to dispose of offenses arising from COVID-19 vaccine refusals is withheld to the general court-martial convening authority, although the special court-martial convening authority may issue administrative counseling. MARADMIN 462/21 ¶ 3.1. Withholding this authority from lower ranking commanding officers and commanders precludes administrative separation or disciplinary action without elevated review and direction of a general officer.<sup>3</sup>

### **Medical Exemptions**

6. MARADMIN 462/21 ¶ 3.j & 3.k provides that service members may seek two types of exemptions, medical and administrative. Medical exemptions to vaccination are governed by Army Regulation (AR) 40-562, which is a consolidated Military Services regulation applicable to the Navy and Marine Corps via Bureau of Medicine (BUMED) Instruction

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<sup>3</sup> “General officers” comprise the highest ranks in the military. Officer ranks range from O-1 to O-10, with general officers occupying the ranks between O-7 to O-10. In the Marine Corps, a general officer is any officer serving in the rank of Brigadier General or higher.

6230.15B (hereinafter BUMEDINST 6230.15B). Granting medical exemptions is a medical function, whereas granting administrative exemptions is a non-medical function. BUMEDINST 6230.15B, ¶ 2-6.

7. BUMEDINST 6230.15B provides the following with respect to medical exemptions:

a. Medical exemptions. A medical exemption includes any medical contraindication relevant to a specific vaccine or other medication. Health care providers will determine a medical exemption based on the health of the vaccine candidate and the nature of the immunization under consideration. Medical exemptions may be temporary (up to 365 days) or permanent. Standard exemption codes appear in appendix C.

(1) *General examples* of medical exemptions include the following—

(a) Underlying health condition of the vaccine candidate (for example, based on immune competence, pharmacologic or radiation therapy, pregnancy and/or previous adverse response to immunization).

(b) *Evidence of immunity* based on serologic tests, documented infection, or similar circumstances.

(c) An individual's clinical case is not readily definable. In such cases, consult appropriate medical specialists, including specialists in immunization health care.

BUMEDINST 6230.15B, ¶ 2-6a.(1) (emphasis added).

As the policy reflects, these are just examples of situations when health care providers may determine a medical exemption is warranted but each exemption request is an individual determination based on the health of the individual and the disease at issue. Additionally, there are *some*, but not all, diseases in which serologic or other tests may be used to identify pre-existing immunity.<sup>4</sup>

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<sup>4</sup> BUMEDINST 6230.15B states, "*Screening for immunity*. For *some* vaccine-preventable diseases, serologic or other tests can be used to identify pre-existing immunity from prior infections or immunizations that may eliminate unnecessary immunizations." BUMEDINST 6230.15B, 2-1.g (emphasis added).

8. MARADMIN 462/21 ¶ 3.j. provides specific guidance related to processing medical exemptions. The policy requires the electronic documentation of vaccination or vaccine exemption, if applicable, in the Medical Readiness Reporting System (MRRS) and the service member's Electronic Health Record (EHR). MARADMIN 462/21 ¶ 3.h.2. Permanent medical exemptions are granted only where the service member has a medical contraindication to the COVID-19 vaccine. MARADMIN 462/21 ¶ 3.j.<sup>5</sup> For commands to which a Command Surgeon is assigned, a permanent medical exemption must be approved by the first Command Surgeon in the service member's chain of command, in the grade of O-5 or above. MARADMIN 462/21 ¶ 3.j. For commands without a Command Surgeon, a permanent medical exemption must be approved by the member's supporting Military Treatment Facility (MTF), according to the MTF's processes (but in no case lower than a licensed DoD healthcare provider), or, in the case of a command without access to a MTF, by the Office of the Director of Health Services, Headquarters, U.S. Marine Corps. Letter from Dir., Health Services, Headquarters, U.S. Marine Corps, "Marine Corps COVID-19 Vaccination Amplifying Guidance Pertaining to Exemption Documentation and Approval," (Sep. 15, 2021). Temporary medical exemptions may be granted when there is a temporary medical reason to postpone vaccination, and such exemptions may be approved by a licensed DoD healthcare provider. MARADMIN 462/21 ¶ 3.j.

9. For either a temporary or permanent medical exemption request, medical providers evaluate the patient for medical contraindications based on documented medical history and/or clinical evaluation, and an assessment of the benefits and risks to the patient.

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<sup>5</sup> Any condition potentially warranting permanent medical exemption will initially be assessed by a licensed healthcare provider. If the provider determines that an exemption is not warranted, the process is complete and the Service member is required to be vaccinated per MARADMIN 462/21. *See* Director, Health Services, Headquarters, U.S. Marine Corps, "Marine Corps COVID-19 Vaccination Amplifying Guidance Pertaining to Exemption Documentation and Approval," (Sep. 15, 2021).

BUMEDNOTE 6300 of September 3, 2021, *Clinical Consultation Guidance for COVID 19 Vaccine Permanent Exemption* (published September 3, 2021). Additionally, medical providers are encouraged to request expert consultation by an immunizations specialist, when necessary.

Medical contraindications for the COVID-19 vaccine include:

- (a) Anaphylaxis from a previous COVID-19 vaccine or COVID-19 vaccine ingredient;
- (b) Myocarditis or pericarditis after COVID-19 vaccine administration or infection;
- (c) Temporary association of Stevens-Johnson Syndrome or Guillain-Barré Syndrome that cannot be attributed to another underlying cause within 6 weeks of COVID-19 vaccine administration or infection;
- (d) Thrombosis with Thrombocytopenia Syndrome (TTS) after COVID-19 vaccine administration; or
- (e) Persistent clinical symptoms lasting 4 or more weeks following a COVID-19 infection that cannot be attributed to another underlying cause after evaluation and focused workup (“Long COVID”). *Id.*

In the *Clinical Consultation Guidance*, providers are also encouraged to consult CDC guidance.<sup>6</sup>

If a patient does not present with contraindications for COVID-19 vaccination, or does not

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<sup>6</sup> An example of CDC clinical considerations includes:

If you were treated for COVID-19 with monoclonal antibodies or convalescent plasma, you should wait 90 days before getting a COVID-19 vaccine. Talk to your doctor if you are unsure what treatments you received or if you have more questions about getting a COVID-19 vaccine.

If you or your child has a history of multisystem inflammatory syndrome in adults or children (MIS-A or MIS-C), consider delaying vaccination until you or your child have recovered from being sick and for 90 days after the date of diagnosis of MIS-A or MIS-C. Learn more about the clinical considerations for people with a history of multisystem MIS-C or MIS-A.

otherwise present a clinical case requiring specialized assessment under BUMEDINST 6230.15B, paragraph 2-6a.(1)(c), the patient does not qualify for a permanent medical exemption.

10. On October 7, 2021, MARADMIN 533/21 was issued to provide additional guidance related to the documentation of medical exemptions to the COVID-19 vaccination requirement. Permanent medical exemptions are assessed, granted, and documented as required by MARADMIN 462/21 and MARADMIN 533/21 ¶ 2.c.2. All administrative exemptions were required to be documented in the Medical Readiness Reporting System (MRRS) not later than October 24, 2021, for active duty service members, and November 24, 2021, for reserve component personnel. MARADMIN 533/21 ¶ 2.c. Members with pending exemption requests are granted temporary medical exemptions pending the approval or denial of their request.<sup>7</sup> MARADMIN 533/21 ¶ 2.c.4.

11. Additional guidance concerning documenting administrative exemptions in MRRS is provided in BUMED Notice 6150, *Guidance for Coronavirus Disease 2019 Vaccination Deferral Status Reporting* (Sep. 21, 2021). While an exemption code may be recorded in MRRS, it generally indicates the Service member is unavailable to receive the (e.g., because they are on emergency leave, executing a PCS move, in civilian confinement, or deployed to a location or region where the mandatory vaccine is unavailable).<sup>8</sup> Ultimately, the

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<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

<sup>7</sup> No disciplinary or administrative action will be initiated while a permanent medical exemption request is pending.

<sup>8</sup> With few exceptions all administrative exemptions applicable to Service members are temporary in nature. BUMEDINST 6230.15B provides an indefinite duration for only the “Administrative, deceased” and “Administrative, missing” (i.e., missing in action, prisoner of war) administrative deferral codes. BUMEDINST 6230.15B, Appx. C, Table C-2. Similarly, BUMED Notice 6150 permits an indefinite duration only for the “Admin Deceased” administrative deferral code. BUMED Notice 6150, at 3. Even approved religious accommodations are subject to review and rescission based upon a determination that circumstances upon which the initial religious accommodation was based have changed. MCO 1730.9 ¶ 4.d.(1).

code documents a Service member's vaccination status on a given date under a category that generally explains why he or she has not received the vaccine, and does not necessarily represent a determination to exempt someone from the vaccine. BUMED Notice 6150 also provides that vaccine deferral codes are to be in effect for only 30 days, after which "the Service member will need to either receive the vaccine or update their deferral status." BUMED Notice 6150, at 3.

12. A service member with a medical exemption is still subject to restrictions and/or limitations due to the fact that they are unvaccinated (e.g., deployment ineligibility, foreign country entry restrictions, COVID-19 screening testing, extended quarantine requirements, restrictions from non-mission essential travel, etc.). From a medical standpoint, any Marine who is not fully vaccinated, including those with a medical exemption, "is not considered worldwide deployable and shall be assigned or reassigned, locally, to billets which account for health risks to the unvaccinated Marine and those working in proximity to the Marine." MARADMIN 612/21, ¶ 3.c. Further, commanders are authorized to temporarily reassign unvaccinated Marines based on operational readiness or mission requirements. *Id.* ¶ 3.d. Therefore, all unvaccinated Marines are impacted, as is their command and the Marine Corps writ large, by virtue of their unvaccinated status. As of March 21, 2022, a total of 20 permanent medical exemptions have been granted for Marines in the active and reserve components.

#### **Administrative (Including Religious) Exemptions**

13. In contrast to medical exemptions, granting administrative exemptions is a non-medical function handled by separate procedures. Administrative exemptions may be granted for reasons such as pending separation or retirement, permanent change of station, emergency leave, and religious accommodation. BUMEDINST 6230.15B, ¶ 2-6.b. To date, there have been 3,657

requests for religious accommodation concerning the COVID-19 vaccine mandate, and 6 requests have been approved.

**a. Religious Accommodation Request Process Overview**

14. Marine Corps policy concerning requests for the accommodation of religious practices, including requests for exemption from immunizations for religious beliefs, is outlined in Marine Corps Order (MCO) 1730.9, *Accommodation of Religious Practices in the Marine Corps*, (Jul. 12, 2021). A Marine seeking an exemption from immunization for religious reasons must initiate the request, using Navy Marine Corps (NAVMC) 10274 Administrative Action (AA) Form, in accordance with MCO 1730.9, paragraphs 4.a.(2) and 4.a.(3). The Marine's request must articulate: (1) the nature of the accommodation requested, (2) the duration of the request, (3) the religious or sincerely held spiritual basis for the request, and (4) the faith group or belief system identified with the request. MCO 1730.9 ¶ 4.a.(3).

15. All requests for religious accommodation are reviewed on a case-by-case basis. Requests for the accommodation of religious practices for medical requirements are forwarded, via the general court-martial convening authority, to the Deputy Commandant, Manpower and Reserve Affairs (DC M&RA)<sup>9</sup> for action as the adjudication authority. *Id.* ¶ 4.b. The commander must forward requests for a waiver of immunization requirements to DC M&RA within 30 days of receipt of the request. *Id.* ¶ 4.b(1)(a). The review and final determination by DC M&RA must be made within 60 days of receipt of the request. *Id.* If the request for religious accommodation for immunization is disapproved, the service member has the right to request an

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<sup>9</sup> "Requests for the accommodation of religious practices that require the waiver of Department of Navy and Marine Corps Orders and regulations will be submitted to DC M&RA via the first GCMCA. This type of request includes requests for grooming, religious apparel, and medical requirements.." *Id.* ¶ 4.b. The current DC M&RA is Lieutenant General David A. Ottignon.

appeal to the Commandant of the Marine Corps (CMC).<sup>10</sup> *Id.* ¶ 4(c)(1). A Service member who desires to appeal DC M&RA's decision will submit the appeal in standard naval letter addressed to CMC within 10 business days of receiving the determination. *Id.* The appeal should provide substantive information as to why the Service member or applicant believes the decision was unjust. *Id.* No adverse disciplinary or administrative action is taken while a member has a pending exemption or appeal. *See generally* MARADMIN 612/21.

16. The DC M&RA also considers the recommendation of the Religious Accommodation Review Board (RARB).<sup>11</sup> The RARB reviews the religious accommodation request with all endorsements and enclosures and provides written recommendations as to the merits of each religious accommodation request and whether the DC M&RA should approve or deny, in whole or in part, each request. *Id.*, Encl. 3, ¶ 2. The Board may recommend an accommodation request be temporarily or partially denied and has done so in cases requesting accommodation of uniform regulations. *Id.* The Board evaluates the request using the standards set forth in MCO 1730.9.

17. The adjudication authority may consider any adverse health and safety impacts of the request in rendering its decision. *Id.*, ¶ 4.b.(3)(b). For any medical-related accommodation request, paragraph 4(e)(6) requires the Director, Health Services provide a medical advisory.

#### **b. Standard of Review**

18. Commanders are directed to remain objective in considering requests to accommodate religious practices. MCO 1730.9 ¶ 3.a.(4). Each request for religious

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<sup>10</sup> The Assistant Commandant of the Marine Corps or the Director of the Marine Corps Staff may take action on behalf of the CMC. Decisions by an Appellate Authority are final. The current CMC is General David H. Berger.

<sup>11</sup> The Religious Accommodation Review Board (RARB) consists of a minimum of three voting members and non-voting advisors, to include a recorder, a legal advisor, a chaplain advisor, and other personnel as determined by the Board President. *Id.*, Encl. 3, ¶ 1.

accommodation must be reviewed on a case-by-case basis, “giving consideration to the full range of facts and circumstances relevant to the specific request.” Commanders are further admonished that “[i]t is essential that [they] articulate the factual basis underlying their decision.”

19. The Marine Corps will approve an individual request for accommodation unless such approval erodes a compelling government interest. *Id.* ¶ 4.b.(2). The adjudication authority is required to demonstrate that its determination considers whether the request is based on a sincerely held religious belief and whether there is a less restrictive alternative means of meeting the compelling government interest. *Id.* While every request is reviewed on a case-by-case basis, the adjudication authorities may consider the “individual and the cumulative effects of granting similar religious accommodation requests on the necessary elements of mission accomplishment;” *Id.* ¶ 4(b)(2). For requests for waivers from immunization requirements, Secretary of the Navy Instruction (applicable to both the U.S. Navy and U.S. Marine Corps) 1730.8B, *Accommodation of Religious Practices*, (Mar. 28, 2012), paragraph 8.a. provides that “[t]he religious objection of the service member must be balanced against the medical risk to the member and the military unit, and military requirements such as alert status, deployment potential, and availability of the member for reassignment to units requiring full medical readiness.”

### **c. Sincerely Held Religious Beliefs**

20. In support of a request for religious accommodation, Service members are required to complete an interview with a Navy chaplain, who assesses whether the requestor’s beliefs appear sincerely held using a standard checklist found in MCO 1730.9, enclosure (1). The

interview checklist directs the chaplain to assess the requestor's sincerity using one or more of the following factors:

- a. Requestor was credible (consistently keeps tenets, practices, etc.).
- b. Requestor's demeanor and pattern of conduct are consistent with the request.
- c. Requestor participates in activities associated with the belief(s).
- d. Other persons supporting the claim are credible.<sup>12</sup>
- e. Request is supported by letter(s) of verification or endorsement from an organization espousing the beliefs which are the basis for the claim.

*Id.*

21. The chaplain may find the requestor's beliefs sincere based on any of the factors above, it is not required that the requestor establish all of the factors. The chaplain does not assess the validity of the requestor's beliefs. The chaplain is also directed to explore alternative means of accommodating the requestor's practice in the interview. *Id.* After the interview, the chaplain provides a written memorandum for the record that summarizes the nature of the member's request, the religious belief(s) upon which the request is based, and a "professional and objective opinion regarding the religious importance of the request to the member." *Id.* Finally, the chaplain provides an assessment of sincerity of the member's personal religious belief, including any information provided during the interview. *Id.* A copy of this memorandum is provided to the requestor. *Id.*

22. The chaplain assessment is not itself a determination of the sincerity of the requestor's belief, nor is the chaplain's conclusion of the sincerity of the requestor's religious belief binding on the adjudication authority. While not questioning the validity of the beliefs, the approval and appeal authority (i.e. DC M&RA and CMC, respectively) will consider the

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<sup>12</sup> Requestors may submit material such as religious articles, or letters from religious leaders and/or organizations, in support of the request.

chaplain's input and assess the sincerity of the religious belief on a case-by-case basis using the same criteria in MCO 1730.9.

#### **d. Substantial Burden**

23. If a policy, practice, or duty substantially burdens a Marine's exercise of religion then the request can only be denied if the military policy, practice, or duty is in furtherance of a compelling governmental interest, and there is no lesser restrictive means to furthering that compelling interest. *Id.* ¶ 3.a. The policy states that the Marine Corps, not the Marine requesting the accommodation, carries the burden the burden of proof in establishing that the policy, practice or duty furthers a compelling governmental interest and there are no lesser restrictive means to further that interest. *Id.* ¶ 3.a.(2). This is also a case-by-case determination. Some sincerely held beliefs may not be substantially burdened if the requester has demonstrated acquiescence to the purported burden in other portions of their life (e.g., receiving other vaccinations or using other products developed with aborted fetal cells). Additionally, if the requester's sincerely held religious belief concerns objections to the mRNA vaccines, the requestor's belief may not be substantially burdened by receiving a different type of vaccine.

#### **e. Compelling Government Interest**

24 The Marine Corps has a compelling governmental interest in mission accomplishment at the individual, unit, and organizational levels. MCO 1730.9 highlights the necessary elements of mission accomplishment, which include: (1) military readiness; (2) unit cohesion; (3) good order and discipline; and (4) health and safety. MCO 1730.9 ¶ 3.b. In particular, immunizations are required for all Marines based upon the Marine Corp's compelling interest in military readiness, and the health and safety of active duty and reserve Marines. MCO 1730.9 ¶ 3.f. Immunizations are a vital component of individual and unit medical readiness, as

Marines operate in environments and under conditions that increase their exposure and susceptibility to illness. *Id.* This is particularly acute in deployed environments or in circumstances when Marines are required to be in close proximity to each other, such as recruit training or when embarked on ships, aircraft, and military vehicles. *Id.* Mission accomplishment may necessitate that Marines be immunized to protect against disease due to increased exposure potential, or to conform with international health regulations incident to foreign travel or unit deployment. *Id.*

25. Recent coronavirus variants (such as delta and omicron) have proven to be highly transmissible and cause more severe illness, hospitalization, and death than previous variants. The greatest risk of transmission is from and among unvaccinated people. And, while fully vaccinated people may still contract and potentially spread the virus, they appear to spread the virus for a shorter period of time. Personnel who have fallen ill due to a failure to be vaccinated against COVID-19 undermine a unit's effective functioning and would negatively impact their unit's ability to accomplish the mission. Moreover, personnel who are unvaccinated do not just put themselves at risk, they also risk the health and medical readiness of other persons within their unit, which in turn decreases the military readiness of the unit and the Marine Corps as a whole. For a unit to function effectively, either in garrison, in field training, or in combat, all personnel must be able to perform their individually assigned duties, which ensures military readiness.

#### **f. Less Restrictive Means**

26. If the requirement to be vaccinated places a substantial burden on the requestor's sincerely held religious belief, but is in furtherance of a compelling government interest, the approval and appellate authority will consider whether there are less restrictive means to achieve

the Marine Corps' compelling government interest in mission accomplishment at the individual, unit, and organizational levels. This is also based on a case-by-case review that is highly dependent on the particular facts applicable to the requester. If an approval or appellate authority does not have enough information to complete a case-by-case analysis, then they can ask the requestor or the requestor's command for more information in order to adjudicate a request or an appeal. Religious accommodations will be approved if it can be done so in a manner that does adversely impact the Marine Corps compelling government interest in preventing the spread of communicable diseases to support mission accomplishment, including military readiness, unit cohesion, good order and discipline, or health and safety.

27. The approval and appellate authority consider a variety of unique factors specific to the requester in determining if less restrictive means are available. Some of the considerations may include where the requester lives (e.g., in military barracks where bathrooms and messing facilities are often shared with other Marines), where the requester works (e.g., confined indoor space, outdoors, if telework is feasible), the nature of the requester's unit (e.g., is it deployable, living conditions if deployed, embarkation on a vessel if deployed), the nature of required military training (e.g., will the requester be required to train in close proximity with United States or foreign partners and allies) and the nature of the requestor's primary and collateral duties, among other factors. While considering these factors and others as may be applicable, the approval and appellate authorities will also consider if mitigation measures (e.g., social distancing, additional sanitation, masking, self-quarantining, etc.) will be effective without undermining the Marine Corps' compelling interest in mission accomplishment at the individual, unit, and organizational levels. These mitigation measures and similar ones are often

incompatible with the demands of military life, where Marines and Sailors must live, work, realistically train, and, if necessary, fight in close quarters.

28. As a result of the COVID-19 pandemic, the Marine Corps has implemented restrictions on travel and deployments, in addition to mitigation measures such as requirements for mask wearing and social distancing, to protect the health and safety of the force. Restrictions on travel, and specifically deployment, require additional testing and restriction of movement (“ROM”) for unvaccinated personnel. These measures are burdensome to commands who may have limited access to testing and lodging facilities required to implement these health protection measures. Additionally, over 37,000 Marines<sup>13</sup> have been infected with COVID-19, which is evidence that these restrictions and mitigation measures are not as effective as vaccination. Most importantly, Marines and Sailors must be available to deploy at a moment’s notice to respond to military exigencies as America’s Force in Readiness.

### **Refusal to Comply with the COVID-19 Vaccination Requirement**

29. Commanders are required to issue appropriate orders to ensure service members under their command are fully vaccinated. MARADMIN 462/21 ¶ 3.1. In the event a service member does not qualify for an exemption and refuses the order to become vaccinated,<sup>14</sup> the member’s refusal is documented in MRRS and the general court-martial convening authority may initiate disciplinary or adverse administrative action. MARADMIN 533/21 ¶ 2.c.4.

#### **a. Disciplinary Options**

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<sup>13</sup> See <https://www.defense.gov/Spotlights/Coronavirus-DOD-Response> (last accessed March 22, 2022).

<sup>14</sup> “A Marine is considered to have ‘refused the vaccine’ when they do not have an approved administrative or medical exemption, religious accommodation, or pending appeal per [MARADMIN 462/21] and [MARADMIN 533/21] and they (1) received and willfully disobeyed a lawful order from a superior commissioned officer to be vaccinated against COVID-19; or, (2) they are not or will not be fully vaccinated on the date(s) required by [MARADMIN 462/21] and [MARADMIN 533/21]. A Marine is not considered to have ‘refused the vaccine’ until final adjudication of any administrative or medical exemption, religious accommodation, or pending appeal per [MARADMIN 462/21] and [MARADMIN 533/21].” MARADMIN 612/21 ¶ 3.b.

30. While MARADMIN 462/21 elevates disposition authority for cases involving vaccine refusal to the general court-martial convening authority, commanders generally possess a wide array of administrative and disciplinary options with which to dispose of service members' offenses under the UCMJ. Subject to the limits of the commander's authority, the commander's administrative corrective measures include formal or informal counseling, non-punitive letters of caution or censure,<sup>15</sup> withholding of privileges, and extra-military instruction, as governed by the relevant service policy. Disciplinary options include non-judicial punishment under Part V of the MCM, disposition of the charges by court-martial where the commander has the authority to do so, or forwarding of charges for trial by court-martial where the commander does not.

a. Nonjudicial punishment is a forum generally reserved for minor offenses, or those offenses which the maximum sentence would not include a Dishonorable Discharge or confinement for greater than one year if tried by a general court-martial. MCM, Part V ¶ 1.e. Punishments are limited by the rank and position of the cognizant commander, as well as the rank of the person accused of misconduct. *Id.* ¶ 2, 5. Punishments and service limitations are outlined in MCM Part V and the Manual of the Judge Advocate General (JAGMAN), but commonly include some combination of the following: admonishment or reprimand, extra duties, restriction, reduction in rank, or forfeiture of pay. MCM, Part V ¶ 5; JAGMAN, 0111. Commanders are encouraged to permit the accused to speak with counsel subject to the immediate availability of counsel, the delay involved, and operational commitments or military exigencies. JAGMAN 0108 ¶ a.(1). Service members not attached to a vessel have the right to refuse non-judicial punishment and request trial by court-martial. MCM, Part V ¶ 3; JAGMAN

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<sup>15</sup> Non-punitive letters of caution or censure are matters between the issuing authority and the counseled member and do not become part of the member's official service record. Manual of the Judge Advocate General (JAGMAN) 105 ¶b.(2).

0108 ¶ a. Following imposition of non-judicial punishment, the service member has five working days to submit an appeal, and may request additional time for good cause. MCM, Part V ¶ 7.

The member's appeal is forwarded, along with the commander's endorsement, to the cognizant general court-martial convening authority for action. MCM, Part V ¶ 7; JAGMAN, 0117.

b. More serious offenses under the UCMJ may be subject to trial by court-martial. There are three types of courts-martial: summary court-martial, special court-martial, and general court-martial. Depending on the rank and position of the commander, he or she may or may not be authorized to convene certain types of courts-martial. UCMJ, 10 U.S.C. § 821-24. Further, the nature of the proceedings and punishments available are limited depending on the forum and rank of the accused. *See* UCMJ, 10 U.S.C. Chapter 47, Subchapters IV, VIII. The most severe punishments, such as the death penalty, a Dishonorable Discharge, Dismissal, or extended periods of confinement, are only available at general courts-martial, and certain offenses are only permitted to be tried by general courts-martial. *Id.* Summary courts-martial are less formal than either special or general courts-martial, which are equivalent in formality and procedure to civilian criminal courts; however, each court-martial forum is governed by the procedures outlined in the MCM, Part II, Rules for Court Martial. Special courts-martial and general courts-martial, in particular, have substantial legal and procedural requirements with respect to pre-trial, trial, and post-trial judicial proceedings.<sup>16</sup> Disposition of offenses by court-martial is generally reserved for serious criminal offenses.<sup>17</sup> The adjudication of trials by court-martial generally take months before the court is convened, and may take several months,

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<sup>16</sup> Relevant to a charge of violation of Article 92 (disobeying a lawful order) for refusal to receive the COVID-19 vaccination, an accused member could choose to raise all available affirmative defenses, including the lawfulness of the order, at court-martial.

<sup>17</sup> *See, e.g.,* Monthly Court-Martial Reports (describing punishments imposed by courts-martial convened within the U.S. Marine Corps, for offenses such as drug offenses, sexual assault, child pornography, etc.) (available at <https://www.hqmc.marines.mil/sja/Court-Martial-Reports/>).

depending on the matters involved in the case and the court's docket, prior to the trial date.

Upon conclusion of the trial, the member may appeal the findings or sentence as provided in Chapter XI and XII of the MCM.

### **b. Administrative Options**

31. Adverse administrative action includes administrative separation from the service. Administrative separation procedures may vary in certain respects depending on the service member's status (officer or enlisted), years of service, and record of performance, among other factors. Administrative separations for officers are processed in accordance with SECNAV Instruction 1920.6D (hereinafter SECNAVINST 1920.6D) and Chapter 4 of MCO 1900.16, Separation and Retirement Manual (hereinafter MARCORSEPMAN), while enlisted administrative separations are processed pursuant to MARCORSEPMAN, Chapter 6. "Marines refusing the COVID-19 vaccination, absent an approved administrative or medical exemption, religious accommodation, or pending appeal shall be processed<sup>18</sup> for administrative separation [in accordance with] this MARADMIN and supporting references." MARADMIN 612/21 ¶ 3.a.

32. Adverse incidents involving officers require notification to the CMC, Military Personnel Policy Branch. MARCORSEPMAN ¶ 4101. The CMC shall initiate administrative separation processing when the officer's performance or conduct is such that administrative separation is appropriate. *Id.* In the case of officers of the Navy, the commander must coordinate with Navy Personnel Command, which manages the officer's separation processing. MCO 5800.16, Legal Support and Administration Manual, Vol. 15, Art. 010402.B. (Aug. 8, 2018). Typically, the Navy officer would remain assigned to the Marine Corps unit throughout the process. Reasons for separation are outlined in SECNAVINST 1920.6D, and include reasons

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<sup>18</sup> Although processing for separation is required, this does not automatically result in a member actually being separated. Members processed for separation may ultimately be retained in the service.

such as Misconduct, Moral or Professional Dereliction, and Substandard Performance. The specific procedures involved with processing an officer for misconduct are outlined in SECNAVINST 1920.6D, Enclosure (6), “Policy Governing Involuntary Separation for Cause or Parenthood”, and Enclosure (7), “Guidelines on Separations for Cause”. The separation authority for officers in both the U.S. Marine Corps and U.S. Navy is delineated by statute as the Secretary of the Navy, and this authority is further delegated by Department policy to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)). Discharge from the naval service only becomes final upon that Secretarial action. See SECNAVINST 1920.6D Encls. (10) ¶6; (11) ¶15.

33. The applicable procedures may vary in certain respects depending on the officer’s type of appointment, years of service, and record of performance, among other factors. Probationary officers may be processed without a Board of Inquiry (BOI) when the show cause authority determines that an Honorable, or General (under honorable conditions) characterization of service is appropriate. SECNAVINST 1920.6D, Encl (2), ¶ 25; Encl (7), ¶ 3.a. Non-probationary officers must be processed using BOI procedures, which entails a formal administrative hearing over which a panel of no fewer than three senior officers preside in order to make findings with respect to the bases for separation, and recommendations with respect to retention or separation, and character of service. *Id.*, Encl (7) ¶ 4; Encl (11).

34. In cases where no BOI is required, the processing time *goal* under SECNAVINST 1920.6D is that separation processing should be completed by the convening authority 30 calendar days from the date a command notifies an officer of the commencement of separation processing. SECNAVINST 1920.6D ¶ 9b. In cases where a BOI is required, the processing goal is 90 calendar days from the date a command notified an officer of the commencement of

separation processing. *Id.* at ¶ 9c. Every effort is made to adhere to these time goals but the failure to process an administrative separation within the prescribed time goals does not constitute a bar to separation or characterization. *Id.* at ¶ 9.

35. Enlisted Marines may be separated for the convenience of the government for reasons including refusal of medical treatment, including refusal of inoculation, if the refusal interferes with duty. MARCORSEPMAN ¶ 6203.7.e. Alternatively, Marines may be separated by reason of misconduct for offenses which would warrant a punitive discharge under the UCMJ, which includes violations of Article 92 of the UCMJ. MARCORSEPMAN ¶ 6210.6. Marines with fewer than six years of service may be processed using notification procedures under MARCORSEPMAN 6303, unless characterization of service<sup>19</sup> of Other Than Honorable is warranted. Administrative board procedures under MARCORSEPMAN paragraph 6304 are used in instances where an Other Than Honorable characterization is warranted, or for Marines with greater than six years of service, if they elect an administrative board.

36. Notification procedures afford the Marine with notice of the adverse administrative action and an opportunity to submit written matters for consideration, whereas administrative board procedures require a formal administrative hearing. Written matters include any information that the Marine wishes to be considered—including service record and letters from third parties—and may bear not only whether discharge is appropriate but also on the level of any discharge. The MARCORSEPMAN processing time goal where a board is not required is 15 working days after the Marine received notification of separation. MARCORSEPMAN ¶

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<sup>19</sup> A characterization of service is assigned to a service member upon separation from the military and generally reflects the quality of an individual's military service. The highest characterization of service is Honorable, followed by General (Under Honorable Conditions), Other Than Honorable, Bad-Conduct, and Dishonorable. Officers may be awarded a Dismissal, which is akin to a Dishonorable discharge. The first three types of characterization may be awarded using administrative procedures, whereas Bad Conduct and Dishonorable discharges, as well as an officer's Dismissal, are considered "punitive discharges." These types of discharges may only be awarded by a court-martial sentence and imposed after appellate review is complete.

6102. If a board is required, action should be completed within 50 working days after the Marine received notification of separation. *Id.*

37. All active duty and reserve component Marines who separate, retire, demobilize or deactivate after a minimum of 180 continuous days of AD are eligible and required to participate in a transition readiness seminar (TRS), with limited exemptions. *See* MCO 1700.31, (Dec. 30, 2015). The TRS includes mandatory pre-separation counseling to inform Marines of available transition-related services and benefits, to include a Department of Labor Employment Workshop, and Department of Veterans Affairs (VA) benefits briefings with information on education, healthcare, compensation, life insurance, home loans, and vocational rehabilitation and training benefits.

38. MARADMIN 462/21 permits the special court-martial convening authority to issue administrative counseling pursuant to paragraph 6105 of the MARCORSEPMAN, which provides the following for involuntary separations by reason of misconduct:

“In cases involving unsatisfactory performance, pattern of misconduct, minor disciplinary infractions, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies and afforded a reasonable opportunity to overcome those deficiencies.”

MARCORSEPMAN ¶ 6105.3. The duration of time that affords the Marine a “reasonable opportunity” is determined by the commanding officer on a case-by-case basis, and the commanding officer must sign the formal counseling document (commonly known as a “Page 11”). *Id.* The MARCORSEPMAN provides standard language to include to advise the Marine of potential disciplinary or adverse administrative action, to include administrative separation, and advises the member of his or her right to provide a rebuttal to be filed with the counseling. *Id.*

### **Post-Discharge Corrective Actions**

39. Discharged service members may seek a review of his or her discharge through the cognizant Discharge Review Board (DRB). 10 U.S.C. § 1553. The DRB is empowered to change and issue a new discharge on grounds of equity or propriety. 32 C.F.R. § 70.9. DRBs may consider factors such as the applicant's service history, awards and decorations, letters of commendation or reprimand, wounds received in action, acts of merit, length of service, convictions by court-martial or civilian convictions, non-judicial punishments, records of unauthorized absence, or records relating to the member's discharge. *Id.*

40. Discharged service members may also seek an upgraded discharge from the appropriate Board for Correction of Military Records (BCMR), which is the Board for Correction of Naval Records (BCNR) for the Navy and Marine Corps personnel. 10 U.S.C. § 1552. The BCNR has more extensive authority than DRBs to upgrade discharges, void discharges, alter reenlistment codes, and remove otherwise inaccurate or adverse documents from a service member's record. The BCNR may correct any military record when it is necessary to correct an error or remove an injustice. *Id.* The BCNR's action may result in a member being reinstated in the Marine Corps. If a service member is unable to obtain relief through the appropriate DRB or BCMR, the service member may elect to challenge the agency's decision and administrative proceedings in federal court under applicable federal law.

41. In summary, the Marine Corps provides Service members opportunities to seek medical and religious exemptions from the requirement to be vaccinated. For those Marines who do not wish to pursue an exemption, or who have their exemption request denied after full adjudication including appeal, and still refuse to be immunized, the Marine Corps' interest in good order and discipline is best served by adjudicating each refusal on a case-by-case basis. Each Marine will be afforded all due process to which he or she is entitled, while fully

exhausting intra-service administrative and disciplinary processes that result in a final agency action.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of July, 2022.

FURNESS.DAVI  
D.J.1052857526

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D. J. FURNESS  
Lieutenant General, U.S. Marine Corps

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

ISRAEL ALVARADO, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 8:22-CV-01149
	)	
LLOYD AUSTIN, III, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF CHAPLAIN, MAJOR MATTHEW J. STRETT**

I, Matthew J. Strett, hereby state and declare as follows:

1. I am a Major in the United States Air Force currently assigned as a Staff Chaplain at the Office of the Chief of Chaplains. I have been in this position since June 2021. As a part of my duties, I am responsible for coordinating Chaplain Corps policy, publications, and religious accommodation concerns for the United States Air Force and the United States Space Force, lead the Policy branch of the Plans and Programs division, and I serve as one of the chaplain representatives on the Headquarters Air Force Religious Resolution Team advising the Air Force Surgeon General on religious accommodation appeals for vaccination exemption requests.

2. I make this declaration in my official capacity as a Staff Chaplain and based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

3. The Air Force policy and procedures for addressing religious accommodation requests are outlined in Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, dated June 23, 2021 and Air Force Instruction (AFI) 48-110\_IP, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*, dated October

7, 2013 (certified current February 16, 2018).<sup>1</sup> DAFI 52-201 implements Department of the Air Force Policy Directive 52-2, *Accommodation of Religious Practices in the Air Force*, which implements Department of Defense Instruction (DoDI) 1300.17, *Religious Liberty in the Military Services*, in the Air Force. DoDI 1300.17 implements requirements in the “Religious Freedom Restoration Act<sup>2</sup> and other applicable laws.<sup>3</sup> I am familiar with the religious accommodation policy and process as they fall within the scope of my professional duties.

4. A service member may request a religious accommodation from an immunization requirement by submitting a written request addressed to the approval authority to his or her unit commander. The request will include, in addition to other identifying information, “the religious basis for the request; a comment on the sincerity of the request; and the substantial burden on the member’s expression of religion.”<sup>4</sup> The approval authority indicated in DAFI 52-201 is the Major Command (MAJCOM), Field Command (FIELDKOM), Direct Reporting Unit (DRU), or Field Operating Agency (FOA) commander over the service member. The appeal authority for any disapproved request is the Air Force Surgeon General.

5. The DoD will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety.<sup>5</sup> Accommodations will be granted unless they encounter these issues. Not all religious accommodation requests are the same. Each request for religious accommodation is reviewed individually—by both the initial approval

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<sup>1</sup> AFI 48-110\_IP is an inter-service publication. The Army identifies it as Army Regulation (AR) 40-562, Navy as Bureau of Medicine and Surgery Instruction (BUMEDINST) 6230.15B, and Coast Guard (CG) Commandant Instruction (COMDTINST) M6230.4G.

<sup>2</sup> 42 U.S.C. § 2000bb-1.

<sup>3</sup> Note that because of publication dates, AFI 48-110\_IP does not reflect the recent, significant changes in DoDI 1300.17, while DAFI 52-201 does reflect those changes. When there are conflicts between AFI 48-110\_IP and DAFI 52-201 on the same subject, DAFI 52-201 will reflect more recent guidance.

<sup>4</sup> DAFI 52-201, paragraph 5.3.

<sup>5</sup> DoDI 1300.17, paragraph 1.2.b.

level decision authority and the appellate authority, if applicable—to determine (1) if there is a sincerely held religious (as opposed to moral or conscience) belief, (2) if the vaccination requirement substantially burdens the applicant’s religious exercise based upon a sincerely held religious belief, and if so, (3) whether there is a compelling government interest in requiring that specific requestor to be vaccinated, and (4) whether there are less restrictive means in furthering that compelling government interest. An accommodation request based on conscience or moral principle (as opposed to religious beliefs) is not evaluated under the compelling government interest standard; in those cases, the needs of the member are balanced against the needs of mission accomplishment.<sup>6</sup>

6. When evaluating a religious accommodation request, DAFI 52-201 states that “[t]he Department of the Air Force has a compelling government interest in mission accomplishment and will take this into account when considering members’ requests for accommodation of religious beliefs. This interest includes military readiness, unit cohesion, good order and discipline, and health and safety for both the member and the unit.”<sup>7</sup> Commanders may only deny a religious accommodation request (in full or in part) “when there is a real (not theoretical) adverse impact on military readiness, unit cohesion, good order and discipline, or public health and safety for both the individual and unit levels.”<sup>8</sup> Any substantial burden imposed “will employ the least restrictive means possible on expressions of sincerely held religious beliefs.”<sup>9</sup>

7. To ensure commanders are properly informed of the facts and circumstances of the request and able to make an informed recommendation and/or decision, the Air Force uses a

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<sup>6</sup> DoDI 1300.17, paragraph 1.2.d. Para. 2.2.b directs the services to establish regulations and policies addressing conscience and moral principles (“Accommodation of practices reflecting a Service member’s sincerely held conscience or moral principles will be governed by the policies of the DoD Component concerned.”); DAFI 52-201, paragraph 2.5 describes that policy.

<sup>7</sup> DAFI 52-201, paragraph 2.1.

<sup>8</sup> Id.

<sup>9</sup> Id.

Religious Resolution Team, which “is a multidisciplinary team that advises commanders regarding resolution of religious liberty matters.”<sup>10</sup> At the installation level, the team is comprised of the commander (or designee), Senior Installation Chaplain, a public affairs officer, a member of the Staff Judge Advocate’s office (i.e., the legal office). Teams addressing immunization requests also include a medical provider.

8. Most units that fall under Air Force Reserve Command (AFRC) operate on a part-time basis and are not fully staffed for the entirety of a month. Typically, these units only fully convene one weekend per month. As such, it is logistically difficult for AFRC units to assemble the members required for a Religious Review Team to address the number of COVID-related religious accommodation packages that have been submitted. Accordingly, the AFRC temporarily waived the requirement for AFRC units to hold a Religious Review Team, with the AFRC-level Religious Review Team fulfilling the requirement instead.<sup>11</sup> This waiver was made pursuant to the AFRC Commander’s authority in Department of the Air Force Instruction 33-360, which delegated waiver authority for such matters to Air Force Major Command commanders. That waiver was valid from September 1, 2021 to December 31, 2021.

9. Prior to review by the Religious Resolution Team, the member will have three consultations, in no particular order. First, a chaplain is appointed to interview the service member. The interview addresses the type of request, the sincerity of an asserted religious (as opposed to a moral/conscience) belief, any substantial burden imposed by the policy in question on a sincere religious practice, and potential alternative means of accommodating the practice. Second, the service member’s unit commander must also counsel the service member concerning

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<sup>10</sup> Id., paragraph 3.8.1.

<sup>11</sup> Per DAFI 52-201, paragraph 3.8.1.2, the Religious Resolution Team at a Major Command is comprised of representatives from the Deputy Chief of Staff for Manpower, Personnel, and Services; Chaplain Corps, Public Affairs, Judge Advocates General, and the Surgeon General.

the impact not receiving the specified vaccine may have on “readiness for deployment, assignment, international travel, or result in other administrative consequences.”<sup>12</sup> Third, a military physician must ensure the service member is making an informed decision and consult with the member on “at a minimum, specific information about the diseases concerned; specific vaccine information including product constituents, benefits, and risks; and potential risks of infection incurred by unimmunized individuals.”<sup>13</sup> The chaplain, commander, and medical provider each provide written memoranda of their respective meetings and recommendations to include in the request package.

10. The chaplain’s memorandum must address whether the requestor’s beliefs seem to be sincere and based upon religion (as opposed to moral or conscience), alternative means explored for religious accommodation, the substantial burden infringing on religious exercise, and a recommendation to the decision authority.<sup>14</sup> The chaplain’s role is to provide inputs based on the interview to ensure the approval authority is able to make an informed decision.

Additionally, the recommendation is not necessarily whether the accommodation should be granted or not. While the chaplain is not prohibited from saying whether an accommodation should or should not be granted, the chaplain could also recommend that alternative means be explored, or that a belief should be viewed as a religious versus ethical/moral case involving different standards of burden. For example, in appeals, the chaplain recommendation is either that the request appears to be religious or moral/conscience in nature, the vaccination does or does not constitute a substantial burden, more information should be requested before further chaplain analysis, or further group discussion is requested.

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<sup>12</sup> DAFI 52-201, paragraph 6.6.1.1.

<sup>13</sup> AFI 48-110\_IP, paragraph 2-6.(b)(3)(a)(2).

<sup>14</sup> DAFI 52-201, Attachment 5.

11. The Religious Resolution Team reviews the package (i.e., written request and other submitted endorsements/letters, chaplain memorandum, medical provider memorandum, unit commander memorandum, and any other pertinent information) and provides a written recommendation from the team, including dissenting views of any members of the team. If necessary to making a recommendation, the team may request additional information. Separately, a written legal review for the package is provided.

12. The package is then routed through each commander in the chain of command, from the unit commander up to the approval authority, with each commander providing an endorsement with a recommendation to approve or disapprove the request. “Endorsements must address if there is a compelling government interest and any effect the accommodation will have on readiness, unit cohesion, good order and discipline, health, or safety, and impact on the duties of the member. . . . The endorsement must also address whether less restrictive means can be used to meet the government’s compelling government interest.”<sup>15</sup>

13. Depending on the chain of command for a specific service member, the commanders endorsing a request may include a squadron command, group command, wing command/delta commander,<sup>16</sup> Numbered Air Force commander,<sup>17</sup> and MAJCOM/FIELDCOM/DRU/FOA commander. In addition, as the package is routed through the chain of command, Religious Resolution Teams at the MAJCOM (or equivalent) level also review the package and advise the commander. The MAJCOM (or equivalent) commander is the final approval authority.

14. A religious accommodation request where the policy, practice or duty in question substantially burdens a sincerely held religious belief will be approved unless there is a

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<sup>15</sup> DAFI 52-201, paragraph 6.6.1.5.

<sup>16</sup> A Delta is the Space Force equivalent of an Air Force Wing.

<sup>17</sup> A Numbered Air Force is a level of command directly under a MAJCOM with other organizational units, such as Wings, Groups, and Squadrons assigned as subordinate units.

compelling government interest and the policy, practice or duty causing the substantial burden is the least restrictive means to achieve the compelling governmental interest equally well.<sup>18</sup>

“Using the least restrictive means necessary may include partial approval, approval with specified conditions, or other means that are less burdensome on the member’s religious beliefs.”<sup>19</sup>

15. Requests for religious accommodation from an immunization requirement made by an active duty service member within the continental United States should be reviewed with final action and notification to the member within thirty business days from the date the service member submitted the request. For requests from a member outside the continental United States or reserve component service members, the timeline is extended to 60 business days.<sup>20</sup> If there is a large influx of religious accommodation requests, these timelines may not be met. However, even if the timelines are not met, a service member is temporarily exempted from the relevant immunization requirement while their religious accommodation request is pending.<sup>21</sup> The temporary exemption applies to both the approval process and any appeal from a denial, if applicable. No administrative or disciplinary action is to be taken for failure to comply with the vaccination requirement during that exemption period.

16. If the final approval authority approves a religious accommodation request, a written approval is provided to the member’s servicing Force Support Squadron to include in the member’s electronic personnel record. The member’s unit commander will inform the member of the approved request. If a request is disapproved, the member may elect to appeal the request to each level of command and ultimately to the final appeal authority, the Air Force Surgeon

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<sup>18</sup> DAFI 52-201, paragraph 2.4; DoDI 1300.17, paragraph 1.2.(e)(2).

<sup>19</sup> DAFI 52-201, paragraph 2.4.

<sup>20</sup> DAFI 52-201, Table 2.1; DoDI 1300.17, Table 1.

<sup>21</sup> DAFI 52-201, paragraph 2.12.

General.<sup>22</sup> An appeal must be submitted within five (5) calendar days of receiving notification of the disapproval.<sup>23</sup> To file an appeal, the member addresses the appeal memorandum to the appeal authority and provides a copy to the unit commander. The unit commander will provide the request to both the prior approval authority and the appeal authority.<sup>24</sup> An appeal should be resolved within 30 business days following the member's written notification of intent to appeal.<sup>25</sup> As noted, if the timeline is not met the service member continues to be exempt from the immunization requirement, and no administrative or disciplinary action is to be taken for failure to comply with the vaccination requirement during that exemption period.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of July 2022.

**STREETT.MATTHE**  
**W.JAMES.114784**  
**4570**  
MATTHEW J. STREETT, Maj, USAF  
Staff Chaplain

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Attachments:

1. DoDI 1300.17, *Religious Liberty in the Military Services*, dated 1 September 2020
2. DAFI 52-201, *Religious Freedom in the Department of the Air Force*, dated 23 June 2021
3. Air Force Policy Directive (AFPD) 52-2, *Accommodation of Religious Practices in the Air Force*, dated 28 July 2020

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<sup>22</sup> DAFI 52-201, paragraph 5.8.1. While the DAFI discusses appealing to the next higher decision authority, absent a delegation of approval authority from the MAJCOM to a lower level, in this case the next higher authority for immunization requirements is the Air Force Surgeon General with no intermediate appeal authority.

<sup>23</sup> Secretary of the Air Force Memo, *Supplemental Coronavirus Disease 2019 Vaccination Policy*, dated December 7, 2021.

<sup>24</sup> DAFI 52-201, paragraph 5.8.2. – 5.8.3.

<sup>25</sup> DAFI 52-201, paragraph 5.8.4.

U.S. ARMY COVID-19 VACCINATION DATA*				
Component	% Complete	% At Least One Dose	Refusals	Separations
Active Army	96%	97%	1,558	1,299
Army National Guard	87%	89%	12,229	0
Army Reserve	89%	90%	7,033	0
U.S. ARMY COVID-19 PERMANENT EXEMPTION DATA*				
Temporary	Approved: <i>(includes requests for permanent exemptions)</i>			
Active Army	3,085			
Army National Guard	7,767			
Army Reserve	6,457			
Permanent Medical	Approved:	Disapproved:	Requested:	
Active Army	23	689	742	
Army National Guard	6	33	53	
Army Reserve	0	252	297	
Permanent Religious	Approved:	Disapproved:	Requested:	
Active Army	19	1,239	4,782	
Army National Guard	0	39	1,141	
Army Reserve	0	31	1,778	
*As of July 7, 2022				

## DAF COVID-19 Statistics - June 28, 2022



Published June 28, 2022

Secretary of the Air Force Public Affairs

**WASHINGTON (AFNS) --** Below are current coronavirus disease 2019 statistics for Department of the Air Force personnel. Due to the 4th of July holiday, the next update will be published July 12.

June 28, 2022

Current as of 2 p.m., June 27, 2022

DAF TOTAL STATS				
	CASES*	HOSPITALIZED	RECOVERED*	DEATHS*
Military**	104,165	12	101,549	16
Civilian	22,081	5	21,378	109
Dependents	18,911	1	18,685	8
Contractors	5,893	1	5,744	32
<b>Total</b>	<b>151,050</b>	<b>19</b>	<b>147,356</b>	<b>165</b>

\*These numbers include all of the cases that were reported since our last update on June 14.

\*\*Military includes Active and Reserve components.

DAF TOTAL VACCINATED				
	ACTIVE DUTY	GUARD	RESERVE	TOTAL FORCE
% Partially Vaccinated	0.1%	0.2%	0.2%	0.1%
% Fully Vaccinated	98.6%	94%	95.1%	97.1%

DAF APPROVED EXEMPTIONS				
	ACTIVE DUTY	GUARD	RESERVE	TOTAL FORCE
Medical	308	207	161	676
Administrative	23	825	84	932

RELIGIOUS ACCOMMODATION REQUESTS		
	MAJCOM/FLDCOM	DAF/APPEALS
Pending	2,399	721



Disapproved

0,042

3,443

As of June 27, the Department of the Air Force has administratively separated 672 service members.

\*Civilian statistics are unaccounted for.

\*\*These numbers are subject to change.

**Unvaccinated:** All those who have verbally refused, have not started the vaccination process or are erroneously coded. Does not include those who have approved exemptions.

**Medical:** Medical exemptions are determined individually by the member's medical provider.

**Administrative:** Administrative exemptions are determined individually. For example, if a member obtained a commander-approved submission for separation or retirement by Nov. 1, they are administratively exempt.

**Religious Accommodation:** Religious accommodations are a subset of administrative exemptions and are determined by the MAJCOM/FLDCOM commanders. The DAF has 30 business days (active component in CONUS) to process requests. Members who receive a denial of the accommodation request have five calendar days from the denial to 1) begin a COVID-19 vaccination regimen, 2) submit an appeal to the final appeal authority or 3) request to separate or retire. Appeals are determined by the DAF's Surgeon General with inputs from the chaplain and staff judge advocate. Individuals do not have to get immunized as long as their request is in the process of being decided.

Members who continue refusing to obey a lawful order to receive the COVID-19 vaccine after their accommodation request has been denied or retirement/separation has not been approved will be subject to initiation of administrative discharge proceedings.

**Personnel Numbers (approximates):**

- 326,000 Active Component (U.S. Air Force and U.S. Space Force)
- 105,000 Air National Guard
- 66,000 Air Force Reserve
- 497,000 Total Force (Active Duty, Air National Guard and Air Force Reserve)

June 14, 2022

Current as of 2 p.m., June 13, 2022

DAF TOTAL STATS				
	CASES*	HOSPITALIZED	RECOVERED*	DEATHS*
Military**	102,515	11	99,931	16
Civilian	21,689	5	21,084	109
Dependents	18,770	1	18,577	8
Contractors	5,799	1	5,678	32
<b>Total</b>	<b>148,773</b>	<b>18</b>	<b>145,270</b>	<b>165</b>

\*These numbers include all of the cases that were reported since our last update on June 7.

\*\*Military includes Active and Reserve components.

DAF TOTAL VACCINATED				
	ACTIVE DUTY	GUARD	RESERVE	TOTAL FORCE
% Partially Vaccinated	0.1%	0.2%	0.2%	0.1%
% Fully Vaccinated	98.6%	93.9%	95%	97.1%

	ACTIVE DUTY	GUARD	RESERVE	TOTAL FORCE
Medical	331	214	164	709
Administrative	23	869	87	979

#### RELIGIOUS ACCOMMODATION REQUESTS

	MAJCOM/FLDCOM	DAF/APPEALS
Pending	2,920	909
Approved	95	23
Disapproved	6,476	3,071

As of June 13, the Department of the Air Force has administratively separated 583 service members.

\*Civilian statistics are unaccounted for.

\*\*These numbers are subject to change.

**Unvaccinated:** All those who have verbally refused, have not started the vaccination process or are erroneously coded. Does not include those who have approved exemptions.

**Medical:** Medical exemptions are determined individually by the member's medical provider.

**Administrative:** Administrative exemptions are determined individually. For example, if a member obtained a commander-approved submission for separation or retirement by Nov. 1, they are administratively exempt.

**Religious Accommodation:** Religious accommodations are a subset of administrative exemptions and are determined by the MAJCOM/FLDCOM commanders. The DAF has 30 business days (active component in CONUS) to process requests. Members who receive a denial of the accommodation request have five calendar days from the denial to 1) begin a COVID-19 vaccination regimen, 2) submit an appeal to the final appeal authority or 3) request to separate or retire. Appeals are determined by the DAF's Surgeon General with inputs from the chaplain and staff judge advocate. Individuals do not have to get immunized as long as their request is in the process of being decided.

Members who continue refusing to obey a lawful order to receive the COVID-19 vaccine after their accommodation request has been denied or retirement/separation has not been approved will be subject to initiation of administrative discharge proceedings.

#### Personnel Numbers (approximates):

326,000 Active Component (U.S. Air Force and U.S. Space Force)

105,000 Air National Guard

66,000 Air Force Reserve

497,000 Total Force (Active Duty, Air National Guard and Air Force Reserve)

June 7, 2022

Current as of 2 p.m., June 6, 2022

#### DAF TOTAL STATS

	CASES*	HOSPITALIZED	RECOVERED*	DEATHS*
Military**	100,919	14	98,590	16
Civilian	21,512	5	20,927	109
Dependents	18,708	1	18,524	8
Contractors	5,778	1	5,574	32

\*These numbers include all of the cases that were reported since our last update on May 24.

\*\*Military includes Active and Reserve components.

DAF TOTAL VACCINATED				
	ACTIVE DUTY	GUARD	RESERVE	TOTAL FORCE
% Partially Vaccinated	0.1%	0.2%	0.2%	0.1%
% Fully Vaccinated	98.5%	93.8%	94.9%	97.1%

DAF APPROVED EXEMPTIONS				
	ACTIVE DUTY	GUARD	RESERVE	TOTAL FORCE
Medical	337	220	172	729
Administrative	25	892	89	1,006

RELIGIOUS ACCOMMODATION REQUESTS		
	MAJCOM/FLDCOM	DAF/APPEALS
Pending	2,633	836
Approved	86	23
Disapproved	6,343	2,978

As of June 6, the Department of the Air Force has administratively separated 543 service members.

\*Civilian statistics are unaccounted for.

\*\*These numbers are subject to change.

**Medical:** Medical exemptions are determined individually by the member's medical provider.

**Administrative:** Administrative exemptions are determined individually. For example, if a member obtained a commander-approved submission for separation or retirement by Nov. 1, they are administratively exempt.

**Religious Accommodation:** Religious accommodations are a subset of administrative exemptions and are determined by the MAJCOM/FLDCOM commanders. The DAF has 30 business days (active component in CONUS) to process requests. Members who receive a denial of the accommodation request have five calendar days from the denial to 1) begin a COVID-19 vaccination regimen, 2) submit an appeal to the final appeal authority or 3) request to separate or retire. Appeals are determined by the DAF's Surgeon General with inputs from the chaplain and staff judge advocate. Individuals do not have to get immunized as long as their request is in the process of being decided.

Members who continue refusing to obey a lawful order to receive the COVID-19 vaccine after their accommodation request has been denied or retirement/separation has not been approved will be subject to initiation of administrative discharge proceedings.

**Personnel Numbers (approximates):**

326,000 Active Component (U.S. Air Force and U.S. Space Force)

105,000 Air National Guard

66,000 Air Force Reserve

497,000 Total Force (Active Duty, Air National Guard and Air Force Reserve)



## FEATURED NEWS

### Senior Leader Priorities

[Kendall talks PTSD, mental health with medical leaders](#)

[Air Force hosts service chiefs to discuss JADC2](#)

[DAF seeking science research partnerships with HBCUs](#)

[DAF strengthens discharge process for sexual offenders](#)

[Air Force operationalizes ACE concept, addresses today's changing threat environment](#)

### Innovation →

[New BLOS capability on the horizon for B-52s, first IRIS air demo complete](#)

[Air Force selects future aircrew helmet](#)

[Airmen and Guardians can learn anytime, anywhere, on any device with myLearning username and password](#)

[AFMC releases \\$8 million towards accelerating change, innovation](#)

[Air Force, Space Force hackathon applications close June 21](#)

### MAJCOM News →

[USAFE-AFACRICA, NATO Allied Air Command welcomes new commander](#)

[AMC aligns strategic priorities with counterparts in Pacific theater](#)

[AFMC releases \\$8 million towards accelerating change, innovation](#)

[Richardson takes command of AFMC](#)

[Servicing support for Airmen assigned to Space Force fully operational](#)



## MONTHLY COVID-19 UPDATE

Headquarters Marine Corps  
703-614-4309

6 JULY 2022

The Marine Corps recognizes COVID-19 as a readiness issue. The speed with which the disease transmits among individuals has increased risk to our Marines and the Marine Corps' mission. We are confident the vaccine protects our Marines, our communities, and the Nation.

To date, approximately 91% of Marines who have been hospitalized due to COVID-19 were unvaccinated at the time of their hospitalization.

### VACCINATION STATISTICS

For information on current total numbers of partially and fully vaccinated Marines, please visit <https://www.defense.gov/Spotlights/Coronavirus-DoD-Response/>. This site is maintained by the Department of Defense and is updated on Wednesdays. The Marine Corps tracks data using the Medical Readiness Reporting System, which is then uploaded into the DOD system. We are providing data provided to us by MRRS, current as of July 6, 2022.

#### Active

- 96% fully vaccinated
- 97% at least partially vaccinated (includes partial and fully)

#### Reserve

- 94% fully vaccinated
- 94% at least partially vaccinated (includes partial and fully)

### EXEMPTIONS & SEPARATIONS

Per MARADMIN 462/21, all Marine Corps active and reserve component service members shall be fully vaccinated against COVID-19, unless medically or administratively exempt. Medical exemptions can be either permanent or temporary, based on the duration of the condition which qualifies the service member for medical exemption. Administrative exemptions are typically short-term in nature and related to logistical considerations.



**UNITED STATES MARINE CORPS**

As of July 6, 2022, the Marine Corps is tracking 602 approved administrative or medical exemptions.

Marines who request exemption due to religious accommodation will have their request forwarded to Manpower and Reserve Affairs for adjudication. All current exemption requests are being reviewed on a case-by-case basis. Each request will be given full consideration with respect to the facts and circumstances submitted in the request.

To date, there have been 3,733 requests for religious accommodation concerning the COVID-19 vaccine mandate and 7 requests have been approved.

The Marine Corps has a compelling governmental interest in mission accomplishment at the individual, unit, and organizational levels. The necessary elements of mission accomplishment include: (1) military readiness; (2) unit cohesion; (3) good order and discipline; and (4) health and safety. Adjudication Authorities pay particular attention to how religious accommodation request determinations will impact the Marine's and unit's ability to accomplish the mission, and consider the least restrictive means of furthering that compelling government interest.

Per Marine Corps policy (MARADMINs 462/21, 533/21, and 612/21), any active duty Marine and Ready Reserve Marine in an active duty status who did not receive a final vaccination dose by Nov. 14 or any reserve component Marine who did not receive a final vaccination dose by Dec. 14 is considered unvaccinated. All unvaccinated Marines without a pending or approved administrative exemption, medical exemption, or religious accommodation, or appeal, will be processed for administrative separation.

MARADMIN 462/21 indicates units will document a specific code in the Marine Corps Total Force System upon separation for vaccine refusal. To date, 3,069 Marines have been separated from the Marine Corps with the vaccine refusal discharge code.

## U.S. Navy COVID-19 Updates



You are at the official site for Navy information and updates on Coronavirus Disease 19 (COVID-19). Visit frequently to learn about the latest policies, leadership messages, and guidance on how to protect yourself, your family, and your Shipmates.

[Department of the Navy Return to the Workplace COVID-19 Guidance and Resources 2020](#) (updated July 28, 2020) (PDF). Information to assist the military and civilian employees on workforce management, reporting, testing, personnel protection, telework policy, travel and more. Information is subject to change. Consult the following links for updated guidance: [ALNAV](#) Library, [NAVADMIN](#) Library, and [MARADMIN](#) Library.

### NEED TO A REPORT COVID-19 CASE?

Go to MyNavy Portal at - <https://www.mnp.navy.mil/group/navy-covid-19-reporting> (CAC Enabled)

If you have any questions or experience any difficulties please contact the OPNAV COVID Cell via email [OPNAV\\_COVID\\_CRISIS\\_RESPONSE\\_CELL@navy.mil](mailto:OPNAV_COVID_CRISIS_RESPONSE_CELL@navy.mil) or by phone at (703) 571-2822.

- For Navy-specific questions related to COVID-19 numbers and vaccination data, please email [PTGN\\_CHINFONEWSDESK@NAVY.MIL](mailto:PTGN_CHINFONEWSDESK@NAVY.MIL).

## NAVY COVID-19 UPDATE

June 22, 2022

- Beginning June 22, 2022, this report will be made publicly available on a monthly basis instead of a weekly basis. *The next report is expected to post July 27, 2022.*
- As of June 22, 2022, 3,371 active component and 3,448 Ready Reserve service members remain unvaccinated.
- As a result of the class action certification and corresponding injunction issued by the U.S. District Court for the Northern District of Texas, [NAVADMIN 083/22](#), released March 30, 2022, suspended separation processing and adverse administrative consequences for Navy service members who submitted requests for religious accommodation from the COVID-19 vaccine requirement.
- There have been 1,229 separations for refusing the COVID-19 vaccine. In accordance with [NAVADMIN 083/22](#), Sailors who submitted religious accommodation requests may no longer be separated for vaccine refusal. Vaccine refusers who have not submitted religious accommodation requests remain subject to adverse administrative action, including separation.
  - There have been 998 Active Component Sailors and 209 Reserve Component Sailors separated, all with an honorable characterization of service. Guidance for separating Navy service members refusing the vaccine was set by the COVID-19 Consolidated Disposition Authority and is detailed in [NAVADMIN 283/21](#).
  - There have been 22 Entry Level Separations (ELS). In accordance with the Naval Military Personnel Manual (MILPERSMAN) [1910-154](#) and [NAVADMIN 225/21](#), this reflects service members who, since the time of the vaccine mandate, were separated during initial training periods within their first 180 days of active duty.
- Thirteen religious accommodation requests for members of the Individual Ready Reserve (IRR) have been conditionally approved. A conditional approval means that the individual is not required to be vaccinated while in the IRR, but must be fully vaccinated as defined in Mot.App.491a

Application491a

[NAVADMIN 190/21](#) prior to returning to service.

- As of June 22, 2022, there are 3,368 active duty and 867 Ready Reserve requests for a religious accommodation from immunization for the COVID-19 vaccine.
- As of June 22, 2022, active duty service members currently have 14 permanent medical exemptions and 200 temporary medical exemptions, and Ready Reserve service members currently have one permanent medical exemption and 58 temporary medical exemptions.
- Starting with the Dec. 10 report, the vaccination and religious accommodation request data is provided by the data collected by the COVID-19 Consolidated Disposition Authority (CCDA), as directed in [NAVADMIN 249/21](#): CCDA Data Reporting Requirements. On Feb. 22, 2022, [NAVADMIN 042/22](#) was released updating these reporting requirements.
- On Dec. 15, 2021, [NAVADMIN 283/21](#) was released outlining execution guidance regarding separation of Navy service members refusing the COVID-19 vaccine.
- On Dec. 22, 2021, [NAVADMIN 289/21](#) was released outlining guidance encouraging COVID-19 vaccine boosters.

	<i>Cases</i>	<i>Hospitalized</i>	<i>Recovered</i>	<i>Deaths</i>	<i>Cumulative Total COVID Cases*</i>
<i>MIL</i>	946	1	96,917	17	97,880
<i>CIV</i>	1,942	5	48,935	120	50,997
<i>DEP</i>	80	0	11,819	7	11,906
<i>CTR</i>	370	0	12,992	49	13,411
<i>TOTAL</i>	3,338	7	170,663	193	174,194

\* Active Cases + Recovered + Deaths = Cumulative Total COVID Cases

**UNVACCINATED**

	<b>Active Duty</b>	<b>Ready Reserve</b>
Unvaccinated	3,371	3,448
Religious Accommodation Request	3,368	867

**APPROVED EXEMPTIONS**

	<b>Active Duty</b>	<b>Ready Reserve</b>
Permanent Medical	14	1
Temporary Medical	200	58
Religious Accommodation	42	1

- In accordance with Navy mandatory COVID-19 vaccination and reporting policy guidance, the deadline for active-duty Navy service members to be fully vaccinated was Nov. 28, 2021. Ready Reserve Navy service members will be fully vaccinated by Dec. 28, 2021. New accessions will be fully vaccinated as soon as practicable following service entry.
- In order to ensure a fully vaccinated force, U.S. Navy policy is to process for separation all Navy service members who refuse the lawful order to receive the COVID-19 vaccination and do not have an approved exemption. All waiver requests are reviewed on a case-by-case basis and each request will be given full consideration with respect to the facts and circumstances submitted in the request.
- The Navy issued a [press release](#) outlining guidance to commands for service members who refuse to comply with the service's order mandating all active-duty and reserve members be fully vaccinated against COVID-19 in [NAVADMIN 256/21](#), released Nov. 15, 2021.
  - Definitions:
    - Fully Vaccinated: Per [NAVADMIN 190/21](#), Navy service members are considered fully vaccinated two weeks after completing the second dose of a two- dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose COVID-19 vaccine. Booster shots are still under evaluation and will be addressed via separate message.

Mot.App.492a

Application492a

**Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 4 of 19 PageID 2705**

- Unvaccinated: Per [NAVADMIN 249/21](#), this includes Navy service members who:
  - refused the vaccine
  - started the vaccination series, but are not complete
  - are pending medical exemption
  - have an approved medical exemption
  - are pending religious accommodation exemption
  - have an approved religious exemption
  - have not had access to the vaccination due to operational schedule and/or remote location
- Medical: Medical exemptions will be determined by health care providers based on the health of the requestor, and the nature of the immunization under consideration in line with [BUMEDINST 6230.15B](#) and [MILPERSMAN 1730-020](#).
- Religious Accommodation: A religious accommodation is a category of administrative exemptions that provides an accommodation to a service member for an otherwise applicable military policy, practice, or duty. In accordance with The Religious Freedom Restoration Act, if such a military policy, practice or duty substantially burdens a service member's exercise of religious, accommodation unless:
  - The military policy, practice, or duty is in furtherance of a compelling governmental interest (e.g. mission accomplishment, safety, force health).
  - It is the least restrictive means of furthering that compelling governmental interest.
    - For more information, including frequently asked questions and Navy instructions, visit <https://www.mynavyhr.navy.mil/Support-Services/Religious-Accommodations/>
- Hyperlinks to Navy Administrative Messages:
  - [NAVADMIN 102/22](#): CCDA ADDITIONAL GUIDANCE REGARDING MEMBERS REQUESTING RELIGIOUS ACCOMMODATION FROM COVID-19 VACCINATION REQUIREMENTS
  - [NAVADMIN 083/22](#): CCDA INTERIM GUIDANCE REGARDING MEMBERS REQUESTING RELIGIOUS ACCOMMODATION FROM COVID-19 VACCINATION REQUIREMENTS
  - [NAVADMIN 042/22](#): UPDATED COVID CONSOLIDATED DISPOSITION AUTHORITY DATA REPORTING REQUIREMENTS AND LESSONS LEARNED
  - [NAVADMIN 007/22](#): U.S. NAVY COVID-19 STANDARDIZED OPERATIONAL GUIDANCE 5.0
  - [NAVADMIN 289/21](#): GUIDANCE ENCOURAGING COVID-19 VACCINE BOOSTER
  - [NAVADMIN 283/21](#): CCDA EXECUTION GUIDANCE TO COMMANDERS
  - [NAVADMIN 256/21](#): CCDA GUIDANCE TO COMMANDERS
  - [NAVADMIN 249/21](#): CCDA DATA REPORTING REQUIREMENTS
  - [NAVADMIN 225/21](#): COVID-19 CONSOLIDATED DISPOSITION AUTHORITY (CCDA)
  - [ALNAV 062/21](#): 2021-2022 DEPARTMENT OF THE NAVY MANDATORY COVID-19 VACCINATION POLICY
  - [NAVADMIN 190/21](#): 2021-2022 NAVY MANDATORY COVID-19 VACCINATION AND REPORTING POLICY

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**Go to the Links below for more information**

- [Operational Guidance](#)
- [NAVADMINs](#)
- [ALNAVs](#)
- [ALNAVRESFOR](#)
- [MyNavyHR Videos](#)
- [Navy.mil Releases](#)
- [Supporting Video](#)
- [DoD, Navy Leadership Statements](#)
- [TRANSCOM Release](#)
- [More Resources](#)

## Operational Guidance

- [U.S. Navy Updates Guidance to Combat COVID-19](#) (Nov. 4, 2020)
- [COVID-19 Mitigation Framework Infographic](#) (May 19, 2020)
- [U.S. Navy Response to the COVID-19 Pandemic Infographic](#) (May 19, 2020)
- [Return-to-Work Guidelines Infographic](#) (May 18, 2020)
- [Navy Telework Capabilities Graphic](#) (May 6, 2020)
- [COVID-19 Healthcare Provider Guidance](#) (April 30, 2020)
- [Cyber Awareness – Protect Sailors and Families Online](#) (February 2020)

[Back to links](#)

## NAVADMINS

- Aug. 30, 2021: [190/21 2021-2022 Navy Mandatory COVID-19 Vaccination and Reporting Policy](#)
- Aug. 23, 2021: [180/21 Update 3 to Navy COVID-19 Reporting Requirements](#)
- July 29, 2021: [161/21 Updated Mask Guidance for All DOD Installations and Other Facilities](#)
- July 28, 2021: [159/21 Special Leave Accrual for the Navy](#)
- July 13, 2021: [150/21 Department of Defense COVID-19 Testing Prior to Overseas Travel \(Update 2\)](#)
- June 16, 2021: [129/21 Physical Readiness Program Update for Calendar Year 2021 \(CY2021\) Physical Fitness Assessment](#)
- June 15, 2021: [123/21 Procedures for Foreign Visit requests to U.S. Navy Commands During COVID-19 Pandemic](#)
- June 2, 2021: [110/21 U.S. Navy COVID-19 Standing Guidance Update 1](#)
- May 21, 2021: [100/21 Cancellation of Urinalysis Policy Update](#)
- May 21, 2021: [100/21 Cancellation of Urinalysis Policy Update](#)
- May 21, 2021: [99/21 U.S. Navy COVID 19 Standard Guidance](#)
- May 14, 2021: [95/21 Interim Update on DOD Mask Guidance](#)
- May 4, 2021: [88/21 SARS-COV-2 Vaccination and Reporting Policy Update](#)
- Apr. 30, 2021: [086/21 Updated Guidance to Commanders on Adjusting Health Protection Conditions and Base Services During COVID-19 Pandemic](#)
- Apr. 05, 2021: [073/21 Navy Mitigation Measures in Response to Coronavirus Outbreak Update 7 \(Conditions-Based Approach to COVID-19 Personnel Movement and Travel Restrictions\)](#)
- Mar. 10, 2021: [059/21 Use of Masks and other Public Health Measures during COVID-19 pandemic](#)
- Mar. 03, 2021: [052/21 Procedures for Foreign Visit Requests to U.S. Navy Commands during COVID-19 pandemic](#)
- Feb. 16, 2021: [038/21 Process to Request Exception on use of Masks and Other Public Health Measures During COVID-19 Pandemic \(Corrected Copy\)](#)
- Feb. 16, 2021: [037/21 U.S. Navy COVID-19 Standardized Operational Guidance Version 4.0 \(Cancelled May 21, 2021 per NAVADMIN 099/21\)](#)
- Jan. 29, 2021: [026/21 Department of Defense COVID-19 Testing Prior to Overseas Travel \(Update 1\)](#)
- Jan. 7, 2021: [003/21 DEPARTMENT OF DEFENSE COVID-19 TESTING PRIOR TO OVERSEAS TRAVEL](#)
- Dec. 16, 2020: [327/20 SARS-COV-2 VACCINATION AND REPORTING POLICY](#)
- Dec. 15, 2020: [325/20 CNO Message to the Fleet - COVID-19 Vaccine](#)
- November 10, 2020: [302/20 Termination of Global Authorized Departure for Individuals at Higher Risk From COVID-19](#)
- November 4, 2020: [298/20 US NAVY COVID-19 STANDARDIZED OPERATIONAL GUIDANCE VERSION 3.1 \(Cancelled Feb. 16, 2021 per NAVADMIN 037/21\)](#)

Mo. App. 494a

Application494a

**Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 6 of 19 PageID 2707**

- **October 13, 2020:** [277/20 UPDATE 2 TO COVID-19 REPORTING REQUIREMENTS](#)
- **September 30, 2020:** [266/20 US NAVY COVID-19 STANDARDIZED OPERATIONAL GUIDANCE VERSION 3.0](#) (Cancelled Nov. 4, 2020 per NAVADMIN 298/20)
- **August 24, 2020:** [236/20 UPDATED PROCEDURES FOR FOREIGN VISIT REQUESTS TO U.S. NAVY COMMANDS DURING COVID-19 PANDEMIC](#)
- **August 21, 2020:** [235/20 Announcement of Approval of Humanitarian Service Medal \(HSM\) and Armed Forces Service Medal \(AFSM\) for Department of Defense Coronavirus \(COVID 19\) Operations and Activities](#)
- **August 14, 2020:** [231/20 Flexibility For Fiscal Year 2020 Sexual Assault Prevention Response and Suicide Prevention General Military Training Requirements](#)
- **August 10, 2020:** [225/20 Third Extension of Global Authorized Departure For Individuals At Higher Risk From COVID-19](#)
- **August 4, 2020:** [217/20 U.S. Navy COVID-19 Standardized Operational Guidance Version 2.1](#) (Cancelled Sep. 30, 2020 per NAVADMIN 266/20)
- **July 13, 2020:** [197/20: Second Extension of Global Authorized Departure for Individuals at Higher Risk from COVID-19](#)
- **July 9, 2020:** [195/20: Casualty and Mortuary Affairs Processes in Response to COVID-19 Update Two](#)
- **July 8, 2020:** [194/20: Face Coverings in Uniform](#)
- **July 7, 2020:** [193/20: Physical Readiness Program Policy Update for Physical Fitness Assessment Cycle Two 2020 Due to COVID19 Mitigation](#)
- **July 2, 2020:** [189/20: Navy Mitigation Measures In Response to Coronavirus Outbreak Update 6](#)
- **June 30, 2020:** [185/20: CNO Message to the Fleet on Sustaining Readiness](#)
- **June 25, 2020:** [178/20: COVID-19 Testing](#)
- **June 17, 2020:** [173/20: U.S. Navy COVID-19 Standardized Operational Guidance Version 2.0](#) (Cancelled Aug. 4, 2020 per NAVADMIN 217/20)
- **June 12, 2020:** [169/20: Permanent Change of Station Post Stop Movement Priority Plan](#)
- **June 12, 2020:** [168/20: Navy Mitigation measures In Response to Coronavirus Outbreak Update 5](#) (Cancelled July 2, 2020 per NAVADMIN 189/20)
- **June 10, 2020:** [164/20 Extension of Termination of Global Authorized Departure for Individuals at Hight Risk from COVID-10](#)
- **June 4, 2020:** [163/20: Modification-2 to the Notice of Convening FY-21 Active-Duty Officer Continuation Selection Boards and Announcement of Continuation Policy](#)
- **May 29, 2020:** [160/20: Guidance on Conducting Ceremonies for Retirement or Transfer to the Fleet Reserve Delayed Due to the Coronavirus Pandemic](#)
- **May 29, 2020:** [159/20: Termination of Departure Authority for Individuals at Higher Risk From COVID-19](#)
- **May 26, 2020:** [155/20: U.S. Navy COVID-19 Standardized Operational Guidance](#) (Cancelled June 17, 2020 per NAVADMIN 173/20)
- **May 20, 2020:** [148/20: Updated Policy for the Use of Embedded Computer Capabilities and Peripherals to Support Two-Way Collaboration](#)
- **May 20, 2020:** [147/20: Guidance to Commanders on Adjusting Health Protection Conditions and Base Services](#)
- **May 19, 2020:** [145/20: Advancement Eligibility Related to Changes to the Navy-Wide Advancement Exam and Physical Fitness Assessment Schedules Due to COVID-19 Mitigation](#)
- **May 15, 2020:** [144/20: Recommencement of Selection Boards and Announcement of Revised Schedule](#)
- **May 6, 2020:** [CNO Message to the Fleet](#)
- **May 4, 2020:** [132/20 Manning Initiatives Announced to Mitigate Fleet Gaps](#)
- **May 1, 2020:** [129/20 Guidance on Evaluation of Deployability, Temporary Limited Duty, and Referral to the Disability Evaluation System \(DES\) during the Coronavirus \(covid-19\) Pandemic](#)
- **May 1, 2020:** [128/20 Naval History and Heritage Ideas and Online Resources to Support Fleet Learning and at Home Education during the Pandemic](#)
- **April 30, 2020:** [126/20 Protection of Service Members and Families Executing Inbound/Outbound Household Goods Moves During Covid-19 Stop Movement](#)
- **April 27, 2020:** [121/20: Supplemental Number Two for E4 Through E7 February 2020 \(Cycle 106\) Selective Reserve and March 2020 \(Cycle 247\) E4 Through E6 Active-Duty, Full-Time Support and Canvasser Recruiter Navy-Wide Advancement Examinations](#)
- **April 21, 2020:** [116/20: Navy Mitigation Measures in Response to Coronavirus Outbreak Update 4.](#) (Cancelled June 12, 2020 per NAVADMIN 168/20)
- **April 21, 2020:** [115/20: Update to Navy COVID-19 Reporting Requirements](#)

Mot.App.495a

Application495a

**Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 7 of 19 PageID 2708**

- **April 21, 2020:** [114/20: Policy Guidance Update for Identification Card Services for COVID-19](#)
- **April 17, 2020:** [113/20 – Restriction of Movement \(ROM\) Guidance Update](#)
- **April 15, 2020:** [109/20 – COVID-19 Update Guidance to Support Fleet Operations](#)
- **April 10, 2020:** [105/20: Expanded Opportunity For Retention On Active-Duty In A Retired Status For Active-Duty Officers With Pending Statutory Retirements](#)
- **April 8, 2020:** [104/20: CNO Message to the Fleet](#)
- **April 7, 2020:** [101/20: Exception to Policy for Small Arms Training and Qualification Criteria and Navy Security Forces Annual Sustainment Training Requirements](#)
- **April 7, 2020:** [102/20: Casualty and Mortuary Affairs Processes in Response to COVID-19](#)
- **April 5, 2020:** [100/20: Navy Guidance on the Use of Face Coverings](#)
- **April 3, 2020:** [99/20: Mobilization Processing of Navy Reserve Personnel in Support of COVID-19 Response Operations](#)
- **April 3, 2020:** [98/20: Procedures for Navy Entities to Contribute Additively Manufactured Parts or Services in Response to COVID-19](#)
- **April 2, 2020:** [97/20: Common Access Card Issuance Policy Update for COVID-19](#)
- **March 27, 2020:** [93/20: Commercial Virtual Remote \(CVR\) Collaboration Environment](#)
- **March 27, 2020:** [92/20: Urinalysis Policy Update \(Cancelled May 21, 2021 per NAVADMIN 100/21\)](#)
- **March 26, 2020:** [89/20: Voluntary Extensions for Active Component Navy Members with Approved Separation or Retirement Dates](#)
- **March 25, 2020:** [88/20: Requirements for Authorized and Ordered Departures](#)
- **March 23, 2020:** [83/20: Restriction of Movement Guidance](#)
- **March 23, 2020:** [82/20: Navy Transition Assistance Program Policy Update for COVID-19](#)
- **March 21, 2020:** [80/20: Navy Mitigation Measures in Response to Coronavirus Outbreak: Update 3](#)
- **March 19, 2020:** [75/20: Maintaining and Protecting the Navy Accessions Supply Chain](#)
- **March 19, 2020:** [74/20: Mitigation Measures in Response to Coronavirus Outbreak \(Update 2\)](#)
- **March 18, 2020:** [73/20: Temporary Relaxation of Hair Grooming Standards in Response to Coronavirus Outbreak](#)
- **March 18, 2020:** [72/20: Navywide Advancement Examinations](#)
- **March 18, 2020:** [71/20: Physical Readiness Policy Update](#)
- **March 17, 2020:** [69/20: Enlisted Advancement Exams Postponed](#)
- **March 17, 2020:** [68/20: Effective use of Remote Work Options](#)
- **March 14, 2020:** [65/20: Overseas Travel](#)
- **March 12, 2020:** [64/20: Navy Mitigation Measures in Response to Coronavirus Outbreak](#)

[Back to links](#)

---

## ALNAVs

- **Aug. 30, 2021:** [062/21 2021-2022 Department of the Navy Mandatory COVID-19 Vaccination Policy](#)
- **Apr. 30, 2021:** [032/21 Update to Department of the Navy Health Protection Condition Policies](#)
- **June 12, 2020 –** [67/20: Cancellation of ALNAV 044/20 and 49/20 Per SECDEF Memo transitions to a conditions based movement order](#)
- **May 21, 2020 –** [59/20: 101 Days of Summer Safety](#)
- **May 4, 2020 –** [52/20: Public Service 2020](#)
- **April 22, 2020 –** [49/20: Modifications to ALNAV 044/20: Reissuance of Department of the Navy Travel Restrictions in Response to Coronavirus Disease 2019](#)
- **April 21, 2020 –** [44/20: Reissuance of Department of the Navy Travel Restrictions in Response to Coronavirus Disease 2019](#)
- **April 3, 2020 –** [SECNAV Vector 18: Serving Our Country \(also posted on ALNAV site\)](#)
- **March 31, 2020 –** [35/20: Special Duty Medical Examinations Update to Policy in Response to the Coronavirus Disease 2019](#)
- **March 23, 2020 –** [29/20: State and Local Shelter-in-Place Orders' Impact on Department of the Navy Operations](#)
- **March 20, 2020 –** [28/20: \(SECNAV Vectors Blog: Vector 16: Agility in Time of Crisis \(As posted to ALNAV site\)](#)

Application496a

**Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 8 of 19 PageID 2709**

- **March 14, 2020** – [26/20: Official and Personal Domestic Travel Force Health Protection Guidance for Department of the Navy \(CONUS Travel Guidance\)](#)
- **March 13, 2020** – [24/20: Acting Secretary of the Navy Thomas B. Modly's Vector 15 message](#) (Re. Force Protection Guidance)
- **March 12, 2020** – [25/20: Force Protection Guidance for the Department of the Navy](#)

[Back to links](#)

---

**ALNAVRESFOR**

- **June, 22, 2020** – **13:** [Reserve Force Conditions-Based Approach to Personnel Movement](#)
- **May 21, 2020** – **12:** [CNRF-Navy Reserve Force Policy for COVID-19 Update 2](#)
- **April 16, 2020** – **11:** [CNRF-Navy Reserve Force Policy Update for COVID-19](#)
- **April 16, 2020** – **10:** [CNRF-Message to the Force from VADM McCollum](#)
- **March 20, 2020** – **09:** [Navy Reserve Enhanced Telecommuting Procedures](#)
- **March 17, 2020** – **08:** [Reserve Mitigation Measures in Response to Coronavirus](#)

[Back to links](#)

---

**MyNavyHR Videos**

- **Feb. 10, 2021:** [News You Can Use - Face Mask Update](#)
- **May 29, 2020** – [Boards Resume](#)
- **May 29, 2020** – [Retirements During COVID-19:](#)
- **May 29, 2020** – [Medical and Dental Elective Procedures](#)
- **May 4, 2020** – [Retired/Separated Sailors' Return to Active Duty Options](#)
- **May 4, 2020** – [Personnel Mitigation Measures](#)
- **May 4, 2020** – [MyNavy Family App Update](#)
- **May 4, 2020** – [Selective Reenlistment Bonus Update](#)
- **April 29, 2020** – [Coronavirus \(COVID-19\) Tutor.com](#)
- **April 22, 2020** – [Leave Accumulation Update](#)
- **April 22, 2020** – [Sea Duty Incentive Pay](#)
- **April 22, 2020** – [Stop Movement](#)
- **April 22, 2020** – [CAC and USID Cards Update](#)
- **April 14, 2020** – [Naval Academy Update](#)
- **April 14, 2020** – [Contacting Navy College Education Counselors](#)
- **April 9, 2020** – [Reducing Team Stress](#)
- **April 9, 2020** – [Retire to Retain Policy](#)
- **April 8, 2020** – [Face Coverings Update](#)
- **April 8, 2020** – [Basic Allowance for Subsistence](#)
- **April 8, 2020** – [CAC Offices Update](#)
- **March 27, 2020** – [Town Hall With Fleet K Mot.App.497a](#)

Application497a

**Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 9 of 19 PageID 2710**

- **March 23, 2020** – [NAVADMIN 80/20](#)
- **March 23, 2020** – [Transition Assistance Program](#)
- **March 23, 2020** – [Coronavirus \(COVID-19\) Japan CDC Warning Level 3 Update](#)
- **March 23, 2020** – [COVID-19 Identity Management](#)
- **March 20, 2020** – [Board Suspension](#)
- **March 20, 2020** – [Relaxed Grooming Standards](#)
- **March 19, 2020** – [Advancement Exams Postponement Clarification](#)
- **March 19, 2020** – [Restriction of Movement Update](#)
- **March 19, 2020** – [PFA Suspension Update](#)
- **March 18, 2020** – [Advancement Exams Postponed](#)
- **March 18, 2020** – [Details on Upcoming Advancement Exams](#)
- **March 18, 2020** – [Orders, Coronavirus Warning Signs](#)
- **March 17, 2020** – [Coronavirus Testing](#)
- **March 17, 2020** – [Leave and Liberty, Travel Reimbursements](#)
- **March 16, 2020** – [Freeze on PCS Moves](#)
- **March 16, 2020** – [HHG Reimbursements for Canceled Moves, PCS Orders to Alert-Level 2 Countries](#)
- **March 16, 2020** – [Nonessential OCONUS Travel](#)

[Back to links](#)

---

## **Navy.mil Releases**

- **Nov. 15, 2021:** [Navy Updates Guidance for COVID-19 Vaccine Refusal](#)
- **Oct. 20, 2021:** [Navy Identifies Sailor Who Died of COVID-Related Complications](#)
- **Oct. 6, 2021:** [Navy Identifies NAWDC Sailor Who Died of COVID-Related Complications](#)
- **Sept. 20, 2021:** [Navy Identifies Sailor Who Died of COVID-Related Complications](#)
- **Sept. 20, 2021:** [NEPLO Surges Medical Teams Back Into COVID Hotspot](#)
- **Sept. 1, 2021:** [Navy Supports Mandatory COVID-19 Vaccination for all Active Duty and Reserve Sailors](#)
- **Aug. 18, 2021:** [Navy Identifies Sailor Who Died of COVID-19 Related Complications](#)
- **Aug. 17, 2021:** [Navy Identifies Reserve Sailor Who Died of COVID-19 Related Complications](#)
- **July 28, 2021:** [Navy Identifies Reserve Sailor Who Died of COVID-19 Related Complications](#)
- **July 28, 2021:** [Navy Identifies Naval Medical Center Camp Lejeune Sailor Who Died of COVID-19 Related Complications](#)
- **May 26, 2021:** [Navy Administers One Million Vaccines since the Beginning of the COVID-19 Pandemic](#)
- **May 26, 2021:** [Navy Advancement Results for E-4 through E-6 Delayed Due to COVID-19](#)
- **May 24, 2021:** [U.S. Navy Issues COVID-19 Standing Guidance](#)
- **May 22, 2021:** [Navy Resumes Regular Urinalysis Operations](#)
- **May 7, 2021:** [U.S. Naval Hospital Naples Makes History with Unit Bravo Strike](#)
- **May 4, 2021:** [Theodore Roosevelt Carrier Strike Group Gets Vaccinated](#)
- **May 4, 2021:** [Expeditionary Strike Group 7 Sailors Stay COVID-Free While at Sea](#)
- **May 3, 2021:** [U.S. Navy Issues Updated Guidance to Commanders On Adjusting Health Protection Conditions and Base Services During COVID-19 Pandemic](#)
- **Apr. 30, 2021:** [Virginia Beach Sailor Dies of COVID-Related Complications](#)
- **Apr. 29, 2021:** [Iwo Jima ARG and 24th MEU Reach Milestone, 60 days COVID-Free](#)
- **Apr. 20, 2021:** [From COVID Testing to MHS GENESIS support, Lab Techs Do It All](#)
- **Apr. 19, 2021:** [COVID-19 Vaccines Distributed Onboard Washington Navy Yard](#)  
Mot.App.498a

Application498a

## Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 10 of 19 PageID 2711

- Apr. 19, 2021: [COVID-19 Vaccine Appointments Available to All Eligible DOD Beneficiaries](#)
- Apr. 13, 2021: [Candid Comments Shared on Choosing COVID-19 Vaccine](#)
- Apr. 13, 2021: [Public Health Experts handling the Public Health Crisis](#)
- Apr. 12, 2021: [Nimitz Sailors Receive First Dose of Moderna COVID-19 Vaccine](#)
- Mar. 17, 2021: [DOD Health System Archives COVID-19 Vaccination Data](#)
- Mar. 16, 2021: [From Sea to Shining Sea: Combating the Pandemic One Mile at a Time](#)
- Mar. 12, 2021: [U.S. Navy Accelerates Progress in Providing Vaccinations for Sailors](#)
- Mar. 11, 2021: [USS Dwight D. Eisenhower Receives Second COVID-19 Vaccination Shot](#)
- Mar. 11, 2021: [Naval Medical Research Center continues Research in Fight Against COVID-19](#)
- Mar. 10, 2021: [Suicide and COVID-19: How Navy Region Southeast is fighting back](#)
- Mar. 09, 2021: [Nursing the COVID Vaccine Forward](#)
- Mar. 09, 2021: [Porter Receives First Dose of COVID-19 Vaccine](#)
- Mar. 05, 2021: [USS Lake Champlain Sailors Receive COVID-19 Vaccine](#)
- Mar. 01, 2021: [Fleet Readiness Center Southeast supports COVID-19 containment efforts through 3D printing](#)
- Feb. 26, 2021: [U.S. 5th Fleet Responds to COVID-19 Aboard USS San Diego and USS Philippine Sea](#)
- Feb. 24, 2021: [Navy Identifies Assault Craft Unit 4 Sailor Who Died of COVID-Related Complications](#)
- Feb. 15, 2021: [Sailors Embarked on a U.S. Pacific Fleet Ship Test Positive for COVID-19](#)
- Feb 13, 2021: [Navy Identifies USS Wasp Sailor Who Died of COVID-Related Complications](#)
- Feb. 5, 2021: [Navy Identifies USS Tennessee Sailor Who Died of Coronavirus-related Complications](#)
- Feb. 5, 2021: [Navy Identifies Recruit Training Command Sailor Who Died from COVID-19](#)
- Feb. 4, 2021: [USS Ronald Reagan Begins Second Round of COVID-19 Vaccinations](#)
- Feb. 4, 2021: [Sailor Assigned to Kings Bay Unit Dies of COVID-Related Complications](#)
- Feb. 4, 2021: [TRF Kings Bay Provides Superior Support to Submarine Force](#)
- Jan. 28, 2021: [Navy Shifts 2021 Fitness Cycle to July](#)
- Jan. 28, 2021: [Navy Medical Personnel to Join in Texas COVID-19 Response](#)
- Jan. 28, 2021: [Initiation Innovation: Navigating Chief Season in the Midst of COVID](#)
- Jan. 26, 2021: [Navy, DoD Respond to COVID-19 in Navajo Nation](#)
- Jan. 23, 2021: [Fleet Forces Establishes Vaccination Cell to Expedite Delivery to Fleet](#)
- Jan. 22, 2021: [NSA Souda Bay Receives COVID Vaccine](#)
- Jan. 22, 2021: [Frontline Workers at Naval Station Rota, Spain Begin Receiving COVID-19 Vaccine](#)
- Jan. 13, 2021: [USS Ronald Reagan Begins COVID-19 Vaccinations](#)
- Jan. 12, 2021: [Navy Expeditionary Combat Command Leadership Receives COVID-19 Vaccine](#)
- Jan. 12, 2021: [Navy Exchange Great Lakes Buoy A-School Students Placed on Restriction of Movement After Holiday Break](#)
- Jan. 9, 2021: [NAS Sigonella Receives First Shipment of COVID-19 Vaccine](#)
- Jan. 7, 2021: [Service Members Transferring Overseas Must Test Negative for COVID-19 Before Flying](#)
- Jan. 6, 2021: [CDC Explains Benefits of COVID-19 Vaccine](#)
- Jan. 5, 2021: [U.S. 7th Fleet Sailors Receive COVID Vaccine](#)
- Jan. 5, 2021: [Additional Naval Military Treatment Facilities Receiving COVID-19 Vaccine](#)
- Jan. 4, 2021: [Commander of Military Sealift Command Receives COVID-19 Vaccine](#)
- Dec. 22, 2020: [Navy Announces Expanded Operational Stress Control Program: Here Are the Details](#)
- Dec. 21, 2020: [Southwest Regional Maintenance Center Hosts Blood Drives Benefitting Service Members](#)
- Dec. 17, 2020: [FLU SEASON 2020: Protect Yourself Against Two Viruses](#)
- Dec. 16, 2020: [U.S. Navy Issues Vaccine Guidance to Combat COVID-19](#)
- Dec. 15, 2020: [NMCCSD Receives First Shipment of COVID-19 Vaccines](#)
- Dec. 15, 2020: [Naval Medical Forces Atlantic Hospitals to Be Among First to Receive COVID-19 Vaccine](#)
- Dec. 14, 2020: [COVID-19 Vaccine Headed to Naval Medical Center San Diego, Naval Hospital Camp Pendleton](#)
- Nov. 12, 2020: [Navy Publishes Scientific Paper on USS Theodore Roosevelt COVID-19 Outbreak](#)
- Nov. 12, 2020: [Navy/Marine Corps COVID-19 Study Findings Published in New England Journal of Medicine](#)
- Nov. 6, 2020: [Navy: ROM Is Official Duty Status](#)
- Nov. 4, 2020: [U.S. Navy Updates Guidance to Combat COVID-19](#)
- Oct. 28, 2020: [Navy Junior ROTC Units Contend With New Normal in New School Year; Naval Science Instructors Meet New](#)

## Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 11 of 19 PageID 2712

[Challenges](#)

- Oct. 23, 2020: [COVID-19 Special Leave Accrual – What You Need to Know](#)
- Oct. 22, 2020: [Navy Researchers Evaluate UV Light Sources to Combat COVID-19](#)
- Oct. 20, 2020: [Amid COVID-19, Information Warfare Training Command San Diego Safely Trains USS Carl Vinson's IW Warriors](#)
- Oct. 19, 2020: [Naval Chaplaincy School, Center Uses Virtual Training for Mission Success](#)
- Oct. 19, 2020: [Office of Naval Reserves Robotics Enters COVID-19 Fight](#)
- Oct 16, 2020: [Clothing, Textile Research Facility Pivots 3D Knitting Research to Face Covering Development](#)
- Sept. 30, 2020: [U.S. Navy Issues Standardized Operational Guidance 3.0](#)
- Sept. 3, 2020: [NAVCENT Medical Personnel Embed with Bahrain Ministry of Health to Manage Pandemic Response](#)
- Sept. 3, 2020: [Yokosuka Fleet Logistics Center Supports Incoming Personnel During Pandemic](#)
- Aug. 19, 2020: [Naval Safety Training Keeps Momentum with Virtual Learning](#)
- Aug. 12, 2020: [Recruit Training Command and Partners Work Together to Transform Drill Halls Into Barracks](#)
- Aug. 10, 2020: [USS Germantown's COVID-19 Rapid Response Team: Fighting Pandemic From The Deckplate](#)
- Aug. 4, 2020: [Lebanese Armed Forces, U.S. Navy Conduct Resolute Union Virtually Amid COVID-19 Pandemic](#)
- Aug. 4, 2020: [Staying the Course during COVID-19: Losing Weight and Feeling Great!](#)
- July 31, 2020: [Naval Laboratory Researcher's Invention Allows to Study Nanoparticle Gases](#)
- July 31, 2020: [MARMC SST Advances OSD Grasp of COVID Risk](#)
- July 29, 2020: [NHC Annapolis' Operational Approach to COVID-19 Prevention puts U.S. Naval Academy on Track for Fall 2020](#)

[Semester](#)

- July 24, 2020: [Navy Care Virtual Visits: Real-Time Access to Care, From Anywhere](#)
- July 23, 2020: [NMCB-3 Completes Turnover, Assumes Execution of Indo-Pacific Region NCF Operations](#)
- July 23, 2020: [Nimitz Receives COVID-19 Convalescent Plasma Administration Certification](#)
- July 23, 2020: [4th Fleet Commander Hosts Maritime Staff Talks with Armada de Chile](#)
- July 22, 2020: [Sailors Needed to Move; NPC Innovated to put Them in Motion](#)
- July 22, 2020: [NAVWAR Trident Warrior Team Assesses New Tracking Technology for COVID-19 Mitigation](#)
- July 21, 2020: [Sailors Support COVID Response in Texas](#)
- July 17, 2020: [Change of Command in the Era of a Global Pandemic: Commander, Maritime Prepositioning Ships Squadron Two](#)

[Changes the Helm](#)

- July 15, 2020: [Adaptability and Resilience: EMF-M's Historic Stateside Deployment Supporting COVID-19](#)
- July 14, 2020: [A SPRINT to Guam: Psychological First Aid in the COVID-19 Pandemic](#)
- July 14, 2020: [Navy Childcare Center Supports Sailors Through COVID-19](#)
- June 25, 2020: [Navy Establishes COVID-19 Surveillance Testing Program](#)
- June 10, 2020: [Navy Mobilizing Reservists Under SurgeMain Program to Support Ship Maintenance](#)
- June 10, 2020: [Addressing Mental Health Key to NDW Fleet and Family Support Center During Pandemic](#)
- June 10, 2020: [USS Kidd Commanding Officer Sends Thank You Letter to San Diego](#)
- June 9, 2020: [Findings From USS Theodore Roosevelt Public Health Investigation Support Force Health Protection](#)
- June 9, 2020: [U.S. Navy Navigates to 'New Normal'](#)
- June 9, 2020: [High School on U.S. Navy Base in Japan Holds Socially Distanced Graduation Ceremony](#)
- June 9, 2020: [Navy Emergency Liaisons Deploy in Record Numbers for Pandemic](#)
- June 8, 2020: [Mission Essential Training Continues During COVID-19 at Great Lakes Schools](#)
- June 5, 2020: [Center for Seabees Learning Sites Adjust Courses in Response to COVID-19](#)
- June 5, 2020: [Safety, Standards Uncompromised as Naval Special Warfare Center Restarts Paused Training Phases](#)
- June 4, 2020: [I Am Navy Medicine: Hospital Corpsman 3rd Class Marc Gasbarri](#)
- June 4, 2020: [Navy Pharmacy Adjusts Procedures in Response to COVID-19](#)
- May 29, 2020: [Navy Approves Interim Retirement Ceremony Rules](#)
- May 29, 2020: [Base Port Operations: 'Commitment and Ability to Protect America has Not Changed'](#)
- May 27, 2020: [Mental Health During the Pandemic: Understanding How Your Mind Responds to Disasters](#)
- May 27, 2020: [Navy Issues COVID-19 Standardized Operational Guidance](#)
- May 27, 2020: [Naval District Washington Recovery Working Group Plans for Post COVID-19 'New Normal'](#)
- May 27, 2020: [Virtual Fleet Week NY Concludes; City Thanks Servicemembers for Help in COVID-19 Fight](#)
- May 26, 2020: [Officer Training Command Uses Remote Learning to Train Leaders During Pandemic](#)

## Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 12 of 19 PageID 2713

- May 22, 2020: [Navy Releases Commander Guidance on Adjusting Health Protection Conditions \(HPCON\)](#)
- May 21, 2020: [Navy Reserve Extends Drill Postponement until June 30, Provides Additional Guidance for COVID-19](#)
- May 21, 2020: [Former CNO Mullen Talks Leadership, National Security Challenges in a Post-COVID-19 World](#)
- May 21, 2020: [Supply Corps Reservists Apply Data, Logistics Expertise to COVID-19 Pandemic](#)
- May 21, 2020: [USS Theodore Roosevelt Returns to Sea](#)
- May 19, 2020: [Navy Clarifies Advancement Eligibility Due to Coronavirus Postponements](#)
- May 19, 2020: [USS Kidd Conducts Crew Swap, Transitions to Next Phase of COVID-19 Response](#)
- May 19, 2020: [Naval District Washington Personnel Adapt to Teleworking During COVID-19 Pandemic](#)
- May 17, 2020: [NEPLOs Coordinate Cross-Country Move of Navy Medical Personnel in COVID-19 Fight](#)
- May 15, 2020: [USNS Mercy Departs Los Angeles; Military Relief Efforts Continue](#)
- May 14, 2020: [Navy Exchange Service Command Provides Over Half Million Cloth Face Masks](#)
- May 14, 2020: [Senior Enlisted Academy Achieves Mission Success through Virtual Training during COVID-19](#)
- May 14, 2020: [Individual Ready Reserve Sailors Serve at Navy Medical Center Portsmouth](#)
- May 14, 2020: [NAVWAR Launches Data Fusion Tool, Maintains Fleet Readiness in Wake of Worldwide Pandemic](#)
- May 13, 2020: [Blue Angels to Salute Tennessee and Arkansas COVID-19 Responders](#)
- May 13, 2020: [U.S. Navy Ceremonial Guard Marches Forward During COVID-19 Pandemic](#)
- May 13, 2020: [The NEX Has You "Covered"](#)
- May 12, 2020: [Naval War College Faculty Steps Up to Assist U.S. Northern Command Planning Effort During COVID-19](#)
- May 12, 2020: [Crew Endurance Team Emphasizes Role of Sleep in Immunity](#)
- May 12, 2020: [Puget Sound Teams Fast-Track Biocontainment Prototype for Covid-19 Testing](#)
- May 11, 2020: [Blue Angels to Salute Michigan, Illinois, Indiana COVID-19 Responders](#)
- May 8, 2020: [U.S. Pacific Fleet Reaffirms Confidence in USS Theodore Roosevelt](#)
- May 8, 2020: [Fleet Activities Yokosuka Rolls Out Family Partner Program](#)
- May 8, 2020: [NEX, Navy Lodges Install Sneeze Shields to Help Stop Spread of COVID-19](#)
- May 7, 2020: [Southwest Regional Maintenance Center Prints Face Shields for Medical Personnel](#)
- May 7, 2020: [National Capital Region Military Treatment Facilities Continue Providing Quality Care During COVID-19 Pandemic](#)
- May 6, 2020: [Blue Angels to Salute Florida COVID-19 Responders](#)
- May 6, 2020: [Navy Exchange Service Command Associates Screened for COVID-19 Symptoms](#)
- May 4, 2020: [Naval Special Warfare Center Resumes Portions of Paused SEAL and SWCC Training](#)
- May 4, 2020: [NAVSUP Leading Way in 100% Safety Checks for HHG Moves](#)
- May 4, 2020: [Manning Initiatives Announced to Mitigate Fleet Gaps](#)
- May 4, 2020: [Blue Angels to Salute Texas, Louisiana COVID-19 Responders](#)
- May 4, 2020: [NMCP Staff Members Build a Ventilator In Wake of COVID-19](#)
- May 4, 2020: [HSC-26 Maintains Mission Readiness during COVID-19 Pandemic](#)
- May 2, 2020: [USS Constitution Hosting Daily Virtual Tours on Facebook Live](#)
- May 2, 2020: [NEX San Diego, Sustainable Support System Supplying Ships and Sailors](#)
- May 1, 2020: [Fleet Activities Yokosuka Call Center Serves Thousands](#)
- April 30, 2020: [NEXConnect Keeps Internet 'Light' On for Navy Community](#)
- April 30, 2020: [Undersea Warfare Center Partners With University of Alaska for COVID-19 Preparation](#)
- April 30, 2020: [Blue Angels, Thunderbirds to Salute Maryland, Washington D.C., Virginia, Georgia COVID-19 Responders](#)
- April 29, 2020: [Human Resources Comprehensive FAQ](#)
- April 29, 2020: [Truman Sailors Join Forces to Protect Against COVID-19](#)
- April 29, 2020: [Online Tutoring Now Available for Military and Civilian Families](#)
- April 29, 2020: [Barracks at Naval Base Guam Ordnance Annex Refurbished for Warfighter Support](#)
- April 29, 2020: [Naval Sea Systems Command Continues Fleet Support Despite COVID-19 Restrictions](#)
- April 29, 2020: [Navy MWR Digital Library Always Open](#)
- April 28, 2020: [Navy Provides Medical Care to Sailors of USS Kidd, Disinfects Ship](#)
- April 28, 2020: [Information Warfare Training Command Virginia Beach Employs Virtual Training to Help Keep Sailors, America Safe](#)
- April 28, 2020: [Sailors on Isolated Facility Use Radio to Keep Shipmates Informed, Connected](#)
- April 27, 2020: [USS Nimitz Departs for Training](#)
- April 27, 2020: [NEX Cancels Active/FTS E4 Exam, Sets Schedule for Finishing Advancement Cycles](#)

## Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 13 of 19 PageID 2714

- April 27, 2020: [Florida Team Trains Culinary Specialists Virtually During Pandemic](#)
- April 26, 2020: [Thunderbirds, Blue Angels to Salute New York, New Jersey, Pennsylvania COVID-19 Responders](#)
- April 24, 2020: [America Strong: Blue Angels, Thunderbirds to Conduct Multi-City Flyovers](#)
- April 24, 2020: [Undersea Warfare Center Begins Producing Safety Equipment for Naval Hospital](#)
- April 24, 2020: [USS Kidd Evacuates Sailor, Embarks COVID-19 Medical Response Team](#)
- April 24, 2020: [CFAY Delivers Goodie Bags to ROM Sailors](#)
- April 24, 2020: [Naval Supply Systems Command Human Resources Office Perseveres Through Pandemic](#)
- April 23, 2020: [Employees at Fleet Readiness Center Make 1,800 Cloth Masks for Coworkers](#)
- April 23, 2020: [Fleet Readiness Center East Manufacturing Face Shields to Support Local Health Care Workers](#)
- April 22, 2020: [Sea Duty Incentive Pay Expands During Time of COVID-19 Crisis](#)
- April 22, 2020: [NEX Customers Can Support NMCRS During COVID-19 Crisis](#)
- April 22, 2020: [Combating Coronavirus: Navy Provides Protective Gear to First Responders](#)
- April 22, 2020: [Navy Reserve Unit Shows Agility in Crisis With First Virtual Drill](#)
- April 22, 2020: [Navy Civil Servants' Support to COVID-19 Response Earns Meritorious Civilian Service Awards](#)
- April 21, 2020: [Navy Extends Travel and PCS Restrictions, Authorizes Leave Accrual](#)
- April 21, 2020: [Navy Updates ID Card Guidance](#)
- April 20, 2020: [Staff Work to Continue Strong Support for Navy Wounded Warriors' Pay, Benefits Needs](#)
- April 20, 2020: [Military Resale Unites to Support Servicemembers During COVID-19 Pandemic](#)
- April 20, 2020: [Surface Warfare Center Designs Portable Oxygen Manifolds for Camp Pendleton COVID-19 Response](#)
- April 20, 2020: [Overseas Navy Personnel Fight COVID-19 One Stitch at a Time](#)
- April 20, 2020: [USS George Washington Preventive Maintenance Team Makes Masks to Combat COVID-19](#)
- April 20, 2020: [Bahrain Fleet Mail Center Steps Up to Support 6th Fleet With Mail Operations](#)
- April 17, 2020: [Update to Restriction of Movement Guidance](#)
- April 17, 2020: [Navy Conducting Public Health Outbreak Investigation on USS Theodore Roosevelt](#)
- April 17, 2020: [NAVFAC Southwest Battles COVID-19 with \\$2.6 Million for Disinfecting Services](#)
- April 17, 2020: [Navy Reserve Extends Drill Postponement Until May 31, Consolidates COVID-19 Guidance](#)
- April 17, 2020: [Navy Hospital's Car-Based Triage Assists Emergency Dept in Wake of COVID-19](#)
- April 17, 2020: [Air Warfare Center Works to Keep Americans Safe In, Out of the Fleet](#)
- April 17, 2020: [Reserve Component Command Fort Worth Mobilizes Second Wave of Reservists to Assist in Global COVID-19 Combat Support](#)
- April 17, 2020: [Undersea Warfare Center Launches 'Operation Sewcial Distancing' to Craft Face Masks](#)
- April 17, 2020: [Don't Let COVID-19 Keep You From the Emergency Department](#)
- April 16, 2020: [Navy Identifies USS Theodore Roosevelt Sailor Who Died of COVID-19](#)
- April 16, 2020: [Surface Warfare Center Designs Face Shields for Staff at State Prison](#)
- April 16, 2020: [Norfolk Team Tackles Unique COVID-19 Contracting Challenges](#)
- April 16, 2020: [USS Theodore Roosevelt's Clean Fight](#)
- April 16, 2020: [Supervisor of Shipbuilding, Conversion, Repairs Turns to Fusion for Face Masks](#)
- April 15, 2020: [Engineering/Expeditionary Warfare Center 3-D Prints Masks to Aid Pandemic Response](#)
- April 15, 2020: [NAVFAC Partners with USACE for FEMA "Whole-of-Nation" Effort Combating COVID-19](#)
- April 15, 2020: [Navy MWR at Home Helps Sailors, Families 'Stay Active, Stay Informed, Stay Connected'](#)
- April 15, 2020: [Navy Reserve App to Deliver Real-Time Access to Business Processes](#)
- April 14, 2020: [Fleet and Family Services Still Open for Business Over Phone, Web](#)
- April 14, 2020: [Navy Museums Donate PPE to Local Clinics](#)
- April 14, 2020: [Chaplains Prove Essential to COVID-19 Response](#)
- April 14, 2020: [Navy Exchange Service Command Hosts Virtual "We Stand Together" Concert Series](#)
- April 14, 2020: [Humanitarian Response Program Offers Expertise For COVID-19 Response](#)
- April 13, 2020: [Emergency Physician of 44 Years Postpones Retirement to Fight COVID-19](#)
- April 13, 2020: [Navy Authorizes Retiring Officers to Stay Until December](#)
- April 13, 2020: [Leadership Tips in Challenging Times](#)
- April 13, 2020: [NEX Creates New Program to Bring the Store to a Sailor's Door](#)
- April 13, 2020: [Navy Sailor Assigned to USS Theodore Roosevelt Dies of COVID-Related Complications](#)

## Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 14 of 19 PageID 2715

- April 10, 2020: [Naval Academy Cancels All Public Commissioning Week 2020 Events; USNA and NROTC Ceremonies Go Virtual](#)
- April 10, 2020: [3rd Marine Logistics Group Supports USS Theodore Roosevelt](#)
- April 10, 2020: [Commander, Fleet Activities Yokosuka Hosts a "Camp In" to Support Physical Distancing](#)
- April 11, 2020: [Chief of Navy Reserve Releases Message to the Force](#)
- April 10, 2020: [Naval Academy Cancels All Public Commissioning Week 2020 Events; USNA and NROTC Ceremonies Go Virtual](#)
- April 10, 2020: [3rd Marine Logistics Group Supports USS Theodore Roosevelt](#)
- April 10, 2020: [Commander, Fleet Activities Yokosuka Hosts a "Camp In" to Support Physical Distancing](#)
- April 8, 2020: [Naval Base San Diego Mission Ready While Fighting COVID-19](#)
- April 8, 2020: [Navy Exchange Service Command Issues PPE Guidance for Associates](#)
- April 8, 2020: [Meal Allowance Rules Modified for Sailors Restricted to Government Quarters](#)
- April 8, 2020: [NCIS: Sailors, Marines, Civilians Beware of Card-Cracking Scams](#)
- April 7, 2020: [NAVWAR Enterprise Delivers Innovative Solutions for Increased Readiness in Support of COVID-19 Relief Efforts](#)
- April 7, 2020: [Navy Lodge Program Supports Those on Restriction of Movement Status Due to COVID-19](#)
- April 7, 2020: [Navy Mandates Face Covering: What You Need to Know](#)
- April 6, 2020: [NAVCO Launching SHIP2SHORE Virtual Outreach Program](#)
- April 6, 2020: [Navy Exchange Service Command Donates 240 N-95 Masks to Naval Air Station Pensacola Fire Department](#)
- April 6, 2020: [Info Warfare Training Detachment Entertains Base-Bound Sailors While Social Distancing](#)
- April 5, 2020: [7th Fleet Commander Arrives in Guam During COVID-19 Recovery](#)
- April 4, 2020: [Rapid Mobilization Process Established for Reservists Supporting COVID-19 Response](#)
- April 3, 2020: [Navy Deploys Expeditionary Medical Facility Personnel to Support Federal COVID-19 Response](#)
- April 3, 2020: [Navy College Program Continues During COVID-19 Pandemic](#)
- April 3, 2020: [NAVSUP FLC Norfolk Helps Comfort Get Underway for New York](#)
- April 3, 2020: [Team at Naval Personnel Command Works 24/7 to Help Sailors, Families With PCS Questions](#)
- April 3, 2020: [Navy Initiates Temporary Changes for ID Card Offices](#)
- April 2, 2020: [Navy, Marine Corps Partner With Industry, FEMA to 3-D Print Face Shields](#)
- April 2, 2020: [Hospital Ships Arrive Safely With Help From Meteorologists, Oceanographers](#)
- April 2, 2020: [Navy COVID-19 Efforts Link to Joint Acquisition Task Force](#)
- April 2, 2020: [Before COVID-19, U.S. Naval War College War Game Examined Epidemic Response](#)
- April 1, 2020: [Comfort Treats First Patients in New York](#)
- April 1, 2020: [U.S. Navy Support Facility Diego Garcia Ramps Up Social Distancing](#)
- April 1, 2020: [Undersea Warfare Center Builds Face Shields for Local Medical Community](#)
- April 1, 2020: [DC-Area Fleet/Family Support Center Offers Webinars to Help Navigate COVID-19](#)
- March 31, 2020: [24/7 Chaplain Hotline for Reserve Sailors Starts April 1](#)
- March 30, 2020: [Comfort Arrives in New York](#)
- March 29, 2020: [Comfort Underway to Support City of New York](#)
- March 27, 2020: [Navy Exchange Service Command Closes Tailor/Embroidery, Laundry, Dry Cleaning Shops Due To COVID-19](#)
- March 27, 2020: [USNS Mercy Arrives in Los Angeles](#)
- March 27, 2020: [Amid COVID-19 Restrictions SkillBridge Internships Continue](#)
- March 27, 2020: [St Louis Native Supports Nation's COVID-19 Response Efforts Aboard USNS Mercy](#)
- March 27, 2020: [Navy Strengthens Supply Chain During COVID-19 Pandemic](#)
- March 26, 2020: [Navy Authorizes Enlistment Extensions, Re-Entry Opportunities](#)
- March 26, 2020: [Navy Base in Japan Works to Keep COVID-19 at Bay](#)
- March 25, 2020: [U.S. Navy Reports Updated Positive COVID-19 Cases](#)
- March 25, 2020: [Navy Consolidates COVID-19 Prevention Policies in NAVADMIN 080/20](#)
- March 25, 2020: [Naval Postgraduate School Continues Prep for Spring Classes Online](#)
- March 24, 2020: [Navy Reserve Arrives to Support USNS Mercy](#)
- March 24, 2020: [Containing COVID-19: Why the Boss Sent Me Home](#)
- March 24, 2020: [TAP Available Online for Transitioning Sailors](#)
- March 23, 2020: [USNS Mercy Departs San Diego](#)
- March 23, 2020: [U.S. Naval War College Turns to Virtual Town Hall, All-Hands Call in Response to COVID-19](#)
- March 22, 2020: [Navy Exchange Service Command Closes Barber and Beauty Shops in Response to COVID-19](#)

**Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 15 of 19 PageID 2716**

- **March 22, 2020:** [Navy Preventive Medicine Teams Embark Ships in 7th Fleet](#)
- **March 21, 2020:** [Naval War College Moves Lectures, Seminars Online, Postpones Events to Fight COVID-19](#)
- **March 20, 2020:** [Navy Exchange Suspends All In-Store Vendor and Sales Events](#)
- **March 20, 2020:** [Navy Increasing Health Protection Measures on Installations to Fight COVID-19](#)
- **March 20, 2020:** [Telework Increased for Reserve Sailors; Some Admin Requirements Waived](#)
- **March 19, 2020:** [Recruit, Officer Graduation Ceremonies Canceled Till Further Notice](#)
- **March 19, 2020:** [Navy Postpones Selection Boards](#)
- **March 18, 2020:** [Navy Authorizes COs to Relax Some Grooming Standards if Necessary](#)
- **March 18, 2020:** [NCIS: Beware of Coronavirus-Themed Scams](#)
- **March 18, 2020:** [Chief of Chaplains Provides COVID19 Mitigation Guidance](#)
- **March 18, 2020:** [Navy Cancels Spring 2020 Fitness Cycle, Delays Advancement Exam](#)
- **March 18, 2020:** [Navy School Closed After Third COVID-19 Case](#)
- **March 17, 2020:** [Updated Training Track Guidance Issued](#)
- **March 16, 2020:** [Navy Museums Temporarily Close](#)
- **March 15, 2020:** [COVID-19: Important Information for U.S. Navy Reservists](#)
- **March 15, 2020:** [Navy Sets Coronavirus Transfer and Travel Rules: What You Need to Know \(March 15, 2020\)](#)

**Navy.mil Strategic Library**

- **July 31, 2020:** [Department of the Navy Return to the Workplace](#)

**Navy Times**

- **July 31, 2020:** [‘A small number’ of carrier George HW Bush sailors test positive for COVID-19](#)

[Back to links](#)

**Supporting Video**

- **Jan. 11, 2021:** [Coronavirus Vaccines on USS San Antonio](#)
- **Dec. 16, 2020:** [Lieutenant Emily Micciolo talks about receiving COVID-19 vaccine](#)
- **Dec. 16, 2020:** [Captain Shelley Perkins talks about the first round of COVID-19 vaccination at Naval Hospital Camp Pendleton](#)
- **Dec. 16, 2020:** [U.S. Navy Lieutenant Commander Devon Czarzasty talks about the COVID-19 Vaccination](#)
- **Dec. 16, 2020:** [NMCS D's Coronavirus Vaccine MAO](#)
- **Dec. 15, 2020:** [NMCS D COVID-19 Vaccine Interview](#)
- **Dec. 15, 2020:** [NMCS D COVID-19 Vaccine Transfer to NHCP](#)
- **Dec. 15, 2020:** [COVID-19 vaccine arrives at Naval Hospital Camp Pendleton](#)
- **Dec. 15, 2020:** [NMCS D Distributes COVID-19 Vaccine](#)
- **Dec. 15, 2020:** [Naval Medical Center San Diego COVID-19 Vaccine Teleconference](#)
- **Dec. 15, 2020:** [COVID-19 Vaccine Arrives at Naval Hospital Pensacola](#)
- **June 3, 2020:** [Basic Information on COVID19 Contact Tracing Process in the U.S. Navy](#)
- **April 25, 2020:** [America Strong](#)
- **April 3, 2020:** [Secretary Modly appearance on Hugh Hewitt Show to discuss Navy response to COVID-19](#)
- **March 24, 2020 (Facebook Live Press Conference):** [Secretary of the Navy, Chief of Naval Operations, Navy Surgeon General, Master Chief Petty Officer of the Navy](#)
- **March 24, 2020:** [Acting Secretary of the Navy Thomas B. Modly – Message to the Fleet](#)
- **March 23, 2020:** [USNS Mercy \(T-AH 19\) Deploys in COVID-19 Response Support](#)
- **March 23, 2020 (Facebook Video):** [Press Availability on USNS Mercy Deployment](#)
- **March 21, 2020:** [Chief of Naval Personnel Virtual Town Hall](#)

Application504a

**Case 8:22-cv-01149-WFJ-CPT Document 41-9 Filed 07/18/22 Page 16 of 19 PageID 2717**

- **March 19, 2020:** [CNO's Message to the Fleet on Coronavirus](#)
- **March 18, 2020:** [Coronavirus Terms to Know](#)
- **March, 14, 2020:** [Message From Chief of Naval Operations ADM Mike Gilday and Master Chief Petty Officer of the Navy Russell Smith](#)
- **March 14, 2020:** [Stop the Spread of Germs Everyday](#)
- **Feb. 26, 2020:** [Navy Surgeon General's Message](#)

[Back to links](#)

---

**DoD, Navy Leadership Statements**

- **Oct.4, 2021:** [Mandatory Coronavirus Disease 2019 Vaccination of DoD Civilian Employees](#)
- **Aug. 24, 2021:** [Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members](#)
- **Dec. 15, 2020:** [CNO Gilday Issues a Message to the Fleet on the COVID Vaccine](#)
- **April 14, 2020:** [U.S. Naval Forces Europe-Africa and U.S. 6th Fleet Resiliency Letter](#)
- **April 11, 2020:** [Chief of Navy Reserve Releases Message to the Force](#)
- **March 31, 2020:** [Vice Chief of Naval Operations Message to Navy Leadership](#)
- **March 30, 2020:** [COVID-19 Navy Update: CNO and MCPON Message to the Fleet](#)
- **March 27, 2020:** [Memo from Secretary of Defense to all DoD Personnel](#)
- **March 26, 2020:** [Chief of Naval Operations Statement on USS Theodore Roosevelt](#)
- **March 25, 2020 (DoD Statement):** [Overseas Stop Movement Order in Response to COVID-19](#)
- **March 18, 2020:** [Hospital Ships, Other DOD Assets Prepare for Coronavirus Response](#)
- **March 14, 2020:** [Statement by the Department of Defense on COVID-19 Response Measures on the Pentagon Reservation](#)
- **March 13, 2020:** [Department of Defense Statement on Enhanced Protection Measures at Pentagon](#)

[Back to links](#)

---

**TRANSCOM Release**

- **March 17, 2020:** [Most Defense Personal Property Pick-ups and Pack-outs Paused; Deliveries Continue](#)

[Back to links](#)

---

**More Resources**

- [30 Days to Slow the Spread](#) (President's Coronavirus Guidelines for America – PDF)
- [MWR At Home Website](#)
- [White House/CDC/FEMA COVID-19 Page](#)
- [Navy Remote Work Information & Guidance \(CAC Required\) Published by the DON Deputy Chief Information Officer for the Navy](#)
- [Military and Air Support Nurse Advice Line](#)

Application505a

- [MyNavy Career Center](#)
- [Navy Chaplain Care](#)
- [Psychological Health Resource Center](#)
- [Navy Marine Corps Public Health Center](#)
- [Department of Defense Coronavirus Update Site](#)
- [Centers for Disease Control and Prevention COVID-19 Website](#)
- [Military OneSource: Coronavirus Information for Our Military Community](#)
- [Coronavirus Guidance from TRICARE](#)
- [Navy-Marine Corps Relief Society: Coronavirus Response](#) (video)

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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

ISRAEL ALVARADO, *et al.*,

Plaintiffs,

v.

Case No. 8:22-cv-1149-WJF-CPT

LLOYD AUSTIN, III, *et al.*,

Defendants.

\_\_\_\_\_ /

**ORDER TRANSFERRING CASE**

The Court finds that venue in the Tampa Division is not proper. *See* Local Rule 1.04(b), M.D. Fla. Plaintiffs have filed a motion to transfer this action pursuant to 28 U.S.C. § 1406(a) to the Eastern District of Virginia, which is not opposed. After carefully reviewing the submissions, and having heard argument on July 25, 2022, the Court finds on balance that the convenience factors and interests of justice weigh in favor of transfer pursuant to 28 U.S.C. § 1404(a).

Accordingly, the unopposed motion (Dkt. 46) is granted. The Court transfers this action to the Eastern District of Virginia and directs the Clerk to accomplish same and thereafter close the case.

**DONE AND ORDERED** at Tampa, Florida on July 27, 2022.

  
\_\_\_\_\_  
**WILLIAM F. JUNG**  
**UNITED STATES DISTRICT JUDGE**

**IN THE MATTER OF THE VACCINE MANDATE CHALLENGE**

**DECLARATION OF CHAPLAIN, MAJOR DARREL LANCE SCHRADER**

Pursuant to 28 U.S.C. §1746, I, Darrel “Lance” Schrader declare as follows:

1. My name is Darrel “Lance” Schrader. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Air Force mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside in Montgomery, Alabama. My home of record and where I am domiciled is Phoenix, Maricopa County, Arizona.
4. I am an active duty chaplain in the United States Air Force (USAF) serving at the rank of Major. I am currently assigned to the Air Force Chaplain Corps College (AFCCC), in the Ira C. Eaker Center for Leadership Development of Air University, located at Maxwell Air Force Base in Montgomery, Alabama.
5. After ten years of professional work in education, business, and ministry, on February 9, 2008, I commissioned as a Chaplain in the rank of First Lieutenant and joined the Arizona Air National Guard (A ANG) in Phoenix, Arizona. I was honorably discharged from the A ANG on September 27, 2012, and appointed into the USAF as an active duty Chaplain in the rank of Captain. I joined the USAF Chaplain Corps because I love God and love America and wanted to serve both by supporting and defending the Constitution. Being a USAF chaplain has been a great highlight of my life, and I have been honored to be invited into some of life’s most sacred moments for great Americans from all branches of our Armed Forces.

6. My promotions were as follows: Commissioned as a First Lieutenant on February 9, 2008; promoted to Captain on October 1, 2009; promoted to Major on March 1, 2020. I have 14 years of service as of February 2022.

7. During my military career, I have been mobilized for one state side deployment and three deployments to foreign locations recognized as combat zones and have been stationed outside the continental United States for three years. During my service in the A ANG I was mobilized in support of the Southwest Border Mission, Operation Copper Cactus for nine months (September 2010 through May 2011), serving as the chaplain for the Arizona National Guard and Air National Guard members serving along the Arizona/Mexico border. As an active duty chaplain I deployed to: Bagram Air Field, Afghanistan for five months (May 8, 2014 – October 17, 2014) as a Chaplain for an Air Expeditionary Wing in support of Operation Enduring Freedom; Turkey for six months (March 27, 2017 – September 26, 2017) at a Group Chaplain for a Combat Search and Rescue Group in support of Operation Inherent Resolve; and an undisclosed location in Southwest Asia for seven months (July 18, 2020 – February 11, 2021) as a Wing Chaplain for an Air Expeditionary Wing in support of Operation Inherent Resolve; in addition I spent three years stationed in Germany during which time I supported Theater Security Packages across Europe in support of Operation Atlantic Resolve.

8. I have received the following awards, decoration and recognitions: Four Meritorious Service Medals<sup>1</sup>; An Air Force Commendation Medal; An Air Force Achievement Medal; 2011 161st Air Refueling Wing, Junior Officer of the Year, in the A ANG; 2014 366th Fighter Wing, Wing Staff Agencies Company Grade Officer of the year at Mountain Home Air Force Base;

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<sup>1</sup> Two of these MSMs were awarded when I was a company grade officer, which is unusual and typically indicates that the company grade officer being awarded the MSM is performing beyond what is expected of a company grade officer.

2019 Air Education and Training Command, Company Grade Officer, Chaplain of the ear; 2019 81st Training Wing, Wing Staff Agencies Company Grade Officer of the ear at Keesler Air Force Base; 2020 81st Training Wing, Wing Staff Agencies, Field Grade Officer of the ear at Keesler AFB; I received a “Definitely Promote” to Major; was vectored by Chaplain Corps leadership for a staff position and assigned as a Staff Chaplain at the Air Force Chaplain Corps College; At the 2021 Intermediate and Senior Development Education (IDE/SDE) Designation Board I was selection as an alternate for Intermediate Development Education (IDE) to attend Air Command and Staff College in-residence. These awards and recognitions competitively earned me a spot at the top of my career field prior to the COVID-19 vaccine mandate and the subsequent religious discrimination I have experienced.

9. Religious tension is an everyday reality for military chaplains. I have worked harmoniously, effectively, and with mutual respect alongside many Airmen and commanders who do not share my religious beliefs. But I have never experienced the kind of singling out that has accompanied this Religious Accommodation Request (RAR) process and the hostility directed at me by my chain of command because of my submission of an RAR. In good faith, I submitted my RAR, but the USAF has not followed its own procedures in denying my request. I am taken aback by the USAF’s blanket refusals to Airmen of like faith.

10. I have witnessed and been subject to open hostility and sidelining from my job for my religious views on the “vaccine” that have led me to stay unvaccinated. During my deployment (winter of 2020/21), when it became clear to our base leadership that the numbers of Airmen who planned to receive an optional COVID-19 vaccine was lower than was hoped for, the Wing Commander communicated that a targeted information campaign was needed to get Airmen to change their minds about the vaccine and to combat what he called misinformation.

11. In April 2021, all unvaccinated Airmen at Keesler Air Force Base were required to attend vaccine briefings and sign a form indicating that we had declined to receive the vaccine. At this meeting the presenting Major from the 81st Medical Group indicated the mRNA technology does not enter one's DNA and reiterated over and over that the vaccines were safe and effective and that it was more or less a protein wrapped in water and sugar. There was little if any communication of the potential side effects of the vaccine being administered. The presenting doctors talked down to airmen who had questions, saying, in effect, "We're the ones with the white coats on, not you." When asked by an airman about the possibility of vaccine injury because of his family's medical history and whether the USAF would be liable for damages and provide for the family if he were to be harmed, the presenter gave legal advice, saying in effect, "It's us, the Air Force, telling you to get the shot. So, there's nothing to worry about." Overall, the briefing was condescending and dismissive of anyone with concerns.

12. Third, on May 26, 2021, my first day at work at the Air Force Chaplain Corps College (AFCCC), during a staff gathering to welcome me, my supervisor and primary rater, a Chaplain in the rank of Colonel and the Commandant of the AFCCC asked me in front of the entire staff if I was vaccinated. This was a direct violation of privacy and put me on notice that it was unacceptable to be unvaccinated on his staff. Later that day, a colleague asked if the Deputy Commandant had come to pressure me into being vaccinated yet, indicating that they had been pressured, and that I would likely surrender to the pressure as well.

13. Fourth, during these months, the rules changed, and we moved to a two-tiered system, where only unvaccinated individuals were required to wear masks. I met with the Commandant and Deputy Commandant (at the Commandant's invitation) to present reasons why I believed this two-tiered system was discriminatory, unjust, and frankly unnecessary if were "following CDC guidance," since the CDC guidance advocated less stringent guidelines. At this meeting, I

presented my concern that the USAF, including AFCCC, was presenting an incomplete narrative and furthering the baseless ideas that masks prevent infection, and that the vaccine prevents disease. I also pointed out that the USAF seems to arbitrarily pick and choose which CDC guidelines they will follow as a coercive tactic. In this case, the CDC guidelines recommended masks only if one could not maintain six feet of social distancing. They made (at that time) no distinction between vaccinated and unvaccinated. The Air Force used the mask/no mask rule as a way of singling out airmen to publicly shame and belittle them in order to increase vaccination percentages prior to the mandate. I prepared for this meeting in good faith, believing that supervisor and rater was open to hearing my concerns. Instead, I was met with open hostility and condescension. He refused to look at anything I had prepared. He talked down to me, suggesting that I was the one who didn't understand that commanders have leeway in issuing orders, when in fact I was arguing that very point; our commander had issued an order that was beyond CDC recommendations when that was not required of her.

14. Fifth, in June/July 2021, during Basic Chaplain Course (BCC) 21C, I was asked by the course director and curriculum manager to participate in writing case studies to be used in a particular lesson that would be taught for the first time. I generated the requested case studies, but I was not allowed to team teach the lesson with another member of our staff.

15. Likewise, for BCC 21D in August 2021 I was asked by the course director to meet with the active-duty chaplains as a functional mentor. I was willing and eager to do so, but leadership denied me on the pretext that I had not been through the Academic Instructor Course (AIC), and it would not be appropriate to put me in front of students. I had suspected that this was the same pretext I was kept from having any involvement in BCC 21C. AIC is a technical training course geared toward classroom management and lesson development and presentation and would have no impact on my ability or proficiency in mentoring active-duty chaplains in the BCC 21D, or to

team teach a small portion of one lesson for which I had written the curriculum in 21C.

Furthermore, staff members who arrived at the AFCCC after I did have been allowed to participate as class mentors and presenters prior to attending AIC.

16. On August 31, 2021, the Air Force Chaplain Corps issued their “Vaccination FAQs” document, a flowchart and table for pre- and post-accessions, and a sample chaplain memo. (Exhibit 1) This guidance presented chaplains with the new requirement to distinguish between “religious” and “moral/conscience” objections. The guidance says: “Whether [the objections] are religious or moral/conscience, they will be referred to as ‘religious accommodation’ for lack of a better term, and they will be analyzed to see into which category they fall.” In answering the question, “What is the difference between a religious objection and a conscience or moral objection ” the guidance discusses the two different paths protected by DoDI 1300.17 “(a) religious beliefs and (b) conscience or moral principles,” noting that this DoDI addresses “religious beliefs and delegates accommodation of conscience or moral principles to service regulations, namely DAFI 52-201 for the USAF.” The answer goes on to explain, “religious beliefs must be evaluated by the standards required by the Religious Freedom Restoration Act (RFRA) while needs prompted by conscience or moral principles are only balanced against the needs of mission accomplishment (DAFI 52-201, para. 2.5). Thus, the chaplain helps to identify whether a request is religious vs. being based in conscience or moral principles make your assessment on this point clear.” (Emphasis added.) So, chaplains have been asked to distinguish between types of belief but are instructed to refer to them all as religious requests.

17. Further unofficial guidance was also circulated, within the Chaplain Corps, that coached chaplains in arguing against the stated religious objections put forth in RARs. (Exhibit 2) For example, a chaplain told me he recommended a denial for an airman who was a deacon in his church because that airman had taken Tylenol in the past. So even though he knew this was a

religious person who was sincere and was making a request based on his sincere objection, he was able to convince the airman to “admit” that his objection may not be “religious” but based on his moral conscience. I also heard of another instance where a chaplain recommended disapproval, but the commander, who knew the airman, recommended approval based on a sincerely held religious belief. I heard a JAG officer coach Basic Chaplain Course students, saying a belief could not be “religious” if a religious leader in that faith group had publicly stated otherwise. So, since the Pope had advocated for the COVID-19 vaccine, chaplains should not consider a Catholic airman’s religious objection to be sincere. This is in direct contradiction to what the Archbishop for the Military Services, USA has said. This confusion<sup>2</sup> and obfuscation of the legal and moral issues regarding RARs helped to weaponize the Chaplain Corps against its own core function that of supporting the free exercise of religion for airmen by advising commanders. Chaplains have become the enemy of airmen rather than the trusted wingmen they used to be. Chaplains exist to help airmen practice their faith and prevent moral injury because of violations to their conscience. But during this vaccine mandate, many chaplains have advocated against airmen by acquiescing to the idea that there was some arbitrary, undefined standard of “religious” but not “moral/conscience” sincerity that the chaplain was to determine. In this moment of total crisis regarding the Chaplain Corps’ identity, purpose, and integrity, with over 12,000 American Airmen are having their religious freedom trampled, the Chaplain Corps leadership at all levels is giving themselves accolades for a job well done, lamenting how difficult and time consuming the RAR process has been for chaplains.

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<sup>2</sup> There seems to be effort to replace individual religious beliefs, which are protected by the Constitution, with official religions as if the religious beliefs of the individual are in submission to some other arbiter than one’s own conscience.

18. On September 9, 2021, I was issued an “Order to Receive Mandatory COVID-19 Vaccine” (Exhibit 3).

19. I submitted a Religious Accommodation Request (RAR) on September 17, 2021 (Exhibit 4), outlining my religious convictions concerning the mandatory COVID-19 vaccination.

20. My RAR presented three primary religious objections to receiving the vaccine, all of which (and more) would result in my committing of a sin of presumption (doing the wrong thing while knowing it is the wrong thing). This would place a substantial burden upon my religious convictions to live with a clear conscience before God and obey God in all things, which is the very essence of my worship of him. 1) The vaccine “is tied to the abortion industry and the leveraging of abortion for medical gain to receive this vaccine is to participate in these sins of murder and theft.” 2) “The vaccine would defile my body, which is the temple of God’s Holy Spirit, is a member of Jesus Christ, and belongs to the Lord My body is the vehicle by which I live out my faith in Jesus Christ and by which I worship God, offering it as a living sacrifice to God in order that I may glorify God.” 3) “This vaccine has become, in our society, an act of worship to a false god, i.e., the State.”

21. On October 27, 2021, I was informed by my supervisor and rater that my RAR was one of five provided by the Air Education and Training Command (AETC) Chaplain to the AETC Commander and decision authority for all AETC RARs as part of his preparation for the RAR discussion with other Major Command Commanders and senior leaders at the October 2021 bi-annual Corona conference. In addition, in November 2021, I heard the Air Force Chief of Chaplains tell a group of approximately 30 Air Force Chaplains that he was at the Corona conference, he provided comments on the religious accommodations, and was asked to leave the room prior to the discussion for which the AETC Commander had prepared using my RAR.

22. My RAR was denied on November 1, 2021, and I received notice of the denial on November 8, 2021 (Exhibit 5).

23. Prior to the November 8, 2021, meeting with my Commander in which she presented me with the RAR denial decision, my supervisor and primary rater pleaded with me to resign my commission, thereby incriminating myself. In lieu, he urged me to take the vaccine, either implying that my religious convictions on the matter are not sincere or encouraging me to deny myself due process and my own rights and sear my own conscience (i.e., willingly subject myself to moral injury without cause). He justified his reasoning by saying that if it is not this situation, there will be another situation that causes trouble for me in my military career. I infer this to mean he believes my convictions are not compatible with service as a chaplain in the Air Force. My supervisor asked me to set aside my convictions, abdicate a reasonable request to exercise my God-given rights, and resign in fear of a dishonorable discharge. This reveals what I believe is a broad mischaracterization of the religious convictions of myself and others like me, and a lack of commitment to religious respect and diversity in an organization that claims mutual respect and human dignity are essential to the culture (DAFI 52-201 para 1.2.1). In another meeting, he said, in effect, that eventually the COVID-19 vaccine requirement will all fade away and we'll move on. His point was that I could continue to serve if I would just get the shot. Then I could keep my job, and in a few years, it would all be forgotten by me and others. He said, in effect, "Don't throw away your career over this short-term thing." This seems to be an open admission that the COVID-19 pandemic and the measures enacted in response to it were nothing but theater. It is religious discrimination to urge me to defile my conscience.

24. In the denial letter the AETC Commander said: "I deny your request for exemption from Air Force COVID-19 immunization standards based on the recommendation from your chain of command and the Religious Resolution Team." In response to this statement, I requested from

my commander on November 8, 2021, to be provided a copy of her recommendation memo and the recommendations from the Religious Resolution Team members to prepare my appeal. I articulated that if the decision authority made his decision upon these documents, I should have access to the same information in making my appeal. Without these documents I was unable to know what factual discrepancies were included or to identify any misrepresentations of my religious beliefs or specifics to my personal circumstances. On November 9, 2021, my commander notified me that she would not be providing me these documents, stating that they were internal commander decision documents. I was denied due process and disadvantaged in writing my appeal without these documents. On November 15, 2021, I submitted a Freedom of Information Act (FOIA) Request for these documents (Exhibit 6) which I did receive on December 16, 2021, fifteen days after my appeal was denied and two days after my commander issued to me the first punitive administrative action in the form of a Letter of Correction (LOC).

25. Until receiving the FOIA released documents, the only recommendation/indorsement statement I saw from anyone in the decision process was the RAR chaplain interview memo, required by DAFI 52-201 to be presented to me for my signature.<sup>3</sup> Though withheld from me by my commander, these documents were determined releasable under FOIA.

26. The FOIA documents reveal how my religious beliefs were understood and what recommendations were made by the RRT. This quote from Air University's Commander and President reveals his views about my religious convictions and the undue influence his views placed on anyone including my Commander recommending approval: "While I accept the sincerity of Maj Schrader's religious beliefs, his position that getting the vaccine constitutes an act of worship to a false God (i.e., the State) arguably appears to be in conflict with his service as

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<sup>3</sup> In the Air Force RAR process, the chaplain interviewing the member is the only person required to present his/her recommendation to the member. No one else in the process is accountable to the member for their recommendation.

a [sic] an officer—service he entered voluntary [sic] and in doing so bore allegiance to the State, which at times requires him to do it’s [sic] bidding. His assertion on this point, through sincere, seems inconsistent and falls flat”.

27. The FOIA documents also reveal religious discrimination by my chain of command and members of the 42 Air Base Wing Religious Resolution Team (RRT). I outlined the discrimination in a Military Equal Opportunity complaint submitted on March 22, 2022 (Exhibit 8). This complaint has not yet to be fully investigated. On June 24, 2022, I received a response from Department of the Air Force Senior Official Inquiries Directorate (DAF/IGS) dismissing the portion of my complaint concerning the Air University Commander and President at the time, Lt Gen James Hecker (who recently was approved by the Senate for promotion to General and assumed command of U.S. Air Forces in Europe-Air Forces Africa). The letter stated, “We further found his observation that there appeared to be a conflict between your beliefs and your duties as an officer was a direct response to your own RAR statements and not evidence of religious discrimination.” To be clear, the former AU Commander and current 4-star General and Commander of U.S. Air Force in Europe-Air Forces Africa’s opinion of my religious beliefs are that they conflict with my duties as an officer. My religious beliefs are that the participation in this vaccine is a sin and a direct affront to the God whom our founding fathers identified as the bestower of the inalienable rights articulated in our founding documents, specifically the United States Constitution, which both Gen Hecker and I have sworn to protect from all enemies both foreign and domestic. Gen Hecker stated that I “bore allegiance to the State” rather than to the Constitution. But the State does not protect me from the very harm to which the DoD and Gen Hecker have subjected me; rather, the Constitution does.

28. In addition, the FOIA documents include the single PowerPoint slide presumably briefed to the AETC Commander for his decision (Exhibit 6). This PowerPoint side shows that the

interviewing Chaplain for my RAR recommended to approve the request and all other advisors and commanders recommended denial. It is worth noting that the only member providing their recommendation that actually ever had a conversation with me is the one person, the interviewing chaplain, that recommended approval.

a. This PowerPoint slide includes a fraudulent summary/“Scorecard” of the recommendations made by a chain of command to “disapprove” and appears to be a template with default disapprove checkmarks:



b. This “Scorecard” does not reflect a “to the person” evaluation of my RAR, because this list of positions does not accurately reflect my chain of command. I belong to unit that reports directly to Air University, which belongs directly to AETC. Therefore, I do not belong to a Squadron, Group, Wing or Numbered Air Force (NAF).

c. The list includes **four** commanders in my chain of command, all recommending to “Disapprove”. But there are only **two** commanders in my chain of command below the AETC Commander. So this list includes two nonexistent commanders recommending “Disapprove”.

d. In the RAR, I show my religious beliefs are sincere and would be substantially burdened by the policy. I included 12 pages of Bible verses from which I drew my convictions. The burden of proof then shifted to the USAF, since limits on the expression of religious beliefs

may only be imposed when there is a real (not theoretical) adverse impact on the government's compelling interest, and when the policy in question is the least restrictive means to accomplish that interest. This the USAF did not do, citing no evidence whatsoever to back up its claims. Instead, I received a form letter exactly like every other RAR denial that I've seen from airmen in AETC. The only difference is a few lines that show "specificity" to our jobs. However, the RAR denial letter contained false statements about my current position as an instructor, citing other responsibilities typical of a chaplain, such as crisis counseling, death notifications, and hospital visitations, that I do not currently perform.

29. In further unfair, arbitrary and capricious treatment, I was given five duty days to complete my appeal (in contrast to the multiple 30-day windows provided to wing/base Religious Resolution Team (RRT), MAJCOM RRT, and Department of the Air Force (DAF) RRT. I submitted my appeal (Exhibit 9), on November 16, 2021. In it I thoroughly outlined the many inconsistencies and false statements in the denial letter. They are outlined below. None of these issues were addressed in the appeal denial.

30. Concerning the sincerity of my beliefs: Despite my professional credentials and the material presented in my RAR and appeal, neither decision letter includes language to communicate that my RAR was evaluated against the standards of the Religious Freedom and Restoration Act of 1993 (RFRA), rather than the lesser standard of mission accomplishment.<sup>4</sup>

31. Concerning the substantial burden: Despite that my very existence as a commissioned officer in the USAF is contingent on my status within my religious community and the practice of my faith, and the clear burdens I referenced in my RAR, the approving authority chose not to acknowledge any level of burden the policy may put on my religious beliefs and instead said that

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<sup>4</sup> DoDI 1300.17, DAFI 52-201 and Vaccination FAQs from HAF/HC cao 31 Aug 2021.

he considered the “impact” on me “personally,” a significantly less weighty consideration. He considered this personal impact not weighty enough to warrant an exception and introduced a new undefined phrase, “the threshold necessary for an exemption.” What is this threshold and where is it described, and why was I not given an opportunity to address this threshold

32. I clearly articulated in the RAR that this policy would place me in a position of sin against God. This presumptuous sin would cause a moral injury to my soul and cause me, in my ministerial capacity, to lead other to also sin. Jesus says it would be better to die than to cause another to sin, so it would place a substantial burden upon my ability to live with a clear conscience before God and to obey God in all things which is the very essence of my worship of God and the foundation of my job as a chaplain. I simply cannot and should not be an endorsed chaplain representing my faith tradition in the USAF if I am purposefully living in disobedience to the clear teachings of the God I aim to represent. My religious beliefs are clear on this topic, and it is deeply concerning that my leadership does not see this as a substantial burden. If the DoD is not able to see how this policy places a substantial burden on my religious beliefs as a Christian chaplain, then I can agree with the common sentiment I hear from many who said to me as a chaplain, “If you as a Chaplain cannot get a religious accommodation, then none of us can.” I think they are right. The USAF has never intended to accommodate a single COVID-19 RAR, and with this new precedent they are setting, I believe they will never be able to accommodate religious Americans honestly ever again. I believe the process has been a sham.

33. Concerning the government’s compelling interest and a real (not theoretical) adverse impact, the actual compelling interest is never clearly stated in the denial letters. In the appeal I offered refutation of compelling government interest in the following categories, none of which were addressed in the denial:

a. Force Readiness: The denial letter credits the “extreme measures” taken by AETC for the low COVID-19 hospitalizations and deaths in the USAF. I provided studies showing no real effect of these measures and data concerning the age and health status of COVID-19 victims. The denial letter credited the vaccine with decreasing the “pandemic numbers” in the USAF. This is demonstrably false by the very data shown on the USAF website. Deaths increased six-fold in the three-and-a-half months after the mandate. I also referenced the USAF’s Joint Chief of Staff Vice Director Major General Jeff Taliaferro’s statement to the House Armed Services Committee on February 17, 2021: “ **e have already demonstrated that we are fully capable of operating in a covid environment. e are deployable even if we have not been vaccinated.**”<sup>5</sup>

b. Personal Readiness: USAF readiness includes more than just vaccination. It requires additional physical requirements, social, mental, and spiritual readiness, all of which have been drastically inhibited by this divisive, dangerous, and unnecessary mandate. I deployed as Wing Chaplain for an Expeditionary Wing from July 2020 to February 2021 during the COVID-19 pandemic. We did not have the vaccine, the mission did not fail, and I was awarded a Meritorious Service Medal for my service.

c. Unit Cohesion: If the presence of an unvaccinated person is a detriment to unit cohesion, then the force must be 100 vaccinated to deter this possibility. But that would make disingenuous the Secretary of Defense’s declaration that “mandatory vaccination of Service members will be subject to any administrative or other exemptions established in Military Department policy,”<sup>6</sup> The USAF indicated the sincerely held religious objections would be

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<sup>5</sup> See Major General Jeff Taliaferro, Joint Chief of Staff Vice Director for Operations 17 Feb 2021 House Armed Services Committee testimony at 34’:30” to 36’:15” <https://www.c-span.org/video/509040-1/house-armed-services-hearing-covid-19-response> (accessed 15 Nov 2021).

<sup>6</sup> Lloyd J. Austin III, U.S. Secretary of Defense, “Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members,” U.S. Department of Defense, Washington, D.C., 24 August 2021.

honored. Instead, I have seen blanket denials, obfuscation, enacting policies through memorandum, and “passing the buck.”

d. Good order and discipline: The RAR decision authority made this disheartening and polarizing statement in my denial letter, “Additionally, you are in a position of leadership. A lack of readiness on your part due to a COVID-19 vaccination exemption is likely to have a negative impact on good order and discipline.” First, even though USAF policy allows for religious accommodations, he equates the acquisition of one with a “lack of readiness.” Second, his claim that a [religious] exemption would “likely have a negative impact on good order and discipline” could reflect a threat of punitive action based on UCMJ Article 134. When did it become the USAF position that granting religious accommodations in accordance with the First Amendment to the U.S. Constitution we have sworn to defend produces a “negative impact on good order and discipline” On the contrary, I would argue that religious accommodations (not just for chaplains but for any Airman) have a positive impact since the hearts and minds of American Airmen are strengthened when they see leadership upholding the law and policy.

e. Health and safety for member and the unit: Neither denial letter addresses standards it is seeking to achieve for the “health and safety” of its members. The fact that viruses such as SARS-CoV2 cannot be eradicated due to animal reservoirs, the rapidly decreasing efficacy rate of the vaccine (untraceable after 211 days),<sup>7</sup> breakthrough cases, and the herd immunity standards makes zero COVID-19 cases impossible. As of January 11, 2022, 97.5% of active-duty Air Force members were vaccinated.<sup>8</sup> At my current duty station, the rate was 97.1% fully vaccinated as of January 10, 2022.<sup>9</sup> According to Dr. Anthony Fauci, herd immunity is achieved somewhere

<sup>7</sup> See [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3949410](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3949410) (accessed 11 Nov 21).

<sup>8</sup> See <https://www.af.mil/News/Article-Display/Article/2831845/daf-covid-19-statistics-jan-11-2022/> (accessed 15 Jan 22).

<sup>9</sup> 42d ABW Public Health Emergency Working Group PHEO Update, 10 Jan 2022, version 2.

between 70 and 85 , to include both vaccine-acquired and naturally acquired immunity.<sup>10</sup> Thus, it is irrational for the Air Force to require 100 vaccination, and goes against what its chief expert, Dr. Fauci, has said in the past. I also pointed out the testimonies of military medical doctors LTCs Theresa Long and Peter Chambers, who began sounding the alarm on vaccine injury to military members. I pointed out that there is no meaningful threat of COVID-19 death or long-term injury for people in the health and age categories of the active duty Air Force.

34. Neither denial letter outlined less restrictive means considered by the decision authorities. In my appeal I mentioned: natural immunity, prophylactic treatments, and early treatment options.

35. The USAF categorizes the approval of an RAR for immunizations as “non-compliance” in accordance with DAFI 52-201. It is troubling that utilizing a prescribed accommodation process is considered “non-compliance” (a disciplinary term) in the eyes of leaders.

36. My RAR appeal was denied on December 1, 2021 (Exhibit 10), and on December 3, I received notice of the appeal denial and an order to receive mandatory COVID-19 vaccine by December 13, 2021 (Exhibit 11). The appeal denial letter was the same form letter from AF/SG that I have verified other Air Force members received. The only differences are a few sentences regarding my position, made to look like it was written specifically in response to my circumstances. In fact, none of the items I mentioned above were addressed in the appeal denial.

37. On December 7, 2021, I submitted a request for a temporary administrative exemption (Exhibit 12) in accordance with AFI 48-110 October 7, 2013, Appendix C for pending legal action in multiple civil class action lawsuits concerning this mandate and the blanket denial of religious accommodation. On December 9, 2021, my commander replied, “I have considered your request for a Temporary Administrative exemption from the COVID-19 vaccine, and have decided to deny

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<sup>10</sup> See <https://townhall.com/tipsheet/mattvespa/2021/03/29/wsj-oped-herd-immunity-is-hereeven-if-fauci-doesnt-want-to-admit-it-n2587026> (accessed 12 Nov 2021).

it". On December 10, 2021, I submitted an Inspector General (IG) complaint form to the Air University IG (Exhibit 13) asking in accordance with AFI 48-110 Para 1-4b & b (1) if the commander has the authority to approve or deny the Temporary Administrative Exemption, or if her authority is to ensure that my immunization records, including exemptions, are documented. The Air University IG office confirmed that the Air Force Surgeon General has delegated approval/denial of administrative exemptions codes to the commander, establishing that my commander has this authority (Exhibit 14). This is problematic because guidance from the unidentified "DAF Deputy Director of Staff for COVID-19" from September 3, 2021 (Exhibit 15), states in 5.1.2.1, "the only administrative exemption is for members on approved terminal leave." The IG's response to me indicates the decision has been delegated to my commander, but the Department of the Air Force has assumed her responsibility and made a blanket decision for all Airmen. This fact also relates to the MS (medical supply) exemption code, which was requested on multiple occasions by my private attorney, due to the unavailability of an FDA-approved vaccine. The guidance states that the only option for medical code is "MT", but it also states in 4.5.2.1, "Use of medical exemption codes in ASIMS must be IAW AFI 48-110 Table C-1." Table C-1 gives lists different medical code options.

38. From the time my Appeal was denied, I was required to test weekly for COVID-19 while my vaccinated coworkers were not required to test. I tested positive on January 16, 2022, with an EUA home test. I had minimal symptoms and worked from home that week. On January 29, 2022, I tested negative for antibodies from LabCorp. During the months of November-January, multiple of my vaccinated colleagues contracted COVID-19 and were required to miss work. They were and are considered "ready" while I am not.

39. On December 29, 2021, I submitted another FOIA request, this time for the Appeal paperwork from the Surgeon General's office and the DAF RRT. I received a response on March

3, 2022, with the same documents I received in the previous FOIA request only this time fully redacted (Exhibits 6 and 7). On March 16, 2022, I asked for the FOIA request to be revisited, again asking for documents at the DAF level. I received a response on March 22, 2022, that my request would be run through the Air Force FOIA level for review. On May 2, 2022, I followed up again to get a status update. On May 4, 2022, SAF/AAIL acknowledged my request, indicating it would be up to 90 more days before I received a response. As of this writing, I still do not know what recommendations were made by the Headquarters Air Force RRT concerning my Appeal.

40. The Air Force has begun the process of punishing me and perhaps discharging me for remaining true to my beliefs. On December 15, 2021, I received a Letter of Counseling (LOC)<sup>11</sup> for Failure to Obey Order to Receive COVID-19 Vaccine (Exhibit 16). On December 17, 2021, I submitted a timely response to the LOC (Exhibit 17), requesting reconsideration and withdrawal of the LOC. On January 4, 2022, my commander sustained the LOC.

41. In conjunction with sustaining the LOC, on January 4, 2022, my commander issued me an “Order Following Disapproval of Religious Accommodation Request for COVID-19 Vaccination Exemption” (Exhibit 18), to receive the vaccine by January 10, 2022. During the January 4, 2021, meeting issuing me this new order, my commander made a point to explain why the wording in this current order was different than previous orders. She said that the “Air Force’s language has changed,” though she did not specify which authority changed it, so her language in the order had also changed. The only change in the language is the removal of the original language from the Secretary of Defense, Secretary of the Air Force, and her on September 9, 2021 (Exhibit 3), specifying that only FDA approved vaccines could be mandated. In the January 4, 2022, order she

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<sup>11</sup> Letter of Counseling (LOC). Administrative censure for violation of standards. The intended outcome of an LOC is to help Airman use good judgment, assume responsibility, understand and maintain standards, and face and solve problems. Generally, this is a form of corrective action appropriate for correcting habits or shortcomings not necessarily criminal or illegal, but which can ultimately affect job performance, work center morale, and discipline. (AFI 36-2907, 22 May 20 para 2.3.3)

did not include the wording of her initial order, i.e., “full licensure from the FDA” language, and misquoted her own December 3, 2021, order by not including the “full licensure from the FDA” language. This verbal and written redaction of previous orders may indicate her understanding that no FDA approved vaccines are currently available and therefore the original order is unenforceable. Here is a summary (emphasis added):

24 Aug 21, Secretary of Defense (SECDEF) Austin issued a memorandum that stated, “Mandatory vaccination against COVID-19 **will only** use COVID-19 vaccines that receive **full licensure** from the Food and Drug Administration (FDA), **in accordance with FDA-approved labeling and guidance.**”<sup>12</sup>

3 Sep 21, Secretary of the Air Force (SECAF) Kendall issued a memorandum that stated, “**Only** COVID-19 vaccines that received **full licensure from the FDA** will be utilized for mandatory vaccinations **unless a military member volunteers** to receive a vaccine that has obtained U.S. FDA Emergency Use Authorization (EUA) or is included in the World Health Organization’s Emergency Use Listing.”<sup>13</sup>

9 Sep 21, Eaker Center Commander issued Order to Receive Mandatory COVID-19 Vaccine (Exhibit 3): Mandatory vaccination will **only** use COVID-19 vaccines **that receive full licensure from the Food and Drug Administration (FDA). Currently, that only includes the Pfizer COVID-19 vaccine, marketed as Comirnaty,** but could include Moderna’s and Johnson and Johnson’s (J&J) COVID-19 vaccines, if they receive full licensure from the FDA I am ordering you to receive an initial dose of a COVID-19 vaccine **with full licensure approval from the FDA. Currently, that only includes the Pfizer COVID-19 vaccine, marketed as Comirnaty.**”<sup>14</sup>

3 Dec 21 Eaker Center Commander Order (Exhibit 11): I am once again ordering you to receive an initial dose of a COVID-19 vaccine with **full licensure approval** from the FDA.

4 Jan 22 Eaker Center Commander Order (Exhibit 18): Misquoted her December 3, 2021, order saying “On 3 December 2021, I ordered you to receive an initial dose of a COVID-19 vaccine ” **not including** the “with full licensure approval from the FDA” that was in the original December 3, 2021, order.

4 Jan 22 Eaker Center Commander Order continued: “I am ordering you to receive an initial dose of a COVID-19 vaccine” again **without** the “full licensure approval

<sup>12</sup> Secretary of Defense, *Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members* (24 August 2021).

<sup>13</sup> Secretary of the Air Force, *Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military Members* (3 Sep 2021).

<sup>14</sup> Eaker Center Commander, *Order to Receive Mandatory COVID 19 Vaccine* (9 September 2021).

from the FDA” language in previous orders including the guidance from the Secretary of Defense and Secretary of the Air Force.

42. On January 10, 2021, I requested an extension to the January 10, 2022, deadline to receive the vaccine and included justification from my personal legal counsel (Exhibit 19). This request was denied on January 11, 2022 (Exhibit 20).

43. On January 12, 2022, I received a Letter of Reprimand (LOR)<sup>15</sup> for Failure to Obey Order to Receive COVID-19 Vaccine (Exhibit 21). On January 18, 2022, I timely responded to the LOR (Exhibit 22); the commander sustained the LOR on January 27, 2022, informing me at that time of her intention to establishing an Unfavorable Information File (UIF) (Exhibit 23). I timely responded to the UIF on January 31, 2022 (Exhibit 24) and the UIF became official on February 2, 2022. This LOR with the required UIF and referral annual Officer Performance Report (OPR) has erased my 14 years of honorable and outstanding service and effectively ended my career by eliminating any possibility of promotion. My record of service has been moved from the top of my career field to the bottom.

44. On February 4, 2022, Lt Gen Hecker, my senior rater declined to recommend me for my next required Intermediate Development Education (IDE), Air Command and Staff College (ACSC) in-residence during my third and final consideration (Exhibit 25). In my first and second consideration I received recommendation for IDE in-residence from my commander; in my second consideration I was selected as an alternate as recognized by my senior rater, who was now not recommending me for consideration (Exhibit 26). In the year between my second consideration (when I was selected as an alternate) and my third consideration (not recommended), I finished a deployment as a Wing Chaplain in an 0-5 billet (one rank above my current rank), was recognized

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<sup>15</sup> Letter of Reprimand (LOR). Administrative censure for violation of standards which is more severe than a RIC, LOC, and LOA and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior. (AFI 36-2907, 22 May 20 para 2.3.5)

by the Air Force Central Command (AFCENT) Chaplain for leading the best team for our rotation, was awarded two MSMs, named FGO of the year for the Wing Staff Agencies at my permanent duty station, and was selected for a vectored position as a Staff Chaplain at the Air Force Chaplain Corps College. It is unquestioned that my performance record during this period should have only strengthened my competitiveness prior to my third consideration. However, my senior rater chose not to recommend me. His dismissive and contemptuous letter to the RAR decision authority provides evidence that this non-recommendation is because of my religious beliefs outlined in my RAR and not due to my professional performance<sup>16</sup>. The impact on my career can hardly be overstated. To be selected for in-residence IDE is verification that my performance record, compared with my peers, places me near the top of the list. Some say it is harder to make the IDE list than it is to be promoted. This past year, 25 Chaplain Corps Captains were selected for promotion to Major from just one year group. The competition for IDE in-residence is for four select and three alternate slots from three different year groups. The only significant negative change in my situation is that I have requested and been denied a religious accommodation.

45. During the first few days of February 2022, I became aware the Chaplain Corps assignments office had already named and notified a replacement for me even though I am not through even the first year of what would typically be a three-year assignment. Again, it is religious discrimination to treat my non-vaccinated status as refusal or as a failure to obey an order when it is clear and has been fully communicated to my chain of command that my reticence to do so is in accordance with my constitutional and RFRA right to religious freedom and is being litigated.

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<sup>16</sup> The RAR process has taught me, based on the treatment I and others have received, that the USAF and other military branches are all too eager to inflict punishment or adverse action on requesting members in a variety of ways. U.S. District Court Judge Steven Merryday has noticed this too. In his denial of a stay of preliminary injunction requested by the DoD, he highlighted his observation of the Navy's "retaliatory animus toward legally protected pursuit of the relief that Congress through RFRA secures." United States District Court Northern District of Florida Tampa Division, Navy Seals 1, et al., v. Lloyd Austin, et al., Case 8:21-cv-2429-SDM-TGW, *Order*, Document 122 Filed March 3, 2022.

46. My supervisor and rater presented me with a referral annual OPR on March 31, 2022 (Exhibit 27), indicating I do not meet the standards of “Professional Qualities” because I “failed to obey a lawful order to receive the COVID-19 vaccine for which you received a Letter of Reprimand.” I timely responded on April 5, 2022 (Exhibit 28). Additional Rater and Commander replied on the OPR “carefully considered” my referral comments and chose to concur, as did my OPR Reviewer the Commander and President of Air University. This referral OPR is a career killer for me, and clearly reflects Air Force’s unofficial policy: To eliminate RFRA claimants like me from the ranks not because of performance and fitness for duty, but because of our religious beliefs.

47. This process has lacked transparency about available courses of action for me. On November 9, 2021, I asked my Commander what would happen to me should my appeal be denied, specifically asking about a flow chart from the 42d ABW Public Health Emergency Working Group update November 8, 2021. Rather than reference the chart or any other existing Air Force guidance, she told me decisions would be made at a higher level and she would do whatever everyone else at her level was doing, and I would not receive individual treatment. I pointed out to her DAFI 52-201 outlines three options in para 2.7: reassignment, reclassification, or voluntary separation. None of these three options are on the flow chart. The options listed on the flow chart are Letter of Correction/Admonishment/Reprimand to Art 15. It was not until the December 7, 2021 “Supplemental Coronavirus Disease 2019 Vaccination Policy” from the Secretary of the Air Force that the option for voluntary separation was acknowledged even though it is clearly listed in DAFI 52-201.

48. To date, approximately ten months after my RAR, no member of my chain of command has had a conversation with me about my religious concerns or has ever explored less restrictive means. This, along with the veiled references to court-martial and dishonorable discharge, was purposeful coercion and was discrimination against me as a RFRA claimant.

49. I submitted a complaint to Military Equal Opportunity on February 14, 2022 (Exhibit 29) outlining the religious discrimination by the AETC Commander (AETC/CC) and Air Force Surgeon General (AF/SG). I received an email response on May 5, 2022 (Exhibit 30), that outlined the same “compelling government interest” talking points as justification for dismissal of my complaint. The response also stated that the performance of my chaplain duties could not be achieved without vaccination. This shows that they also have not done a “to the person” assessment of my complaint, as I am not currently in a position where I perform any “chaplain duties.” I am a Staff Chaplain as an instructor at the Chaplain Corps College. I received this email response on a day I was backfilling for a vaccinated coworker who was home sick with COVID-19. I was in fact doing my job unvaccinated. Multiple times over the past year my vaccinated coworkers who are deemed “ready” have been out sick with COVID while I, the “unready,” and the one that “Does Not Meet Standards of Professional Qualities” am at work, unimpeded and unimpaired. This is to say nothing of the fact that I was deployed during the pandemic without the vaccine. My leadership has sidelined me from any capacity as a course director. They have also minimized my instructor status/job duties. I was allowed to teach in a few classes while my RAR was pending. I taught six blocks of instruction in three different courses, all receiving exemplary student evaluations, while being “unvaccinated.” The insistence that I cannot do my job unvaccinated is plainly false as evidenced by the AFCCC’s own evaluation standards.

50. The response from Military EO referenced in paragraph 49 stated, “There is no separate standard for chaplains.” But Section 533 of the 2013 NDAA as revised in the 2014 NDAA, DoDI 1300.17, and DAFI 52-102 para 9 all clearly articulate that there is a special standard for chaplains when it comes to protections against requirements to participate in a rite, ritual or ceremony contrary to the conscience, moral principles, or religious beliefs of the chaplain. As I outlined in my RAR and Appeal, I identify this COVID-19 vaccine as nothing less than a sacrament to a State

religion and I cannot and will not participate because it violates my religious belief and my conscience, which as a chaplain is legally protected. The Air Force has chosen to punish me and retaliate against me, as I have outlined in this declaration, because of my conscience, moral principles, and religious beliefs. I am being punished for doing the very job I was hired to do.

51. On June 3, 2022, I submitted six questions to SAF/IG (Exhibit 31) in response to the May 5, 2022, dismissal of my MEO complaint. On July 21 SAF/IG replied (Exhibit 32) answering only the question about their consideration of 2013 NDAA, section 533. They wrote: “The second paragraph in the NDAA language you cite prevents requiring chaplains to *perform* [emphasis theirs] rites, rituals, or ceremonies contrary to their beliefs. As it further provides for a chaplain unable to *perform* [emphasis theirs] any such duties to identify a willing provider, it clearly does not apply to vaccination policies or establish a separate standard for the beliefs of chaplains beyond that provided all members in the preceding NDAA paragraph.” The NDAA language does not include the stipulation that chaplains must identify “a willing provider.” The USAF has coopted language from the NDAA and altered its intended meaning.

52. On May 13, 2022, I initiated an Exception to Policy (ETP) to be allowed to travel to Albuquerque, NW to attend a required annual conference for my Chaplain Endorsing Agency June 27 through July 1, 2022 (Exhibit 33). On June 22, 2022, I was notified my request was denied by Maj Gen Tullos, Deputy Commander, AETC (Exhibit 34). This is a denial of authorized and required annual training on the basis of my vaccination status due to my religious beliefs.

53. On June 13, 2022, I was presented a Memorandum for “Show Cause Action” from AETC/CC Lt Gen Brian S. Robinson (Exhibit 35). In it he wrote, “I am initiating action against you under AFI 36-3206, *Administrative Discharge Procedures of Commissioned Officers*, Chapter 3, paragraph 3.6.5, that requires you to show cause for retention on active duty.” I timely responded to the “Show Cause Action” on June 22, 2022, requesting a Board of Inquiry (Exhibit 36).

54. **Summary:** Receiving the vaccine would be a sin against God, would sear my conscience, would invite increasing spiritual rebellion into my life and work, would cause me to lead others who share my religious convictions to also sin, would be a form of false worship, would violate the command of God to love God and love people, and would defile my body. The mandate goes against the rule of law and is an overstepping of the government's biblical role and jurisdiction in society. These are incongruent with my ordination as a minister of the Gospel and their presence in my life would disqualify me from leading those in my faith tradition. **In short, if I take this vaccine, I can no longer be a chaplain.** The sense of betrayal and the dismissal by the Air Force of my contribution, my service, and my family's sacrifice to serve our nation has been heartbreaking to my wife and me and has devastated our trust in the hands in which the safety of our nation resides. These long months of prayer and petition to the Lord, of research, of talking to anyone and everyone we can to help educate, persuade, and console those whose consciences have been violated because they took the shot against their will have taken a toll on us, as they have every service member who is trying to expose the evil deeds being done by the DoD. We're crushed by the sadness of this time. Still, our resolve is firm, and we are at peace because we know that we are speaking the truth.

55. Since January 2021, when it became clear that the vaccine mandated for DoD was a forgone conclusion, and from August 2021 till now, my experience has shown that the DoD and the Air Force never had any intention of approving religious accommodation requests for the COVID-19 vaccine mandate.

56. It has been my intention to serve as a chaplain until at least my 20-year mark, and maybe to my age limit if the opportunity was available to me. I have often said that the Lord made me to be an Air Force chaplain. If I am discharged in relation to the mandate, I will be forced to leave

the Air Force 10-17 years prior to my intentions and forfeit all retirement benefits earned in those years of service.

57. I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

July 30, 2022

/S/ D. Lance Schrader  
Darrel Lance Schrader



**DEPARTMENT OF THE AIR FORCE  
AIR EDUCATION AND TRAINING COMMAND**

1 Nov 21

MEMORANDUM FOR MAJOR DARREL L. SCHRADER

FROM: HQ AETC/CC  
1 F Street, Suite 1  
JBSA Randolph TX 78150-4324

SUBJECT: Decision Regarding Religious Accommodation Request

I have received your accommodation request for exemption from the COVID-19 immunization requirement based on your religious beliefs. After careful consideration of the specific facts and circumstances, I deny your request for exemption from Air Force COVID-19 immunization standards based on the recommendations from your chain of command and the Religious Resolution Team. A copy of this decision memorandum will be placed in your automated personnel records.

I thoroughly reviewed your request, examined the comments and recommendations from the functional and legal experts, and considered the impact on you personally, the Airmen with whom you work and the mission. I find that your request, while sincere, does not meet the threshold necessary for an exemption.

First, the Air Force's compelling government interest outweighs your individual belief and no lesser means satisfy the government's interest. For the past 18 months, the Air Education and Training Command fought through the COVID pandemic by implementing several extreme measures and processes to ensure the health, safety and welfare of our Airmen. These measures included maximum telework, workplace occupancy limitations, and extreme adjustments to Basic Military Training to include multiple training sites and modified training, and remote learning for most Professional Military Education to name just a few actions. Despite these efforts, the Air Force remained in this posture until vaccinations became available and administered, and only then did our pandemic numbers begin to decrease. Continuing to implement these drastic measures detracts from the readiness, efficiency and good order and discipline of the force, and is unsustainable as the long-term solution.

Lesser means to accomplish the government's compelling interest are insufficient. In your position as a Staff Chaplain you are required to conduct a number of in-person meetings, including crisis counseling, death notifications, hospital visitations, and interactions with students and instructors. The in-person meetings put you and others at an increased risk of health and safety which can be mitigated by a COVID-19 vaccine. Teleworking and assignment changes are not a feasible alternative in your case. Additionally, you are in a position of leadership. A lack of readiness on your part due to a COVID-19 vaccination exemption is likely to have a negative impact on good order and discipline.

Upon receipt of this decision, I expect you will take every action necessary to comply with the requirement for COVID-19 immunization as soon as possible. Should you elect to appeal this decision, follow the procedures in AFI 52-201, *Religious Freedom in the Department of the Air Force*, Chapter 6. You have five (5) duty days from receipt of this memorandum to appeal this decision to the Air Force Surgeon General. If you wish to appeal, you must notify your commander, in writing, of your desire to appeal this decision and provide any additional matters you wish for the AF/SG to consider as part of your appeal.

If you have any questions, contact HQ AETC/HC at 210-652-3822 (DSN 487), or email at [aetc.hc@us.af.mil](mailto:aetc.hc@us.af.mil).



MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander, Air Education and Training Command

cc:  
Member's Unit  
Member's Servicing FSS

1st Ind, MAJ DARREL L. SCHRADER

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

I have received AETC/CC's decision regarding my request for a religious based exemption from the COVID-19 vaccine on 8 Nov 2021 (date). I understand that if I choose to appeal this decision, I have five (5) duty days to notify my commander in writing of my appeal.



DARREL L. SCHRADER, Maj, USAF



**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON DC**

DEC 1 2021

**MEMORANDUM FOR MAJOR DARREL L. SCHRADER**

**FROM: HQ USAF/SG**  
1780 Air Force Pentagon  
Washington, DC 20330-1780

**SUBJECT: Decision on Religious Accommodation Appeal**

Your final appeal is denied. In accordance with Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, paragraph 3.2, I have carefully reviewed your request for religious accommodation, specifically for an exemption from the COVID-19 immunization.

The Department of the Air Force has a compelling government interest in requiring you to comply with the COVID-19 immunization requirement because preventing the spread of disease among the force is vital to mission accomplishment. Specifically, in light of your circumstances, your present duty assignment requires intermittent to frequent contact with others and is not fully achievable via telework or with adequate distancing. Your instructor status requires frequent contact and immersion with multiple individuals, which would significantly impact training accomplishment if you or your trainees are exposed or actively infected. We must be able to leverage our forces on short notice as evidenced by recent worldwide events. Your health status as a non-immunized individual in this dynamic environment, and aggregated with other non-immunized individuals in steady state operations, would place health and safety, unit cohesion, and readiness at risk. Foregoing the above immunization requirement would have a real adverse impact on military readiness and public health and safety. There are no less restrictive means available in your circumstance as effective as receiving the above immunization in furthering these compelling government interests.

A copy of this decision memorandum will be placed in your automated personnel records. Please contact your unit leadership for questions or concerns.

A handwritten signature in cursive script that reads "Robert I. Miller".

**ROBERT I. MILLER**  
Lieutenant General, USAF, MC, SFS  
Surgeon General

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

<b>ISRAEL ALVARADO, et al.,</b>	:	
<i>Plaintiffs,</i>	:	
v.	:	<b>Case No.: 1:22-cv-00876-AJT-JFA</b>
<b>LLOYD AUSTIN, III, et al.,</b>	:	
<i>Defendants.</i>	:	

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**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR A  
PRELIMINARY INJUNCTION**

Plaintiffs, 31 Military Chaplains in each Armed Service, and 11 additional military chaplains who moved to join on August 14, 2022, *see* ECF 56, move the Court for a Preliminary Injunction to enjoin the Defendants’ constitutional and statutory violations in connection with the Department of Defense’s (“DoD”) COVID-19 “vaccine” mandate (“DoD Mandate”), *see* Ex. 1, as set forth below and in Plaintiffs’ May 18, 2022 complaint (“*Compl.*”). *See* ECF 1.

**INTRODUCTION**

Plaintiffs seek to vindicate the Constitution’s protection of religious liberties and “to ... Secure the Blessings of Liberty to ourselves and our posterity [.]” U.S. CONST., PREAMBLE.

Plaintiffs’ First and Second Causes of Action challenge the DoD’s nearly decade-long failure to implement § 533 of the 2013 National Defense Authorization Act (“NDAA”) as modified by the 2014 NDAA, and willful violations thereof in connection with the DoD Mandate. Congress established specific protections in § 533(b) of Chaplains’ rights to follow their conscience and faith and prohibited the specific actions Defendants have taken against them.

Plaintiffs’ Third through Sixth Causes of Action challenge Military Defendants’ directive or policy not to grant any religious accommodation requests (“RAR”) to the DoD Mandate, without the individualized assessment required by law (the “No Accommodation Policy” or

“Categorical RA Ban”), as well as related discriminatory and retaliatory actions taken against Plaintiffs. Courts have called the RAR process “theater” and found that it likely violates the Religious Freedom Restoration Act (“RFRA”) and the Free Exercise Clause. *See infra* ¶ 5. Military Defendants have also engaged in a systematic campaign of threats, intimidation and retaliation against Plaintiffs: to coerce Plaintiffs to violate their conscience; to compel Plaintiffs to “parrot” the government’s position promoting vaccines and dismissing religious objections; to censor and exclude chaplains with religious objections from the RAR process or counseling service members with religious objections; that sends a clear message of overt hostility to religion and religious service members; and to establish a religious test for military service. *See infra* ¶¶ 14-15. These actions violate RFRA and the First Amendment’s Free Exercise, Free Speech and Establishment Clauses, and the Constitution’s Article VI No Religious Test Clause.

Plaintiffs’ Seventh through Ninth Causes of Action raise claims regarding Defendants’ violations of the Fifth Amendment Due Process Clause, the Administrative Procedure Act (“APA”), and the Separation of Powers. Each of the challenged agency actions—the DOD Mandate, the categorical bans on religious accommodations and pre-existing medical exemptions, and ignoring or revising pre-Mandate definitions of “vaccine” and “vaccination”—violate the U.S. Constitution, federal statutes, and/or the agency’s own regulations. In taking these actions, which will result in the loss of tens or hundreds of thousands of service members, causing the Services to fall below congressionally mandated strength levels, and threatening national security, Defendants have “usurp[ed] major policy decisions properly made by Congress.” *Ford Motor Co. v. NLRB*, 441 U.S. 488, 497 (1979) (“*Ford*”) (citation and quotation marks omitted). The Fourth Circuit has consistently found that such “major policy decisions,” are justiciable, reviewable, and not due deference, even if these decisions affect only “scores” or hundreds of service members,

rather than the hundreds of thousands affected here. *See infra* ¶ 6 & Section I.A.

### **MILITARY CHAPLAIN PRECEDENTS ADDRESSING THESE ISSUES**

*Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985), rejected an Establishment Clause challenge to the Army Chaplain Corps. It held the chaplaincy was Congress’ appropriate accommodation of the Establishment and Free Exercise Clauses’ distinct constitutional commands. By removing soldiers “to areas where religious leaders of their persuasion and facilities were not available [the Army] could be accused of violating the Establishment Clause unless it provided them with a chaplaincy.” *Katcoff*, 755 F.2d at 232 (citing *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947)). Absent a chaplaincy, the military “would deprive the soldier of his right under the Establishment Clause not to have his religion inhibited and of his right under the Free Exercise Clause to practice his freely chosen religion. *Id.* at 234. “The Establishment Clause, properly understood, is a shield against any attempt by government to inhibit religion as it has done here.” *McDaniel v. Paty*, 435 U.S. 618, 642 (1978) (Brennan, J., concurring). The Establishment Clause’s neutrality mandate demands DoD not restrict, deny or be hostile to religion. Military Defendants’ Categorical RA Ban and apparent purge of those seeking accommodation is an overt Establishment violation.

In *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290 (D.C. Cir. 2006) (“*CFGC*”), Navy chaplains sought a preliminary injunction against a Navy practice permitting Catholic clergy to stay on active duty beyond the statutory separation age of 60 by illegally transferring them to the “Retired Reserve” and then recalling them to active duty. This was a sham because these chaplains did not qualify for “retired reserve” status. The *CFGC* court found that such Establishment Clause violations also constituted irreparable harm.

But the Establishment Clause is implicated as soon as the government engages in impermissible action. Where, as here, the charge is one of official preference of one religion over another, such governmental endorsement sends a message to nonadherents [of the favored denomination] that they are outsiders, not full

members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.

*CFGC*, 454 F.3d at 302. The constitutional injury “occurs merely by virtue of the government’s purportedly unconstitutional policy or practice establishing a religion.” *Id.* Sending the forbidden message of preference or hostility is the irreparable harm, without the need for chaplains to make any further showing. Military Defendants’ actions communicate clear, forbidden messages of hostility to religion, *e.g.*, zero RAR approvals and the extraordinarily vicious and vindictive threats and punishments that would destroy these chaplains’ future ministry and their families.

### **FACTUAL BACKGROUND**

#### **Defendants’ Unlawful Vaccine Mandate**

1. On July 21, 2021, in a CNN Town Hall, President Biden informed the American people that “You’re not going to get COVID if you have these vaccinations.”<sup>1</sup> On August 23, 2021, Defendant Food and Drug Administration (“FDA”) approved Pfizer/BioNTech’s Comirnaty, and the very next day, on August 24, 2021, Secretary Austin issued the DoD Mandate. Roughly two weeks later, on September 9, 2021, President Biden announced a series of executive orders and other vaccine mandates that would cover 100 million Americans requiring COVID vaccination as a condition for employment, education, or participation in the Nation’s social or economic life. *See generally* Ex. 2, September 9, 2021 Biden Remarks.

2. On July 21, 2022, exactly one year later, a fully vaccinated and double boosted President Biden had contracted COVID. Contrary to previous statements, his spokesperson informed the American public that the President and his doctors “knew this was going to happen”

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<sup>1</sup> See Jason Lemon, *Video of Biden Saying Vaccinations Prevent COVID Resurface After Infection*, Newsweek (July 21, 2022), available at: <https://www.newsweek.com/joe-biden-2021-video-saying-vaccinations-prevent-covid-resurfaces-1726900> (last visited Aug. 8, 2022).

and that “at some point, everyone is going to get COVID.”<sup>2</sup> It long been known that the mandated mRNA vaccines cannot prevent infection or transmission,<sup>3</sup> and at most, can reduce the severity of infections, like other COVID treatments. Former officials have similarly acknowledged that they “knew” at the time that vaccines would “not protect against infection.”<sup>4</sup> Presumably in recognition of these facts, on August 11, 2022, the Centers for Disease Control and Prevention (“CDC”) issued new guidance that no longer distinguishes between vaccinated and unvaccinated.<sup>5</sup>

3. The DoD and other Defendants similarly knew at the time not only that the mRNA treatments would not prevent infection or transmission, but that they were not “vaccines” at all. On September 1, 2021, one week after the issuance of the DoD Mandate, Defendants Department of Health and Human Services (“HHS”) and the CDC had to change the definition of “vaccine” and “vaccination” because they (correctly) recognized that the mRNA treatments did not meet the definitions set forth in their governing statutes, regulations, and their website (the “HHS/CDC Vaccine Redefinition”). *See* Compl., ¶¶ 131-140. The mRNA treatments also cannot satisfy the DoD’s own immunization regulation, *see* Ex. 6, DoD Instruction 6205.02, “DoD Immunization Program” (July 23, 2019) (“DoDI 6205.02”) & ECF 41 at 2 & n.1. The DoD also eliminated,

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<sup>2</sup> Ex. 3, July 21, 2022 White House Press Briefing, at 16. Vice President Harris, Secretary Austin, Chairman of the Joint Chiefs of Staff Milley, Commandant of the Marine Corps Berger, and other fully vaccinated and boosted senior military officers also caught COVID. *See* Compl. ¶ 16 & n.3.

<sup>3</sup> *See* Ex. 4, McCullough Decl., ¶¶ 8-10; Ex. 5, Bhattacharya Decl., ¶¶ 28-32. *See also* Cory Stieg, *Dr. Fauci on CDC mask guidelines: ‘We are dealing with a different virus now’*, CNBC (July 28, 2021), available at: <https://www.cnbc.com/2021/07/28/dr-fauci-on-why-cdc-changed-guidelines-delta-is-a-different-virus.html> (last visited Aug. 8, 2022).

<sup>4</sup> Fox News Staff, *Dr. Deborah Birx Says She ‘Knew’ COVID Vaccines Would Not ‘Protect Against Infection’* (July 22, 2022), available at: <https://www.foxnews.com/media/dr-deborah-birx-knew-covid-vaccines-not-protect-against-infection> (last visited Aug. 8, 2022).

<sup>5</sup> *See* CDC Press Release, *CDC Streamlines COVID-19 Guidance to Help the Public Better Protect Themselves and Understand Their Risk* (Aug. 11, 2022), available at: <https://www.cdc.gov/media/releases/2022/p0811-covid-guidance.html> (visited Aug. 15, 2022).

without any scientific or legal basis, pre-existing categories of medical exemptions such as natural immunity (“Categorical ME Ban”). *See* Compl., ¶¶ 250, 259 & Ex. 7, Army Regulation 40-562, “Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases” (Oct. 7, 2013) (“AR 40-562”).

4. While there is much debate as to the efficacy of the mRNA treatments for the Omicron variant, the following facts are not disputed. First, no active-duty service member, whether vaccinated or not, has died from COVID since November 2021 when the Omicron variant became prevalent. *See* ECF 39-3, Rans Decl., at 12-13 & Table. Second, Defendant HHS’ own data shows that the treatment for the virus has killed more service members (119), *see* Ex. 8, Dr. Teresa Long Decl. at 13, than the virus itself (96), and in a much shorter time period. *See* ECF 39-3, Rans Decl. ¶ 12. Third, Pfizer’s CEO, the *New England Journal of Medicine*, and apparently Defendants acknowledge that the mandated two-dose regimen “offer[s] little, if any protection against [Omicron] infection.”<sup>6</sup> Fourth, the military will lose hundreds or even thousands because of non-vaccination for each life lost to COVID, *see infra* Section I.A.1, but has not provided any estimate of lives saved by vaccination. Fifth, these vaccinations have “led to more than 12,000 deaths and more than 13,000 permanently disabled Americans.” Ex. 4, McCullough Decl., ¶ 17.

5. President Biden’s federal administrative mandates have not fared well in the courts. The five other federal mandates were quickly enjoined by the Courts.<sup>7</sup> Several courts have

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<sup>6</sup> ECF 39-1, Stanley, Decl., ¶ 20. *See also* *New COVID-19 Vaccine That Covers Omicron ‘Will Be Ready in March,’ Pfizer CEO Says* Yahoo!Finance (Jan. 10, 2022) (transcript of video interview with Pfizer CEO Albert Bourla), available at: <https://finance.yahoo.com/video/covid-19-vaccine-covers-omicron-144553437.html> (last visited Aug. 8, 2022).

<sup>7</sup> *See Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661 (2022) (“*OSHA*”) (enjoining OSHA mandate, which was subsequently withdrawn); *Feds for Medical Freedom v. Biden*, 2022 WL 188329 (S.D. Tex. Jan. 21, 2022) (nation-wide stay of federal employee mandate), *vacated and remanded* 30 F.4th 503 (5th Cir. Apr. 7, 2022), *reh’g en banc granted and vacated*, 2022 WL 2301458 (5th Cir. June 27, 2022) (reinstating nationwide stay); *Georgia, v. Biden*, 2021 WL

enjoined the DoD Mandate and the Categorical RA Ban,<sup>8</sup> including two that have issued service-wide injunctions for all members of the Air Force and Navy who have submitted RARs.<sup>9</sup>

6. Secretary Austin's Mandate and the other challenged agency actions may result in the loss of up to 300,000 service members.<sup>10</sup> They are also directly responsible for massive recruiting shortfalls, with the Army having reached only 40% of its FY22 target with less than three months left.<sup>11</sup> As a result, the Army will fall short of its FY22 end strength goal by up to 40,000,<sup>12</sup> while over 60,000 unvaccinated Army reserve and National Guard were barred from

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5779939 (S.D. Ga. Dec. 7, 2021) (nation-wide stay of federal contractor mandate); *Texas v. Becerra*, 2021 WL 6198109 (N.D. Tex. Dec. 31, 2021) & *Louisiana v. Becerra*, 2022 WL 16571 (W.D. La. Jan. 1, 2022) (staying Head Start Mandate in 25 states). The Healthcare Mandate was stayed nationwide in *Louisiana v. Becerra*, 2021 WL 5609846 (W.D. La. Nov. 30, 2021), but that injunction was dissolved and the case remanded by the Supreme Court in *Biden v. Missouri*, 142 S. Ct. 647, 654–55 (2022). The healthcare worker mandate is now back before the district court to consider constitutional challenges not addressed in the Supreme Court's decision.

<sup>8</sup> See generally *U.S. Navy SEALs 1-26 v. Biden*, 2022 WL 34443 (N.D. Tex. Jan. 3, 2022) (“*Navy SEALs 1-26*”), *stay denied*, 27 F.4th 346 (5th Cir. Feb. 28, 2022) (“*Navy SEALs 1-26 Stay Order*”); *Navy SEAL 1 v. Austin*, 2022 WL 534459 (M.D. Fla. Feb. 18, 2022) (“*Navy SEAL 1*”), *stay denied pending appeal* No. 22-10645 (11th Cir. Mar. 30, 2022); *Air Force Officer v. Austin*, 2022 WL 468799 (M.D. Ga. Feb. 15, 2022) (“*Air Force Officer*”); *Poffenbarger v. Kendall*, 2022 WL 594810 (S.D. Oh. Feb. 28, 2022) (“*Poffenbarger*”); *Doster v. Kendall*, 2022 WL 982299 (S.D. Oh. Mar. 31, 2022) (“*Doster*”).

<sup>9</sup> See *Navy SEALs 1–26 v. Austin*, 2022 WL 1025144 (N.D. Tex. Mar. 28, 2022) (Navy class-wide preliminary injunction), *appeal filed* No. 22-10534 (5th Cir. May 27, 2022); *Doster v. Kendall*, 2022 WL 2974733 (S.D. Ohio July 14, 2022) (Air Force class-wide PI).

<sup>10</sup> This includes over 7,000 who have already been discharged, at least 25,000 who have submitted religious accommodation requests, see Compl., ¶¶ 109 & Table 1, and nearly 270,000 service members who are partially-, but not fully-, vaccinated as of July 13, 2022. See DoD. *Coronavirus: DOD Response*, Table: DOD Vaccination Data, available at: <https://www.defense.gov/Spotlights/Coronavirus-DoD-Response/> (last visited July 19, 2022).

<sup>11</sup> See Courtney Kube & Molly Boigon, *Every Branch of the Military is Struggling to Make its 2022 Recruiting Goals*, *Official Say*, NBCNews (June 27, 2022), available at: <https://www.nbcnews.com/news/military/every-branch-us-military-struggling-meet-2022-recruiting-goals-officia-rcna35078> (last visited Aug. 8, 2022).

<sup>12</sup> See Opinion: Michael R. Bloomberg, *Military Recruitment Woes Endanger National Security*, Bloomberg (Aug. 8, 2022) (the Army “could end [FY22] with as few as 445,000 troops, nearly 40,000 smaller than the force size authorized by Congress.”), available at:

service or being paid effective July 1, 2022.<sup>13</sup> The losses of current personnel and future recruits due to these policies are so great that they pose a “long-term threat to the all-volunteer force.”<sup>14</sup>

### **Defendants’ Systematic Violations of Service Members’ Religious Liberties**

7. Plaintiffs’ Complaint describes Military Defendants’ nearly decade-long failure to implement § 533 and Congress’ repeated directives requiring DoD leadership to implement in DoD regulations, training, and policies the statutory protections and rights of chaplains and military personnel to exercise their conscience and faith. Compl., ¶¶ 77-93. The 2018 NDAA specifically explained Congress’ intent “to recognize the importance of protecting the rights of conscience of members of the Armed Forces,” and it provided specific guidance to the Secretary that compliance with § 533 “requires an intentional strategy for developing and implementing a comprehensive training program on religious liberty issues ... at all levels of command,” and it urged DOD to develop such training “in consultation with the chief of chaplains” for each Armed Service. ECF 1-6, 2018 NDAA Senate Committee Report, at 149-150.

8. On September 1, 2020, more than seven years after § 533's passage, DoD issued DoD Instruction 1300.17, “Religious Liberty in the Military Services” (“DoDI 1300.17”). *See* ECF 1-4. DoDI 1300.17 recites part of the statutory language. *Compare* §§ 533(a)-(b) *with* DoDI 1300.17, ¶¶ 1.2(b)-(c). But DoDI 1300.17 does not mention, much less prohibit, the specific

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<https://www.bloomberg.com/opinion/articles/2022-08-08/us-military-has-a-recruitment-and-retention-problem-here-s-how-to-fix-it> (last visited Aug. 8, 2022).

<sup>13</sup> *See* Allie Griffin, *Army Bars More Than 60K National Guards, Reservists from Service, Cutting Off Pay*, NY Post (July 8, 2022), available at: <https://nypost.com/2022/07/08/army-cuts-pay-from-over-60k-unvaccinated-national-guard-reserves/> (last visited Aug. 8, 2022).

<sup>14</sup> Tom Jurkowsky, *The Military Has a Serious Recruiting Problem – Congress Must Fix it*, The Hill (June 21, 2022) (*quoting* Sen. Thom Tillis (R-N.C.)), available at: <https://thehill.com/opinion/national-security/3527921-the-military-has-a-serious-recruiting-problem-congress-must-fix-it/> (last visited July 17, 2022). *See also supra* note 11, Kube & Boigon (“2022 is the year we question the sustainability of the all-volunteer force”).

retaliatory personnel actions against chaplains § 533 expressly forbids. Rather than develop “an intentional strategy for developing and implementing a comprehensive training program” as the 2018 NDAA specifically directed, the Secretary delegated to the Service Secretaries with no instruction or guidance, “training concerning religious liberty”. *See id.*, ¶ 2.3(7) (Responsibilities).

9. Publishing DoDI 1300.17 with parts of § 533’s language does not ensure DoD, its leadership and personnel know or understand “religious liberty,” a phrase appearing only in 1300.17’s title. Defendants’ uniform refusal to grant any RARs while ignoring 1300.17’s RAR process and retaliating against Plaintiffs show they are in fact overtly hostile to religious liberty and service members’ free exercise of religion. *See generally* Compl., ¶¶ 94-107 & ¶¶ 108-114.

10. DoD established the No Accommodation Policy, or Categorical RA Ban, implemented by each of the Armed Services. The Service Secretaries appear to have directly ordered their chain of commands not to approve any accommodations. *See* Compl., ¶¶ 97-101 (directives from Air Force Secretary and Chief of Army Chaplain Corps). The Navy (whose chaplains also serve the Marine Corps and Coast Guard) has adopted a process that does not even permit the possibility of approval. *See* Ex. 9, *Navy SEALs I-26 Whistleblower Decl.*

11. Each of the Services adopted new rules and centralized procedures for RARs to designate as the approval and final appeal authorities the most senior military officials, three-star or four-star flag officers who in most cases report directly to the Service Secretary.<sup>15</sup> As a result

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<sup>15</sup> *See* ECF 39-4, ¶ 18 (the Surgeon General of the U.S. Army, (three-star) Lieutenant General R. Scott Dingle is the “only approval or disapproval authority” for Army RARs, and “the Assistant Secretary of the Army for Manpower and Reserve Affairs ... is the final appeal authority”); ECF 39-5, ¶ 12.b (for the Navy, the approval authority is the Deputy of Chief of Naval Operations and the final appeal authority is the Chief of Naval Operations, (four-star) Admiral Michael Gilday); ECF 39-7, ¶ 15 (for the Marine Corps, the approval authority is the Deputy Commandant, Manpower, and Reserve Affairs, (three-star) Lieutenant General David Ottignon, and the appeal authority is Commandant of the Marine Corps, (four-star) General David Berger); 39-13, ¶¶ 13 & 16 (for the Air Force the approval authority is the MAJCOM commander, a three-star Lieutenant

of these express directives and centralized procedures, none of the tens of thousands of RARs have been granted, while the handful of approved RARs are in fact administrative exemptions granted where the requester was already programed for retirement or separation.<sup>16</sup>

### **Defendants' Violations of Plaintiffs' Religious Liberties and Retaliation Against Them**

12. At least seven Plaintiffs have had their RAR appeals denied, and a majority (at least 17 of 31) have had their initial RARs denied, all by form letters that are nearly identical to those received by every other member of the Armed Service in question. *See* Compl., ¶¶ 121-122.

13. Exhibit 10 is a table summarizing the Defendants' violations of § 533 with respect to each Plaintiff, *i.e.*, religious discrimination and “denial of promotion, schooling, training, of assignment on the basis of the refusal by the chaplain to comply [with the vaccine mandate]” specifically prohibited by § 533. Exhibit 11 includes a table summarizing other First Amendment violations and irreparable harms to Plaintiffs.

14. Nearly all Plaintiffs describe a pervasive, hostile environment created by Defendants intended to isolate, ostracize, stigmatize, and humiliate Plaintiffs and others with religious objections to the vaccination.<sup>17</sup> Plaintiffs have been punished for and prohibited from performing their duties to minister to service members in accordance with their faith, conscience,

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General or four-star General, and the final appeal authority is the Air Force Surgeon General, (three-star) Lieutenant General Dorothy Hogg).

<sup>16</sup> *See* Compl., ¶ 109 n.7 & Table 1 & ECF 45, July 25, 2022 Hearing Trans. At 38:13-15 (Defendants' counsel acknowledging that “a great many of those” whose RAs were granted “are in one way or another preparing to leave the service.”).

<sup>17</sup> *See generally* Ex. 11; *see also* ECF 1-2, Hirko Decl., ¶ 12 (all unvaccinated soldiers removed from training “at the last minute for maximum embarrassment and coercion,” and leaving his unit without a chaplain), ECF 1-3 (“senior members of the chaplain corps revel in ... the harsh and abusive measures to be taken against ‘refusers’” and that these measures would deter service members from submitting them “so the chaplain corps would have less work to process the requests.”).

and vocation—which for chaplains is the free exercise of their religion—when they were directed to discourage or dissuade service members not to submit RARs; were removed from religious review teams (“RRTs”); and prohibited from conducting RARs reviews. Plaintiff chaplains suffered other forms of retaliation and adverse actions merely for submitting an RAR or even expressing their own religious objections; expressing sympathy for other with such objections; or advising service members of their rights to seek religious accommodations.<sup>18</sup> Plaintiffs’ chain of command consistently drove home the message that no RARs would be granted (or if they were that the service member would be discharged).<sup>19</sup>

15. Defendants have also attempted to coerce and coopt chaplains to be complicit in these constitutional violations—“weaponiz[ing] the Chaplain Corps against its own core function,” ECF 56-10, Schrader Decl., ¶ 17—by giving them “script[s]” for interviews to dismiss service members’ religious objections;<sup>20</sup> to “parrot” the government-endorsed position, *see* ECF 1-3, Schnetz Decl., ¶ 18; and to convince them their sincerely held religious objections are instead political, not religious in nature, insincere or invalid.<sup>21</sup>

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<sup>18</sup> *See* Compl. ¶¶ 103 & 117; Ex. 11 (Plaintiffs Fussell, Gentilhomme, Nelson & Schnetz removed from RAR process); ECF 1-2, Brown Decl., ¶ 15 (reprimanded for assisting service members with RARs); ECF 1-3, Cox Decl., ¶ 32 (removed from position and put on unpaid status on October 1, 2021, after expressing religious objections).

<sup>19</sup> *See, e.g.*, ECF 1-2, Brown Decl., ¶ 15 (“It has been disheartening to hear from Command and Chaplain leadership that none of the religious accommodations will be approved and even they were that we would still be discharge from service.”); ECF 1-3, Young Decl., ¶ 18.v (informed that his RAR “would certainly result in failure, *i.e.*, expulsion from the military,” and that the RAR process was “intended to achieve 100% compliance,” *i.e.*, no religious exemptions).

<sup>20</sup> *See, e.g.*, ECF 1-3, Young Decl., ¶ 18.s (“From the high level of the branch, chaplains were coached and resourced from a pro-vaccine viewpoint on how to combat potential vaccine ‘refusers’” and describing the “scripted” interview process they were ordered to conduct).

<sup>21</sup> *See* ECF 1-2, Brown Decl., ¶ 16; ECF 1-3, Schnetz Decl., ¶ 18 (command chaplain informed him that “it was my responsibility to assuage any religious concerns that Solider might have to receiving the vaccine”); ECF 56-10, Schrader Decl., ¶ 17.

16. All Plaintiffs face adverse employment or disciplinary actions, up to and including separation, discharge for “misconduct,” court martial, loss of postseparation veterans’ benefits, and permanent damage to their reputation and employment prospects resulting from less than a full “honorable” discharge. In the meantime, they are non-deployable; have been removed from leadership positions; received one or more letters of reprimand; and prohibited from travel, training, permanent change of station (“PCS”), promotion, and new assignments.<sup>22</sup> Plaintiffs’ discharge status will result in denial of VA benefits and the loss of medical care for dependents ongoing lifesaving medical treatment. They have faced these adverse actions even while their RAR was pending, and in many cases because they submitted RARs. Despite the unconstitutional and unconscionable treatment by Defendants, Plaintiffs have performed their duties with the highest degree of professionalism, and they ask only that they be permitted to serve their country.

### **STANDARD OF REVIEW**

To obtain a preliminary injunction, a plaintiff must show that:

[1] It will likely succeed on the merits; [2] It is likely to suffer irreparable harm absent preliminary relief; [3] The balance of equities tips in its favor; and [4] An injunction is in the public interest.

*Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 188 (4th Cir. 2013) (en banc).

Satisfying the first element is dispositive for the other factors when First Amendment values are at issue. An allegation of a Free Exercise or Establishment Clause violation satisfies the

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<sup>22</sup> See Compl., ¶¶ 142-143 & Ex. 10. The travel and training restrictions have prevented Plaintiffs Henderson, Lee and Nelson from attending their Chaplain Endorser-mandated conferences. This is not only a violation of Service regulations, but it prevents them from performing their current ministry duties, training to maintain qualifications for their current positions, and/or remaining an approved Chaplain. Due to their vaccination status, all Plaintiffs are prevented from PCS and taking new assignments, leaving them and their families in a state of limbo. Plaintiffs Pak, Shour, and Troyer, Plaintiffs and their families were stranded outside the United States without the ability to return home.

irreparable injury criteria for an injunction. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct 63, 67 (2020) (“*Cuomo*”); *see also Committee for Public Education v. Nyquist*, 413 U.S. 756, 794 (1973) (courts must carefully examine any practice “challenged on establishment grounds with a view to ascertaining whether [the practice] furthers any of the evils against which that Clause protects.”). This applies equally to violations of statutes that enforce First Amendment freedoms like RFRA, *see Navy SEAL I-26*, 2022 WL 34443, at \* 13 (citation omitted), and § 533. The Defendants’ expression of overt hostility to religion also establishes irreparable harm. *CFGC*, 454 F.3d at 302.

The Complaint, Plaintiffs’ Declarations, and this Motion describe a range of conduct that violates one or more provisions of the First Amendment, as implemented through RFRA and Section 533, including Defendants’ Categorical RA Ban and creation of a “sham” RAR process; systematic hostility to religion; compelled speech supporting government policy and censorship and suppression of religious expression; and their campaign of threats, intimidation and retaliation against Plaintiffs and other service members with religious objections. Once Plaintiffs have shown *prima facie* violations of RFRA and the First Amendment, strict scrutiny is triggered and the burden of proof shifts to the government. *See, e.g., O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 429 (2006) (“*O Centro*”) (RFRA and Free Exercise clause); *County of Allegheny v. ACLU*, 492 U.S. 573, 608-09 (1989) (“*Allegheny*”) (Establishment Clause). Because § 533 prohibits governmental conduct analogous to that prohibited by the Free Exercise and Establishment Clauses, the Court should apply the same strict scrutiny analysis.

The No Religious Test Clause prohibits not only oaths, but government actions that “establish[] a religious classification” that imposes “a test for office based on religious conviction

as one based on denominational preference.” *McDaniel*, 435 U.S. at 632 (Brennan, J., concurring). Such tests are “absolutely prohibited,” *id.*; once the Court determines that the government has imposed a religious test, then such a test must be found unlawful without the need for any further scrutiny. *Accord Torcaso v. Watkins*, 367 U.S. 488, 494 (1961) (“*Torcaso*”).

## ARGUMENT

### **I. THIS COURT HAS SUBJECT MATTER JURISDICTION.**

#### **A. The Challenged Actions Are “Major Policy Decisions.”**

Plaintiffs challenge a series of discrete, final, coordinated and unlawful agency actions by Defendants<sup>23</sup> to enable the illegal, *ultra vires* mandates and to discipline and discharge Plaintiffs and hundreds of thousands of other service members. Each challenged action is at a minimum a “major policy decision,” rather than a routine, “day-to-day” exercise of agency discretion, enforcement decisions, or “personnel management decisions.” *Nat’l Treasury Employees Union v. Horner*, 854 F.2d 490, 496 (D.C. Cir. 1988).<sup>24</sup>

The Military Defendants’ actions apply without exception or individualized assessment to over two million service members, as well as hundreds of thousands of DoD civilian employees. These policies substantially modify the terms of eligibility for enlistment, retention, deployment, promotion, completing an existing term of service, and disciplinary rules. These actions have

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<sup>23</sup> The Complaint challenges the following agency major policy decisions: (1) the DoD Mandate; (2) the No Accommodation Policy or Categorical RA Ban; (3) Categorical ME Ban; (4) § 533 Non-Implementation; and (5) the HHS/CDC Vaccine Redefinition.

<sup>24</sup> Each of these actions also violates the “Major Questions” doctrine insofar as they directly impose, or intentionally enable, a federal vaccine mandate, without express statutory authorization. Federal vaccine mandates are “major questions” because they impact the lives and livelihoods of millions and impose billions of dollars in costs. *See, e.g., OSHA*, 142 S.Ct. at 668 (2022) (Gorsuch, J., concurring) (*OSHA Mandate*); *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 617 (5th Cir. 2021) (“*BST*”) (same); *Kentucky v. Biden*, 23 F.4th 585, 607-608 (6th Cir. 2022) (federal contractor mandate).

resulted in the discharge of several thousand; may result in the loss of up to 300,000 service members; and caused massive recruiting shortfalls and the Services to fall short Congressionally mandated strength levels by tens of thousands. *See supra* ¶ 7. Each DOD action easily meets the requirement for a justiciable and reviewable “major policy decision,” which need only affect “scores” or hundreds,<sup>25</sup> rather than an unreviewable individual personnel or enforcement action.<sup>26</sup>

The Supreme Court has recently and repeatedly struck down agency rules, and denied agencies deference, where they acted in seeking to enact “public health” measures using emergency authorities,<sup>27</sup> where “the agency has no comparative expertise.” *EPA*, 142 S.Ct. at 2613 (*quoting Kisor v. Wilkie*, 139 S.Ct. 2400, 2417 (2019)). The DoD Mandate, and the other challenged agency actions, are just one part of the Biden Administration’s efforts to impose near-

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<sup>25</sup> *See, e.g., Harrison v. Austin*, 2022 WL 1183767, at \*11 (E.D. Va. Apr. 6, 2022) (“*Harrison*”) (rejecting justiciability, reviewability, and military deference arguments and finding that DoD deployment policy for HIV-positive service members based on “major policy decisions” doctrine). This Court and the Fourth Circuit have enjoined and treated as “major policy decisions” categorical bans affecting HIV positive service members who accounted for only 0.027% of active-duty service members (a few hundred at most). *See Roe v. Shanahan*, 359 F.Supp.3d 382, 421 (E.D. Va. 2019) (“*Roe I*”), *aff’d sub nom., Roe v. Dept. of Defense*, 947 F.3d 207 (4th Cir. 2020) (“*Roe II*”). The Fourth Circuit followed the D.C. Circuit in enjoining the military’s transgender ban and refusing to grant deference for “major personnel policy changes,” *Stone v. Trump*, 280 F.Supp.3d 747 (D. Md. 2017) (“*Stone I*”), *stay denied pending appeal* 2017 WL 9732004 (4th Cir. Dec. 21, 2017), that affected only “scores of individuals.” *Doe I v. Trump*, 275 F.Supp.3d 167, 206 (D.D.C. 2017) (“*Doe I*”), *stay denied pending appeal* 2017 WL 6553389 (D.C. Cir. Dec. 22, 2017).

<sup>26</sup> The challenged HHS/CDC actions also meet these requirements. Neither agency may directly impose a vaccine mandate. But the DOD Mandate—and the five other federal vaccine mandates announced by President Biden within two weeks each other—relied on the HHS/CDC action to impose unlawful mandates on nearly 100 million Americans.

<sup>27</sup> The Supreme Court summarized these cases and the criteria it applies in *W. Va. v. EPA*, 142 S.Ct. 2587, 2608 (2022) (“*EPA*”) (*discussing OSHA*, 142 S.Ct. 661 (staying OSHA Mandate because it was a “broad public health regulation”) & *Alabama Assn. of Realtors v. HHS*, 141 S.Ct. 2485 (2021) (striking down CDC rent moratorium)). Deference also is not due where Congress has repeatedly debated the matter in question yet declined to take action on the matter. *See EPA*, 142 S.Ct. 2614. Congress has spent trillions of dollars and passed several pieces of major legislation to address COVID-19, but has declined to impose any federal vaccine mandates.

universal federal vaccine mandates, *see supra* ¶ 5, and as such is part of a “broad public health regulation” beyond the DoD’s comparative expertise.

**1. The Challenged Actions Exceed Agency Authority and Violate the U.S. Constitution, Federal Statutes and/or Agency Regulations.**

Congress has “plenary authority” “‘To raise and support Armies’; ‘To provide and maintain a Navy’; ‘and ‘To make Rules for the Government and Regulation of the land and naval Forces.’” *Chappell v. Wallace*, 462 U.S. 296, 301, 103 S.Ct. 2362 (1982) (*quoting* U.S. Const. Art. I, § 8, cls. 12-14). This includes the authority to regulate who may, or must, serve, and to set the conditions of eligibility for service, accession, and retention. *See, e.g., Rostker v. Goldberg*, 453 U.S. 57, 101 S.Ct. 2646 (1981). While the “primary business” of the Armed Forces is “to fight or be ready to fight wars,” “the responsibility for determining how best [they] shall attend to that business rests with Congress” and the President. *Schlesinger v. Ballard*, 419 U.S. 498, 510 (1975) (citations and quotations marks omitted).

Thus, “major policy decisions” affecting strength levels and the ability of the military to fight wars are to be made by Congress and the President acting together, and no deference is due to an agency—even the DOD—where it “attempt[s] to usurp major policy decisions properly made by Congress.” *Ford*, 441 U.S. at 497. While Congress has undoubtedly granted Secretary Austin and Secretary Mayorkas the authority to enact measures regarding the health and welfare of military personnel, it has not precluded judicial review of those measures, nor has it authorized them to violate the Constitution, express federal statutory prohibitions, or their own regulations in implementing such measures. Nor has it delegated the authority to major new policies to purge tens or hundreds of thousands with religious objections.<sup>28</sup>

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<sup>28</sup> The same applies to the HHS/CDC Vaccine Redefinition that was adopted without any legal basis, public notice or comment, or any public explanation at all. It was only through a FOIA request that the agencies’ rationale was revealed: the public had recognized that the pre-September

**2. No Deference For Categorical Bans Imposed without Deliberation or Exercise of Military Judgment or Discretion.**

Deference to military judgment or discretion, or to agency expertise more generally, is due only where the agency actually applied its discretion and went through a deliberative process in adopting the policy or rule. Here, as in the case of the Military HIV+ and Transgender Bans, these decisions were made “without any of the formality or deliberative processes that generally accompany the development and pronouncement of major policy changes that will gravely affect the lives of many Americans.” *Doe I*, 275 F.Supp.3d at 213. The “level of deference,” if any, due to the military in such cases is based on the extent to which the decisions and policies are “support[ed]” by the record, *Stone II*, 400 F.Supp.3d at 351, and an underlying deliberative process.<sup>29</sup> There is no record evidence demonstrating any deliberative process at all.

Categorical bans like those for RARs and MEs are unlawful on their face where the relevant statute and/or regulations require individualized assessment of the exemption request and the service members fitness for service. RFRA and DoDI 1300.17 require individualized assessments of RARs, while AR 40-562 requires individualized assessment of medical exemptions. Moreover, no deference to military judgment or discretion can be given because the categorical ban precludes the exercise of such discretion. *See, e.g., Roe I*, 359 F.Supp.3d at 406; *Roe II*, 947 F.3d at 218. They are also particularly disfavored when based on arbitrary criteria, animus, or “obsolete” scientific evidence or assumptions. *See infra* Section II.D. These categorical bans were adopted

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2021 definitions of “vaccine” and “vaccination” did not cover the cover Pfizer/BioNTech and Moderna mRNA gene therapies and the agencies had to radically change these definitions to cover these products and to implement the vaccine mandates. *See* Compl. ¶¶ 131-140 & ECF 1-8.

<sup>29</sup> *See also Doe 2 v. Shanahan*, 917 F.3d 694, 704 (D.C. Cir. 2019) (Wilkins, J. concurring) (review of military policy considers “whether the policy was motivated by animus, ... what military purposes are furthered by the policy, whether those purposes are legitimate, and whether ... the Executive used considered professional judgment and accommodated the servicemembers’ rights in a reasonable and evenhanded manner”).

based on overt hostility to religion and an obsolete vaccine based on obsolete understanding that the vaccines could prevent infection and transmission. *See supra* ¶¶ 2-4.<sup>30</sup>

**B. Plaintiffs’ Claims Are Justiciable and Satisfy the *Mindes v. Seaman* Tests.**

The Supreme Court has repeatedly and emphatically rejected Defendants’ “military nonjusticiability” argument. *See* ECF 39 at 16.

[I]t is the function of the courts to make sure ... that the men and women constituting our Armed Forces are treated as honored members of society whose rights do not turn on the charity of a military commander. ... A member of the Armed Forces is entitled to equal justice under law not as conceived by the generosity of a commander but as written in the Constitution and engrossed by Congress in our Public Laws.

*Winters v. United States*, 89 S. Ct. 57, 59–60 (1968).<sup>31</sup> Congress has rejected this argument as well. RFRA expressly grants a “person whose religious exercise has been burdened in violation of” RFRA the right to “assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government.” 42 U.S.C. § 2000bb-1(c).<sup>32</sup>

To date, at least five U.S. District Courts have found that RFRA and Free Exercise Claims similar to Plaintiffs’ satisfy the two-tier tests for justiciability set forth in *Mindes v. Seaman*, 453

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<sup>30</sup> With respect to deference, they also suffer from a further problem, namely, that the Military Defendants have denied that there are any categorical bans and that service members do in fact receive the individualized assessment required by RFRA and their own regulations (*i.e.*, DODI 1300.17 and AR 40-562). But there can be no deference to agency expertise or discretion, nor to the agency’s deliberative process, where the agency itself denies the existence of the policy.

<sup>31</sup> *See also Emory v. Secretary of Navy*, 819 F.2d 291, 294 (D.C. Cir.1987) (“The military has not been exempted from constitutional provisions that protect the rights of individuals. It is precisely the role of the courts to determine whether those rights have been violated.”)(citation omitted); *Matlovich v. Sec’y of the Air Force*, 591 F.2d 852, 859 (D.C. Cir. 1978) (“It is established, of course, that the federal courts have the power and the duty to inquire whether a military discharge was properly issued under the Constitution.”);

<sup>32</sup> With respect to Plaintiffs’ APA claim, the APA does not impose any exhaustion requirement, and instead “incorporates exhaustion requirements established by statute or agency rule.” *Standage*, 526 F.Supp.3d at 84 (*discussing Darby v. Cisneros*, 509 U.S. 137 (1993) (“*Darby*”). Further, there is “no military exception to *Darby*.” *Id.* (citations and quotations marks omitted).

F.2d 197, 201 (5th Cir. 1971) (“*Mindes*”) (*i.e.*, exhaustion or exemption therefrom and the four-factor test). *See supra* notes 8-9. RFRA “sets the standards binding every department of the United States”, and “[i]t undoubtedly applies in the military context.” *Navy Seals I-26 Stay Order*, 27 F.4th at 346 (citation and quotation marks omitted). Plaintiffs’ Establishment and No Religious Test Clause claims are also justiciable and do not require administrative exhaustion.<sup>33</sup> In any case, there are no specific administrative procedures to bring an Establishment Clause claim, nor are there any military administrative bodies that can adjudicate or remedy such claims.<sup>34</sup>

**1. Plaintiffs Have Exhausted Military Remedies and Qualify for Exemption from Exhaustion.**

Each Plaintiff has pursued military remedies and submitted an RAR, most of which (17 of 31) have been denied. To date, at least seven have had their appeals denied as well (namely, Plaintiffs Alvarado, Barfield, Brobst, Gentilhomme, Henderson, Jackson, and Layfield). *See* Compl., ¶ 120. Plaintiffs pursuit and exhaustion of the RAR process easily meet the *Mindes* and any other applicable exhaustion requirement, as several courts have found. *See, e.g., Air Force Officer*, 2022 WL 468799, at \*6; *Poffenbarger*, 2022 WL 594810, at \*9. The concerns underlying this judicially-created exhaustion doctrine “are diminished to a vanishing point in this case,” *Roe*

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<sup>33</sup>*See, e.g., CFGC*, 454 F.3d at 295 (listing over a dozen cases where military chaplains raised Establishment Clause claims deemed justiciable); *Adair v. England*, 183 F.Supp.2d 31, 55 (D.D.C. 2002) (no exhaustion requirement for military chaplain’s Establishment Clause claims); *Laird v. Anderson*, 466 F.2d 283, 284 (D.C. Cir. 1972) *cert. denied*, 409 U.S. 1076 (1972) (permitting review of No Religious Test Clause claim without exhaustion requirement).

<sup>34</sup> The same analysis applies to Plaintiffs’ § 533 claims, as § 533 enforces and reinforces military chaplains’ rights under the Free Exercise and Establishment Clauses. Defendants’ failure to implement § 533 and their defiance of Congressional directives to do so is the foundation for Plaintiffs’ § 533 and other religious liberty claims. *See* Compl., ¶¶ 180-188 (Second Cause of Action). If the DoD had complied with, rather than defied, Congress’ commands in § 533, there would have been administrative avenues to vindicate these rights, and if it complied with Congress’ training directives, these violations might not have occurred at all. Military Defendants cannot rely on their own failure to fulfill their statutory duties to avoid judicial review.

I, 359 F.Supp.3d at 402, because Plaintiffs' RARs were addressed through a "complex, tiered administrative review process," "culminating in an extensive administrative record and final written decisions" reviewed and approved by senior leadership acting as "the final appeal authority," *id.*, either a three-star or four-star flag officer and/or Assistant Secretary who report directly to the Service Secretary in question. *See supra* ¶ 11 & n. 16.

To the extent that any Plaintiffs or other class members are deemed not to have exhausted military remedies, they should be excused therefrom on multiple grounds.<sup>35</sup> The administrative procedure available (namely, the RAR process) is both futile and inadequate "theater." *Navy SEALs I-26*, 2022 WL 34443, at \*1; *Air Force Officer*, 2022 WL 468799, at \*1. The outcome (denial) is "pre-determined." *Navy SEALs I-26*, at \*6 (*quoting McCarthy v. Madigan*, 503 U.S. 140, 148 (1992)). This is demonstrated by Defendants' own data demonstrating that no RARs have been granted (or less than 1% if administrative exemptions are included).<sup>36</sup> The Air Force and Navy appear to have directly ordered their chains of command not to approve any RARs, *see* Compl., ¶¶ 97-101, while the Navy (whose chaplains also serve the Marine Corps and Coast Guard) has adopted a process that does not even permit the possibility of approval. *See Navy SEALs I-26*, at \*6 & Ex. 9, *Navy SEALs I-26 Whistleblower Affidavit*, at 2-4. Where, as here, "[t]he record all but compels the conclusion that the military process will deny relief, exhaustion is

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<sup>35</sup> The four exhaustion exemptions are: (1) futility; (2) inadequacy; (3) irreparable harm if review is denied; (4) request raises "substantial constitutional questions. *See Navy SEALs I-26*, at \*6 (*discussing Von Hoffburg v. Alexander*, 615 F.2d 633, 638-40 (5th Cir. 1980)). The third and fourth exhaustion exemptions are largely identical to the second and first *Mindes* criteria, respectively. Plaintiffs qualify for these exemptions that are discussed in the following sub-section.

<sup>36</sup> *See* Compl., ¶ 109 & Table 1 (five out of 25,000 initial RARs granted); ECF 41 at 10 & Table (178 out of nearly 25,000 initial RARs granted or less than 1% of RARs granted). Further, no one has received a religious accommodation and been permitted to remain in the service; the approvals that have been granted are in fact administrative exemptions for service members at the end of their term of service. *See* Compl., ¶ 110 & n.7 & *supra* ¶ 10.

inapposite and unnecessary.” *Navy SEALs I-26*, at \*5 (citation and internal quotation omitted); *see also Roe I*, 359 F.Supp.3d at 403 (remedies are futile when no exemptions actually granted).

Military Defendants have erroneously claimed that service members must exhaust remedies up to and through the applicable Board of Correction of Military Records (“BCMR”). *See* ECF 36 at 15-16. BCMRs may “interpret the content and effect of military regulations and decide whether [a] military tribunal’s decision was in error or unjust,” but “it cannot adjudicate a claim that the [Armed Service’s] policies and regulations *themselves* are unconstitutional or otherwise unlawful.”<sup>37</sup> Of equal importance, BCMR decisions are merely recommendations to the Service Secretaries executing Secretary Austin’s Categorical RA Ban and may disregard or overrule the BCMR’s recommendation.<sup>38</sup> The final appeal authorities whose decisions the BCMRs are reviewing are three-star or four-star flag officers who report directly to the Service Secretary. *See supra* ¶ 11. “Nothing suggests that the [BCMRs] would depart from the conclusions” of the Service Secretaries or other senior decisionmakers “and conclude that [their] determinations contained an ‘error’ to ‘correct’ or an ‘injustice’ to ‘remove.’” *Roe I*, 359 F.Supp.3d at 403. Accordingly, exhaustion does not require a further appeal to a BCMR before seeking relief in federal court. *Roe I*, 359 F.Supp.3d at 404; *see also Standage*, 526 F.Supp.3d at 84 (same).

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<sup>37</sup> *Roe I*, 359 F.Supp.3d at 403 (citations and quotation marks omitted)(emphasis in original); *see also Adair*, 183 F. Supp. 2d at 55 (“resolving a claim founded solely upon a constitutional right is singularly suited to a judicial forum and clearly inappropriate to an administrative board.”)(citation omitted); *May v. Gray*, 708 F.Supp. 716, 719 (E.D.N.C. 1988) (appeal to BCMR not required for constitutional challenge because it was “undisputed that the [BCMR] is not ... empowered” to rule on constitutionality of an Army regulation or to change an unconstitutional regulation).

<sup>38</sup> *See* 10 U.S.C. § 552(a)(1) (“The Secretary of a military department may correct any military record of the Secretary’s department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department.”). *See also Hodges v. Callaway*, 499 F.2d, 423 (5th Cir. 1974) (“the Service Secretary *always* has the final say over decisions by ... the BCMR[.]”) (emphasis added).

## 2. Plaintiffs Satisfy the Four *Mindes* Factors.

First, review is favored where, as here, Plaintiffs raise constitutional claims “founded on infringement of specific constitutional rights,” such as those found in the First Amendment and Fifth Amendment, *Navy SEALs I-26*, at \*7 (citation omitted), or statutes like RFRA and § 533 that enforce those rights. Plaintiffs’ statutory and constitutional claims are strong. Several courts have found similar RFRA and Free Exercise claims to have a substantial likelihood of success and to satisfy *Mindes* for that reason. *See supra* note 8. Plaintiffs demonstrate that their other religious liberty claims are strong, *see infra* Section II, though they only need to make this showing for one to satisfy *Mindes*’ first factor. *See, e.g., Air Force Officer*, 2022 WL 468799, at \*7.<sup>39</sup>

Second, Plaintiffs face irreparable harm from the infringement of their rights under the First Amendment, and the violations of the statutory schemes for enforcing those rights in § 533 and RFRA. *See infra* Section III; *see also* Ex. 10 (§ 533 Injuries) & Ex. 11 (First Amendment injuries). In addition to the presumptively irreparable harms from the loss of these fundamental rights, *see Elrod v. Burns*, 427 U.S. 347, 374 (1976) (“*Elrod*”), they face harm from loss of careers; veterans benefits; medical coverage; for some retirement eligibility; severe trouble in finding civilian employment consistent with their calling and training; and severe family disruptions. They are already experiencing injuries and harm from the very practices § 533 prohibits. *See supra* ¶¶ 13-16. Several Plaintiffs have suffered injury because they submitted” RARs, namely, duty and ministry restrictions, reassignment, and exclusion from RRT and RAR interview. *See supra* ¶ 14. “[W]ithholding judicial review is particularly illogical when participation in the administrative

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<sup>39</sup> Review is also favored where Plaintiffs raise “far-reaching” challenges to generally applicable regulations that threaten to categorically exclude a substantial number of similarly situated class members “who wish to serve their country,” but are “being irrationally and arbitrarily swept from the ranks.” *Roe I*, 359 F.Supp.3d at 406.

process invites the very harm Plaintiffs seek to avoid.” *Navy SEALs I-26*, at \*8.

Third, judicial review would not interfere with military functions. Plaintiffs’ claims largely seek to require DoD to follow its own regulations and “stated policies and make nonarbitrary, individualized determinations about each service members fitness for service.” *Roe II*, 947 F.3d at 218. “Requiring the military to follow its own policies does not interfere with its functions.” *Id.* Moreover, it is “illogical to ... argue, that Plaintiff[s]’ religious based refusal to take a COVID-19 vaccine would ‘seriously impede’ military function,” when Defendants have permitted thousands of “other service members still on duty who are just as unvaccinated as” Plaintiffs. *Air Force Officer*, at \*7 (*quoting Mindes*, 453 F.2d at 201); *infra* Section II.A.1 (20,000 secular exemptions).

Fourth, the constitutional issues in this case do not implicate military expertise or discretion. Whether the Categorical RA Ban “can withstand strict scrutiny doesn’t require military judgment. ... Such an issue is purely a legal matter” appropriate for judicial review. *Air Force Officer*, at \* 8 (*quoting Mindes*, 453 F.2d at 201). By adopting the Categorical RA and ME Bans, the DOD “declin[ed] to make individualized determinations regarding servicemembers’ fitness for service,” and thereby “failed to apply its expertise to the evidence before it. And the military cannot claim that a failure to follow its own written policies is discretionary.” *Roe II*, 947 F.3d at 218.

### **C. Defendants’ Actions Are Reviewable.**

Exceptions to judicial review are “very narrow” and “reserved for those rare instances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.” *Weyerhauser Co. v. U.S. Fish and Wildlife Servs.*, 139 S. Ct. 361, 370 (2018) (citation and quotation marks omitted). The Defendants’ actions are reviewable because they are “high-level policy decisions made far from the field of battle.” *Harrison*, 2022 WL 1183767, at \*12 (citation and quotation marks omitted). In fact, the DoD’s

actions are not uniquely military in nature at all and instead were a relatively small part of the Biden Administration’s illegal federal vaccine mandates. *See supra* ¶ 5.

Plaintiffs allege that the Military Defendants violated RFRA, § 533, and their own regulations, each of which “provide a standard by which to review [their] conduct.” *Deese v. Esper*, 483 F.Supp.3d 290, 309 (D. Md. 2020) (“*Deese*”). Courts have had no difficulty in applying RFRA’s standards to the military. *See supra* ¶ 5 & nn. 8-9. Similarly, Plaintiffs allege that Military Defendants violated their own regulations, in particular: (1) the Categorical RA Ban violates DoDI 1300.17, which implements RFRA and requires individualized assessments of RARs; (2) the DoD Mandate violates DoDI 6205.02, which governs immunizations and defines “vaccine” and “vaccinations” in a manner that excludes the mRNA gene therapies from being treated as vaccines; and (3) the Categorical ME Ban violates AR 40-562, which governs medical exemptions and requires individualized assessments. Each regulation provides clear standards for review.

#### **D. Plaintiffs Have Standing.**

##### **1. Article III Standing**

Plaintiffs have: (i) “concrete and particularized and actual and imminent” injuries, *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 339 (2016) (citations and internal quotation marks omitted), that are (ii) “fairly traceable to the challenged conduct of” Defendants and (iii) that are “likely to be redressed by favorable judicial decision.” *Spokeo*, 578 U.S. at 338 (citations omitted). Courts have routinely found that service members have standing to challenge new vaccine mandates applicable to them, both against the DoD and civilian agencies like the FDA and HHS that enabled the mandate.<sup>40</sup> The latter two elements, traceability and redressability, normally “overlap as two sides

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<sup>40</sup> *See generally John Doe No. 1 v. Rumsfeld*, 297 F. Supp. 2d 119, 135 (D.D.C. 2003) (“*Rumsfeld I*”), *modified sub nom. John Doe No. 1 v Rumsfeld*, 341 F. Supp. 2d 1 (D.D.C. 2004) (“*Rumsfeld II*”), *modified sub nom. John Doe No. 1 v. Rumsfeld*, 2005 WL 774857 (D.D.C. Feb. 6, 2005)

of the causation coin.” *Dynalantic Corp. v. DoD*, 115 F.3d 1012, 1017 (D.C. Cir. 1997). Where, as here, the plaintiff “is the object of the challenged agency action, there is usually little doubt of causation.” *Teva Pharmaceuticals USA, Inc. v. FDA*, 514 F.Supp.3d 66, 91 (D.D.C. 2020) (“*Teva*”). Plaintiffs’ injuries are directly traceable to the actions of the Defendants in adopting or enabling the DoD Mandate and would be redressed by the relief sought in this Motion.

“The Supreme Court has explained that standing requirements are somewhat relaxed in First Amendment cases,” *Cooksey v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013), where plaintiffs need not “risk punishment” by breaking the rule and instead need only show the “danger of chilling” “protected [First Amendment] activity.” *Id.* (citation omitted). Plaintiffs here have directly challenged the directives from Military Defendants and their Chaplain Corps leadership to dissuade service members from submitting RARs and to dismiss their religious objections, and faced retaliation for doing so. *See supra* ¶ 14. Moreover, several Plaintiffs were sidelined and reassigned to prevent them from engaging in protected activities, *see supra id.*, which constitutes active censorship (rather than self-censorship).

Plaintiffs have also suffered concrete injuries from violations of the rights under Section 533, RFRA, and the First Amendment. *See* Ex. 10 (§ 533) & Ex. 11 (First Amendment). Plaintiffs’ declarations detail additional injuries they have suffered, in particular, reassignment and/or removal from the RAR process due to submitting an RAR; overt hostility to religion; constant threats, retaliation, intimidation and coercion to take the vaccine and to counsel others to disregard their religious beliefs; and adverse personnel and disciplinary actions. *See supra* ¶¶ 14-16.

Plaintiffs also face imminent injury from being discharged under a category (General) that

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(“*Rumsfeld III*”); *see also Rempfer v. Eschenbach*, 535 F.Supp.2d 99 (D.D.C. 2008) (“*Rempfer*”), *aff’d sub. nom. Rempfer v. Sharfstein*, 583 F.3d 860 (D.C. Cir. 2009) (same).

will deny them benefits, tar them as discipline problems, and prevent them from future military or civilian employment as chaplains (*i.e.*, over and above any obstacles created by being unvaccinated). Moreover, “Plaintiffs will be separated—and thus deprived of the economic, medial, and nonpecuniary benefits associated with ... service—earlier than” their current term of service “amounts to classic injury-in-fact sufficient to support Article III standing.” *Roe I*, 359 F.Supp.3d at 407.<sup>41</sup> Finally, Plaintiffs suffer from “the stigma associated with being singled out as unfit for service,” and such “[s]tigmatic injury” is “sufficient to support standing” in the instant case. *Stone*, 280 F.Supp.3d at 764.

## 2. Prudential Standing for Statutory Claims.

Plaintiffs also have standing to bring their statutory RFRA and § 533 claims. The standing of service members to bring RFRA claims is so self-evident that, as far as Plaintiffs are aware, it has not been seriously challenged by Defendants or addressed in any depth in related cases. For Plaintiffs’ § 533 claims, the standard is whether they fall within the “zone of interests” protected by § 533, a relaxed standard that does not require Congress to have enacted a statutory provision “specifically intend[ing] to benefit the plaintiff.” *Nat’l Credit Union Admin. v. First Nat’l Bank & Trust Co.*, 522 U.S. 479, 118 S.Ct. 927, 935 (1998). Of course, § 533 is specifically intended to benefit—and protect—Chaplains, who are the only ones who could bring a § 533(b) claim.

### E. Plaintiffs’ Claims Are Ripe.

Even if there is some “uncertainty regarding the exact details of the military’s future policy

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<sup>41</sup> This injury is imminent and sufficiently certain for standing purposes, as several Plaintiffs have been directly informed by their chains of command that their RAR would be denied and that they will receive a general discharge. This is nearly the same as in *Doe I*, 275 F.Supp.3d at 203, where the Court found standing satisfied for APA and constitutional claims where evidence available and chain of command “unequivocally” indicated that transgender individuals would not be permitted to serve, just as those who remain unvaccinated for religious reasons will not be permitted to serve.

towards ... service members” who remain unvaccinated due to religious objections, “there is no uncertainty regarding” Secretary Austin’s directives, *Doe 1*, 275 F.Supp.3d at 205, requiring 100% vaccination with no exceptions for religious objections. “The only uncertainties are how, not if, the policy will be implemented.” *Stone*, 280 F.Supp.3d at 767. “There is no reason to believe that” Secretary Austin “will alter these directives, and the Court must assume that they will be faithfully executed by the military.” *Doe 1*, F.Supp.3d at 205 (citations omitted). Further, Plaintiffs’ claims are ripe because they are already suffering “the stigma of being set apart as inherently unfit, facing the prospect of discharge,” and being denied “assignments.” *Stone*, 280 F.Supp.3d at 767. Waiting for judicial review “only subjects them to substantial risk of even greater harms.” *Id.*

### 1. RFRA and Free Exercise Claims.

“Much like standing, ripeness requirements are also relaxed in First Amendment cases.” *Cooksey*, 721 F.3d at 240. Plaintiffs easily meet the requirements for RFRA and Free Exercise claims. All Plaintiffs have submitted requests for religious accommodation. Most have had their initial requests denied (17 of 31), and seven have had their appeals denied as well. *See supra* ¶ 12.

The claims of Plaintiffs with pending RARs are also ripe. In assessing fitness for review, the Court must consider not merely the existence, but the *degree* of contingency. Here the outcome is certain and inevitable. The purported contingency of RAR approval has a likelihood somewhere between 0.0% and 1.0%, *see supra* ¶ 10 & *infra* Section II.A.1 & Table, and is sufficiently remote that the court can make a “firm prediction” as to the outcome to find their claims ripe. *Immigrant Assistance Project of Los Angeles AFL-CIO v. INS*, 306 F.3d 842, 860-67 (9th Cir. 2002).

Plaintiff chaplains, given their unique constitutional role and ministry duties, have been deprived of their Free Exercise rights apart from the RAR process and these injuries occurred much earlier than the denial of an RAR. *See, e.g., Navy SEAL 1*, at \*14 n.5 (Such denial may arise before a plaintiff’s “request and appeal is conclusively denied if a plaintiff receives targeted punishment

for requesting an exemption.”)(citation omitted). In particular, Plaintiffs have been prohibited from performing their duties to minister to service members in accordance with their faith and conscience and vocation; directed to discourage or dissuade service members not to submit RARs; removed from RRTs, prohibited from conducting RARs reviews, and suffered other forms of retaliation and adverse actions merely for submitting an RAR or even expressing their own religious objections. *See supra* ¶¶ 14-16.

## 2. Establishment and No Religious Test Clause and § 533 Claims

“[T]he Establishment Clause is implicated as soon as the government engages in impermissible action.” *CFGC*, 454 F. 3d at 302. Plaintiffs have suffered myriad injuries from Defendants’ discriminatory actions, overt hostility to their religions and religious beliefs; compelled speech; endorsement of a government religion (or non-religion); and establishment of a prohibited religious test for service. Plaintiffs have suffered discrimination and the precise adverse personnel actions § 533(b) specifically prohibits because they have followed the commands of their religion and demands of their conscience. *See supra* ¶¶ 13-14 & Ex. 10.

Plaintiffs’ challenges present legal issues that do not require further factual development. *See, e.g., Awad v. Ziriax*, 670 F.3d 1111, 1124-25 (10th Cir. 2012). They are ripe because compliance with the Mandate and vaccination orders require “an immediate and significant change in the plaintiffs’ conduct ... with serious penalties attached to noncompliance.” *City and Cty. of San Francisco v. Azar*, 411 F.Supp.3d 1001, 1010 (N.D. Cal. 2019). The Court should reach the same conclusion, for the No Religious Test Clause and Section 533 claims.

**II. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIMS.**

**A. RFRA and Free Exercise Claims.**

**1. Defendants Have Substantially Burdened Plaintiffs’ Free Exercise Rights, Triggering Strict Scrutiny.**

RFRA restricts governmental action that “substantially burden[s] a person’s exercise of religion[,] even if the burden results from a rule of general applicability.” 42 U.S.C. § 2000bb-1.<sup>42</sup> Defendants have substantially burdened Plaintiffs’ free exercise rights because the mandate forces them to “decide whether to lose their livelihoods or violate sincerely held religious beliefs.” *Navy SEALs I-26*, at \*9. But for chaplains the violation of conscience is even more severe as the government seeks to coerce Plaintiffs to endorse and be complicit in Defendants’ wrongdoing by counseling service members to ignore the demands of their conscience and forego their rights to seek religious accommodation, or else be removed and censored for performing their duties consistent with their conscience and faith. *See supra* ¶¶ 14-16.

Defendants have done so through a sham RAR process that amounts to “theater”, *Navy SEALs I-26*, at \*1, because the result (denial) is “pre-determined.” *Id.*, at \*4; *see also id.* (“the Plaintiffs’ requests are denied the moment they begin.”). Moreover, the Categorical RA Ban was set at the level of Secretary Austin and/or the Service Secretaries and implemented with review and appeals by flag officers who report directly to the Service Secretaries. *See supra* ¶¶ 11. The high level, centralized control ensures complete uniformity of results: no RAR approvals.

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<sup>42</sup> Because RFRA “provides greater protection ... than is available under the First Amendment,” if a Plaintiff’s “RFRA claim fails, the service member’s First Amendment claim necessarily fails.” *Navy SEAL I*, at \*12. Accordingly, Plaintiffs here follow the approach in *Navy SEAL I* and other recent cases in focusing their analysis on the RFRA claim, because if Plaintiffs can establish a likelihood of success for RFRA claims, then for “the same reasons” they are “likely to prevail on [their] First Amendment claim[s].” *Air Force Officer*, at \*11.

Several courts have already addressed Military Defendants’ overt discrimination against religion, by treating comparable secular activity—medical and administrative exemptions—more favorably than religious exemptions. *See supra* notes 8-9. More recent statistics provided by Defendants, and summarized in the Table below from Plaintiffs’ Reply Brief, *see* ECF 41 at 10 & Table, show that the Military Defendants’ the Armed Services have granted more than 100 times more secular exemptions than RARs, and for the Army the ratio approaches 1000 times.

**Table: Religious Accommodations vs. Secular Exemptions**

Service	RARs Submitted	RARs Approved	% RAR Approved	Med/Admin Approved	Secular vs. RAR
Air Force	9,139	109	1.2%	1,608	14.8:1
Army	7,701	19	0.25%	17,338	913:1
USMC	3,733	7	0.19%	602	86:1
Navy	4,235	43	1.0%	273	6.3:1
<b>Total</b>	<b>24,808</b>	<b>178</b>	<b>0.7%</b>	<b>19,821</b>	<b>111:1</b>

Plaintiffs have thus presented *prima facie* evidence, using Defendants’ own data, that Defendants have substantially burdened Plaintiffs’ exercise of religion and have discriminated against religious exercise. This evidence triggers strict scrutiny and shifts the burden to the government to demonstrate that its policy satisfies strict scrutiny. *See O Centro*, 546 U.S. at 429.

**2. The Categorical RA Ban Does Not Further a Compelling Governmental Interest.**

While “[s]temming the spread of COVID-19 is unquestionably a compelling interest,” *Cuomo*, 141 S. Ct. at 67, “its limits are finite.” *Navy SEALs I-26*, at \*10. To satisfy strict scrutiny under RFRA, there must be a compelling interest “supporting the specific denial of a specific plaintiff’s exemption and the absence of an alternative for that plaintiff.” *Navy SEAL I*, at \*10. Military Defendants’ “broadly formulated interest in national security,” *id.*, will not suffice. Nor will simply invoking “magic words” like “military readiness and health of the force.” *Id.* at \*17

(citation omitted). But “[w]ithout individualized assessment” of service members fitness for service, the Defendants “cannot demonstrate a compelling interest in vaccinating these particular Plaintiffs.” *Navy SEALs I-26*, at \*10.

Defendants have manifestly failed to demonstrate that they have a compelling governmental interest in denying Plaintiffs’ RARs and appeals; censoring or removing Plaintiffs from their positions for submitting an RAR; coercing and compelling government-endorsed speech; and corrupting the RAR process to ensure it achieves the result (uniform denials) demanded by Secretary Austin and the Service Secretaries. The denial letters simply recite the same set of magic words—preventing the spread of disease, military readiness, unit cohesion, and good order and discipline with slight variations by letter or service, *see* Compl, ¶¶ 121-122 & n.16— without applying these to Plaintiff’s individual circumstances or fitness for service.

Defendants’ assertion of a compelling governmental interest in 100% vaccination with no exception is contradicted by their actions and their acknowledgment that the mRNA treatments cannot prevent infection or transmission of COVID. The Armed Services have granted tens of thousands of exemptions for secular reasons, while categorically banning religious accommodations. Such “underinclusiveness ... is often regarded as a telltale sign that the government’s interest in enacting a liberty-restraining pronouncement is not in fact compelling.” *Navy SEALs I-26 Stay Order*, 27 F.4th at 352 (*quoting BST*, 17 F.4th at 616). Defendants, along with the White House, have acknowledged that mandated treatments cannot prevent infection or transmission of COVID—with the CDC now recommending that vaccinated and unvaccinated should be treated the same—and thus cannot further any compelling government interest in stopping the spread of disease or military readiness. *See supra* ¶¶ 2-4.

Government’s claimed compelling purposes are to be evaluated by their results. *McDaniel*,

435 U.S. at 632-41 (Brennan, J., concurring). Searching review is required because the First Amendment “forbids subtle departures from neutrality, religious gerrymanders, as well as obvious abuses.” *Gillette v. U.S.*, 401 U.S. 437, 452 (1971) (citation and quotation marks omitted). The RAR process was designed to categorically ban religious accommodations and to purge religious service members. The DoD’s real compelling purpose is a prohibited religious gerrymander.

**3. Defendants’ Policy Is Not the Least Restrictive Means for Achieving Government’s Interests.**

Defendants have failed to demonstrate that the Categorical RAR Ban is the least restrictive means of furthering their purportedly compelling interests or that any less restrictive alternatives to vaccination were ever seriously considered. Several plaintiffs proposed alternative, less restrictive means and provided evidence that these alternatives had been employed successfully over the past two years achieving mission objectives and limiting the spread of COVID-19. *See, e.g.*, ECF 31-7, Hirko Decl., ¶ 10; Jackson Decl., ¶ 12. The denial letters failed altogether to mention proposed alternatives. Defendants also dismissed, or failed altogether to consider, natural immunity (possessed by 17 of 31 Plaintiffs), and the cumulative impact of natural and herd immunity with Plaintiffs’ proposed less restrictive measures. *See* Compl., ¶ 128.

In these denial letters, Defendants failed to demonstrate, as they must, that the less restrictive measures “were tried and failed, or that the alternatives were closely examined and ruled out for good reason.” *Bruni v. City of Pittsburgh*, 824 F.3d 353, 370 (3d Cir. 2016). Instead, these letters indicate that Plaintiffs’ proposed alternatives were denied because the government’s “chosen route [of 100% vaccination] was easier,” rather than a determination that “imposing lesser burdens on religious liberty would fail to achieve the government’s interests.” *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 633 (2d Cir. 2020) (citation and quotation marks omitted).

**B. Establishment Clause and No Religious Test Clause Claims.**

**1. DoD's Actions Are Not Neutral, Demonstrate Hostility to Religion, and Establish a Religious Test Violating the Establishment Clause.**

Defendants' RAR process described above also violates the Establishment Clause. "[T]he Establishment Clause forbids [government] to hide behind an application of formally neutral criteria and remain studiously oblivious to the effects of its actions." *Capital Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 777 (1995). The RAR process was not an honest attempt to comply with RFRA's and §533 emphasis on maximum accommodation. It was designed to hinder the exercise of religion. This is in fact hostility to religion, which the Establishment Clause forbids.

*See, e.g., Katcoff*, 755 F.2d at 234; *Everson*, 330 U.S. at 15. The DoD Mandate:

[E]stablishes a [prohibited] religious classification – involvement in protected religious activity – governing the eligibility for office ... The provision imposes a unique disability upon those who exhibit a defined level of intensity of involvement in protected religious activity. Such a classification as much imposes a test for office based on religious conviction as one based on denominational preference.

*McDaniel*, 435 U.S. at 632 (Brennan, J., concurring).<sup>43</sup> If a chaplain believes his faith requires him to follow his conscience, he is in DoD's "not wanted here" religious classification. "[A] law targeting religious beliefs as such is never permissible." *Id.* at 626 (plurality opinion)

The RAR system is similar to the "50% income from church members" test to determine if a church could be regulated that *Larson v. Valente*, 456 U.S. 228 (1982), found unconstitutional. The Supreme Court struck down the statute because it did "not operate evenhandedly" and was intended to impose "selective ... burdens and advantages upon particular denominations." *Id.* at 254. That describes the RAR process here: a process designed to destroy Plaintiffs' careers and

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<sup>43</sup> Justice Brennan's concurrence found the challenged law violated both Establishment and Free Exercise Clauses, *id.* at 630, and "imposes a test for office based on religious conviction", *id.* at 632. All three clauses serve the same function, protect religion from government interference.

faith through a selective and intentionally discriminatory process. The RAR process discriminates against Plaintiffs based on their beliefs, while granting preferences to those of other denominations or beliefs, violating the “clearest command of the Establishment Clause.” *Id.* at 244.

In preferring a specific religious position, *i.e.*, abortion is not “sin”, and the Secretary’s contemptuous disregard for RFRA by pre-ordaining the denial of all RARs appears to be an attempt to purge from the military those who believe they must follow their conscience as formed by their faith. Almost all the RARs cite the use of abortion related stem cell lines and object to the use of abortion byproducts. The military has already punished them for doing so and has made clear that they will not be permitted to serve due to their religious objections. Military Defendants have thus sent the message that the military is hostile to religion and Plaintiffs’ core religious beliefs—the sanctity of life and refusal to benefit from the evil of abortion that many consider akin to child sacrifice—and have attempted to compel government-endorsed speech promoting vaccination and dismissing religious objections. This is an Establishment violation. *CFGC*, 454 F.3d at 302 (Navy’s twin messages of preference and hostility violate Establishment Clause).

The Military Defendants’ policies require exclusion of those who believe that conscience requires them not to participate in the evil of abortion, especially vaccines that do not work and may change DNA or immune systems. The Categorical RA Ban also amounts to a prohibited religious test for military service prohibited by both the Establishment and the No Religious Test Clauses. Military-mandated atheism or celebration of its rituals is no more permissible than the military academies’ mandatory church attendance enjoined in *Laird*. *See supra* note 33.

**2. Defendants’ Actions Are Evidence of Hostility Toward Religion and their Policies Were Made in Bad Faith.**

These Chaplains’ RAR’s all emphasized the Mandate’s requirements burdened their conscience. *See* ECF 31-9 (table summarizing Plaintiffs’ religious objections). They could not,

consistent with their faith, accept the vaccine for the valid reasons they provided. Section 533 defines and protects that right. The Defendants' punitive and retaliatory actions against these Chaplains for exercising their § 533 right to follow their conscience are the very ones § 533 prohibits, *e.g.*, denying assignments, travel and schooling. Moreover, Defendants seek to destroy Plaintiffs' careers, deny them benefits lawfully earned, and cripple their ministry by labeling them as miscreants and troublemakers through a General Discharge, all for the sake of retaliation against chaplains who follow their conscience.

Plaintiffs allege that Military Defendants actions are motivated by religious hostility, bias and bad faith evidenced by the Categorical RA Ban and other First Amendment violations in implementing the DoD Mandate; the DoD's disobedience in not publishing regulations implementing § 533's protections; refusing to implement and develop the religious liberty instruction addressing § 533 and RFRA that Congress ordered in the FY 2018 NDAA; and the draconian punishments for those who raise religious objections. The Military Defendants actions in constructing a scheme with the appearance of neutrality but whose purpose was to deny religious accommodation show they had no intent of following the rule of law. This is *per se* bad faith.

### **3. The Government Seeks to Enforce Government-Endorsed Beliefs.**

While Military Defendants' retaliation against Plaintiffs had the effect of silencing certain Plaintiffs who were removed from the RAR process, the ultimate goal was to coerce the remaining chaplains to support the DOD Mandate and No Accommodation Policy, either censoring their own religious or conscientious objections, persuading service members to ignore their own, or expressing support for a policy they opposed.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

*W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). In doing so, Military Defendants also violated rights of service members not to have their religion inhibited, *see, e.g., Katcoff*, 755 F.2d at 234, by having their chaplain’s guidance dictated to them by the chain of command, rather than their conscience and faith. *See supra* ¶ 14.

#### **4. The Categorical RA Ban Cannot Withstand Strict Scrutiny.**

These *prima facie* violations of the Establishment Clause trigger scrutiny and shift the burden of proof to the government. *See Allegheny*, 492 U.S. at 608-09 (citations omitted). The sham RAR process and the Military Defendants’ other actions expressing hostility to religion fail strict scrutiny because these actions demonstrate that the military prefers some religious viewpoints and beliefs over others. The alleged compelling purpose of the vaccine, protection of the force, is a farce. The fact the military leadership contracted COVID despite being “fully vaccinated” shows the vaccine does not immunize military personnel from COVID. The CDC has recognized this fact and eliminated discriminatory treatment of the unvaccinated. That military leaders and personnel become infected by COVID and rapidly recover with no recorded evidence of loss of efficiency or readiness, belies their claim there is no less restrictive measure. Secretary Austin’s objective is not military readiness, but 100% vaccination, regardless of its costs. Further, to the extent it is a religious test, it is “absolutely prohibited,” *see McDaniel*, 435 U.S. at 632 (Brennan, J., concurring), without regard to the government’s purported justification.

#### **5. The RAR Process Is A Religious Test Forcing Religious Service Members to “Out” Themselves, Then Used to Purge Them.**

This case shares many similarities with the Military Transgender cases. In particular, the Services provided an opportunity to seek religious accommodations. Service members with sincere religious objections relied on the military’s obligation to follow the law and self-identified through the RARs process and detailed their objections. The Services then used these RARs to identify

those with religious beliefs of sufficient intensity of belief that they would risk the loss of their careers for expulsion. *See Doe 1*, 275 F.Supp.3d at 213 (“transgender service members identified themselves to their commanding officers in reliance on” the previous policy permitting transgenders to serve, and then this information was used to expel them). The Military Defendants have thus used the RAR process to impose a religious test and to purge believers from the military.

**C. Section 533 Claims**

**1. Protection of Chaplains’ Right of Conscience Is A Compelling Purpose.**

Section 533’s headings, language, and context show Congress’ intent to protect the right of service personnel and chaplains to exercise their faith and to act in accord with their conscience. No other Group has received special protection for decisions based on conscience flowing from their faith. Section 533(b), “Protection of chaplain decisions relating to conscience, moral principles, or religious beliefs” specifically established each chaplain’s right to follow their conscience and faith, protecting them from the very actions Defendants have taken against Plaintiffs. Congress again addressed its concern for § 533’s provisions and protections in the 2016 and 2018 NDAA’s. *See* ECF 1-5, 2016 NDAA Report & 1-6, 2018 NDAA Report. The DoD never produced what Congress told it to do, apart from a passing reference in DoDI 1300.17. Instead, Defendants’ negative personnel actions against Plaintiffs are the very actions § 533 prohibits.

The undisputed evidence shows § 533(b) is Congress’s decision on the respect, legitimacy, and honor due chaplains’ individual expressions of faith and decisions “related to conscience, moral principles, or religious beliefs.” Defendants have not shown such decisions concerning the Mandate are contrary to good order and discipline, or how mandating vaccine that does not prevent the spread of COVID is a more compelling purpose than protecting chaplains’ religious liberties.

**2. Defendants Have in Fact Made the Shot a Rite, Ritual or Ceremony by Mandating it in Violation of § 533.**

Plaintiffs allege Defendants' mandate to receive the COVID vaccination despite Plaintiffs' religious objections in violation of § 533 has made COVID vaccination a rite, ritual and/or a ceremony of a government-established religion, or non-religion, that is not only not neutral, but overtly hostile to their religious beliefs. There is a historical, biblical example of the principles and issues at play here supporting Plaintiffs' arguments found in the First Book of Maccabees. Chapters 1 and 2 describe the incident that began the Maccabean Revolt against Antiochus IV (or Antiochus Epiphanes) of Syria, an heir to Alexander the Great's empire.

Antiochus hated the Jewish religion. He "issued a proclamation to his whole kingdom that all were to become a single people, each renouncing his particular customs", I Maccabees 1:41 (Jerusalem Bible), which for the Jewish people meant following the Covenant and the Law. "Anyone not obeying the king's command was to be put to death" and "the king appointed inspectors for the whole people and directed all the towns of Judah to offer sacrifice one after another." *Id.* at 52-53.

Mattathias, a Jewish priest, and his family left Jerusalem to return to his hometown, Modein, *id.* at 2:1. The "king's commissioners" came to Modein and asked Mattathias, "a respected leader" to "be the first to step forward and conform to the king's decree" for which he would be "reckoned among the friends of the king." Mattathias refused to forsake "the covenant of our ancestors". "As for the king's orders, we will not follow them: we will not swerve from our own religion either to the right or to the left." *Id.* at 2:17-22.

When a Jew went forward to offer sacrifice, Mattathias "slaughtered him on the altar, killed the king's Commissioner and tore down the pagan altar. "Let everyone who has a fervor for the law and takes his stand on the covenant come out and follow me." *Id.* at 2:23-28. Mattathias's son

Judas, “called Maccabeus” [the hammer] took over Mattathias’ command of the revolt when he died. *Id.* at 3:1.

The town meeting in Modein was a ceremony or ritual in which persons were asked to publicly state who ruled their conscience. The question presented to Mattathias was would he follow his conscience or abandon his God and submit to another god. “God” is the authority to which a person submits in making decisions how he/she lives their lives, distinguishes between good and evil, and interacts with others. There are only two options, (1) a divine code created by a divine being which man cannot change or (2) **the** person becomes his or her own authority. Mattathias chose the God of the Covenant. Those same two options are presented to Plaintiffs.

The Mandate, No Accommodation Policy, and the directives to violate conscience—both for Plaintiff chaplains’ own vaccination decisions and also to lead their flock astray by pressuring them to advise service members to ignore their own conscience and beliefs—puts Plaintiffs in the same position as Matthias at Modein. Plaintiffs are being told to publicly admit through the vaccination process they replace the God who has ruled their conscience with the authority of man to do something which they know is wrong in God’s sight, and of equal importance, to use their authority as a chaplain to pressure those to whom they minister to do so, or else be expelled from the military and denied the opportunity to continue in their vocation of serving God, country, fellow soldiers, and fellow citizens in future civilian life. Section 533 allows these plaintiffs to say “no thank you” which is exactly what they have done.

### **3. The Terms “Rite,” “Ritual” and “Ceremony” Are Religious Ministry Terms, Not Secular**

Section 533(b) protects chaplains’ decisions concerning “any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain.” CAPT (Ret) Steve Brown, a retired chaplain and current Endorser, explains in Exhibit 12 that in DoD’s

**pluralistic** Chaplain Corps, what one chaplain may consider a rite or ceremony may be considered nothing by another chaplain depending on his faith and endorsement. ¶7. A chaplain is always a chaplain; common events can become “sacred moments” which can be rites, rituals, or ceremonies of major importance to that chaplain because of his faith. ¶¶ 8, 10, 12. DoD has no authority to decide what those religious ministry terms mean to a chaplain. Chaplains are the religion experts whose decisions § 533(b) protects.

#### **4. Defendants’ Conduct Is Prohibited Retaliation.**

To state an unconstitutional retaliation claim a plaintiff must show (1) he or she engaged in constitutionally protected conduct, here the First Amendment; (2) the defendant took some retaliatory action that adversely impacted the plaintiff; and (3) a causal link between the exercise of the constitutional right and the adverse action taken against him or her. *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 499 (4th Cir. 2005). Section 533 grants military chaplains a statutory mechanism to enforce the U.S. Constitution’s religious liberty clauses and to protect them from discrimination or adverse personnel actions for exercise of those rights.

The Plaintiffs’ declarations show how Defendants have systematically violated § 533. *See* Ex. 10. Defendants’ prohibited discriminatory and adverse personnel actions are directly and causally related to Plaintiffs’ exercise of their constitutionally protected religious liberties, as enforced through both RFRA and § 533. What is telling—and dispositive for the § 533 retaliation claim—is that these adverse and discriminatory actions were taken based on Plaintiffs’ own religious objections, and because they sought to perform their unique constitutional role as chaplains. The free exercise rights of both chaplains and service members requires the Secretary permit chaplains to perform their duties—ministering to, advising, and assisting service members with religious objections to the Mandate—in accordance with their conscience and faith.

**5. Secretary Austin’s Failure to Issue Regulations, Implement Training, and/or Establish § 533 Enforcement Procedures Violated § 533.**

The DoD has deliberately ignored Congress’ specific protections and instructions concerning chaplains’ religious liberty and conscience. This blatant insubordination and/or subversion attacks one of our Republic’s fundamental principles: the military is subordinate to civilian authority and must obey the Constitution and Congress’ instructions. DoD’s nearly decade-long refusal to publish regulations implementing § 533’s protections and refusal to develop and implement the “comprehensive training program” on religious liberty instruction, including § 533 and RFRA, that the 2018 NDAA ordered demonstrate DoD’s bias and bad faith. The DoD Mandate and Categorical RAR Ban systematically violate service members religious liberties and punish those who follow their conscience. These actions constitute a forbidden bureaucratic insurgency against Congress that this Court must address promptly and decisively quell.

**D. APA and Major Questions Claims**

An agency violates the APA where it adopts a categorical ban, like the Categorical RA Ban and ME Bans, when the statute in question or DoD “regulations require individualized determinations based on objective evidence to determine a servicemembers fitness for duty or separation.” *Roe II*, 947 F.3d at 222. The regulations at issue here—DoDI 1300.17 (and Service-specific implementing regulations) and AR 40-562—each specifically require such individualized determinations. The record, which consists of a one or two page form denial letters for most Plaintiffs, “is entirely lacking in an explanation reflecting an individualized determination for each servicemember.” *Id.* at 224. Under the APA and the DOD’s own regulations, a “categorical predictive assessment,” “based on speculation” rather than evidence or individualized assessments, is “not ‘a satisfactory explanation’ for discharging each servicemember.” *Id.* Defendants also provide “no explanation at all, let alone support, for their” conclusion, stated in every RAR denial

letter, “that the presence of” service members who are unvaccinated for religious reasons “may be harmful to ‘unit cohesion.’” *Doe 1*, 275 F.Supp. at 212.

The APA arbitrary and capricious standard of review has been described as “indistinguishable” from the rational basis review under the Equal Protection Clause. *Harrison*, 2022 WL 1183767, at \*12. Classification and unequal treatment based on animus, a desire to harm a politically unpopular group, or other improper purpose is irrational and arbitrary and capricious. *See Doe 1*, 275 F.Supp.3d at 211-213. In such circumstances, it is entirely appropriate to “consider[] the circumstances surrounding the announcement” of Secretary Austin’s directive “[i]n determining whether a law is motivated by an improper animus or purpose.” *Doe 1*, 275 F.Supp.3d at 213 (citation and quotation marks omitted). The challenged agency actions were made “without any of the formality or deliberative processes that generally accompany the development and pronouncement of major policy changes that will gravely affect the lives of many Americans.” *Id.* at 213. “[T]he departure from normal procedures,” demonstrate that the decision to expel tens or hundreds of thousands of service members demonstrate that the decision “was not driven by genuine concerns regarding military efficacy.” *Doe 1*, 275 F.Supp.3d at 213.

Purging and excluding altogether a group from the military based on “obsolete” science and false factual predicates is similarly irrational and arbitrary and capricious. While there is uncertainty as to many issues regarding the treatments, there is no question that the treatments do not prevent infection or transmission, and therefore cannot further the government’s interest in “preventing the spread of COVID-19.” President Biden has gone from claiming that “if you get vaccinated, you will not get COVID,” *supra* ¶ 1, to “at some point, everyone is going to get COVID,” *supra* ¶ 2, while the CDC has (belatedly) updated its guidance to largely treat vaccinated and unvaccinated the same. “Such obsolete understandings,” *i.e.*, that a treatment will actually

prevent infection or transmission, “cannot justify a [categorical] ban, even under a deferential standard of review.” *Deese*, 483 F.Supp.3d at 314; *see also Roe II*, 947 F.3d at 228 (same).

### **III. PLAINTIFFS HAVE SUFFERED IRREPARABLE HARM.**

Plaintiffs have shown above they are being deprived of First Amendment rights and RFRA’s and Section 533’s protections intended to enforce these rights. *See generally* Exs. 10 & Ex. 11. *Cuomo* observed there is “no question” that these types of religious exercise restrictions “will cause irreparable harm.” *Cuomo*, 141 S.Ct. at 67; *see also Elrod*, 427 U.S. at 373 (plurality opinion) (“[t]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.”). This applies to violations of statutes like RFRA and § 533 that enforce First Amendment freedoms. *See Navy SEAL I*, at \*19 (citation omitted).

All Plaintiffs whose appeals have been denied now must either “follow a direct order contrary to a sincerely held belief or ... face immediate processing for separation or other punishment,” which “undoubtedly causes irreparable harm” and is “redressable by a preliminary injunction.” *Navy SEAL I*, at \*19 (citation omitted); *see also Air Force Officer*, at \*12; *Navy SEALs I-26*, at \*1. These same results will follow for the other Plaintiffs whose appeals remain pending when their appeals are inevitably denied, and they are “already suffering injury while waiting for the [Armed Services] to adjudicate their requests.” *Navy SEALs I-26*, at \*12.

While a general discharge alone may not constitute irreparable injury, it may where the “circumstances surrounding ... discharge, together with the resultant effect on the employee ... so far depart from the normal situation that irreparable injury may be found.” *Sampson v. Murray*, 415 U.S. 61, 90 (1974). The Defendants’ deprivation of Plaintiffs’ First and Fifth Amendment Rights meet this high standard “because these injuries are inextricably intertwined with Plaintiffs’ loss of constitutional rights,” and because “[t]he crisis of conscience imposed by the mandate is itself an irreparable harm.” *Navy SEALs I-26*, at \*13 (citation omitted).

Plaintiffs will also suffer irreparable harm because they will be “discharge[d] without an individualized assessment of their fitness for continued service and for reasons unrelated to their ability to serve,” coupled with a discharge with a misconduct characterization that they will have to disclose along with their unvaccinated status. *Roe II*, 947 F.3d at 218. This is “a particularly heinous brand of discharge based on outmoded policies” and obsolete science on vaccine efficacy “bear[ing] no relationship to their ability to perform their jobs,”<sup>44</sup> that will “brand[] and stigmatize[] Plaintiffs as less capable of serving the military” or even “unfit for service.” *Doe I*, 275 F.Supp.3d at 216. Such stigmatic injuries cannot be “address[ed] ... through post-discharge intra-service procedures.” *Roe II*, 947 F.3d at 218.

Plaintiffs and class members risk loss of retirement eligibility with more than 15 years of service, or being dropped into the inactive ready reserve, resulting in irreparable harm from the loss of military medical insurance for themselves and family members. It is well-settled that the loss of medical coverage, particularly for dependents with special needs or undergoing lifesaving medical treatment in itself constitutes irreparable harm.<sup>45</sup> Here, Plaintiffs are faced not only with the loss of their sole source of income and medical insurance, but their discharge and vaccination status may preclude future employment as chaplains (and medical insurance) and retirement

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<sup>44</sup> *Id.* (citations and quotation marks omitted). *See also Casey v. United States*, 8 Cl.Ct. 234, 242 (1985) (“*Casey*”) (“a ‘stigma’ may attach to a servicemember’s discharge either from the characterization of the discharge or from the reasons recorded for the discharge”) (citation and quotation marks omitted); *May*, 708 F.Supp. at 722 (rejecting claims that general discharge under honorable conditions “does not impose a stigma” because “military separation codes are known, understood and available to the par of society that count—i.e., prospective employers.”).

<sup>45</sup> *See, e.g., Fitzgerald v. Schweiker*, 538 F.Supp. 992, 998 (D. Md. 1982); *Peter B. v. Sanford*, 2010 WL 5912259 (D.S.C. Nov. 24, 2010) (collecting cases and finding that loss of medical care “constitutes ... the kind of harm which equitable relief is suited to enjoin.”); *Beck v. Hurwitz*, 380 F.Supp.3d 479, 484-85 (M.D.N.C. 2019) (delays in cancer treatment constitutes irreparable harm).

income and benefits, pushing some into poverty and depriving them of the income needed to procure alternate insurance and everything else they need to support their families.

**IV. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR ISSUANCE OF INJUNCTION.**

The third and fourth requirements for issuing a stay and/or preliminary injunction—the balance of harms and whether the requested injunction is in the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Both factors favor Plaintiffs and issuance of the injunction requested by Plaintiffs. “[I]njunctive protections of First Amendment freedoms are always in the public interest.” *Navy SEALs I-26 Stay Order*, at \*13. Further, there is no injury to the public interest “from recognizing a person’s constitutional or statutory right ..., especially when the statute creating the right [*i.e.*, RFRA] expressly authorizes such judicial vindication.” *Navy SEAL I*, at \*20. “It is in the public interest to prevent [Plaintiffs’] discharge for apparently arbitrary and indefensible reasons, at least until the Court can definitively decide the merits of plaintiffs’ claims.” *Roe I*, 359 F.Supp.3d at 421.

The Defendants cannot claim to suffer any harm that “results only from [D]efendants’ own failure to comply with RFRA.” *Navy SEAL I*, at \*20. Nor can a “bare invocation of ‘national defense’ defeat every motion for preliminary injunction that touches on the military.” *Doe I*, 275 F.Supp.3d at 217. Moreover, it is Defendants’ systematic violations of constitutional rights that threaten national security. Defendants’ imposition and enforcement of an unlawful vaccine mandate threatens to purge hundreds of thousands of service members, is destroying recruitment, and even threatens the viability of the AVF. *See supra* ¶ 6.

**V. CONCLUSION**

This Court should grant the relief requested in the Complaint and issue the Proposed Order.

Dated: August 15, 2022

Respectfully Submitted,

/s/ Arthur A. Schulcz, Sr.

Arthur A. Schulcz, Sr.  
DC Bar No. 30174  
Chaplains Counsel, PLLC  
21043 Honeycreeper Place  
Leesburg, VA 20175  
Tel. (703) 645-4010  
Email: art@chaplainscounsel.com

/s/ Brandon Johnson

Brandon Johnson  
DC Bar No. 491370  
Defending the Republic  
2911 Turtle Creek Blvd., Suite 300  
Tel. (214) 707-1775  
Email: bcj@defendingtherepublic.org

/s/ J. Andrew Meyer

J. Andrew Meyer, Esq.  
Fla Bar No. 0056766  
FINN LAW GROUP, P.A.  
8380 Bay Pines Blvd  
St. Petersburg, Florida 33709  
Tel.: 727-709-7668  
Email: ameyer@finnlawgroup.com

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

This is to certify that on this 15th day of August, 2022, the foregoing Plaintiffs' Motion was e-filed using the CM/ECF system.

/s/ Arthur A. Schulcz

Arthur A. Schulcz



**SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000**

AUG 24 2021

**MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP  
COMMANDERS OF THE COMBATANT COMMANDS  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS**

**SUBJECT: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense  
Service Members**

To defend this Nation, we need a healthy and ready force. After careful consultation with medical experts and military leadership, and with the support of the President, I have determined that mandatory vaccination against coronavirus disease 2019 (COVID-19) is necessary to protect the Force and defend the American people.

Mandatory vaccinations are familiar to all of our Service members, and mission-critical inoculation is almost as old as the U.S. military itself. Our administration of safe, effective COVID-19 vaccines has produced admirable results to date, and I know the Department of Defense will come together to finish the job, with urgency, professionalism, and compassion.

I therefore direct the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.

Service members are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Those with previous COVID-19 infection are not considered fully vaccinated.

Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance. Service members voluntarily immunized with a COVID-19 vaccine under FDA Emergency Use Authorization or World Health Organization Emergency Use Listing in accordance with applicable dose requirements prior to, or after, the establishment of this policy are considered fully vaccinated. Service members who are actively participating in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

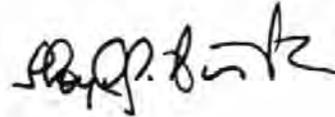
Mandatory vaccination requirements will be implemented consistent with DoD Instruction 6205.02, "DoD Immunization Program," July 23, 2019. The Military Departments should use existing policies and procedures to manage mandatory vaccination of Service members to the extent practicable. Mandatory vaccination of Service members will be subject to any identified contraindications and any administrative or other exemptions established in Military Department policy. The Military Departments may promulgate appropriate guidance to carry out the requirements set out above. The Under Secretary of Defense for Personnel and



Readiness may provide additional guidance to implement and comply with FDA requirements or Centers for Disease Control and Prevention recommendations.

The Secretaries of the Military Departments should impose ambitious timelines for implementation. Military Departments will report regularly on vaccination completion using established systems for other mandatory vaccine reporting.

Our vaccination of the Force will save lives. Thank you for your focus on this critical mission.

A handwritten signature in black ink, appearing to read "Robert P. Bunker". The signature is written in a cursive, somewhat stylized font.

**Army Regulation 40-562  
BUMEDINST 6230.15B  
AFI 48-110\_IP  
CG COMDTINST M6230.4G**

**Medical Services**

# **Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases**

**Headquarters  
Departments of the Army,  
the Navy,  
the Air Force,  
and the Coast Guard  
Washington, DC  
7 October 2013**

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 40-562/BUMEDINST 6230.15B/AFI 48-110\_IP/CG COMDTINST M6230.4G  
Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases

This major revision, dated 7 October 2013--

- o Changes the regulation title to "Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases" (cover).
- o Describes the responsibilities of the privileged physician with medical oversight of any clinic or activity that administers immunizations (para 1-4c(2)).
- o Describes the responsibilities of the privileged health care provider, who is under the direction of the privileged physician of any clinic or activity that administers immunizations (para 1-4c(3)).
- o Changes a reference to five-injection thresholds to reflect current evidence-based practices (para 2-1e(1)).
- o Adds a description of procedures for vaccine storage and handling (para 2-3).
- o Adds a description of military indications for required and recommended vaccines (paras 4-2 through 4-19).
- o Makes changes to chemoprophylaxis recommendations (chap 5).
- o Adds a description of procedures for documenting immunizations and immunization recordkeeping (para B-5).
- o Establishes and recommends immunization personnel training (para B-6 and table B-1).
- o Establishes criteria for determining required immunizations for military personnel (app D).
- o Makes administrative revisions (throughout).

Headquarters  
Departments of the Army,  
the Navy,  
the Air Force,  
and the Coast Guard  
Washington, DC  
7 October 2013

\*Army Regulation 40-562  
\*BUMEDINST 6230.15B  
\*AFI 48-110\_IP  
\*CG COMDTINST M6230.4G

Medical Services

Effective 7 November 2013

## Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases

By Order of the Secretary of the Army, Navy, Air Force, and Coast Guard:

RAYMOND T. ODIERNO  
*General, United States Army  
Chief of Staff*

Official:



GERALD B. O'KEEFE  
*Administrative Assistant to the  
Secretary of the Army*

M. L. NATHAN  
*Vice Admiral, Medical Corps  
United States Navy  
Surgeon General of the Navy*

THOMAS TRAVIS  
*Lieutenant General, U.S. Air Force  
Surgeon General*

MAURA K. DOLLYMORE  
*Rear Admiral, U.S. Coast Guard  
Director, Health, Safety and Work-Life*

**History.** This publication is a major revision.

**Summary.** This regulation for immunization and chemoprophylaxis updates quality standards for immunization delivery; establishes electronic immunization tracking systems as the preferred immunization record; provides guidance for lost immunization records, immunization credit for pre-existing immunity, and complying with regulations for vaccines and other products administered in investigational, new drug status or in accordance with emergency use authorization; describes dividing initial entry immunization into two clusters; and describes the role of the Military Vaccine Office.

**Applicability.** This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to the following: uniformed Departments of the Navy, Air Force, and Coast Guard (including the active and reserve components of each Service); nonmilitary persons under military jurisdiction; selected Federal employees; selected employees of Department of Defense contractors; and Family members and other health care beneficiaries eligible for care within the

military health care system. This regulation is applicable during mobilization.

**Proponent and exception authority.** The proponent of this regulation is The Surgeon General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

**Army internal control process.** This regulation contains internal control provisions and identifies key internal controls that must be evaluated (see appendix E).

**Supplementation.** Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from The Surgeon

General (DASG-ZA), 7700 Arlington Blvd., Falls Church, VA 22041-5143.

**Suggested improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to The Surgeon General (DASG-ZA), 7700 Arlington Blvd., Falls Church, VA 22041-5143. Air Force users are invited to send comments and suggested improvements on AF Form 847 (Recommendations for Change of Publication) through channels to Headquarters, AFMSA/SGOP, 7700 Arlington Blvd., Falls Church, VA 22041-5143.

**Distribution.** This publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve. Navy/Marine Corps: Ships, units, and stations having medical department personnel. Air Force: Active Air Force, the Air National Guard, and Air Force Reserve. Coast Guard: Active Coast Guard and Coast Reserves.

\*This regulation supercedes AR 40-562/BUMEDINST 6230.15A/AFJ 48-110/CG COMDTINST M6230.4F, dated 29 September 2006.

**Contents** (Listed by paragraph and page number)

**Chapter 1**

**Introduction**, *page 1*

Purpose • 1-1, *page 1*

References • 1-2, *page 1*

Explanation of abbreviations and terms • 1-3, *page 1*

Responsibilities • 1-4, *page 1*

**Chapter 2**

**Program Elements and Clinical Considerations**, *page 2*

Standards • 2-1, *page 2*

Logistics • 2-2, *page 3*

Storage and handling • 2-3, *page 3*

Hypersensitivity or allergy • 2-4, *page 5*

Immunizing women of childbearing potential • 2-5, *page 5*

Exemptions • 2-6, *page 6*

Immunization and chemoprophylaxis records • 2-7, *page 7*

Jet-injection immunization devices • 2-8, *page 8*

Emergency response requirements • 2-9, *page 8*

Adverse events • 2-10, *page 9*

Program evaluation • 2-11, *page 9*

Blood donation • 2-12, *page 10*

**Chapter 3**

**Personnel Subject to Immunization**, *page 10*

Military accessions • 3-1, *page 10*

Military personnel • 3-2, *page 11*

Certain civilian employees • 3-3, *page 11*

Contracted workers • 3-4, *page 12*

Department of Defense, U.S. Coast Guard schools, childcare centers and youth programs • 3-5, *page 12*

Other populations • 3-6, *page 13*

**Chapter 4**

**Specific Immunization Requirements for Department of Defense and U.S. Coast Guard Personnel**,  
*page 13*

Civilian applicability • 4-1, *page 13*

Adenovirus types 4 and 7 • 4-2, *page 13*

Anthrax • 4-3, *page 13*

Haemophilus influenzae serotype b, commonly called Hib • 4-4, *page 14*

Hepatitis A • 4-5, *page 14*

Hepatitis B • 4-6, *page 14*

Influenza • 4-7, *page 14*

Japanese encephalitis • 4-8, *page 14*

Measles, mumps, and rubella (MMR) • 4-9, *page 15*

Meningococcal • 4-10, *page 15*

Pertussis • 4-11, *page 15*

Pneumococcal • 4-12, *page 15*

Poliomyelitis • 4-13, *page 15*

Rabies • 4-14, *page 16*

Smallpox • 4-15, *page 16*

Tetanus, diphtheria, and pertussis • 4-16, *page 16*

Typhoid fever • 4-17, *page 17*

Varicella • 4-18, *page 17*

## **Contents—Continued**

Yellow fever • 4–19, *page 17*

### **Chapter 5**

#### **Chemoprophylaxis, *page 18***

General • 5–1, *page 18*

Anthrax • 5–2, *page 18*

Group A streptococcus • 5–3, *page 18*

Influenza • 5–4, *page 18*

Leptospirosis • 5–5, *page 19*

Malaria • 5–6, *page 19*

Meningococcal disease • 5–7, *page 19*

Plague • 5–8, *page 19*

Scrub typhus • 5–9, *page 19*

Smallpox • 5–10, *page 19*

Traveler’s diarrhea • 5–11, *page 19*

### **Chapter 6**

#### **Biological Warfare Defense, *page 20***

Responsibilities • 6–1, *page 20*

Procedures • 6–2, *page 20*

### **Chapter 7**

#### **Vaccines and Other Products in Investigational New Drug Status, *page 20***

Purpose • 7–1, *page 20*

General guidance on investigational new drug products • 7–2, *page 20*

Health recordkeeping requirements for investigational new drug products • 7–3, *page 20*

Information requirements for investigational new drug products • 7–4, *page 21*

Coordination • 7–5, *page 21*

### **Chapter 8**

#### **Vaccines and Other Products Used Under Emergency Use Authorization, *page 21***

General • 8–1, *page 21*

Criteria • 8–2, *page 21*

Refusal options • 8–3, *page 21*

Health recordkeeping requirements for emergency use authorization products • 8–4, *page 21*

Information requirements for emergency use authorization products • 8–5, *page 21*

Department of Defense requests for emergency use authorizations • 8–6, *page 21*

Coordination • 8–7, *page 21*

## **Appendixes**

**A.** References, *page 22*

**B.** Standards for Military Immunization, *page 25*

**C.** Medical and Administrative Exemption Codes, *page 28*

**D.** Immunizations for Military Personnel, *page 29*

**E.** Internal Control Evaluation Process, *page 30*

## **Table List**

Table B–1: Training standards, *page 26*

Table C–1: Medical exemption codes, *page 28*

Table C–2: Administrative exemption codes, *page 28*

Table D–1: Immunizations for military personnel, *page 29*

## **Glossary**



## Chapter 1 Introduction

### 1–1. Purpose

This publication provides directive requirements for the Military Vaccination Program; establishes general principles, procedures, policies, and responsibilities for the immunization program; and implements military and international health regulations and requirements.

### 1–2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

### 1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

### 1–4. Responsibilities

*a. Command medical authority.* The command medical authority will prescribe specific immunization and chemoprophylactic requirements for their units per requirements established by this publication and additional guidance provided by the appropriate surgeon general or the U.S Coast Guard (USCG), Director of Health, Safety, and Work-Life (USCG, CG–11).

*b. Command leaders.* Combatant commanders, major command commanders, unit commanding officers, commanders of special operations and forces, and officers-in-charge will:

(1) Ensure military and nonmilitary personnel under their jurisdiction receive required immunizations and chemoprophylaxis. Ensure immunizations and immunization exemption codes (medical or administrative) are documented in an approved Department of Defense (DOD) or USCG Service Immunization Tracking System (ITS), as described in paragraph 2–7*a*.

(2) Maintain appropriate international, Federal, State, and local records of all immunizations and chemoprophylaxis.

(3) Ensure personnel transferred to another command or unit, including advanced instructional training or technical school, receive proper screening for, and administration of, appropriate immunizations and chemoprophylaxis for the area assigned, and are timed to provide immunity before deployment or exposure or to complete a vaccine series.

(4) Ensure immunization exemptions are documented in the Service ITS.

(5) Ensure vaccine doses or boosters are administered to complete a started series or maintain immunity.

(6) Ensure deviations from specified immunizations are cleared or authorized by the appropriate combatant commander; surgeon general; or USCG, CG–11.

(7) Observe international military standardization agreements (STANAGs).

*c. Medical commanders, commanding officers, and command surgeons.* Medical commanders, commanding officers, and command surgeons will:

(1) Ensure individuals administering immunizations are properly trained in accordance with DOD, Service, and Centers for Disease Control and Prevention (CDC) guidelines and act within their scope of practice as determined by each Service. A training checklist is found in appendix B, paragraph B–6 and table B–1.

(2) Appoint, in writing, a privileged physician with medical oversight over any clinic or activity that administers immunizations. This physician will:

(*a*) Complete appropriate training in immunization science in residence or via distance learning.

(*b*) Be available to address immunization issues, although it is not required that the privileged physician be present for administration of vaccines. The USCG requires a privileged health care provider to administer immunizations to civilians who are eligible for care in a medical treatment facility.

(*c*) Establish and sign vaccine and chemoprophylaxis standing orders for clinics or other locations where immunizations or chemoprophylaxis medications are administered.

(*d*) Ensure standard operating procedures (SOPs) are established that implement current national standards for adult and pediatric immunizations and chemoprophylactic practices and promote appropriate quality improvement mechanisms. Incorporate local practices and requirements of policies contained in references listed at appendix A.

(3) Appoint, in writing, a privileged health care provider, who is under the direction of the privileged physician appointed in paragraph 1–4*c*(2), to have oversight over the daily activities of any clinic or activity that administers immunizations. The privileged physician may serve as the health care provider if no one is available to assume the position of privileged health care provider.

(4) Ensure patients are evaluated for preexisting immunity, screened for administrative and medical exemptions, and/or evaluated for the need for medical exemptions to immunizations or chemoprophylaxis medications. Exemptions are granted per paragraph 2–6; document any exemptions.

(5) Monitor the immunization status of personnel and ensure compliance with policies and procedures for creating and maintaining immunization records in accordance with Title 42, United States Code, Chapter 300aa-25.

(6) Ensure emergency medical response is available and that personnel who administer immunizations receive

training on: basic cardiopulmonary resuscitation, administration of epinephrine, and emergency response to immunization-adverse events, at a minimum.

(7) Ensure health care providers are available to respond to and report adverse events resulting from immunization.

(8) Ensure patients needing evaluation of adverse events after immunization are referred to appropriate health care providers, such as medical subspecialists (including specialists in immunization health care) for evaluation, consultation, or indicated intervention.

*d. The Army, as Executive Agent for the Military Vaccination Program.* The Army, as Executive Agent for the Military Vaccination Program and in cooperation with the Military Services, will:

(1) Operate a Military Vaccine (MILVAX) Office to provide the Military Services with a coordinated source for information and education of vaccine-related activities needed in order to implement Department of Defense Directive (DODD) 6205.3, DODD 6205.02E, and Department of Defense Instruction (DODI) 6205.4.

(2) Synchronize, integrate, and coordinate immunization policies and other immunization-related activities for all DOD components.

(3) Facilitate and promote the quality of immunization policy, implementation, education, distribution, risk communication, administration, clinical services, safety surveillance, research, and program evaluation.

(4) Provide a comprehensive access point to provide information, education resources, safety surveillance, and uniform procedures to identify, report, and evaluate vaccine-associated adverse events.

(5) Maintain historical vaccine usage data as well as identify future vaccine requirements as needed.

(6) Provide primary coordination between DOD and vaccine manufacturers for all applicable post-licensure vaccine studies.

(7) Coordinate with other Secretaries of the Military Departments and the Commandant, USCG to:

(a) Establish joint clinical quality standards for immunization delivery and education and training to personnel involved in immunization healthcare. The goals of these standards are to promote clinical excellence and decrease practice variability.

(b) Assess the DOD Immunization Program by developing metrics to measure individual medical readiness, vaccine effectiveness and safety, and compliance with overall immunization policies.

(c) Regularly update the Joint Regulation on Immunization and Chemoprophylaxis for the Prevention of Infectious Diseases.

(8) Promote scholarly immunization study activities through the Army's Medical Infectious Disease Research Program using funds both from the Defense Health Program and the Research, Development, Test, and Evaluation.

*e. Each of the Military Services.* Each of the Military Services will provide an immunization health care capability to deliver medical specialty consultation, case management, and clinical investigation. The U.S. Navy provides medical services for the U.S. Marine Corps.

## Chapter 2 Program Elements and Clinical Considerations

### 2-1. Standards

*a. Department of Defense and U.S. Coast Guard policy.* The Military Service policy concerning immunizations follows the recommendations of the CDC and the Advisory Committee on Immunization Practices (ACIP) and the prescribing information on the manufacturer's package inserts, unless there is a military-relevant reason to do otherwise. Any vaccine or drug licensed by the U.S. Food and Drug Administration (FDA) or the U.S. Department of Health and Human Services (DHHS) may be used, as well as vaccines or drugs compliant with applicable DOD investigational new drug (IND) or emergency use authorization (EUA) processes. Privileged health care providers may make clinical decisions for individual beneficiaries to customize medical care or to respond to an individual clinical situation that is compliant with IND or EUA processes.

*b. Standards for delivery of military vaccines.* Standards for delivery of military vaccines are provided in appendix B. Military Services will abide by these standards in routine immunization delivery.

*c. Expiration date.* Vaccines or drugs will not be used beyond the manufacturer's potency expiration date, unless the appropriate surgeon general or USCG, CG-11, authorizes extension in exceptional circumstances.

*d. Screening for contraindications.* Screen all potential vaccines for contraindications, precautions, or warnings per the prescribing information on the manufacturer's package insert.

*e. Immunization schedules and intervals.*

(1) *Initial series.* Once an immunization series has been started, it must be completed, unless a medical or administrative exemption exists. Restarting an immunization series or adding extra doses is not necessary when an initial series of a vaccine or toxoid is interrupted; instead, give delayed doses as soon as feasible.

(2) *Doses.* Vaccine doses in an initial series will not be administered at intervals less than the recommended minimum intervals or earlier than the minimum age unless the doses are part of a CDC catch-up schedule or during an

outbreak. Doses in an initial series administered 5 or more days earlier than the minimum interval should not be counted as valid doses. The next valid dose is calculated after the last invalid dose.

(3) *Booster doses.* After the initial series of a vaccine is complete, a booster dose may be recommended for specific vaccines. For vaccines that do not provide lifetime immunity, the booster dose is usually recommended or required to increase immunity back to protective levels.

*f. Simultaneous immunizations.*

(1) When simultaneous vaccine injections are necessary, administer vaccines in different limbs. The anatomical site may depend on the age of the individual, and the degree of muscle development. If different anatomical sites are not possible, then separate the injections by at least 1 inch. Refer to the ACIP General Recommendations on Immunizations for proper needle lengths.

(2) Priority of immunization is based on the relative likelihood of various microbial threats and the existence of any vaccine-vaccine, vaccine-antibody, or vaccine-drug interactions and is best performed by the health care provider. In military training centers, contagious diseases typically represent the most imminent threats.

(3) Spacing of live and inactivated vaccines.

(a) Two or more inactivated vaccines can be administered simultaneously or at the prescribed interval and restrictions indicated in the package insert for each vaccine.

(b) Inactivated and live vaccines can be administered simultaneously or at the prescribed interval and restrictions indicated in the package insert for each vaccine.

(c) Two or more live virus vaccines must be administered simultaneously or separated by at least 28 days (4 weeks). Refer to ACIP guidelines for exceptions.

*g. Screening for immunity.* For some vaccine-preventable diseases, serologic or other tests can be used to identify pre-existing immunity from prior infections or immunizations that may eliminate unnecessary immunizations.

*h. Live virus vaccines and tuberculosis testing.* Vaccinations with live vaccines may affect tuberculosis (TB) testing. This includes both the Mantoux tuberculin skin test and the Interferon-Gamma Release Assays test whole-blood test. To avoid interference:

(1) Administer live virus vaccines and TB test on the same day.

(2) Perform TB test 4 to 6 weeks after administration of live virus vaccines, or

(3) Administer live virus vaccines, once the TB test is read.

## 2–2. Logistics

*a. Requisitioning of immunizing and chemoprophylaxis agents.* Immunizing and chemoprophylaxis agents are requisitioned in accordance with medical supply procedures. However, vaccinia immune globulin—also known as VIG-intravenous—is available only by ordering through the MILVAX Office.

*b. Transportation, storage, and handling.* All personnel will maintain the cold chain in vaccine delivery during transportation, storage, and handling. Shipping and storage advice is available from Services medical logistics centers.

*c. Small stations, ships, and cutters.* To minimize the shipment of vaccines that must be stored at frozen temperatures, small stations, ships, and cutters may requisition these items from a nearby military medical activity stocking the items. Requisitioning procedures and reimbursement are prescribed by the supplying activity.

## 2–3. Storage and handling

*a. Safety and efficacy of vaccines.* Failure to adhere to recommended specifications for storage and handling of vaccines may reduce potency, resulting in inadequate immune responses in the recipients and inadequate protection against disease. To maintain the safety and efficacy of vaccines, ensure immunizing and chemoprophylaxis agents are stored, shipped, and handled in accordance with the pharmaceutical manufacturer's instructions as outlined in the product package insert or other guidance.

*b. Policies for maintaining vaccines.* All locations that maintain and administer vaccines will develop and implement policies and procedures for maintaining cold chain management of vaccines.

*c. Shelf-life after opening.*

(1) Administer vaccines shortly after withdrawal from single-dose or multi-dose vials, in accordance with the manufacturer's package insert.

(2) Single dose vials are meant for one-time use only. At the end of the clinic day, discard all single-dose vials without protective caps.

(3) For multi-dose vaccine vials that do not require reconstitution, doses that remain after withdrawal of a dose can be administered until the expiration date printed on the vial or vaccine packaging, so long as the vial has been stored correctly and the vaccine is not visibly contaminated and the manufacturer has not specified otherwise.

(4) Multi-dose vials that require reconstitution must be used within the interval specified by the manufacturer. After reconstitution, the new expiration date should be written on the vial.

*d. Diluents.*

(1) Diluents are not interchangeable, unless specified by the manufacturer.

- (2) Transport diluents at room temperature in validated containers, but not in direct contact with shipping gel packs.
- (3) Store diluents according to the manufacturer's package insert.
- (4) Discard diluents when stored inappropriately or expired.

*e. Filling syringes and attaching needles.*

(1) Never mix individual vaccines in the same syringe. Different vaccines should never be mixed in the same syringe unless specifically licensed for such use. Do not transfer vaccine between syringes.

(2) Use a separate needle and syringe for each injection.

(3) Label filled syringes with the type of vaccine, lot number, and date of filling, unless the vaccine is administered immediately after being drawn into the syringe by the same person administering the vaccine.

(4) Attach needles to manufactured filled syringes just prior to administration. Discard needle and syringe if the vaccine is not administered before the end of the clinic day or vaccination session in accordance with the manufacturer's package insert. If no time line is provided, discard after 8 hours.

*f. Prefilling syringes.*

(1) Prefilling syringes is highly discouraged because of the increased risk of administration errors and possible bacterial growth in vaccines that do not contain preservatives. Syringes other than those filled by the manufacturer are designed for immediate use and not for vaccine storage.

(2) In certain circumstances in which a single vaccine type is being used, such as during an influenza vaccination campaign, filling a small number of syringes may be considered.

(3) Discard unused syringes filled by the end user (that is, not filled by the manufacturer) in accordance with the manufacturer's package insert. If no time line is provided, discard after 8 hours.

*g. Storing vaccine.*

(1) Ensure that only vaccines are stored in the vaccine storage unit (refrigerator or freezer).

(2) Store refrigerated vaccines at temperatures of 35°F to 46°F (2°C to 8°C). Do not expose refrigerated vaccines to freezing temperatures.

(3) Store frozen vaccines at temperatures of 5°F (-15°C) or lower.

(4) Store all reconstituted lyophilized (freeze-dried) vaccines in accordance with the manufacturer's temperature and light condition parameters.

*h. Vaccine storage equipment.* Ensure that vaccine storage units are carefully selected, used properly, and consistently monitored to maintain recommended vaccine storage temperatures.

(1) Stand-alone refrigerators and freezers are recommended for storage of vaccines. A combination refrigerator/frost-free freezer for home use is acceptable if only the refrigerator compartment of the combination unit is used to store refrigerated vaccines. A separate stand-alone freezer should then be used to store frozen vaccine. Dormitory style refrigerators are not authorized for vaccine storage.

(2) Use certified and calibrated thermometers in all vaccine storage units. Uncertified liquid (mercury or alcohol) thermometers and uncertified dial-type household refrigerator/freezer thermometers are not authorized.

(3) Ensure alarm systems are incorporated as part of the vaccine storage unit to alert staff of power failures or indicate whether or not vaccine temperatures have been maintained.

*i. Temperature tracking.*

(1) Ensure temperatures are documented for each vaccine storage unit. Physically confirm the temperature of all vaccine refrigerators and freezers at a minimum of two times per day. Document the date, time, and temperature of the vaccine storage unit on a temperature log. Vaccine outside of a refrigerator or freezer must have the temperature checked and documented every hour.

(2) Keep temperature logs for at least 3 years. State and/or local requirements may require longer recordkeeping.

(3) Record date and time of any mechanical malfunction or power outage on the temperature log or on another equipment-tracking document.

*j. Vaccine storage alarms.*

(1) Ensure alarm systems are capable of monitoring vaccine storage 24 hours a day, 7 days per week. Ensure the system either notifies an accountable person when a failure is detected, or the system is capable of indicating that the vaccine temperature integrity was maintained during the storage period (or notes any deviations).

(2) Ensure current personnel contact information exists on auto-dialers, and that appropriate coverage occurs during periods of leave, holiday weekends, and so forth.

(3) Monitor alarms electronically and physically 24 hours a day, 7 days per week.

(4) Test the entire alarm system, to include refrigerator-freezer-unit sensor to the remote monitoring station and telephone or pager, at least monthly. Maintain test records for at least 3 years.

(5) For vaccine storage units within restricted access areas, ensure the temperature can be checked and a light or audible alarm is installed to indicate when the storage unit temperature is out of range without having to physically enter the restricted area.

*k. Transporting vaccines.*

- (1) Always transport vaccines in properly insulated containers to maintain the recommended temperatures.
- (2) Ensure containers used for transporting vaccines are capable of maintaining the vaccine at the correct temperatures. Validated storage devices include the Vaxicool, Vaxipac, manufacturer shipping containers, Styrofoam(tm) coolers with at least 2-inch thick walls, or Endurotherm insulating shipping containers.
- (3) Pack containers to appropriately maintain the proper temperature while vaccine is transported or shipped. Refrigerated or frozen packs are authorized for use to maintain the cold chain when used according to the U.S. Army Medical and Materiel Agency (USAMMA) Distribution Operations Center instructions.
- (4) Include calibrated thermometers to track temperatures in all transportation and off-site storage containers.
- (5) Pack vaccines in their original packaging. Do not remove vaccine vials from boxes.
- (6) Document vaccine type, quantity, date, time, and originating facility on the outside of the transportation containers.
- (7) Ensure temperatures are tracked during transportation and any deviations in temperature are readily identifiable.
  1. *Vaccine disposal or disposition.*
    - (1) Discard syringes or vials that contain live virus vaccines per installation policy.
    - (2) Contact the pharmacy or logistics office for specific policies regarding the disposition of unopened vials, expired vials, unused doses, and potentially compromised vaccine.
    - (3) Label potentially compromised vaccines with the words “Do not use” and place in the refrigerator or freezer based on the manufacturer’s instructions as if they were not compromised. Report all compromised anthrax, smallpox, and influenza vaccines to USAMMA for validation before destruction. Contact the manufacturer for all other potentially compromised vaccines for disposition or destruction instructions.
    - (4) Report all confirmed compromised vaccine losses through Service-specific channels to the Military Vaccine Office. The report must include the following: description of the reason for the loss, vaccines compromised, total vials/doses lost, and cost of lost or compromised vaccines.

#### **2-4. Hypersensitivity or allergy**

- a. Before administration of any medication, including vaccines, determine if the individual has previously shown any unusual degree of adverse reaction or allergy to it or any specific component of the vaccine or its packaging (for example, eggs, gelatin, preservatives, latex). Review the manufacturers’ package inserts and reference materials for product-specific information.
- b. Defer individuals with reported hypersensitivity to a particular vaccine or its components from immunization.
- c. Refer individuals with a hypersensitivity to an appropriate medical specialist for evaluation, unless the health record contains documentation of a prior consultation or a specialist’s recommendations. Document hypersensitivity and any recommended exemption(s) in the electronic ITS and the appropriate sections of the health record.

#### **2-5. Immunizing women of childbearing potential**

A pregnancy screening test for women of childbearing potential is not routinely required before administering vaccines, including live virus vaccines. Take the following precautions to avoid unintentional immunization with contraindicated products during pregnancy—

- a. Display signs asking pregnant women to identify themselves. Discreetly ask her if she is, or might be, pregnant. Document responses in the health record. If the answer is “yes,” and the ACIP does not recommend the vaccine for use in pregnancy, then defer her from immunization or refer to an obstetric healthcare provider to determine whether the benefits of immunization outweigh risks in pregnancy. If the vaccine is recommend for use in pregnancy by ACIP, the vaccine may be administered. If pregnancy status is uncertain, defer immunization until after a negative pregnancy evaluation (for example, urine, or serologic test).
- b. With regard to smallpox (vaccinia) vaccine, a specific pre-immunization screening form (available at <http://www.smallpox.mil/resource/forms.asp>) that assesses the date of the last menstrual period is required. For women whose last menstrual period was more than 28 days ago, a pregnancy test is recommended.
- c. Breastfeeding women may be immunized in accordance with the current ACIP guidelines. At present, no immunization products are medically contraindicated in breastfeeding women. Smallpox vaccine is withheld from breastfeeding women, except in an outbreak, primarily due to the potential for contact transmission of vaccinia virus to the child.
- d. If a live virus vaccine is administered, counsel her to avoid becoming pregnant for the appropriate interval as recommended by CDC or the vaccine manufacturer. Document the counseling in the health record.
- e. If she is pregnant and immunization is indicated, immunize in consultation with her obstetric health care provider.
- f. If a contraindicated vaccine is inadvertently administered to a pregnant woman, report the event upon discovery to the preventive medicine point of contact and obstetric services and complete appropriate quality assurance documents. Report such cases to any applicable registry. For assistance with registry referral procedures, contact the preventive medicine service or MILVAX.

## 2-6. Exemptions

There are two types of exemptions from immunization—medical and administrative. Granting medical exemptions is a medical function. Granting administrative exemptions is a nonmedical function.

*a. Medical exemptions.* A medical exemption includes any medical contraindication relevant to a specific vaccine or other medication. Health care providers will determine a medical exemption based on the health of the vaccine candidate and the nature of the immunization under consideration. Medical exemptions may be temporary (up to 365 days) or permanent. Standard exemption codes appear in appendix C.

(1) General examples of medical exemptions include the following—

(a) Underlying health condition of the vaccine candidate (for example, based on immune competence, pharmacologic or radiation therapy, pregnancy and/or previous adverse response to immunization).

(b) Evidence of immunity based on serologic tests, documented infection, or similar circumstances.

(c) An individual's clinical case is not readily definable. In such cases, consult appropriate medical specialists, including specialists in immunization health care.

(2) Providers who are assessing medical exemptions may seek a second opinion from a provider experienced in vaccine adverse event management, such as specialists in immunization health care at a medical center, or seek additional consultation from MILVAX.

(3) Annotate electronic ITS and paper-based service treatment records with exemption codes denoting evidence of immunity, severe adverse event after immunization (except for the Medical Readiness Reporting System), other temporary or permanent reasons for medical exemption, and other appropriate categories.

(4) Report cases warranting permanent medical exemptions due to a vaccine related adverse event to the Vaccine Adverse Events Reporting System (VAERS) at the Web site at <http://www.vaers.hhs.gov> and as discussed in paragraph 2-10.

(5) Revoke medical exemptions when they are no longer clinically warranted.

*b. Administrative exemptions.* Standard exemption codes appear in appendix C.

(1) *Separation or retirement.* Within 180 days before separation or retirement, Service personnel may be exempt from deployment (mobility) immunizations, if one of the following conditions are met:

(a) They are not currently assigned, deployed, or scheduled to perform duties in a geographical area where an immunization is indicated.

(b) The commander has not directed immunization because of overriding mission requirements. Personnel who meet separation or retirement requirements and desire an immunization exemption must identify themselves to their commander. The member must have approved retirement or separation orders. Active duty personnel continuing duty in the reserve component are not exempted on this basis.

(2) *Thirty days or fewer of service remaining.* Applies to civilian employees and contractor personnel who will leave a permanent (other than OCONUS deployments) assignment subject to immunization within 30 days or fewer.

(3) Religious exemptions.

(a) *Servicemembers.* Immunization exemptions for religious reasons may be granted according to Service-specific policies to accommodate religious beliefs of a Service member. This is a command decision made with medical, judge advocate, and chaplain input.

1. Requests for religious exemption must comply with the provisions of the applicable policy and/or regulation for the Servicemember requesting religious accommodation. For the Army, religious accommodation policy is provided in AR 600-20. For the Navy and Marine Corps, waivers are granted on a case-by-case basis by the Chief, Bureau of Medicine, and Surgery. For the Air Force, permanent exemptions for religious reasons are not granted; the MAJCOM commander is the designated approval and revocation authority for temporary immunization exemptions. For the Coast Guard, CG-122 is the designated approval and revocation authority for religious immunization exemptions. USCG requests must be forwarded through the appropriate chain to Commandant CG-122 via CG-112.

2. A military physician must counsel the applicant. The physician should ensure that the Servicemember is making an informed decision and should address, at a minimum, specific information about the diseases concerned; specific vaccine information including product constituents, benefits, and risks; and potential risks of infection incurred by unimmunized individuals.

3. The commander must counsel the individual that noncompliance with immunization requirements may adversely impact deployability, assignment, or international travel.

4. Per DODI 1300.17 and applicable service regulations will be provided whether Servicemembers with pending active requests for religious exemption are temporarily deferred from immunizations, pending outcome of their request.

5. Religious exemptions may be revoked, in accordance with Service-specific policies and procedures, if the individual and/or unit are at imminent risk of exposure to a disease for which an immunization is available.

(b) *Civilian employees.* Civilian employees submit requests for immunization exemption for religious reasons to their supervisors. Civilian requests are processed in accordance with Part 1605, Title 29, Code of Federal Regulations and component policies.

(c) *Bargaining units.* Civilian personnel affected by this document who are members of bargaining units will be

considered for exemption consistent with applicable personnel management policies and applicable labor relations obligations.

(d) *Other exemption categories.* Administrative or medical personnel will appropriately annotate electronic ITS with exemption codes denoting separation, permanent change of station, emergency leave, missing or prisoner of war, deceased, and other appropriate categories.

## 2-7. Immunization and chemoprophylaxis records

### a. *Electronic immunization tracking systems.*

(1) Document all immunizations in a DOD and USCG-approved ITS. Include date, immunization given, dose, anatomical location of administration, lot number, manufacturer, Vaccine Information Sheet (VIS) date, and the identification of the person administering the vaccine.

(2) Electronic ITS must—

(a) Comply with the requirements of the National Vaccine Injury Compensation (NVIC) Program as provided in 42 USC 300aa-25, Report and Recording of Information, and 42 USC 300aa-26. NVIC information is outlined in paragraph 2-7d.

(b) Incorporate DOD-directed levels of security, certification, and redundancy, and the requirements of the Health Insurance Portability and Accountability Act to preclude unauthorized access to personal medical information and to survive hardware or software malfunction.

(c) Be capable of generating printed reports of immunization status and exemption information on both an individual and unit basis.

(3) A printed report from the electronic ITS, in CDC Form 731 (International Certificate of Vaccination or Prophylaxis) 731, SF 601 (Health Record-Immunization Record), or DD Form 2766C (Adult Preventive and Chronic Care Flowsheet) (Continuation Sheet) format, accompanied by an official clinic stamp and the authorized signature and printed name of an authenticating official, will qualify as an official paper immunization record.

(4) A printed report as identified in preceding paragraph 2-7a(3) will suffice as a valid certificate of vaccination for international travel (except for yellow fever which is documented on the CDC Form 731) for active duty members of the Armed Forces as outlined in Article 36 (Annex 6) of the World Health Organization (WHO) International Health Regulations.

### b. *Non-electronic immunization and chemoprophylaxis records.*

(1) *Deployment records.* Transfer information regarding immunizations and chemoprophylaxis including date, product given, dose, and initials of person administering to the deployable health record (DD Form 2766) or comparable approved form, either by computer-generated report or by hand. Upon return from deployment, transfer entries on the deployment record into the appropriate ITS or other electronic record system.

(2) *Abbreviations.* Use abbreviations for vaccines and their manufacturers conforming to the nomenclature adopted by the CDC Vaccine Identification Standards Initiative. When annotating the date a vaccine is administered, the day, month, and year are listed in that order. The day is expressed in Arabic numerals, the month spelled out or abbreviated using the first three letters of the word, and the year expressed in Arabic numerals either by four digits or by the last two digits (for example, 14 June 1994 or 14 Jun 94).

(3) *Transcribed records.* Entries based on prior official records will include the following statement: “Transcribed from official records.” Alternately, the statement may cite the specific source (for example, “Transcribed from SF 601”). When entries are transcribed onto paper records, include the initials of the transcriber on each entry.

(4) *SF 601 (Navy, Marine Corps, and U.S. Coast Guard).* Prepare SF 601 in accordance with this directive and chapter 16 of NAVMED P-117.

(5) *DD Form 2766C.* Initiate DD Form 2766C for all personnel at the time of entry into Military Service.

(6) *Paper-based immunization and chemoprophylaxis records.* Individuals preparing paper-based immunization and chemoprophylaxis records will ensure that paper records match the electronic ITS. If paper-based immunization or chemoprophylaxis records are used, electronic ITS will be updated within 24 hours.

(7) *CDC Form 731.* Required for yellow fever documentation and or prepared upon request for each member of the Armed Forces and for nonmilitary personnel receiving immunizations, including date, immunization given, dose, and the initials of the person administering the vaccine. The form contains valid certificates of immunization for international travel and quarantine purposes in accordance with WHO international health regulations. CDC Form 731 remains in the custody of the individual who is responsible for its safekeeping and for keeping it in his or her possession when traveling internationally. Data are entered by hand, rubber stamp, or by typewriter.

(a) *Supply.* CDC Form 731 is obtained through normal publication supply channels.

(b) *Stamps.* Use in accordance with instructions received from the Division of Global Migration and Quarantine; the appropriate surgeon general; Chief, Bureau of Medicine and Surgery; or CG-11.

1. *Army.* USAHRC (AHRC-PDR), 1600 Spear Head Division Avenue, Fort Knox, KY 40122.

2. *Navy.* Bureau of Medicine and Surgery (BUMED), Washington, DC 20372.

3. *Air Force.* HQ AFPC/DPMDB, Randolph AFB, TX 78148.

4. *Marine Corps*. Headquarters, U.S. Marine Corps, Washington, DC 20380.

5. *Coast Guard*. Commandant, CG-11, USCG Headquarters, 2100 Second Street SW, Washington, DC 20593-0001.

(c) *Written signatures*. Written signatures must appear in appropriate spaces on each certificate; signature stamps are not valid.

c. *Lost immunization records*. If an individual's immunization records are lost, assume the individual received standard immunizations administered at entry into Military Service by the individual's accession source (for example, enlisted, Service academy, direct commission) unless there is an objective reason to believe otherwise. Do not repeat such immunizations. Base decisions for future immunizations on assumed date of last immunization (for example, individual assumed to have received tetanus-diphtheria toxoid in July 1995 would next be immunized in July 2005).

d. *National Vaccine Injury Compensation Program*.

(1) The statute 42 USC 300aa-1 to 300aa-34 (The National Childhood Vaccine Injury Act of 1986) and other regulations set standards for certain immunizations. These requirements apply to U.S. vaccines as indicated by the CDC after the DHHS Secretary publishes a notice of coverage. Document the patient's name; identifying number (for example, sponsor's SSN); type of vaccine; date of administration; manufacturer; lot number; and the name, address, and title of person administering the vaccine in a permanent health record or permanent office log or file, in either paper or electronic format. The electronic immunization tracking systems are the primary method of immunization documentation. Other records and management reports may be generated from the electronic immunization database, as described above.

(2) Personnel who administer any vaccine covered under the NVIC program, to either children or adults, will provide a written copy of the VIS to the vaccinee and allow sufficient opportunity to read the most recent VISs provided by the DHHS and an opportunity to ask questions about the vaccine. Copies of VISs are available through the CDC Web site (<http://www.cdc.gov/vaccines>). The VIS should be supplemented with an oral explanation or video presentation, or in the appropriate language, when the patient or guardian does not appear to be literate in English. Provide printed copies to any individual who requests one. Translations of VISs into languages other than English are available from nongovernmental organizations.

(3) Personnel who administer vaccines are not required to obtain the signature of the military member, patient, or legal representative acknowledging receipt of a VIS. However, to create a record that the materials were provided, health care personnel who administer vaccines will annotate each patient's health record that the VISs were provided at the time of immunization.

(4) The statute 42 USC 300aa-1 to 300aa-34 (The National Childhood Vaccine Injury Act of 1986), requires that the following events be reported to VAERS, a public health activity administered by the FDA and CDC:

(a) Any event listed in the NVIC program's vaccine injury table (at <http://www.hrsa.gov/vaccinecompensation/table.htm>) occurring within the time period specified.

(b) Any contraindicating event listed in a vaccine's package insert (product labeling).

(5) The VAERS accepts all reports by any interested party of real or suspected adverse events occurring after the administration of any vaccine.

(6) All DOD and USCG health care beneficiaries are eligible to file claims with the NVIC program, according to the program's procedures.

## 2-8. Jet-injection immunization devices

These devices must be used in accordance with FDA-approved manufacturer's recommendations. Only vaccines with FDA approval for jet injectors use may be used in these devices.

## 2-9. Emergency response requirements

a. *Written plan*. Clinics or activities administering immunizations will develop and maintain a written plan for emergency response, including standing orders for the management of anaphylaxis and fainting.

b. *Training*. Whenever vaccines are administered, at least one person present must be trained and current in basic cardiopulmonary resuscitation, oropharyngeal airway management, and recognition and initial treatment of anaphylaxis with epinephrine.

c. *Anaphylaxis management*. For the medical management of an anaphylaxis event whenever vaccines are administered, the following must be immediately accessible on scene: stethoscope, blood pressure cuff (sphygmomanometer), minimum of three adult doses of epinephrine (1:1000), oral airway, bag valve mask or equipment to administer oxygen by positive pressure, and the equipment and ability to activate an emergency medical system. Other equipment and/or medications (for example, injectable antihistamines, corticosteroids, vasopressors, glucagon, albuterol, and IV fluids with administration sets), depending on the clinical setting and local policy, may be included beyond the minimum requirements listed above.

d. *Observation*. The ACIP general recommendations suggest that persons be observed for 15 to 20 minutes after

being immunized. Manufacturer's guidance must be followed when the manufacturer's package insert exceeds this requirement.

## 2-10. Adverse events

*a.* Describe in the individual's health record a detailed account of adverse events after administering immunizing agents or other medications. Mandatory information consists of identification, lot number, and manufacturer of the vaccine or other medication; date of administration; name and location of the medical facility; the type and severity of the event; treatment provided; and any exemption from additional doses. Consultation through MILVAX's Vaccine Healthcare Centers network is available 24 hours a day, 7 days a week, for providers who require additional support for clinical evaluation of possible vaccine adverse events.

*b.* Health care providers will report adverse events involving vaccines via the VAERS Web site <http://www.vaers.hhs.gov> or by faxing or mailing a VAERS-1 form. Obtain VAERS forms and information by calling 1-800-822-7967 or by accessing the VAERS Web site.

*c.* Health care providers will report adverse events involving chemoprophylaxis agents to MedWatch via the Web site at <http://www.fda.gov/Safety/MedWatch/default.htm> or on FDA Form 3500. MedWatch forms and information are available by calling 1-888-463-6332 or on the MedWatch Web site.

*d.* Reporting requirements are as follows:

(1) Report adverse events resulting in hospitalization, a life-threatening event (for example, anaphylaxis), time lost from duty more than one duty shift, or an event related to suspected contamination of a vaccine vial. Reports are also required for all events listed on the VAERS Table of Reportable Events Following Vaccination (available at <http://vaers.hhs.gov/resources/vaersmaterialspublications>).

(2) Further, health care providers are encouraged to report other adverse events considered unexpected in nature or severity.

(3) Reports of mild expected reactions are not required (for example, low-grade, self-limited fever of less than 24 hours duration, temporary local soreness, redness, or minor swelling at the site of immunization), but such reports may be submitted if the clinician or patient wishes.

*e.* Patients may also submit a VAERS or MedWatch report directly. If a patient wishes to submit a VAERS report, health care personnel will assist the patient in completing the form, regardless of professional judgment about causal association to immunization.

*f.* Record pertinent information from the recipient's health record on the VAERS or MedWatch report. Submit copies of the report within 7 days of adverse event recognition as follows:

(1) Send the original report form to the VAERS or MedWatch office.

(2) File a copy of the VAERS or MedWatch report in the patient's individual health record or annotate the relevant information on the report within the health record.

*g.* Immediately notify USAMMA or the vaccine manufacturer if contamination or other serious problem with a vaccine vial or lot is suspected. Suspend usage, but quarantine and retain all such opened or unopened vials or lots under appropriate storage conditions pending further investigation and disposition instructions.

*h.* An adverse reaction to a DOD-directed immunization in Service personnel is a line-of-duty condition.

(1) Medical treatment facility (MTF) commanders will provide full access to reserve component (National Guard and Reserve) members for evaluation and treatment of adverse events potentially related to DOD-directed immunizations.

(2) Reserve component (National Guard and Reserve) unit commanders will inform their members that they may seek medical care for such adverse events, with the unit providing assistance and information related to pay status and compensation issues. Any necessary documentation, including line-of-duty determinations, will be completed after the Reserve component Servicemember is evaluated and, if required, treated. In no case will such evaluation or treatment be denied or delayed pending line-of-duty determination. If additional health care is required after the initial visit and a line-of-duty determination has established a Service connection, a notice of eligibility must be completed in accordance with DODD 1241.01.

(3) DOD will provide an immunization health care capability to deliver medical specialty consultation, case management, and clinical investigation.

## 2-11. Program evaluation

MTF facilities and commands storing service treatment records will review immunization and chemoprophylaxis practices at least annually to ensure compliance with current standards of care and documentation and as a measure of medical readiness and health promotion. Program evaluation includes internal and external assessments of the standards for military immunization (see app B). Program evaluation is focused at the clinic level, regardless of Service, to include both fixed facilities and field units. The Continuous Quality Immunization Improvement Process Tool is one of several tools available to assist with program evaluation and is described at <http://www.vaccines.mil/cqiip>. MILVAX

can assist with guidance and implementation of the Continuous Quality Immunization Improvement Process Tool. Other tools may be available depending on the Service.

## 2–12. Blood donation

For timing of immunization with regard to blood donations, clinicians will consider the policies of the Armed Services Blood Program Office (<http://www.militaryblood.DOD.mil>) and the specific Service Blood Program Offices. In some situations, such as accession sites where blood donations are scheduled, regularly coordinate the administration of live vaccine immunizations after scheduled blood donation activities, when possible.

## Chapter 3 Personnel Subject to Immunization

### 3–1. Military accessions

*a. Military accessions.* Accessions include Service personnel in enlisted initial entry training, Reserve Officers Training Corps (ROTC), Officer Candidate School, academy preparatory school, Service academy, Officer Indoctrination School, other officer accession programs, and officers who are directly commissioned.

(1) When determining the immunization needs of accessions, give credit for immunizations appropriately documented earlier in life (for example, data from electronic immunization registries maintained by State health departments).

(2) Immunize if the primary series is incomplete, if a booster immunization is needed, or if the Service personnel has no serologic or documented evidence of immunity. Complete multiple-dose immunization series according to the recommended schedule as soon as possible.

(3) Before immunizing, conduct serologic testing where available. At a minimum, conduct serologic testing for antibodies for measles, rubella, hepatitis A, hepatitis B, and varicella. Document medical exemptions for immunity (MI) in Service ITS. Documented medical exemptions for immunity will be accepted as evidence of immunity in lieu of vaccination.

(4) Except in an outbreak setting or for individual clinical purposes, immunization records will not be screened after completion of initial training with regard to measles, mumps, and rubella (MMR), poliovirus, or varicella vaccines.

(5) Document immunizations and immunization exemption codes (medical or administrative) in a DOD-approved Service ITS.

*b. Enlisted accessions.* Enlisted accessions may be scheduled for immunizations in two or more clusters, as long as all appropriate immunizations are administered or seroimmunity is determined. Pregnancy screening or testing for female accessions must be verified prior to administration of any live virus vaccines.

(1) *First cluster.* The first cluster of immunizations is administered, if susceptible, before or at the beginning of collective training (initial entry training, basic military training) to protect against pathogens that represent an imminent risk of contagious disease in settings of close contact: adenovirus; influenza; meningococcal; MMR; tetanus-diphtheria-pertussis; and varicella. Pneumococcal vaccine may be administered if warranted epidemiologically. Ensure live virus vaccines are given on the same day or at least 28 days apart (see ACIP guidelines for exceptions).

(2) *Second cluster.* The second cluster of immunizations may be administered, if susceptible, in the first or second half of basic military training, during advanced individual training, or upon arriving at the first duty station to protect against travel and other military risks. These immunizations include hepatitis A, hepatitis B, influenza (if not administered in first cluster), and poliovirus. Live virus immunizations follow at least 28 days after earlier live virus immunizations (see ACIP guidelines for exceptions).

*c. Reserve Officers' Training Corps cadets and midshipmen.* ROTC cadets and midshipmen and similar officer candidates who are ordered or called to active duty or active duty for training will require immunizations. Cadets and midshipmen may be scheduled for immunizations in two or more clusters:

(1) *First cluster.* Assess immunization or immunity status and administer immunizations, if susceptible, before or at the beginning of collective training to protect against pathogens that represent an imminent risk of contagious disease in settings of close contact. These immunizations include: influenza; meningococcal; MMR; tetanus-diphtheria-pertussis; and varicella. Ensure live virus vaccines are given on the same day or at least 28 days apart (see ACIP guidelines for exceptions).

(2) *Second cluster.* The second cluster of immunizations may be administered, if susceptible, in the first or second half of collective training to protect against travel and other military risks. These immunizations include hepatitis A, hepatitis B, influenza (if not administered in first cluster), and poliovirus. Live virus immunizations follow at least 28 days after earlier live virus immunizations (see ACIP guidelines for exceptions). ROTC cadets or midshipmen who travel overseas as part of their training will receive immunizations according to geographic risk assessments.

*d. Service academy cadets and midshipmen.* Service academy cadets and midshipmen will require immunizations as follows:

(1) *First cluster.* Assess immunization or immunity status and administer immunizations, if susceptible, before or at the beginning of collective training to protect against pathogens that represent an imminent risk of contagious disease in settings of close contact. These immunizations include: influenza, meningococcal, MMR, tetanus-diphtheria-pertussis, and varicella. Ensure live virus vaccines are given on the same day or at least 28 days apart (see ACIP guidelines for exceptions).

(2) *Second cluster.* The second cluster of immunizations may be administered, if susceptible, in the first or second half of collective training to protect against travel and other military risks. These immunizations include hepatitis A, hepatitis B, influenza (if not administered in first cluster), and poliovirus. Live virus immunizations follow at least 28 days after earlier live virus immunizations (see ACIP guidelines for exceptions). Cadets and midshipmen who travel overseas as part of their training will receive immunizations according to geographic risk assessments.

*e. Entry-level officers.* Upon accession, screen commissioned and warrant officers for immunization or immunity status and vaccinate as required.

### **3-2. Military personnel**

*a. Active duty personnel.* Immunize active duty personnel in accordance with appendix D or as supplemented in official notices posted at the Military Vaccine Office Web site, <http://www.vaccines.mil>. During Military Service, active duty personnel will receive or be up-to-date on adult routine immunizations.

*b. Reserve component (National Guard and Reserve).* Immunize Reserve component Servicemembers in accordance with appendix D or as supplemented in Service-specific policies and notices posted at <http://www.vaccines.mil>. Reserve component Servicemembers receive the same immunizations as active duty personnel, but must be in a duty status to receive required immunizations.

*c. Aviation personnel.* Typically, aviation personnel are grounded for 12 hours (Air Force: access to medical care 4 hours post vaccination unless operational needs dictate otherwise; Navy: refer to “Aeromedical Reference and Waiver Guide” (ARWG) for vaccine specific information) after immunization, or as specified by their flight surgeon. No formal grounding documents are required for uncomplicated immunization. Personnel who previously experienced urticaria, hypersensitivity phenomena, or other unusual phenomena after an immunization are restricted from flying duty for an appropriate interval (for example, 72 hours) as determined by the flight surgeon. Additional temporary grounding may be necessary until significant side effects resolve.

*d. Occupational risk.* Military members at occupational risk for specific disease threats will receive appropriate vaccines per appendix D or as supplemented in Service-specific policies posted at <http://www.vaccines.mil>. Immunize special populations at occupational risk for vaccine-preventable diseases not listed in appendix D per Service, Federal, State, or local occupational medicine guidance.

*e. Geographic travel requirements.*

(1) Each Service’s preventive medicine authority maintains current health threat assessments based on disease prevalence in specific geographical regions using Federal, DOD, USCG, and other relevant sources of information. These assessments are disseminated to units within their respective jurisdictions. Special Operations may determine additional area-specific immunization requirements.

(2) Installations and deployed units report disease occurrence through appropriate unit and/or medical lines of communication.

(3) Combatant commanders, in coordination with the appropriate surgeons general or CG-11, establish specific immunization requirements based on a disease threat assessment. These requirements may differ from standard Service immunization policies for personnel entering their area of responsibility to participate in exercises or other operational missions. Immunize personnel on official deployment or travel orders in accordance with the specific guidance established by the combatant commander before departure.

(4) For short notice travel or deployments requiring vaccines given in a multi-dose series, administer the first dose of the basic series. Administer as many of the subsequent doses as time permits. Completion before departure is the goal. If the series cannot be completed before departure, complete it upon arrival. Inform the patient that in order to obtain optimal immunity, the series must be completed by receiving all the required doses at the recommended intervals.

(5) For quarantine, entry, and reentry requirements, follow the provisions of the CDC, Division of Global Migration and Quarantine regulations concerning entry or reentry of military and nonmilitary personnel into the United States or its commonwealths, territories, and possessions.

*f. Other uniformed Service personnel.* Members of other uniformed Services are authorized immunizations according to their occupation, official duties, travel plans, health status, or other relevant factors.

### **3-3. Certain civilian employees**

*a. Federal civilian employees.*

(1) *General.* Federal civilian employees will receive country-specific immunizations without charge at military activities upon presentation of official orders or authorization. Area preventive medicine authorities are consulted for recommendations applicable to specific areas. People declining immunizations required for entry into foreign countries

are referred to the appropriate authority for counseling. Document counseling in the health record and note that omission of certain immunizations may have consequences under host country policies, which could include compulsory immunization, detention, quarantine, or denial of entry.

(2) *Civilian employees at occupational risk for vaccine-preventable disease.* Federal civilian employees who are at risk of exposure to an infectious disease associated with their occupation may receive appropriate immunizations, without charge, at military activities. Administer immunizations upon recommendation of the responsible occupational medicine authority.

(3) *Civilian health care employees.* Susceptible or occupationally exposed health care employees (including volunteers) who are at risk of exposure to an infectious disease (for example, influenza) associated with their occupation may receive appropriate immunizations, without charge, at military activities. This policy applies to all health care settings, regardless of age or sex of the health care employee. Employees, including volunteers, who have contact with or potential exposure to human blood or blood products (whether from patient care, laboratory, or other health care settings) are provided hepatitis B virus vaccine in accordance with the local bloodborne pathogen exposure-control plan. Refer to the Occupational Safety and Health Administration standards (29 CFR 1910.1030) for additional information. Immunizations or immune status may be a condition of employment.

(4) *Employees with potential occupational exposure to wastewater or sewage.* Employees at occupational risk of exposure to wastewater or sewage will receive tetanus-diphtheria toxoids (preferably with pertussis vaccine) per ACIP recommendations. Other vaccines are not routinely required based solely on occupational exposure for wastewater treatment system workers, including sewage generated by medical facilities.

(5) *Individuals immunized per categories above.* Individuals immunized per the civilian personnel categories above are authorized treatment and necessary medical care related to adverse events after immunization, consistent with applicable occupational health program requirements.

*b. Civilian Expeditionary Workforce.* Civilian employees and others in the Civilian Expeditionary Workforce may receive, without charge, appropriate immunizations at military activities. In accordance with DODD 1404.10, components should ensure emergency-essential and non-combat essential employees are aware of potential deployment immunizations as a condition of employment. Components should also ensure the employee completes and signs a record of notification with a signed DD Form 2365 (DOD Civilian Employee Overseas Emergency-Essential Position Agreement). Applicable vacancy announcements and position descriptions will note obligations to receive immunizations. Emergency-essential and non-combat essential employees have the same access as military personnel to treatment and necessary medical care related to adverse events after immunization, consistent with applicable occupational health program requirements.

*c. Bargaining units.* For Federal employees in a bargaining unit, local management must meet applicable labor relations obligations before implementing any changes to the bargaining unit employees' conditions of employment. Civilian personnel advisory centers provide guidance on these matters.

*d. Biological warfare defense.* Immunization of civilian employees and contracted workers for biological warfare defense are addressed in DODI 6205.4.

*e. Emergency situations.* In emergency situations, the provisions of DODD 6200.03 apply.

### **3-4. Contracted workers**

*a.* Provide immunizations to contracted workers according to the terms of the contract and as stated in the contract agreement. If the contract does not provide for provision of immunizations by the government, contractors are responsible for providing appropriate immunizations to their employees. For vaccines with limited distribution (for example, anthrax, smallpox), DOD or USCG may provide the immunizations, regardless of the terms of the contract. The contractor is responsible for work-related illnesses, injuries, or disabilities under worker-compensation programs, supplemented by existing Secretarial designee authority.

*b.* Contracted health care workers are eligible for immunizations required or offered to health care employees and are provided as stated in the contract agreement. Contracts will include specifications describing immunizations required of contracted health care workers.

*c.* Family members of contracted workers in foreign-duty settings under military sponsorship will receive country-specific immunizations without charge at military activities upon presentation of official orders or authorization. People declining immunizations required for entry into foreign countries are referred to the appropriate authority for counseling. Document counseling in the health record and note that omission of certain immunizations may subject them to adverse action according to host country policies, which could include compulsory immunization, detention, quarantine, or denial of entry.

### **3-5. Department of Defense, U.S. Coast Guard schools, childcare centers and youth programs**

*a.* As a condition of employment, schoolteachers, childcare center workers, youth program workers, and volunteers are administered appropriate vaccines against communicable diseases in accordance with ACIP adult immunization schedule recommendations, unless already immune, based on seroimmunity, physician diagnosed illness, or documented proof of immunization.

*b. Children attending DOD and USCG-sponsored primary and secondary schools, childcare centers, or similar facilities are required to be up to date on all age appropriate ACIP-recommended vaccines for children unless there is documentation of previous immunization, religious exemption, or medical contraindication. For foreign-national children outside the United States, observe host country recommendations or requirements.*

### **3-6. Other populations**

*a. Department of Defense and U.S. Coast Guard beneficiaries.*

(1) *Family members of military personnel.* Family members receive immunizations according to current ACIP recommendations. In addition, Family members may be subject to Service-specific requirements and recommendations for immunizations applicable to the country in which they will reside while accompanying military members under military sponsorship.

(2) Family members or sponsored individuals of other Federal civilian employees in foreign-duty settings under military sponsorship. These Family members will receive country-specific immunizations without charge at military activities upon presentation of official orders or authorization. People declining immunizations required for entry into foreign countries are referred to the appropriate authority for counseling. Document counseling in the health record and note that omission of certain immunizations may have consequences under host country policies, which could include compulsory immunization, detention, quarantine, or denial of entry.

*b. Foreign nationals.* Foreign nationals who come to the United States, its territories, commonwealths, or possessions under Armed Forces sponsorship receive immunizations required for entry into the United States and by local jurisdictions. When returning to their country of origin, foreign nationals receive immunizations required by international health regulations or their country of origin. These immunizations are administered without charge at military activities upon presentation of official orders or authorization.

*c. Detainees.* The installation or activity commander, upon the recommendation of the appropriate medical authority, will provide immunizations against diseases that may be a significant cause of death or illness among detainees. Such immunizations are voluntary and are administered without charge to the detainee. Annotate all immunizations and chemoprophylactic medications in the detainee's health record. Before immunization, inform detainees in their own language about the relative benefits and risks of the specific immunizations offered. Factors to consider in deciding which immunizations to offer detainees include their likely preexisting immunity, the anticipated length of detention, seasonal threat of infection, and other risk factors related to personal health status and living conditions. (Refer to DODI 2310.08E for additional guidance.)

*d. Overseas commander authority.* The overseas commander, commanding officer, or officer-in-charge, upon the recommendation of the appropriate medical authority, will provide immunizations against communicable diseases judged to be a potential hazard to the health of the command; such vaccines are administered without charge.

*e. Other than U.S. Forces.* Immunization of other than U.S. Forces for biological warfare defense are addressed in DODI 6205.4.

*f. Emergency situations.* In emergency situations, the provisions of DODD 6200.03 apply.

## **Chapter 4**

### **Specific Immunization Requirements for Department of Defense and U.S. Coast Guard Personnel**

(Also see appendix D for a chart on the required immunizations for military personnel.)

#### **4-1. Civilian applicability**

Certain civilian employees may be required to receive immunizations as a condition of their employment or participation in a particular assignment. In such cases, failure to voluntarily receive the immunizations may result in a personnel action being taken (see chap 3), but in no case will immunizations be involuntarily administered.

#### **4-2. Adenovirus types 4 and 7**

*a. Military indication.* To prevent adenovirus infection, an acute febrile respiratory disease caused by adenovirus serotypes 4 and 7. Direct contact and fecal oral transmission of the virus may result in a respiratory disease infection or outbreak of disease among an unvaccinated recruit population.

*b. Basic trainees.* Administer adenovirus vaccine to military enlisted basic trainees before or at the beginning of collective training at the same time the first live virus vaccines are administered. Routine administration in other populations is not generally recommended except when directed by preventive medicine guidance, based on disease incidence and severity.

#### **4-3. Anthrax**

*a. Military indication.* To prevent anthrax, an acute infectious disease caused by the spore forming bacterium

*Bacillus anthracis*. Direct exposure to anthrax spores may result in cutaneous, gastrointestinal, or inhalational infection. *Bacillus anthracis* has been identified as a potential biological warfare agent.

*b. Military and civilian personnel.* Administer anthrax vaccine to military personnel and applicable civilians according to DOD or USCG policy for the Anthrax Vaccine Immunization Program and Service-specific implementation plans. Immunize personnel based on geographical areas at higher risk for release of anthrax as a weapon or in occupational roles as designated by the Services, Chairman of the Joint Chiefs, or the Office of the Secretary of Defense.

*c. Occupational risk.* Administer anthrax vaccine to at-risk veterinary and laboratory workers and others at occupational risk of exposure.

#### **4-4. Haemophilus influenzae serotype b, commonly called Hib**

*a. Military indication.* To prevent invasive Haemophilus influenza disease and infection of many organ systems caused by the bacterium *Haemophilus influenzae* serotype b (Hib). The disease is transmitted via respiratory droplets. The most common types of invasive Hib disease are: meningitis, epiglottitis, pneumonia, arthritis, and cellulitis.

*b. Military and civilian personnel.* Administer Hib vaccine to those who are immunocompromised, have sickle cell disease, or do not have a spleen or a functioning spleen.

#### **4-5. Hepatitis A**

*a. Military indication.* To prevent hepatitis A, an acute infection of the liver that is acquired by consuming food or water contaminated with hepatitis A virus, particularly during deployment or travel to areas with poor food, water, and sewage sanitation. It can range in severity from a mild illness lasting a few weeks to a severe illness lasting several months. Hepatitis A infections occur worldwide.

*b. Basic trainees and other accessions.* Unless seroimmune, administer hepatitis A vaccine to trainees and accessions during initial entry training.

*c. Military and civilian personnel.* Unless seroimmune, or evidence of appropriate complete vaccination, administer hepatitis A vaccine to all military personnel, and civilian personnel when indicated.

*d. Occupational risk.* Hepatitis A vaccine is indicated per ACIP guidelines and locally designated food handlers.

#### **4-6. Hepatitis B**

*a. Military indication.* To prevent hepatitis B, an acute or potentially chronic infection of the liver that is acquired through percutaneous, sexual, and other mucosal exposure to blood and body fluids from people infected with hepatitis B virus. Chronic infections may result in cirrhosis or cancer of the liver. Hepatitis B infections occur worldwide, and some infected people maintain a chronic carrier state.

*b. Basic trainees and other accessions.* Unless seroimmune, administer hepatitis B vaccine to basic trainees and accessions during initial entry training.

*c. Military and civilian personnel.* Unless seroimmune, or evidence of appropriate complete vaccination, administer hepatitis B vaccine to all military personnel, and civilian personnel, when indicated.

*d. Occupational risk.* Administer hepatitis B vaccine to susceptible personnel who are at risk of potential exposure to bloodborne pathogens per the Occupational Safety and Health Administration standards (29 CFR 1910.1030). For military purposes, this includes occupational specialties involving health care workers, emergency medical technicians, mortuary affairs personnel, search and rescue specialists, correctional facility staff, and designated special operations forces.

*e. Serologic testing.* Conduct serologic testing of health care workers who have direct contact with patients and those who have potential occupational risk for exposure to bloodborne pathogens 1 to 2 months after completion of the hepatitis B vaccine series to determine serologic response according to CDC and ACIP recommendations.

#### **4-7. Influenza**

*a. Military indication.* To prevent influenza, an acute febrile respiratory viral infection that can cause epidemics within military populations, especially under conditions of crowding, such as initial entry training, aboard ships, extended air transport, or deployment settings. Influenza has the potential for widespread transmission through person-to-person contact and fomites.

*b. Military personnel.* Administer influenza vaccine(s) annually or as indicated to all active duty, Reserve, and National Guard personnel.

*c. Occupational risk.* Administer influenza vaccine(s) annually or as indicated to personnel who work or volunteer in DOD MTFs.

#### **4-8. Japanese encephalitis**

*a. Military indication.* To prevent Japanese encephalitis, a mosquito-borne viral disease, during deployments and travel to endemic areas in Eastern Asia and certain western Pacific Islands. Japanese encephalitis virus (JEV) can cause

an acute infection of the brain, spinal cord, and meninges with high rates of complications, chronic disability, and death.

*b. Military and civilian personnel.* Administer the JEV vaccine to military personnel and civilian personnel who have a substantial risk of exposure to the virus based on their geographic location.

*c. Temporary flying restrictions.* Impose temporary flying restrictions post-JEV immunization for aircrew personnel per Service-specific policy.

#### **4–9. Measles, mumps, and rubella (MMR)**

*a. Military indication.* To prevent MMR, primarily by boosting immunity acquired from childhood immunization. These three acute viral infections are spread by the respiratory route or person-to-person contact. In military trainee populations, each can cause disease outbreaks. Rubella usually causes a mild infection, but infection during the first trimester of pregnancy puts the fetus at high risk of congenital rubella syndrome and birth defects. Young adults may experience more severe complications from mumps infection. All three diseases occur worldwide, primarily among children.

*b. Basic trainees and other accessions.* Unless seroimmune to both measles and rubella, administer MMR vaccine to susceptible basic trainees and accessions within the first 2 weeks of training.

*c. Military and civilian personnel.* Presume immunity through infection for persons born in 1957 or earlier. Ensure personnel born after 1957 have received two lifetime doses of MMR vaccine or have positive serologic test results. Immunity against mumps is not necessary as a military requirement, but may be appropriate in exceptional clinical circumstances such as outbreaks.

*d. Occupational risk.* Ensure health care workers have received two documented doses of MMR vaccine or have positive serologic test results.

#### **4–10. Meningococcal**

*a. Military indication.* To prevent meningococcal disease or meningitis and other systemic infections caused by the bacteria *Neisseria meningitidis* serogroups A, C, W–135, and Y. No vaccine against serogroup B meningococcus, another common pathogen, is currently licensed in the United States. Basic trainees and other military populations living in crowded conditions are at an increased risk for meningococcal infection. Historically, outbreaks have occurred in training populations. Meningococcal vaccine may be indicated for deployment and travel to areas with highly endemic meningococcal disease.

*b. Basic trainees and other accessions.* Administer meningococcal vaccine to basic trainees, cadets, and midshipmen at Service academies within the first 2 weeks of training, if no evidence of vaccination within the last 5 years.

*c. Military and civilian personnel.* Administer meningococcal vaccine to personnel traveling to countries in which *N. meningitidis* is hyperendemic or epidemic and other countries as required by DOD and USCG policy or recommended by the CDC.

*d. Alert personnel.* Administer meningococcal vaccine to personnel who are designated to deploy within 10 days of notification.

*e. Other personnel.* Administer one dose of meningococcal vaccine to persons who do not have spleens or functional spleens.

#### **4–11. Pertussis**

Tetanus, diphtheria, and pertussis guidance is in paragraph 4–16.

#### **4–12. Pneumococcal**

*a. Military indication.* To prevent pneumococcal disease due to *Streptococcus pneumoniae* in personnel who fall into a high-risk category due to age or underlying health conditions (for example, persons who smoke, have asthma, or have no spleen) or who are in high-risk situations, such as certain training populations. *Streptococcus pneumoniae* may result in pneumonia, bacteremia, and meningitis.

*b. Basic trainees and other accessions.* Routine administration of vaccine is not generally practiced, but may be directed by preventive medicine guidance, based on disease incidence and severity.

*c. Military personnel.* Administer pneumococcal vaccine to military personnel who are in a high-risk category per ACIP recommendations. Administer a second dose to persons without spleens or severely immunocompromised five years after the initial dose.

#### **4–13. Poliomyelitis**

*a. Military indication.* To prevent poliomyelitis, a viral infection that affects the central nervous system resulting in paralytic symptoms, primarily by boosting immunity acquired from childhood immunization. Poliomyelitis is acquired by person-to-person transmission through the fecal-oral route. Military and civilian personnel deploying or traveling to areas with poor sanitation are at increased risk, although international immunization efforts have decreased poliomyelitis incidence worldwide. Only inactivated poliovirus vaccine (IPV) is available in the US.

*b. Basic trainees and other accessions.* Administer a single booster dose of IPV to basic trainees and accessions. Personnel who have not received the primary series must complete the series using IPV. Unless there is reason to suspect otherwise (for example, childhood spent in a developing country, childhood immunizations not administered), receipt of the primary series of IPV may be assumed.

*c. Military personnel.* Because of the high level of childhood immunization against this disease, do not screen immunization records with regard to poliovirus immunity after completion of initial entry training except in an outbreak setting or for individual clinical purposes.

#### 4-14. Rabies

*a. Military indication.* To prevent rabies, a life threatening viral disease caused by exposure to the saliva of animals or humans infected with the rabies virus, which includes bites.

(1) *Pre-exposure prophylactic immunization.* A pre-exposure immunization series may be indicated for people with potential occupational risk of exposure to rabid animals, or for forces assigned to locations where access to definitive care likely exceeds 24 hours. Pre-exposure prophylaxis should not be considered sufficient for the prevention of rabies; however, it reduces the need for human rabies immune globulin-better known as HRIG-and reduces the number of shots required for post-exposure prophylaxis.

(2) *Post-exposure prophylaxis.* Consult with a preventive medicine physician and veterinarian for guidance and to report the animal exposure. Post-exposure treatment includes immediate wound care, and may include the post-exposure vaccine series, and human rabies immune globulin in an unvaccinated patient. Post-exposure prophylaxis is safe and effective.

*b. Military personnel.* Administer pre-exposure rabies vaccine series to special operations personnel, including designated special operations enablers and the occupational risk groups listed below, in accordance with Service policy.

*c. Occupational risk.* Administer pre-exposure rabies vaccine series to veterinary workers, animal handlers, certain laboratory workers, and personnel who have animal control duties and personnel assigned long-term to regions with endemic rabies. Give booster doses every 2 years or when antibody concentrations indicate.

#### 4-15. Smallpox

*a. Military indication.* To prevent smallpox disease due to the deliberate release or spread of the smallpox virus. In 1980, the WHO declared the global eradication of naturally occurring smallpox. Nonetheless, stocks of variola virus, the causative agent of smallpox, could be used as a biological warfare agent.

*b. Military and civilian personnel.* Vaccinate designated military and civilian personnel according to DOD and other designed personnel in accordance with USCG policy and Service-specific implementation plans. These include military personnel and applicable civilians who are smallpox epidemic response team members, assigned to medical teams at hospitals and clinics, or assigned to designated forces that constitute mission-critical capabilities. Immunize personnel based on geographical areas at higher risk for release of smallpox as a weapon or in occupational roles as designated by the Services, Chairman of the Joint Chiefs, or the Office of the Secretary of Defense.

*c. Training and education.* Before administering smallpox vaccine to military or civilian personnel who are eligible to receive smallpox vaccine, provide education on the criteria for exemption from immunization, expected response at the vaccination site, vaccination-site care, risks of spreading vaccinia to close contacts, adverse events following immunizations (AEFI) such as myopericarditis, and other relevant topics per Service implementation plans.

*d. Screening.* Use the DOD-specific screening form posted at <http://www.vaccines.mil> to identify persons with personal or household contraindications to smallpox vaccination (for example heart conditions, immunosuppressed conditions, pregnancy, skin conditions such as eczema and atopic dermatitis). Screening will include assessing pregnancy status and recency of testing for human immunodeficiency virus infection. In the event of a smallpox outbreak, “permanent” exemptions may be rescinded according to individual risk of exposure to variola virus.

*e. Vaccination.* Internal MTF and command clinical quality management programs will have mechanisms to confirm that vaccinators demonstrate proper vaccination technique.

*f. Post-vaccination site care.* Take appropriate care to prevent the spread of vaccinia virus from a vaccinee’s vaccination site. MTFs will monitor the vaccination sites of vaccinated health care workers (for example, operating site-care stations), promote effective bandaging, and encourage scrupulous hand washing.

*g. Post-vaccination evaluation (“take” check).* Assessment and documentation of response (a “take”) to vaccination is required for health care workers and members of smallpox response teams who would travel into a smallpox outbreak area. Evaluate and record the vaccination response of individuals receiving smallpox vaccine in a DOD and USCG-approved electronic ITS.

#### 4-16. Tetanus, diphtheria, and pertussis

*a. Military indication.* To prevent tetanus, diphtheria, and pertussis, primarily by boosting immunity acquired from childhood immunization.

(1) Tetanus is an acute disease of the nervous system caused by the serotoxin produced by *Clostridium tetani*. The *C. tetani* spores enter the body through breaks in the skin, and the bacterium then grows at the wound site. A tetanus

infection results in generalized rigidity and convulsive spasms of the skeletal muscles. The *C. tetani* spores occur in the environment worldwide.

(2) Diphtheria is an acute disease caused by a cytotoxin of the bacteria *Corynebacterium diphtheriae*. *C. diphtheriae* is transmitted person-to-person via respiratory droplets and direct contact. Diphtheria can lead to airway obstruction, and more severe complications may result from toxin absorption into organs and tissues. Diphtheria occurs worldwide.

(3) Pertussis is a highly communicable acute respiratory illness caused by the bacteria *Bordetella pertussis*. Pertussis is spread via direct contact with respiratory secretions. Pertussis occurs worldwide.

*b. Basic trainees and other accessions.* For those individuals lacking a reliable history of prior immunization, administer one dose of Tetanus-diphtheria and acellular pertussis (Tdap) vaccine according to ACIP guidelines. Unless there is reason to suspect otherwise (for example, childhood spent in a developing country, childhood immunizations not administered), receipt of the basic immunizing series may be assumed.

*c. Military and civilian personnel.* Administer booster doses of Tetanus-diphtheria (Td) to all personnel every 10 years following the completion of the primary three-dose series. A one-time dose of Tdap in place of a Td booster during adulthood is required, regardless of interval.

*d. All personnel.* Following ACIP wound-management guidelines for the treatment of contaminated wounds. Tdap is preferred to Td for adults vaccinated 5 years earlier who require a tetanus toxoid-containing vaccine as part of wound management and who have not previously received Tdap. For adults previously vaccinated with Tdap, Td should be used if a tetanus toxoid-containing vaccine is indicated for wound care.

#### 4–17. Typhoid fever

*a. Military indication.* To prevent typhoid fever, a systemic bacterial disease acquired by consuming food or water contaminated with *Salmonella typhi*, particularly during deployment or travel to typhoid-endemic areas and other areas with poor sanitation.

*b. Military and civilian personnel.* Administer typhoid vaccine before overseas deployment to typhoid-endemic areas.

*c. Alert personnel.* Administer typhoid vaccine to alert personnel, per Service policy, who are prepared for deployment to typhoid-endemic areas or who have potential risks of exposure to contaminated local food and drink. Administer booster doses per immunization schedule. For Air Force, only units specifically identified by the MAJCOM surgeon require initial and subsequent immunization against typhoid fever.

#### 4–18. Varicella

*a. Military indication.* To prevent varicella (chickenpox), a generally mild and self-limiting viral infection caused by the varicella zoster virus. Although varicella is a common childhood disease, adults may experience more severe illness and have higher complication and case-fatality rates. Adolescents and adults are at higher risk for severe disease complications such as secondary skin infections, neurologic disease, and multi-organ involvement. Varicella zoster virus is transmitted by respiratory secretions, direct contact, and aerosolization of the virus from skin lesions. Military members at higher risk for infection include basic trainees, cadets/midshipmen at Service academies, officer trainees, and special operations personnel, and others living in military environments conducive to person-to-person spread of respiratory diseases (for example, barracks, ships).

*b. Basic trainees and other accessions.* Administer varicella vaccine to susceptible trainees and other accessions within the first 2 weeks of initial entry training. Serologic screening of trainees is the preferred means of determining those susceptible to varicella infection and in need of immunization. Identify those people who do not have a personal history of varicella disease, documentation of two prior varicella immunizations, or documentation of immunity based on serologic testing as susceptible. Document positive results of serologic testing in a DOD-approved electronic ITS. Adults and adolescents require two doses of varicella vaccine given 4 to 8 weeks apart.

*c. Health care workers.* Administer varicella vaccine to susceptible health care workers. Determine susceptibility as noted above for trainees, birth before 1980 should not be considered evidence of immunity for health care workers. Routine post-immunization testing for antibodies to varicella is not recommended.

*d. Other susceptible adults.* Offer varicella vaccine to other susceptible persons, especially nonpregnant women of childbearing age and men living in households with young children.

#### 4–19. Yellow fever

*a. Military indication.* To prevent yellow fever disease, a viral infection that may result in severe systemic disease and organ failure. Yellow fever infection is transmitted via the bite of an infected mosquito. Documented vaccination status must be verified to meet international health requirements during deployment or travel to yellow-fever-endemic areas. Areas of greatest risk are sub-Saharan Africa and tropical South America.

*b. Military personnel.* Administer yellow fever vaccine to all Marine Corps accessions and military personnel traveling to or transiting through yellow-fever-endemic areas.

*c. Alert personnel.* Administer yellow fever vaccine to alert personnel prepared for deployment to yellow-fever-endemic areas. Administer booster doses per immunization schedule. For Air Force, only units specifically identified

by the MAJCOM surgeon require initial and subsequent immunization against yellow fever. For Navy, administer to those assigned to units subject to deployment within 10 days of notification into land areas where yellow fever is endemic.

*d. Civilian and other personnel.* Administer yellow fever vaccine to personnel traveling to, or transiting through, endemic areas.

## Chapter 5 Chemoprophylaxis

### 5-1. General

*a. Chemoprophylaxis.* This section does not relate to the treatment of diseases but provides a brief review of military relevant diseases and associated chemoprophylaxis guidelines. Chemoprophylaxis is defined here as the administration of medication before, during, or after possible exposure to an infectious agent, to prevent either infection or disease. Most agents used for chemoprophylaxis are not FDA-approved for this indication and thus may not be administered to units under a force health protection strategy or policy; rather, these agents must be prescribed to individuals and documented accordingly by an appropriate health care provider. Follow instructions from the relevant combatant command surgeon who will consult with the appropriate preventive medicine authority for the use of chemoprophylactic agents. Command medical officers will review indications for use and potential adverse effects of specific chemoprophylactic medications before use. These recommendations for drugs or agents are current as of the date of this publication. Consult current information and guidance for appropriate drugs and dosing regimens (for example the CDC, the ACIP, the National Center for Medical Intelligence (NCMI), and the American Public Health Association's "Control of Communicable Diseases Manual"). The following classes of chemoprophylaxis are not addressed in this publication:

(1) Chemical warfare-related chemoprophylaxis. Consult the current version of "Medical Management of Chemical Casualties," published by the U.S. Army Medical Research Institute of Chemical Defense.

(2) Medical therapy for tuberculosis infection. Consult publications from CDC, the American Thoracic Society, the Advisory Council for the Elimination of Tuberculosis, and similar authorities.

(3) Radiation-related chemoprophylaxis (for example, potassium iodide, granisetron, or Prussian blue).

(4) Other forms of prevention involving nonbiological medications (for example, calcium, aspirin, or vitamins).

(5) Immunotherapy.

*b. Packaging.* Dispense chemoprophylaxis agents to individuals in child-resistant containers, consistent with 15 USC 1471-1476 (The Poison Prevention Packaging Act), or unit-of-use packaging. Use appropriate packaging to keep the medication clean and dry.

*c. Labeling.* Dispense chemoprophylaxis agents to individuals in packages that contain the name of the product, directions for proper use, and the name of the person to whom the medication was dispensed.

### 5-2. Anthrax

*a. Military indication.* The use of antibiotics and immunoglobulin following a possible exposure to anthrax is locally-directed and is prescribed by preventive medicine based on risk. The use of antibiotics and immunoglobulin have been shown to increase survival when used after exposure to anthrax and before onset of symptoms (post-exposure prophylaxis or empiric treatment).

*b. Chemoprophylaxis.* Recommended drugs include ciprofloxacin and doxycycline. Refer to Service-specific policies. Anthrax immunoglobulin is available through the CDC's Emergency Operation Center.

### 5-3. Group A streptococcus

*a. Military indication.* Outbreaks of group A streptococci can spread rapidly in groups in settings of close contact, such basic training and contingency operations.

*b. Chemoprophylaxis.* The primary drug used for prophylaxis is penicillin, specifically the long-acting injectable form, penicillin G benzathine. Oral penicillin VK and azithromycin have also been used effectively. Administer penicillin prophylactically, when required, to terminate disease transmission. Routine administration of penicillin for prophylaxis of basic trainees against group A streptococcal infection has been shown to be effective at some installations with historically high incidence of disease. This practice should be directed by local preventive medicine authority.

### 5-4. Influenza

*a. Military indication.* Influenza can be a significant cause of morbidity in a susceptible population and can degrade mission capability.

*b. Chemoprophylaxis.* Consider prophylactic use of antiviral therapy if available vaccine does not antigenically

match circulating strains or if an outbreak occurs early in the season before widespread immunization. For additional guidance, refer to CDC.

#### **5–5. Leptospirosis**

- a. Military indication.* Leptospirosis can cause morbidity in personnel exposed to contaminated water sources.
- b. Chemoprophylaxis.* Doxycycline is effective in preventing leptospirosis in exposed military personnel during periods of high risk of exposure. Consult an infectious diseases or preventive medicine authority for proper use and dosing.

#### **5–6. Malaria**

- a. Military indication.* Malaria has caused morbidity and mortality in military populations for centuries. It continues to be one of the most important disease threats to military and civilian personnel deployed to areas where the disease is endemic.
- b. Chemoprophylaxis.* The Services or the combatant command surgeon determine specific chemoprophylactic regimens, typically with guidance from the NCMI, for the area of operations based on degree and length of exposure and the prevalence of drug resistant strains of *plasmodia* in the area(s) of travel. Prescribe anti-malarials per package insert. Health care providers will screen individuals for contraindications to specific malaria chemoprophylaxis (for example G6PD deficiency and primaquine) and determine the appropriate malaria chemoprophylaxis. Health care providers must document malaria chemoprophylaxis prescriptions in the health record when anti-malarial medications are prescribed. Include the member's electronic medication profile (for example, Composite Health Care System II), whenever possible.

#### **5–7. Meningococcal disease**

- a. Military indication.* Meningococcal disease can result in morbidity and potential mortality in populations experiencing crowded conditions. Chemoprophylaxis has been shown to prevent disease when administered post-exposure to susceptible people.
- b. Chemoprophylaxis.* There are several drugs available for prophylaxis of close contacts of meningococcal disease cases. Consult an infectious diseases or preventive medicine authority for determination of individuals to offer prophylaxis and for assistance with drug selection and dosing.

#### **5–8. Plague**

- a. Military indication.* Plague has been identified as a potential biological warfare agent, especially if aerosolized to cause pneumonic plague. There is no licensed vaccine that is effective against pneumonic plague. Provide chemoprophylaxis to persons potentially exposed to cases of pneumonic plague.
- b. Chemoprophylaxis.* Consult an infectious diseases or preventive medicine authority for determination of individuals to offer prophylaxis and for assistance with drug selection and dosing.

#### **5–9. Scrub typhus**

- a. Military indication.* Spread by the bite of infective larval mites. Mite bites may be a source of morbidity in populations encountering field conditions.
- b. Chemoprophylaxis.* Doxycycline has been shown to be effective in preventing scrub typhus in exposed personnel. Consult an infectious diseases or preventive medicine authority for proper use and dosing.

#### **5–10. Smallpox**

- a. Military indication.* Various forms of vaccinia infections may develop following receipt of the smallpox vaccine. Chemoprophylaxis may be indicated to prevent morbidity in immunized Servicemembers or their contacts.
- b. Chemoprophylaxis.* VIG and vaccinia-specific antivirals are available through the DOD. Contact MILVAX to request and coordinate administration of these chemoprophylactic agents.

#### **5–11. Traveler's diarrhea**

- a. Military indication.* Diarrhea can cause morbidity in personnel exposed to contaminated food and water sources.
- b. Chemoprophylaxis.* Chemoprophylaxis for traveler's diarrhea is only recommended on rare occasions where diarrhea would compromise a mission. Prophylactic antibiotics may be considered for short-term travelers who are high-risk hosts (such as those who are immunosuppressed) or those taking critical trips during which even a short bout of diarrhea could significantly impact the purpose of the trip. Instead of prophylaxis travelers, should be prescribed appropriate medications and provided instructions for self-treatment of diarrhea. Consult an infectious diseases or preventive medicine authority for assistance.

## **Chapter 6 Biological Warfare Defense**

### **6-1. Responsibilities**

*a.* The combatant commanders, annually and as required, provide the Chairman of the Joint Chiefs of Staff with their assessment of the biological warfare threats to their theaters.

*b.* The President of the Defense Health Board, in consultation with the Secretaries of the Military Departments, annually and as required, identifies to the Assistant Secretary of Defense (Health Affairs) (ASD (HA)) vaccines available to protect against validated biological warfare threat agents and recommends appropriate immunization protocols and/or chemoprophylaxis.

### **6-2. Procedures**

The DOD Immunization Program for Biological Warfare Defense is conducted as follows:

*a.* The combatant commanders, annually and as required, provide the Chairman of the Joint Chiefs of Staff with their assessment of the biological warfare threats to their theater.

*b.* The Chairman of the Joint Chiefs of Staff, in consultation with the combatant commanders; the chiefs of the Military Services; and the Director, Defense Intelligence Agency, annually validates and prioritizes the biological warfare threats to DOD personnel and forwards the threat list to the DOD Executive Agent through the ASD (HA).

*c.* Within 30 days of receiving the validated and prioritized biological warfare threat list from the Chairman of the Joint Chiefs of Staff, the DOD Executive Agent, in consultation with the Secretaries of the military departments and the President of the Defense Health Board, provides recommendations to the ASD (HA) on vaccines and immunization protocols necessary to enhance protection against validated biological warfare threat agents.

*d.* Within 30 days of receiving the coordinated recommendations of the DOD Executive Agent, the ASD (HA) directs the Secretaries of the military departments to begin immunization of the specified DOD and USCG personnel against specific biological warfare threat agents. The ASD (HA) will coordinate with and obtain approval from the Secretary or Deputy Secretary of Defense before issuing the appropriate direction.

*e.* The Secretaries of the military departments will program and budget for required vaccinations, including the costs of the biological warfare defense vaccines.

## **Chapter 7 Vaccines and Other Products in Investigational New Drug Status**

### **7-1. Purpose**

For infectious disease threats for which the only available vaccine or chemoprophylaxis product is in an IND status, the IND product must be administered in full accordance with FDA regulations at 21 CFR Parts 50 and 312, as well as 10 USC 1107, Executive Order 13139, and DODD 6200.2. DOD may use products that have not been approved or licensed for commercial marketing as force health protection measures in combat settings, other military operations, peacekeeping, or humanitarian missions. DOD will provide comparable access to IND products to military personnel, civilian personnel, contracted workers, and beneficiaries based on the health risk to the people involved.

### **7-2. General guidance on investigational new drug products**

Commanders, through the appropriate chain, must request approval from the Secretary of Defense to use INDs for force health protection. If the member's use of an IND product is voluntary, the product must be administered with documented informed consent in accordance with a protocol approved by the FDA for IND product use. A vaccine, antibiotic, or other product in an IND status may be mandatory for military members, if the President of the United States has approved a waiver of the requirement for informed consent. Under 10 USC 1107, only the President has the authority to grant a waiver of the requirement that a military member provide prior consent to receive an IND or a drug unapproved for its applied use in connection with the member's participation in a particular military operation. The President must determine, in writing, that obtaining consent (1) is not feasible, (2) is contrary to the best interests of the member, or (3) is not in the interests of national security. The requirement for informed consent may not be waived for civilian personnel, contracted workers, and beneficiaries.

### **7-3. Health recordkeeping requirements for investigational new drug products**

All IND vaccines or chemoprophylaxis products that are administered, whether with the member's informed consent or with an approved waiver of informed consent, must be recorded in the individual's permanent health record or DOD and USCG-approved electronic ITS. For vaccines, the documentation is the same as that required for other vaccines with an annotation "IND" with the vaccine name. This recordkeeping requirement is in addition to any recordkeeping

requirements of the FDA-approved IND protocol. The requirement for recordkeeping applies to IND vaccines, antibiotics, and other medications in IND status.

#### **7-4. Information requirements for investigational new drug products**

Any recipient of an IND vaccine or chemoprophylaxis product must receive the information (for example, briefing, individual counseling, information statements) required by the FDA-approved IND protocol. Full compliance with this requirement is extremely important whether the IND product is voluntary or mandatory.

#### **7-5. Coordination**

The Army, as the Executive Agent for the Immunization Program for Biological Warfare Defense, maintains a program office at the U.S. Army Medical Materiel Development Activity (USAMMDA) to execute oversight and coordination of the use of IND products for Force Health Protection.

## **Chapter 8**

### **Vaccines and Other Products Used Under Emergency Use Authorization**

#### **8-1. General**

Under 21 USC 564 (The Food, Drug, and Cosmetic Act), some drugs, vaccines, or devices that have not been approved or licensed by the FDA through the regular drug approval process (or not approved for an intended use) may be used as medical countermeasures to chemical, biological, radiological, and nuclear (CBRN) agents or threats, if the FDA grants an EUA. This EUA authority is an alternative to the otherwise applicable requirement to file an IND application and follow IND rules (see chap. 7) to use such unapproved drugs as CBRN medical countermeasures.

#### **8-2. Criteria**

In general, the FDA may grant an EUA for up to 12 months, with potential renewal, based on the following:

- a. The Secretary of Defense or designee has determined that there is a military emergency or significant potential for a military emergency relating to a particular CBRN agent or threat.
- b. The Secretary of DHHS declares an emergency based on the Secretary of Defense's determination.
- c. The Secretary of DHHS determines—
  - (1) The vaccine or drug may be effective in diagnosing, treating, or preventing the disease or condition.
  - (2) The known and potential benefits of the vaccine or drug outweigh the known and potential risks.
  - (3) There is no adequate, approved, and available alternative medical countermeasure.
- d. The duration of authorization corresponds to the duration of the emergency or significant potential for an emergency.

#### **8-3. Refusal options**

The FDA may decide that potential recipients of a drug under an EUA should have the option to refuse it. The President may waive this option for military personnel.

#### **8-4. Health recordkeeping requirements for emergency use authorization products**

All EUA vaccines or chemoprophylaxis products that are administered must be recorded in the individual's permanent health record and/or DOD-approved electronic ITS.

#### **8-5. Information requirements for emergency use authorization products**

Any recipient of an EUA vaccine or chemoprophylaxis product must receive the information (for example, briefing, individual counseling, information statements) required by the FDA-approved EUA. Full compliance with this requirement is critical.

#### **8-6. Department of Defense requests for emergency use authorizations**

Requests for possible EUAs for military purposes must be submitted to ASD (HA) for consideration.

#### **8-7. Coordination**

The Army, as the Executive Agent for the Immunization Program for Biological Warfare Defense, maintains a program office at the USAMMDA. This office oversees and coordinates EUA product use for force health protection.

## **Appendix A References**

### **Section I**

#### **Required Publications**

Unless otherwise stated, all publications are available at: <http://www.apd.army.mil/>. Department of Defense regulations are available at: <http://www.dtic.mil/>.

#### **DODI 6200.03**

Public Health Emergency Management within the Department of Defense (Cited in paras 3–3*d*, 3–6*f*.)

#### **DODI 6205.4**

Immunization of Other Than U.S. Forces (OTUSF) for Biological Warfare Defense (Cited in paras 3–3*e*, 3–6*f*.)

### **Section II**

#### **Related Publications**

A related publication is a source of additional information. The user does not have to read a related publication to understand this regulation. Unless otherwise stated, all publications are available at: <http://www.apd.army.mil/>. Department of Defense regulations are available at: <http://www.dtic.mil/>. The U.S. Code and the Code of Federal Regulations are available at: <http://www.gpoaccess.gov/fdsys/>.

#### **AR 11–2**

Managers' Internal Control Program

#### **AR 25–30**

The Army Publishing Program

#### **AR 600–20**

Army Command Policy

#### **AFI 48–123**

Medical Examination and Standards (Available at <http://www.e-publishing.af.mil/>.)

#### **Control of Communicable Diseases Manual**

Communicable disease control and the international health regulations (Available at <http://www.apha.org/>.)

#### **COMDTINST M6000.1**

Medical Manual

#### **DODD 1241.01**

Reserve Component Medical Care and Incapacitation Pay for Line of Duty Conditions

#### **DODD 1404.10**

DOD Civilian Expeditionary Workforce

#### **DODI 6200.02**

Application of Food and Drug Administration (FDA) Rules to Department of Defense Force Health Protection Programs

#### **DODD 6205.02E**

Policy and Program for Immunizations to Protect the Health of Service Members and Military Beneficiaries

#### **DODD 6205.3**

DOD Immunization Program for Biological Warfare Defense

#### **DODI 1300.17**

DOD Accommodation of Religious Practices Within the Military Services

#### **DODI 1400.32**

DOD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures

**DODI 2310.08E**

Medical Program Support for Detainee Operations

**DODI 5010.40**

Manager's Internal Control (MCIP) Program Procedures

**Executive Order 13139**

Improving Health Protection of Military Personnel Participating in Particular Military Operations (Available at <http://www.archives.gov/federal-register/executive-orders/disposition.html/>.)

**NATO STANAG 2037**

Vaccination of NATO Forces(Available at <http://www.nato.int/docu/standard.htm/>.)

**NATO STANAG 2491**

NBC/MED Policy for the Immunization of NATO Personnel Against Biological Warfare Agents(Available at <http://www.nato.int/docu/standard.htm/>.)

**NATO STANAG 3474**

Temporary Flying Restrictions Due to Exogenous Factors Affecting Aircrew Efficiency (Available at <http://www.nato.int/docu/standard.htm/>.)

**10 USC 1107**

Notice of use of an investigational new drug or a drug unapproved for its applied use

**15 USC 1471**

Definitions

**15 USC 1472**

Special packaging standards

**15 USC 1473**

Conventional packages, marketing

**15 USC 1474**

Regulations for special packing instructions

**15 USC 1475**

Repealed. Section 1205(c), Act of 13 August 1981, Public Law 97-35, Title XII, Volume 95, U.S. Statute at Large, p. 716.

**15 USC 1476**

Preemption of Federal standards

**21 USC 360**

Registration of producers of drugs or devices

**42 USC 300aa**

Public Health Service

**42 USC 300aa-1 to 300aa-34**

The National Childhood Vaccine Injury Act of 1986

**42 USC 300aa-25**

Recording and Reporting of Information

**21 CFR 312**

Investigational New Drug Application

**29 CFR 1605**

Guidelines on Discrimination Because of Religion

**29 CFR 1910.1030.**

Blood borne pathogens

**Section III**

**Prescribed Forms**

This section contains no entries.

**Section IV**

**Referenced Forms**

Except where otherwise indicated below, the following forms are available as follows: DA forms are available on the APD Web site, at <http://www.apd.army.mil>; DD forms are available from the OSD Web site, at <http://www.dtic.mil/whs/directives/infomgt/forms/index.htm>; standard forms (SFs) and optional forms (OFs) are available from the GSA Web site (<http://www.gsa.gov>).

**DA Form 11-2**

Internal Control Evaluation Certification

**DA Form 2028**

Recommended Changes to Publications and Blank Forms

**DD Form 2365**

DOD Civilian Employee Overseas Emergency-Essential Position Agreement

**DD Form 2766**

Adult Preventive and Chronic Care Flowsheet (Available through normal forms supply channel.)

**DD Form 2766C**

Adult Preventive and Chronic Care Flowsheet (Continuation Sheet) (Available through normal forms supply channel.)

**FDA Form 3500**

MedWatch: The FDA Safety Information and Adverse Event Reporting System (Available at <http://www.fda.gov/Safety/MedWatch/default.htm>).

**Form VAERS-1**

Vaccine Adverse Event Reporting System (Available at <http://vaers.hhs.gov/esub/index>)

**CDC Form 731**

International Certificate of Vaccination (Available through normal forms supply channel. Also available at <http://bookstore/gpo.gov>, or toll free at 1-866-512-1800.) (Marine Corps and Navy - S/ N 0108-LF-400-0706. Available from the Navy Supply System and may be requisitioned per NAVSUP P-2002D.)

**SF 600**

Medical Record - Chronological Record of Medical Care

**SF 601**

Health Record - Immunization Record

## **Appendix B Standards for Military Immunization**

### **B-1. Standard #1: immunization availability**

- a.* Ensure immunizations are available when required to minimize disruption of deployment or training schedules.
- b.* Ensure immunizations are available at convenient times, without unnecessary barriers and are available on a walk-in basis, as staffing permits. As clinically appropriate, administer any vaccine doses required simultaneously to avoid missed immunization opportunities.
- c.* Ensure immunization services are responsive to the needs of beneficiaries.
- d.* Review the vaccination status of all beneficiaries at every health care visit to determine which vaccines are indicated.
- e.* Implement standing orders if written orders are unavailable. Standing orders must address vaccine dosage and administration, contraindications and precautions, and documentation procedures. Ensure standing orders are signed by the privileged physician who has medical oversight of the clinic.

### **B-2. Standard #2: vaccine information and vaccinee education**

- a.* Educate beneficiaries about the benefits and risks of vaccination in a culturally appropriate manner and at an appropriate education level.
- b.* Prior to vaccination, provide all parents/guardians and vaccinees the most current Vaccine Information Sheets (VISs) for each vaccine as mandated by Federal law (42 USC 300aa-26). Allow sufficient time to discuss any concerns or questions as noted by the vaccinee. Ensure VISs are accessible and visible in the patient waiting area of the clinic or activity that provides immunizations.
- c.* Prior to each vaccination provide all potential vaccinees the opportunity to read the current DOD and/or FDA mandated vaccine information brochure. Additional education requirements may be required as outlined in vaccination policy.
- d.* Ensure immunization personnel are readily available to accurately answer patients' immunization questions and concerns about vaccines. Ensure personnel have ready access to immunization information resources.

### **B-3. Standard #3: vaccine storage and handling**

- a.* Ensure staff members adhere to cold-chain management principles during administration, transportation, and storage. Ensure up-to-date, written cold-chain management protocols are accessible at all locations where vaccines are stored.
- b.* Implement temperature monitoring processes at any clinic or activity that administers immunizations. All vaccine storage devices should have a calibrated thermometer and alarm systems that are visually monitored at a minimum of twice a day.
- c.* The CDC's National Center for Immunization and Respiratory Diseases strongly recommends that providers draw vaccine only at the time of administration to ensure that the cold chain is maintained and that vaccine is not inappropriately exposed to light. Do not pre-draw doses; draw them when they are needed.

### **B-4. Standard #4: indications and contraindications**

- a.* Screen each patient for allergies, health status, recent vaccinations, and previous vaccine adverse events before immunization. Provide each patient an opportunity to ask questions about potential contraindications. Refer patients for appropriate medical evaluation, as needed.
- b.* Screen each patient's immunization record to determine vaccine needs or requirements.
- c.* Ensure staff members document any contraindication to an immunization in the health record and ITS. Screen all women for pregnancy status.

### **B-5. Standard #5: immunization recordkeeping**

- a.* Record immunizations accurately in a DOD and USCG-approved electronic ITS according to Service-specific policy at the time of immunization, or no later than 24 hours after administration of immunization. Transcribe all historical immunizations into the immunization tracking system.
- b.* Recommend any clinic or activity that administers immunizations has one or more mechanisms for notifying patients when the next dose of an immunization series is needed (a reminder system) or when doses are overdue (recall system). Reminder and recall systems may be automated or manual and may include mailed, emailed, or telephone messages.
- c.* Record all military personnel immunization information in an electronic ITS immunization record. All Services must record military immunization data into an electronic database that communicates with a centralized DOD registry.

**B-6. Standard #6: immunization personnel training**

a. Ensure all persons who administer vaccines, including immunization augmentees, are appropriately trained and work within their appropriate scope of practice as determined by Service policies.

b. Immunization training must meet a standard acceptable to the MTF commander, command surgeon, or other appropriate medical authority. Training will include vaccine storage and handling; vaccine characteristics; recommended vaccine schedules; patient screening; contraindications; vaccine administration techniques; and treatment and reporting of adverse events to include anaphylaxis, vaccine benefit and risk communication, and documentation and management.

c. Ensure personnel who administer vaccines complete a comprehensive immunization orientation and annual continuing education that addresses training standards and competency of vaccine related topics based on an individual's role in administering and/or handling vaccines. Individuals who routinely administer vaccines should complete at least 8 hours of training annually. Training resources include resident courses, self-paced online training programs, and video training (see table B-1).

**Table B-1**  
**Training standards**

Medical standard or procedure	Physicians and medical directors	Immunizers	Chapter and appendix paragraph locations
<b>Quality patient care and delivery of immunizations</b>			
Properly trained in accordance with DOD, Service, USCG, and Centers for Disease Control and Prevention (CDC) guidelines and act within their scope of practice as determined by each Service.	B <sup>1</sup> , A <sup>2</sup>	B, A	1-4c(1)
Understands standing order procedures for administering immunizations including dose, route, time indication, contraindications, and so forth.	B, A	B, A	2-1b and B-1
Demonstrates the ability and knowledge to screen individuals for contraindications, hypersensitivities, allergies, and so forth, before administering vaccines.	B	B, A	2-1d and B-4
Understands and adheres to immunization dosing and interval schedules.	B	B, A	2-1e and B-6
Understands how to properly document exemptions from further immunization in the ITS (DD Form 2766C), on the DD Form 2766 (Adult Preventive and Chronic Care Flowsheet), and/or in other relevant paper-based immunization records.	B	B, A	2-6, 2-7, and B-4
<b>Patient information and education before immunization</b>			
Understands the purpose of and legal requirements for making VISs available to vaccine recipients.	B	B, A	2-7d(2) and B-2
Understands how to document the date of the VIS in the ITS when documenting an immunization given.	B	B, A	2-7d(3) and B-2
<b>Vaccine storage and handling</b>			
Trained in cold-chain management principles and procedures.	B, A	B, A	2-3 and B-3
Demonstrates how to read a vaccine package insert for storage and handling requirements.	B	B, A	2-3 and B-3
Understands proper reporting procedures for vaccine storage and handling losses.	B, A	B, A	2-3f and B-3
<b>Emergency care and adverse-event reporting</b>			
Basic cardiopulmonary resuscitation and the administration of epinephrine.	B, R <sup>3</sup>	B, R	2-9b and B-6
Knows how to use the emergency equipment available for treating an anaphylactic reaction. Ensures medications in kit are not expired.	B	B, A	2-9c and B-6
Demonstrates the ability to initiate anaphylactic reaction treatments per protocol.	B	B, A	2-9c and B-6
Understands the procedure for documenting an adverse event after an immunization.	B	B, A	2-10d and B-7

**Table B-1**  
**Training standards—Continued**

Knows how to submit a Vaccine Adverse Event Reporting System (VAERS) Form 1.	B	B, A	2-10d and B-7
Comprehends DOD's Clinical Guidelines for Managing Adverse Events after Immunization.	B, A	B	2-10 and B-7
<b>Understands how to handle and administer specific vaccines</b>			
Military and civilian personnel eligible to receive smallpox vaccine will be educated before immunization regarding criteria for exemption from immunization, expected response at the vaccination site, vaccination-site care, risks of spreading vaccinia to close contacts, and other relevant topics.	B, A	B, A	4-15
<b>Immunization record keeping (documentation)</b>			
Trained to accurately document immunizations, historical immunization data, and medical exception codes in ITS.	B	B, A	2-6a and b, 2-7, and B-5
<b>Training</b>			
Demonstrates understanding of and ability to follow this multi-Service publication and other pertinent references such as DOD, USCG, and CDC guidance in the performance of duties.	B, A	B, A	1-5
Notes:			
<sup>1</sup> B=baseline or initial training			
<sup>2</sup> A=annually			
<sup>3</sup> R=as required			

d. Ensure persons who administer vaccines have ready access to information resources regarding current recommendations for childhood, general adult, travel, and military-specific immunizations.

**B-7. Standard #7: adverse events after immunization**

a. Epinephrine (such as auto-injectable epinephrine) must be properly stored and readily available at all vaccination locations along with other supplies determined locally to manage adverse events (see para 2-9). Ensure all immunization personnel are trained to administer epinephrine.

b. Provide easy access to telephones or radios to persons who administer vaccines for summoning emergency medical personnel. Medical providers document adverse events in the health record at the time of the event or as soon as possible thereafter.

c. Report all clinically significant adverse events after vaccination to VAERS. Provide staff members with ready access to reporting options for the VAERS.

d. Develop a quality improvement process to assure adverse events are reported to VAERS promptly.

**B-8. Standard #8: vaccine advocacy to protect the military Family**

a. Develop a mechanism at the MTF level to determine the extent of influenza and pneumococcal immunization coverage among its high-risk patients. Develop a plan to optimize vaccination uptake and coverage.

b. Implement a plan to optimize immunization rates among cardiac, pulmonary, diabetic, asplenic, and other patient groups at elevated risk of complications from vaccine-preventable infectious diseases.

c. Conduct a quality improvement program to optimize the performance in immunizing children, adolescents, and adults against the preventable infections that most threaten them.

d. Ensure commanders use immunization databases to identify and resolve the vulnerabilities of their units.

e. All health care providers (not just those in any clinic or activity that administers immunizations) should routinely determine the immunization status of their patients, offer vaccines to those for whom they are indicated, and maintain complete immunization records.

## Appendix C Medical and Administrative Exemption Codes

This appendix gives details about medical and administrative exemption codes, as well as information on duration.

### C-1. Medical exemption codes

Medical exemption codes appear in table C-1.

Code	Meaning	Explanation of example	Duration
MD	Medical, declined	Declination of optional vaccines (not applicable to military required vaccinations).	Indefinite
MA	Medical, assumed	Prior immunization reasonably inferred from individual's past experiences (for example, basic military training), but documentation missing. Code used to avoid superfluous immunization. Code can be reversed upon further review.	Indefinite
MI	Medical, immune	Evidence of immunity (for example, by serologic antibody test); documented previous infection (for example, chickenpox infection); natural infection presumed (for example, measles, if born before 1957).	Indefinite
MP	Medical, permanent	HIV infection, prolonged or permanent immune suppression, upper age limit, other contraindication determined by physician. Can be reversed if the condition changes. For tuberculosis, positive tuberculosis test.	Indefinite
MR	Medical, reactive	Permanent restriction from receiving additional doses of a specific vaccine. Use only after severe reaction after vaccination (for example, anaphylaxis). Report such reactions to VAERS. Code can be reversed if an alternate form of prophylaxis is available. Do not code mild, transient reactions as MR. code events referred for medical consultation as MT.	Indefinite
MS	Medical, supply	Exempt due to lack of vaccine supply.	Up to 90 days
MT	Medical, temporary	Pregnancy, hospitalization, events referred for medical consultation, temporary immune suppression, convalescent leave, pending medical evaluation board, any temporary contraindication to immunization.	Up to 365 days

### C-2. Administrative exemption codes

Administrative exemption codes appear in table C-2.

Code	Meaning	Explanation of example	Duration
AD	Administrative, deceased	Individual is deceased.	Indefinite
AL	Administrative, emergency leave	Individual is on emergency leave.	Up to 30 days
AM	Administrative, missing	Missing in action, prisoner of war.	Indefinite
AP	Administrative, PCS	Permanent change of station.	Up to 90 days
AR	Administrative, refusal	Personnel involved in actions under the Uniformed Code of Military Justice, religious waiver. (Indefinite and revocable. May be revoked at any time. See paragraph 2-6b(2).	Until resolution
AS	Administrative, separation	Pending discharge, separation (typically within 60 days), and retirement (typically within 180 days).	Until 180 days
AT	Administrative, temporary	Absent without leave, legal action pending (other than code AR).	Until 90 days
NR	Not required	Individuals who received immunization while eligible, subsequently changed occupational category and now serve as civilian employees or contract workers not otherwise required to be immunized.	Indefinite

## Appendix D Immunizations for Military Personnel

### D-1. Text citations

Paragraphs 4-2 to 4-19 provide additional information on immunizations for military personnel.

### D-2. Required immunizations

This table provides a listing of required immunizations for military personnel.

**Table D-1  
Immunizations for military personnel**

Name of vaccine	Army	Navy	Air Force	Marine Corps	Coast Guard
Adenovirus <sup>1</sup>	Acc <sup>2</sup>	Acc	Acc	Acc	Acc
Anthrax	Risk	Risk	Risk	Risk	Risk
Haemophilus influenzae type b	Risk	Risk	Risk	Risk	Risk
Hepatitis A	Acc, Rou <sup>3</sup>	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Hepatitis B	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Influenza	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Japanese encephalitis	Risk <sup>4</sup>	Risk	Risk	Risk	Risk
Measles, mumps, rubella	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Meningococcal	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Pneumococcal	Risk	Risk	Risk	Risk	Risk
Poliovirus <sup>5</sup>	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Rabies	Risk	Risk	Risk	Risk	Risk
Smallpox (vaccinia)	Risk	Risk	Risk	Risk	Risk
Tetanus-diphtheria (preferably with pertussis vaccine)	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Typhoid fever	Risk	Risk	Risk	Risk	Risk
Varicella	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou	Acc, Rou
Yellow fever	Risk	Risk	Risk	Acc, Risk	Risk

Notes:

<sup>1</sup> Initial entry and basic training accessions only

<sup>2</sup> Acc=accessions

<sup>3</sup> Rou=adult routine

<sup>4</sup> Risk=special, risk-based, and occupational

<sup>5</sup> Refer to paragraph 4-13.

## **Appendix E Internal Control Evaluation Process**

### **E-1. Function**

The function covered by this checklist is immunization and chemoprophylaxis.

### **E-2. Purpose**

The purpose of this checklist is to assist in evaluating key management controls and is not intended to address all controls. The evaluation is focused at the clinic level, regardless of Service, to include both fixed facilities (MTFs, TDA units) and TOE field units. The checklist serves as a clinical quality improvement tool and is described at <http://www.vaccines.mil/cqiip>.

### **E-3. Instructions**

Answers must be based on the actual testing of key management controls (for example, document analysis, direct observation, interviewing, sampling, or simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These key management controls must be formally evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2-5 (Internal Control Evaluation Certification Statement).

### **E-4. Test questions**

Test questions are available directly via a link at the Web site address in paragraph E-2, above.

### **E-5. Supersession**

This evaluation replaces the evaluation for immunization and chemoprophylaxis previously published in AR 40-562, dated 29 September 2006.

## **Glossary**

### **Section I**

#### **Abbreviations**

**ACIP**

Advisory Committee on Immunization Practices

**AFI**

Air Force Instruction

**AFJI**

Air Force Joint Instruction

**ASD (HA)**

Assistant Secretary of Defense (Health Affairs)

**CBRN**

chemical, biological, radiological, and nuclear

**CDC**

Centers for Disease Control and Prevention

**CFR**

Code of Federal Regulations

**CG-11**

Coast Guard, Director, Health, Safety, and Work-Life

**COMDTINST**

Commandant Instructions

**DCJI**

disposable-cartridge jet injectors

**DD**

Department of Defense Form

**DHHS**

Department of Health and Human Services

**DODD**

Department of Defense Directive

**DODI**

Department of Defense Instruction

**EUA**

emergency use authorization

**FDA**

Food and Drug Administration

**G6PD**

glucose-6-phosphate dehydrogenase

**Hib**

Haemophilus influenzae type b

**HQ**

headquarters

**HQDA**

Headquarters, Department of the Army

**IND**

investigational new drug

**IPV**

inactivated poliovirus vaccine

**ITS**

immunization tracking systems

**JTF CapMed**

Joint Task Force - National Capital Region/Medical

**JEV**

Japanese-encephalitis vaccine

**MAJCOM**

major command (Air Force)

**MILVAX**

Military Vaccine Office

**MMR**

measles, mumps, rubella

**MTF**

medical treatment facility

**NCVIA**

National Childhood Vaccine Injury Act

**NVIC**

National Vaccine Injury Compensation (Program)

**OTUSF**

other than U.S. Forces

**RC**

reserve component

**ROTC**

Reserve Officers' Training Corps

**SF**

Standard Form

**SOP**

standard operating procedure

**SSN**

social security number

**STANAG**

standardized agreement

**TB**

tuberculosis

**Td**

Tetanus-diphtheria

**Tdap**

Tetanus-diphtheria and acellular pertussis (vaccine)

**USAMMDA**

U.S. Army Medical Materiel Development Activity

**USC**

United States Code

**USCG**

United States Coast Guard

**VAERS**

Vaccine Adverse Events Reporting System

**VIS**

vaccine information statement

**WHO**

World Health Organization

**Section II**

**Terms**

This section contains no entries.

**Section III**

**Special Abbreviations and Terms**

**Accession**

The attainment of rank or dignity.

**Alert personnel**

Specified forces maintained (alert force) in a special degree of readiness.

**Antigen**

A substance that, when introduced into the body, stimulates the production of an antibody.

**Contraindication**

A factor that renders the administration of a drug or the carrying out of a medical procedure inadvisable.

**Hyperendemic**

Equally endemic, at a high level, in all age groups of a population.

**Neisseria meningitides**

The bacteria that is the causative agent of cerebrospinal meningitis.

**Plasmodia**

A genus of apicomplexan protozoa, in the family Plasmodiidae parasitic, in the blood cells of animals and humans; the malarial parasite.

**Primaquine**

An ant malarial agent especially effective against Plasmodium vivax.

**Seroimmunity**

Immunity conferred by administration of an antiserum.

**Serologic**

The scientific study of blood serum and other bodily fluids.

**Toxoid**

A bacterial toxin (usually an exotoxin) whose toxicity has been weakened or suppressed either by chemical (formalin) or heat treatment, while other properties, typically immunogenicity, are maintained.

**Urticaria**

A skin condition characterized by intensely itching welts and caused by allergic reactions.

**Variola virus**

The causative agent of smallpox.



**ALVARADO, et al., v. AUSTIN, et al.**  
**PLAINTIFFS' INJURIES, HARMS AND § 533 NEGATIVE PERSONNEL ACTIONS**

	Plaintiff	Complaint Exhibit 1 Page Reference	Rank	Branch	Promotion Denial/ Recom. for Denial	School Denial	Training Denial	Assignment/ Orders/ Duty Title/ PCS Denial	Adverse Action: OER/FITREP/ LOI/LOC/LOR / GOMOR/etc.	Natural Immunity	Other
1	Alvarado, Israel	2-12	LT	USN	¶13			¶12, 13	¶13	¶12	Rtn ¶13 ND ¶13 DP ¶12
2	Barfield, Steven	14-20	Lt Col	USAFR				¶12	¶12	¶10	MR ¶11
3	Brobst, Walter	21-27	1 <sup>st</sup> Lt	USAFR		¶13	¶13	¶13	¶9, 13	¶5.c, 8	IRR ¶9, 13 DP ¶12
4	Brown, Justin	28-38	LT	USN <sup>1</sup>					¶15	¶10, 14	DP ¶14
5	Calger, David	39-41	CPT	USAR				¶7, 9		¶6.c, 9	
6	Cox, Mark	42-60	CDR	USNR			¶32	¶32	¶13, 33, 34		VTU ¶32 DP ¶32
7	Eastman, John	61-69	CDR	USN				¶20 <sup>2</sup>	¶6		MR ¶18, 21
8	Fussell, Thomas	70-78	Maj	USAF				¶12		¶10	
9	Gentilhomme, Nathanael	79-85	LT	USN				¶14	¶14	¶11	DP ¶12
10	Harris, Doyle	86-98	CPT	USA			¶15	¶15	¶15	¶11	MR ¶9 DP ¶14
11	Henderson, Jeremiah	99-104	Capt	USAF			¶12	¶12			DP ¶11
12	Hirko, Andrew	105-110	CPT	USA			¶12			¶10, 12	ND* DP ¶12

<sup>1</sup>Assigned to US Coast Guard

<sup>2</sup> Chaplain Eastman's Command assignment was ultimately reinstated.

ND = Nondeployable

MR = Medical Waiver Request

Rtn = Retention Board

VTU = Reassigned to unpaid Volunteer Training Unit

IRR = Involuntary Reassignment Non-Participating Individual Ready Reserve

DP = Discriminatory Policies (eg., masking, testing, refused entry to buildings, holdover on schooling, hostile/demeaning behavior)

\* = Action was taken after Declaration submission

13	Ingram, Krista	111-116	Maj	USAF		¶13		¶13		¶12	DP ¶12
14	Jackson, Ryan	117-126	Capt	USAF		¶17			¶17, 18		ND ¶17
15	Layfield, Joshua		Capt	USAFR				¶14	¶14		DP ¶14
16	Lee, James	127-139	COL	USA		¶15	¶15	¶15	¶9		DP ¶9, 12
17	Lewis, Brad	140-146	COL	USA				¶13	¶10	¶11	DP ¶11
18	Nelson, Robert	147-152	Capt	USAF		¶14		¶11, 13			DP ¶14
19	Pak, Rick	153-157	MAJ	USA			¶13	¶13	¶13		DP ¶14, 15
20	Pogue, Randy	158-163	MAJ	USAR					¶14	¶9	
21	Rodriguez, Gerardo	164-167	Capt	USAF		¶14		¶14			
22	Schnetz, Parker	168-176	CPT	USA	¶14	¶24		¶18, 24	¶14	¶10	DP ¶11, 14
23	Shaffer, Richard	177-180	LT	USN				¶12		¶8, 12	ND ¶12
24	Shour, Jonathan	181-194	LT	USN				¶19, 21, 23, 26		¶9	DP ¶15, 16, 17, 18, 22, 24, 25
25	Snyder, Jeremiah	195-206	MAJ	USA					¶16, 18		DP ¶14, 15
26	Troyer, David	207-214	CPT	USA						¶14	DP ¶17
27	Weaver, Seth	215-217	1LT	USAR			¶13				ND ¶13
28	Wine, Justin	218-222	Capt	USAFR	¶11					¶9	DP ¶11, 12
29	Withers, Thomas	223-227	MAJ	TX ARNG		¶12				¶9	ND ¶12
30	Wronski, Mathew	228-232	LTJG	USN <sup>3</sup>							DP ¶17
31	Young, Jerry	233-257	MAJ	USA			¶18.i, j	¶16.d, 18.g, 25	¶18.f	¶9.d, 11	DP ¶16, 17, 18, 19, 23, 26

<sup>3</sup> Assigned to IRR as a Chaplain Candidate

ND = Nondeployable

MR = Medical Waiver Request

Rtn = Retention Board

VTU = Reassigned to unpaid Volunteer Training Unit

IRR = Involuntary Reassignment Non-Participating Individual Ready Reserve

DP = Discriminatory Policies (eg., masking, testing, refused entry to buildings, holdover on schooling, hostile/demeaning behavior)

\* = Action was taken after Declaration submission

**ALVARADO, et al., v. AUSTIN, et al.**  
**PLAINTIFFS' FIRST AMENDMENT INJURIES, IRREPARABLE HARM**

	Plaintiff	Complaint Exhibit 1 Page Reference	Rank	Branch	RAR Denial/ Appeal Denial	Exclusion from RAR/ RRT Process	Compelled Speech	Hostile Work Environment	Ostracized/ Isolated/ Stigmatized	RAR Process Futility	Retaliation	Censorship/ Self-Censorship	Medical Care/ Insurance
1	Alvarado, Israel	2-12	LT	USN	¶10				¶13		¶12, 13		
2	Barfield, Steven	14-20	Lt Col	USAFR	¶10				¶12				
3	Brobst, Walter	21-27	1 <sup>st</sup> Lt	USAFR	¶9				¶13				
4	Brown, Justin	28-38	LT	USN <sup>1</sup>	¶11		¶15, 16	¶14	¶14	¶15, 16		¶15	
5	Calger, David	39-41	CPT	USAR						¶7, 9			
6	Cox, Mark	42-60	CDR	USNR	¶13		¶13	¶13, 19	¶13, 32	¶13	¶32, 33		
7	Eastman, John	61-69	CDR	USN	¶9								
8	Fussell, Thomas	70-78	Maj	USAF	¶11	¶12		¶12	¶12				
9	Gentilhomme, Nathanael	79-85	LT	USN	¶10	¶14	¶14	¶12, 14	¶12		¶14	¶14	
10	Harris, Doyle	86-98	CPT	USA			¶10, 14.3, 17.1	¶14.1, 14.2	¶10, 14.2, 17.4	¶12, 15.3	¶15.1, 15.2, 15.3, 17.2,		
11	Henderson, Jeremiah	99-104	Capt	USAF	¶10			¶13	¶11				
12	Hirko, Andrew	105-110	CPT	USA	¶10				¶12			¶12	
13	Ingram, Krista	111-116	Maj	USAF					¶12				
14	Jackson, Ryan	117-126	Capt	USAF	¶10			¶17		¶17			
15	Layfield, Joshua		Capt	USAFR	¶10			¶13, 14, 15	¶13, 14	¶14			
16	Lee, James	127-139	COL	USA	¶10		¶9, 15	¶9, 12, 14, 15	¶12, 15		¶9, 14		
17	Lewis, Brad	140-146	COL	USA	¶14			¶11		¶15			

SD—Supplemental Declaration

<sup>1</sup>Assigned to US Coast Guard

18	Nelson, Robert	147-152	Capt	USAF		¶11		¶12	¶11, 14, 18				
19	Pak, Rick	153-157	MAJ	USA				¶47	¶47	¶47			
20	Rodriguez, Gerardo	164-167	Capt	USAF					¶15	¶13			
21	Schnetz, Parker	168-176	CPT	USA		¶17	¶17, SD6	¶13, 14, 15, 16, 22	¶18, 22	¶11, 16, 20	¶13, 14, 19, 24	¶17, SD6	
22	Shaffer, Richard	177-180	LT	USN	¶9								
23	Shour, Jonathan	181-194	LT	USN	¶13		¶15, 17, 18, 24	¶14, 15, 17, 18, 21, 23, 26	¶15, 17, 21, 23	¶13, 15, 26	¶16, 18, 20, 21, 27	¶23, 24, 25, 27	
24	Snyder, Jeremiah	195-206	MAJ	USA				¶14, 15	¶14,16		¶16		
25	Troyer, David	207-214	CPT	USA	¶10								
26	Wine, Justin	218-222	Capt	USAFR			¶12	¶11, 12	¶11	¶11, 12			
27	Wronski, Mathew	228-232	LTJG	USN <sup>2</sup>					¶17				
28	Young, Jerry	233-257	MAJ	USA			¶18, 19, 27	¶16, 17, 18, 19, 20, 23, 24	¶16, 17, 18, 19, 23, 27	¶12, 18, 19, 20	¶18, 19, 23, 26		

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SD=Supplemental Declaration  
 P=Assigned to IRR as a Chaplain Candidate

	Plaintiff	Complaint Exhibit 1 Page Reference	Rank	Branch	RAR Denial/ Appeal Denial	Exclusion from RAR/ RRT Process	Compelled Speech	Hostile Work Environment	Ostracized/ Isolated/ Stigmatized	RAR Process Futility	Retaliation	Censorship/ Self-Censorship	Medical Care/ Insurance
1	Asbury, Brenton		LCDR	USN	¶12					¶12		¶12	
2	Ballard, Jordan		CPT	USA	¶9, 10			¶11, 12	¶11, 12				¶13
3	Booth, Chad		CPT	USA	¶10			¶12, 13		¶13, 14	¶15, 18, 19, 20		
4	Botello, Jeremiah		CPT	AZ ARNG	¶10	¶13	¶10	¶13, 14	¶13	¶13	¶10, 13, 14, 15		¶12
5	Dersch, Jordan		CPT	USA	¶10		¶13	¶13	¶12, 13	¶13	¶13	¶13	
6	Diltz, Clayton		Maj	CA ANG	¶9, 10, 15		¶11, 14	¶12, 14, 15	¶14, 15	¶12, 14	¶14	¶12, 14, 15	
7	Hart, Michael		LTC	USA			¶12		¶14	¶10	¶15	¶12	¶16
8	Howarth, Ian		Maj	ID ANG						¶10			
9	Schrader, D. Lance		Maj	USAF	¶22, 36			¶12, 13, 23, 26, 27, 29, 31, 32, 33, 52	¶10, 11, 12, 38, 48	¶17, 21, 28, 30, 36, 37, 42, 47, 49, 51, 55	¶14, 15, 21, 40, 43, 44, 45, 46, 50, 49, 52, 53	¶10, 14, 15, 49	
10	Zagdanski, Jonathan		LTC	USAR					¶11				

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ISRAEL ALVARADO, et al.,	:	
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	Case No. 1:22-cv- 0876-AJT-JFA
	:	
LLOYD AUSTIN, III, et al.,	:	
	:	
<i>Defendants.</i>	:	
_____	:	

**DECLARATION OF CAPTAIN (RET) STEVE BROWN, CHC, USN**

Pursuant to 28 U.S.C. § 1746, I, Steven D. Brown, declare as follows:

1. My name is Steven D. Brown. I am a retired Navy chaplain and current endorser for the Associated Gospel Churches (“AGC”), located in Greenville, SC, where I also live. I am competent to testify on and have personal knowledge of matters addressed in this declaration.
2. I began my military career by enlisting in the United States Marine Corps Reserve in February 1980. I served as a "Cobra" helicopter mechanic (MOS 6114) in HMA-773, MAG-42 for five years drilling at NAS Atlanta, while I completed college and seminary. In August 1984, I returned to Bob Jones Seminary to complete my Master of Divinity degree, was endorsed by AGC and was commissioned an Ensign in the Navy’s Theological Student Program Officer - now known as the Chaplain Candidate Program or “CCP”. I superseded to active duty in the Navy Chaplain Corps in January 1987. My career as a Navy chaplain included assignments to Navy chapels in the United States and overseas, multiple assignments with the Marines, four ships, the Coast Guard, Seabees, and multiple headquarters. After selection for CAPT, I assumed my duties as FIRST NAVAL CONSTRUCTION DIVISION Chaplain in 2007, and then Second

Marine Division Chaplain in March 2010, subsequently deploying as the Regional Command (Southwest) /II MARINE EXPEDITIONARY FORCE (Forward) Chaplain in Helmand, Afghanistan from March 2011- March 2012.

3. Returning to Camp LeJeune, I subsequently retired on 1 February 2013 after almost 33 years of active and reserve Navy and Marine Corps service.

4. AGC was my endorser throughout my Chaplain career. I mention my career only for the purpose of establishing my military experience and personal knowledge of the Navy and its Chaplain Corps (the “CHC”).

5. Upon retirement, I assumed responsibilities as the President of AGC located in Greenville, SC, and endorser for its chaplains. AGC currently endorses over 100 active duty and reserve military chaplains.

6. I make this declaration to address the question whether the terms “rite , ritual or ceremony” can be limited or defined to apply only in a secular meaning, such as “a marriage ceremony” or the “baptismal rite.”

7. The answer to that question is “no” because of two realities in the Chaplain Corps, First the military chaplaincy operates under the principle of “pluralism” in which chaplains of different faith groups, traditions and theological positions operate together with the understanding that we respect the right of others to have viewpoints and positions on significant theological questions and practices that are different than my own tradition or belief system. “Respect” does not equal agreement. Simply put, what one chaplain may see as a rite, another may see as a ceremony, or a ritual, or nothing at all.

8. The second reality addresses the question, “When is a Military Chaplain a Chaplain, and when is he just an Officer? The answer is, the Chaplain is always a Chaplain every moment of

every day. He is an Officer because he is a Chaplain, *not* a Chaplain because he is an Officer. 9

The Chaplain's Endorsing Agency endorsed him to be a *Pastor-in-Uniform*, not a Morale Officer, Spiritual Readiness Officer, or secular Social Worker, and the Endorser expects the Chaplain to serve continually as a *Pastor-in-Uniform*.

10. Even when the Chaplain is involved in supposedly *secular* tasks in his Military Service, the chance for him to *instantly* provide Religious Ministry in keeping with the free-exercise clause and his endorsement exists *continually*. There really is no difference between the secular and the sacred, for the Chaplain, all ground is Holy Ground. Something as simple as visiting a Motor-pool can become a religious event. The Motor-pool can become a make-shift Confessional or counseling space, and even a place where a sacred Religious Rite is officiated or dispensed by the Chaplain. Religious Rites are not restricted to being dispensed only in Chapels.

11. Convoys become religious and sacred moments when the Chaplain is asked to pray prior to shoving-off on an IED infested road. What starts out as a good idea evolves into a Religious Rite to be officiated by the Chaplain before every future Convey departs.

12. A troubled Soldier, after being dismissed from the Command's Indoctrination Course at his new Command asks the Chaplain in the hallway about a sinful issue in his life, and the Chaplain on the spot offers him Religious Education in the Biblical view of Human Sexuality and Morality. It becomes a sacred moment that moves from the open hallway to an empty Classroom where the Sacred Religious Rite of Confession and Repentance take place with that Soldier.

13. The religious transformation Evangelical Christians call being "born again", "turning from darkness to light" may be called different things by different religious groups, a rite, a ceremony, or a ritual, *e.g.*, saying the "sinner's prayer"; what secular terminology is applied does

not matter. What matters is that a spiritual transaction takes place that fulfills the mission of the chaplain, to bring the sacred into the secular, and to turn or connect service personnel to their God. The term by which that event is described rests with the chaplain and his/her endorser, the chaplain is hired and commissioned as a “religious expert” and it is not for others, especially the government who must remain neutral in areas of religion, to define religious terms to suit their own ideologies or purposes.

14. Sacred Religious Rites can be dispensed almost anywhere. On July 2, 1963, a Roman Catholic Priest Chaplain offered absolution to his troops before the bloody battle at Gettysburg, a Religious Rite that was not available to them before the battle as they had been in long forced marches the previous 2-3 weeks.

15. It would be suicide for a Commander to bog down his Chaplain with only secular responsibilities or force him to only be involved in Religious Rites in the Chapel. The fact “10 U.S. Code § 7073 – Chaplains” exists is an attestation to the critical Religious Service Military Chaplains bring to our men and women in Uniform.

16. A simple conversation can become a “ceremony” or a “sacred rite” such as when a repentant sinner testifies to the change in his/her life because they’ve made their peace with God through repentance. To a chaplain, it’s a transaction that takes place between individuals at the instigation of and in the presence of God. Thus, the transaction which convey’s the military person’s surrender of his life to the authority of God can be a rite, ritual or a ceremony, just like the opposite, when a person publicly (even if it’s in private) surrenders his/her conscience to do something he/she know is wrong or forbidden by their faith. This “ceremony”, “ritual” or “rite” takes on special significance to the chapla Steve, in because of who and what the chaplain represents and the message the action conveys.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

August 12, 2022

/s/ Steven D. Brown  
CAPT Steven D. Brown, CHC, US (Ret)

# Exhibit 10

**COVID-19 MANDATORY VACCINATION IMPLEMENTATION**

**GUIDANCE FOR DAF SERVICE MEMBERS**

**Deputy Director of Staff for COVID-19**

**14 March 2022**

**TABLE OF CONTENTS**

**Chapter 1 – INTRODUCTION .....1**

Section 1.1 Purpose 1

Section 1.2 Background 1

Section 1.3 Key Messages 1

Section 1.4 Applicability and Scope 2

**Chapter 2 – ROLES AND RESPONSIBILITIES .....3**

Section 2.1 HAF/DDS COVID-19 3

Section 2.2 AF/SG 3

Section 2.3 MAJCOMs, FLDCOMs, DRUs, and FOAs 3

Section 2.4 Installation Commanders 3

Section 2.5 Public Affairs 4

Section 2.6 Legal Offices 4

Section 2.7 Chaplains 4

Section 2.8 Unit Commanders 5

Section 2.9 Military Treatment Facility Commanders or Local Equivalent 5

Section 2.10 Vaccine Site Coordinators 6

Section 2.11 Individuals Receiving Vaccination 6

**Chapter 3 – EDUCATION PLAN FOR MANDATORY VACCINATION.....7**

Section 3.1 General 7

Section 3.2 Key Messages 7

Section 3.3 Education for Individuals 7

Section 3.4 Education for Medical Personnel 8

**Chapter 4 – MEDICAL ISSUES .....9**

Section 4.1 Vaccine Administration 9

Section 4.2 Pregnancy and Nursing Considerations 9

Section 4.3 Pre-Vaccination Screening 9

Section 4.4 Adverse Reactions 10

Section 4.5 Medical Exemptions 10

Section 4.6 COVID-19 Vaccine Tracking and Documentation 11

Section 4.7 Medical Logistics/Vaccine Distribution 11

Section 4.8 Aircrew Management 12

**Chapter 5 – ADMINISTRATIVE ISSUES.....13**

Section 5.1 Exemptions 13

Section 5.2 Healthcare Access Guidelines 13

Section 5.3 Refusal Management 14

**Chapter 6 – SCREENING TESTING.....16**

Section 6.1 COVID-19 Screening Testing Requirements 16

Section 6.2 Recordkeeping 17

Section 6.3 Actions After Test Results 17

Section 6.4 Testing Refusals 18

Section 6.5 Testing Kits 18

**ATTACHMENTS .....20**

1 Post-Accession Immunization Religious Accommodation Requests 20

2 Immunization Medical Exemption Requests 23

3 COVID-19 Vaccination Process, Military Members 24

4 COVID-19 Home Test Kits 25

## Chapter 1

### INTRODUCTION

**1.1. Purpose.** This document provides Department of the Air Force (DAF) implementation guidance pursuant to the Department of Defense (DoD) Coronavirus Disease 2019 (COVID-19) vaccination mandate. Source documents can be found at <https://usaf.dps.mil/teams/COVID-19/SitePages/Home.aspx>.

#### **1.2. Background.**

1.2.1. On August 23, 2021, the U.S. Food and Drug Administration (FDA) approved the biologics license application for the Comirnaty vaccine, made by Pfizer-BioNTech, as a two-dose series for prevention of COVID-19 in persons aged 16 years or older. Previously, on December 11, 2020, the FDA issued an Emergency Use Authorization (EUA) for the Pfizer-BioNTech COVID-19 vaccine, which has the same formulation as the Comirnaty vaccine. Per FDA guidance, these two vaccines are “interchangeable,” when prepared according to their respective instructions, and DoD health care providers should “use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.”

1.2.2. On January 31, 2022, the FDA approved the biologics license application for the Spikevax vaccine, made by Moderna, as a two-dose series for prevention of COVID-19 in persons aged 18 years or older. Previously, on December 18, 2020, the FDA issued an EUA for the Moderna COVID-19 vaccine, which has the same formulation as the Spikevax vaccine. Per FDA guidance, these two vaccines are “interchangeable” and DoD health care providers should “use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.”

1.2.3. All other vaccines authorized by the FDA under EUA will remain voluntary until they receive full FDA approval.

1.2.4. Following the FDA news release, the Secretary of Defense announced that the COVID-19 vaccine would be a requirement for all members of the Armed Forces under DoD authority on Active Duty or in the Ready Reserve, including the National Guard.

1.2.5. Service members voluntarily immunized with any FDA approved or authorized COVID-19 vaccine or World Health Organization (WHO) Emergency Use Listing (EUL) COVID-19 vaccine in accordance with (IAW) applicable dose requirements prior to, or after, the establishment of this policy are considered fully vaccinated.

**1.3. Key Messages.** Education of all levels in the command structure is crucial to ensuring the success of this program. The key messages for this vaccination effort are:

1.3.1. Our Airmen and Guardians need to be prepared to operate anytime, anywhere in the world.

1.3.2. Getting vaccinated ensures we are a ready force to meet our commitments to the nation while protecting the health of our team, families, and communities.

1.3.3. Those who refuse to obey a lawful order to receive the COVID-19 vaccine will be subject to appropriate administrative and disciplinary actions consistent with law and Department of the Air Force policy.

**1.4. Applicability and Scope.**

1.4.1. All individuals identified in section 1.2.4.

1.4.2. All other eligible personnel are strongly recommended to voluntarily receive any FDA approved or authorized COVID-19 vaccine or WHO EUL COVID-19 vaccine.

1.4.3. Service members who are actively participating in COVID-19 vaccine clinical trials begun prior to November 22, 2021 are exempted from mandatory vaccination against COVID-19 until the trial is complete, in order to avoid invalidating such clinical trial results.

## Chapter 2

### ROLES AND RESPONSIBILITIES

#### 2.1. AF/DDS COVID-19.

2.1.1. As DAF Office of Primary Responsibility (OPR) for implementation of the vaccination mandate, develop and implement necessary DAF policy.

2.1.2. Provide program oversight.

2.1.3. Coordinate with other Services and agencies on policy implementation and execution as appropriate.

#### 2.2. AF/SG.

2.2.1. Coordinate with the Director, Defense Health Agency (DHA).

2.2.2. Serve as the final appeal authority for all denied Religious Accommodation Requests (RARs) for exemption from vaccine mandate IAW DAFI 52-201.

#### 2.3. MAJCOMs, FLDCOMs, DRUs, and FOAs.

2.3.1. Designate a staff element as OPR for managing implementation of DAF COVID-19 guidance; designate any Offices of Coordinating Responsibility (OCRs) as deemed necessary.

2.3.2. Consult with installations on vaccination issues which require command support.

2.3.3. Submit all requests for official meetings with 250 or more people, mission-critical official travel (for unvaccinated personnel), and exceptions to COVID-19 policy to HAF/ES workflow (haf-es.workflow@us.af.mil).

2.3.4. Serve as the RAR approval authority for granting COVID-19 vaccination exemptions per DAFI 52-201.

#### 2.4. Installation Commanders.

2.4.1. Ensure compliance with DAF COVID-19 guidance by maintaining oversight and ownership of the installation's implementation plan for mandatory vaccination.

2.4.2. As needed, develop an installation implementation plan consistent with DoD and DAF guidance. The DAF plan may be used as the foundation for the installation's implementation plan.

2.4.3. As needed, designate a senior line officer as the installation Officer In Charge (OIC) to oversee the implementation of this guidance and the vaccination mandate.

2.4.4. Direct the Medical Treatment Facility (MTF) Commander or Senior Officer in the Reserve Medical Unit to coordinate the medical administrative and clinical functions of COVID-19 vaccination pursuant to this guidance.

2.4.5. Ensure all installation personnel are educated on the vaccine and the vaccination requirement IAW Chapter 3 of this guidance.

2.4.6. Submit requests for exception to policy to MAJCOMs, FLDCOMs, DRUs and FOAs for coordination.

2.4.7. Ensure all unvaccinated personnel comply with COVID-19 screening and testing requirements, and applicable safety standards. Leaders should continue to counsel all unvaccinated individuals on the health benefits of receiving the COVID-19 vaccine.

## **2.5. Public Affairs.**

2.5.1. Ensure communication efforts prioritize service member education regarding the vaccine mandate and options for those refusing to obey lawful orders – including requests for medical and administrative exemptions or religious accommodation.

2.5.2. Coordinate responses to media queries in a timely manner and align messaging with SAF/LL in response to Congressional Inquiries and Requests For Information (RFIs).

2.5.3. Provide communication guidance to MAJCOM, FLDCOM, DRU and FOA Public Affairs directors to maintain DAF-level of release for COVID-related statistics and synchronize messaging.

2.5.4. Participates in Religious Resolution Teams at the MAJCOM, FLDCOM, DRU and FOA and DAF levels.

## **2.6. Legal Offices.**

2.6.1. Educate personnel, as needed, on relevant legal issues.

2.6.2. Answer any inquiries regarding legal issues related to mandatory vaccination and this guidance (e.g., Freedom of Information Act requests and refusals to receive mandatory vaccinations) and provide guidance to commanders as needed/requested.

## **2.7. Chaplains.**

2.7.1. Assist with RARs for exemption from vaccine mandate IAW DAFI 52-201.

2.7.2. The senior chaplain leads the Religious Resolution Team (RRT) in providing recommendations to commanders on how to resolve RARs. See Attachment 1, *Religious Accommodation Requests for Exemption from Vaccine Mandate*.

2.7.3. To avoid the appearance of conflicts of interest, Chaplains who have submitted an RAR (for their own exemption from vaccine mandate) will not serve on any RRT.

## **2.8. Unit Commanders.**

2.8.1. Ensure unit personnel are educated on the vaccine and the vaccination requirement IAW Chapter 3 of this guidance.

2.8.2. Enforce compliance with the vaccination mandate from the Secretary of Defense and the Secretary of the Air Force by issuing an order for all unvaccinated members under the unit's command to receive the COVID-19 vaccine.

2.8.3. For personnel subject to the vaccination mandate, manage cases of individual refusal to receive the vaccine. Begin taking refusal management steps as soon as possible following notification by the MTF of vaccine refusal by a unit member.

2.8.4. Ensure all unvaccinated personnel comply with COVID-19 screening and testing requirements, and applicable safety standards. Leaders should continue to counsel all unvaccinated individuals on the health benefits of receiving the COVID-19 vaccine.

2.8.5. Ensure Service members receive the duty time necessary to obtain the mandatory COVID-19 vaccination, whether through the DoD or private providers; up to four hours per vaccination event is authorized. While the COVID-19 vaccination booster is not mandatory, Service members will be granted a four-hour pass to receive the appropriate booster in accordance with CDC guidelines; this applies retroactively to service members who have already received the COVID-19 vaccination booster.

2.8.6. Ensure the COVID-19 vaccination status of all assigned Service members is appropriately coded in readiness reporting systems.

## **2.9. Military Treatment Facility Commanders or Local Equivalent.**

2.9.1. Provide oversight for all medical administrative and clinical aspects of vaccination IAW DHA-IPM 20-004.

2.9.2. Assign medical provider(s), as needed, to support:

2.9.2.1. The installation's Religious Resolution Team (RRT) and medical counseling for personnel requesting religious accommodation;

2.9.2.2. The medical evaluation of personnel requiring medical exemptions; and

2.9.2.3. Notification of commanders if the initial refusal of the COVID-19 vaccine takes place in the MTF or Points of Dispensing (PODs).

2.9.3. Ensure appropriate medical personnel are educated on the clinical and policy aspects of the vaccine program (see Chapter 3). When requested, provide additional information to Commanders and individuals.

2.9.4. Ensure a process is in place for access to health care for individuals who may have an adverse reaction to the vaccine.

2.9.5. Ensure those receiving vaccination are offered education prior to vaccine administration.

2.9.6. Oversee management of adverse events IAW DHA-IPM 20-004.

2.9.7. Ensure providers are educated on evaluation processes for medical exemption requests.

**2.10. Vaccine Site Coordinators.**

2.10.1. Ensure education and training of vaccinators on current vaccination policy is accomplished IAW Defense Health Agency-Immunization Healthcare Division (DHA-IPM) 20-004 and any supplemental guidance from DHA-IHD.

2.10.2. Ensure the most current version of the FDA Fact Sheet is readily available/distributed at education venues and within the MTF until an Advisory Committee on Immunization Practices (ACIP)-approved Vaccine Information Statement (VIS) becomes available.

2.10.3. Continue to coordinate with the vaccine coordinators and logistics champions.

2.10.4. For personnel deploying to countries where a yellow shot record is required, ensure COVID-19 vaccine is also documented in their yellow shot record.

**2.11. Individuals Receiving Vaccination.**

2.11.1. Read the applicable COVID-19 vaccination FDA Fact Sheet for education on the risks and benefits of vaccination.

2.11.2. Address any questions or concerns with medical staff prior to receiving the vaccine.

2.11.3. Service members who receive the vaccination outside a military facility will provide documentation to their unit health monitor and medical unit within 72 hours of vaccination.

## Chapter 3

### EDUCATION PLAN FOR MANDATORY VACCINATION

**3.1. General.** Education is the key to a successful COVID-19 vaccination program. Commanders at all levels are responsible for educating their personnel before vaccination. This educational program will inform personnel of the following:

3.1.1. The Comirnaty (Pfizer) and Spikevax (Moderna) vaccines are FDA-approved for the prevention of severe COVID-19 disease, hospitalization, and death.

3.1.2. Known and potential benefits and risks of Comirnaty (Pfizer), Spikevax (Moderna), or any future FDA-approved COVID-19 vaccine.

3.1.3. Only an FDA-licensed vaccine may be mandated; however, Service members may be voluntarily immunized with any FDA approved or authorized COVID-19 vaccine or WHO EUL COVID-19 vaccine prior to or after the establishment of this policy and are considered fully vaccinated.

3.1.4. The FDA and Centers for Disease Control and Prevention (CDC) have monitoring systems in place to ensure that any safety concerns continue to be identified and evaluated in a timely manner.

### **3.2. Key Messages.**

3.2.1. Our Airmen and Guardians need to be prepared to operate anytime, anywhere in the world.

3.2.2. Getting vaccinated ensures we are a ready force to meet our commitments to the nation while protecting the health of our team, families and communities.

3.2.3. Those who refuse to obey a lawful order to receive the COVID-19 vaccine will be subject to appropriate administrative and disciplinary actions consistent with law and Department of the Air Force policy.

**3.3. Education for Individuals.** All unvaccinated personnel must receive education on the COVID-19 vaccinations before receiving the vaccine. This applies to individuals initiating or continuing the vaccination series.

3.3.1. The primary mode of providing education to individuals is the FDA Fact Sheet that will be disseminated at the Immunizations Clinic and/or PODs at a minimum.

3.3.2. Prior to receiving a fully FDA-approved COVID-19 vaccine or EUA/EUL COVID-19 vaccine, individuals must have had the opportunity to review the product-specific information.

3.3.2.1. Upon arrival at the MTF to receive the COVID-19 vaccine, individuals will be offered a copy of the product specific Fact Sheet.

3.3.2.2. Prior to administering the COVID-19 vaccine, the immunization technician will confirm that the patient understands the information in the FDA Fact Sheet. Any questions should be addressed prior to vaccination.

**3.4. Education for Medical Personnel.** Medical personnel are the primary source of information on the disease, the vaccine, and vaccine side effects. For those individuals who experience an adverse event associated with the vaccine, medical personnel will provide the appropriate treatment and referral, if necessary, for diagnosis and treatment of medical conditions.

3.4.1. The MTF Commander or local equivalent will ensure that healthcare professionals and vaccinators involved in COVID-19 vaccination review comply with implementation guidance.

3.4.2. Medical personnel involved with vaccination must understand healthcare-access guidance, procedures for reporting in the Vaccine Adverse Events Reporting System (VAERS) and reasons for medical exemption.

3.4.3. Medical personnel must understand the healthcare provider's roles and responsibilities with medical and administrative exemptions to include religious exemptions.

3.4.4. Personnel providing COVID-19 immunizations must acknowledge completion of training IAW DHA-IPM 20-004.

3.4.5. The Chief of Medical Staff (SGH) will ensure education on the vaccine and the vaccination requirement is accomplished for: clinical supervisors of vaccinators, preventive medicine and public health staff, relevant healthcare providers (e.g., allergy-immunology, ambulatory care, flight medicine, emergency care), and any other provider designated by the Medical Commander.

## **Chapter 4**

### **MEDICAL ISSUES**

#### **4.1. Vaccine Administration.**

4.1.1. Administer COVID-19 vaccine IAW DHA-IPM 20-004.

4.1.2. The Individual Medical Readiness (IMR) report in the Aeromedical Services Information Management System (ASIMS) will turn “red” for personnel not fully vaccinated by the deadline established for their service component.

4.1.3. An order to receive the COVID-19 vaccine is not related to the colors in ASIMS. The colors are for MTF tracking purposes only.

4.1.4. For individuals recently diagnosed with COVID-19, treated with monoclonal antibodies, or treated with convalescent plasma, administer COVID-19 immunization in accordance with recommendations from the CDC, recommendations from the CDC’s Advisory Committee on Immunization Practices (ACIP), and FDA guidelines.

#### **4.2. Pregnancy and Nursing Considerations.**

4.2.1. The COVID-19 vaccine is recommended during pregnancy. Pregnant Service members (without an approved exemption) are mandated to receive COVID-19 vaccination. This is consistent with guidance from the CDC, American College of Obstetricians and Gynecologists (ACOG), and the Society for Maternal-Fetal Medicine (SMFM). However, a pregnant Service member with concerns about vaccination during pregnancy may pursue a temporary medical exemption following vaccine counseling from their healthcare provider. The temporary medical exemption expires at the end of the pregnancy.

4.2.2. As needed, consult medical providers to weigh the benefit/risk of vaccinating with any COVID-19 vaccine during pregnancy.

4.2.3. Nursing is not an approved criteria for a medical exemption. Nursing mothers (unless under a medical exemption for another approved medical exemption) are mandated to receive an FDA-approved COVID-19 vaccine.

4.2.4. Individuals seeking information related to vaccination during pregnancy or while nursing are encouraged to access the following website: <https://www.acog.org/womens-health/faqs/coronavirus-covid-19-pregnancy-and-breastfeeding>.

#### **4.3. Pre-vaccination Screening.**

4.3.1. All patients will be medically screened prior to administering the COVID-19 vaccine, to ensure there are no contraindications for receiving the vaccine.

#### **4.4. Adverse Reactions.**

4.4.1. General Information. Medical personnel must be prepared to manage perceived or actual adverse events after vaccination: how to minimize them, respond to them, and report them IAW AFI 48-110. Treat each concern with care; some symptoms following COVID-19 vaccination may or may not be caused by the vaccination.

4.4.2. Immunization Technician's Role. Immunization technicians will have the most current version of the FDA Fact Sheet and other sources of information available, which provide details on potential side effects. If a patient returns to the clinic after receiving a vaccination and indicates that they had an adverse reaction, the immunization technician can, again, provide these information sources to the patient. If the adverse reaction is anything more than a mild, local reaction, the patient should be referred to a provider. In every case, the patient should be given the option of seeing a provider.

4.4.3. Any serious adverse event temporally associated with any FDA approved or authorized COVID-19 vaccine or WHO EUL COVID-19 vaccine should be immediately evaluated by a privileged healthcare provider. Adverse event management should be thoroughly documented in medical records.

4.4.4. Adverse reactions from DoD-directed immunizations are Line of Duty (LOD) conditions.

4.4.5. Adverse event reporting will be conducted IAW DHA-IPM 20-004.

#### **4.5. Medical Exemptions.**

4.5.1. Granting medical exemptions must be performed by a privileged military health care provider IAW AFI 48-110. See Attachment 2, *Medical Exemption Process*. Medical exemptions may be based on pre-existing conditions or result from vaccine adverse reactions and should be consistent with the CDC Interim Clinical Considerations for Use of COVID-19 Vaccines: [https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fvaccines%2F covid-19%2Finfo-by-product%2Fclinical-considerations.html#vaccinated-part-clinical-trail](https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fvaccines%2F covid-19%2Finfo-by-product%2Fclinical-considerations.html#vaccinated-part-clinical-trail).

4.5.1.1. For the COVID-19 vaccines, IAW CDC guidance, contraindications include: 1) severe allergic reaction (anaphylaxis) after previous dose or to a component of the specific COVID-19 vaccine; 2) immediate allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of the specific COVID-19 vaccine; and 3) development of pericarditis or myocarditis after the first dose, or current unresolved myocarditis / pericarditis; 4) treatment with monoclonal antibodies or convalescent plasma, 90 days; 5) Multisystem Inflammatory Syndrome in Adults (MIS-A), until cleared by patient's specialty care team authorize 60 day temporary exemption; 6) acute SARS-CoV-2 infection (confirmed), and until the member has met criteria to discontinue isolation, authorize 30 day temporary exemption; 7) and for duration of pregnancy, (if member desires) after counseling that pregnant women are strongly encouraged to take the vaccine.

4.5.1.2. Previous COVID-19 infections or positive serology do not exempt Service members from full vaccination requirements. (At this time, DoD, consistent with CDC recommendations, has not determined that a serological test is sufficient to meet the immunization requirements). Only “MT” or “Medical, Temporary” medical exemption code should be used in ASIMS. A temporary medical exemption for up to 365 days allows future evaluation against other fully approved/biologics license application vaccines.

4.5.2. Granting of medical exemptions may require a duty status change or deployment limitation for the individual. Any change in duty status/deployment eligibility/assignment limitation due to a medical exemption must be processed IAW applicable AFIs.

4.5.2.1. Use ASIMS medical exemption codes IAW AFI 48-110 IP, Table C-1.

#### **4.6. COVID-19 Vaccine Tracking and Documentation.**

4.6.1. The Public Health Office or the Base Operational Medicine Clinic (BOMC) will assist commanders and their designees with ASIMS access.

4.6.2. COVID-19 vaccination documentation will ensure clinical decision making is captured.

4.6.2.1 Vaccination sites using the Military Health System (MHS) GENESIS system will continue to use this Electronic Health Record (EHR) platform for vaccination documentation.

4.6.2.2 Vaccination sites using the Armed-Forces Health Longitudinal Technology Application (AHLTA) system will use either ASIMS or AHLTA. Do not double document. Data entered into ASIMS or AHLTA will flow to the other.

4.6.2.3 ASIMS can be used as an alternate in locations (Guard/Reserve) who do not have access to AHLTA/MHS GENESIS but do have ASIMS/ Health Artifact and Image Management Solution (HAIMS) capabilities.

4.6.3. ASIMS will serve as the tracking mechanism for immunizations of Airmen and Guardians.

4.6.4. For personnel deploying to countries where a yellow shot record is required, document that COVID-19 vaccine in their yellow shot record.

**4.7. Medical Logistics/Vaccine Distribution.** The US Army Medical Materiel Agency (USAMMA) is responsible for coordinating the distribution of COVID-19 vaccine within DoD.

4.7.1. Base level medical logistics personnel can order the COVID-19 vaccine from USAMMA.

4.7.2. Medical personnel will ensure proper vaccine storage requirements are met.

4.7.3. Medical personnel will monitor vaccines for any relevant shelf-life extensions.

#### **4.8. Aircrew Management.**

4.8.1. Adverse reactions to vaccines are rare. Benefits of administration of vaccine for this population far outweigh the risks. After receiving a COVID-19 vaccine, all flyers, controllers, and special warfare Airmen (DD Form 2992 holders) will maintain access to medical care on the ground and not perform aviation-related duties (e.g., flying, controlling, or jumping) for a period of 48 hours after each dose IAW DAF Memorandum, *HAF SII 20-02: DNIF Guidance for COVID Vaccines*, December 21, 2020. No formal grounding is required for uncomplicated immunizations.

## Chapter 5

### ADMINISTRATIVE ISSUES

#### 5.1. Exemptions.

5.1.1. Service members may request medical or administrative (including RARs) exemptions from the COVID-19 vaccine mandate. Administrative and medical exemptions may be authorized under AFI 48-110 IP. Service members on approved terminal leave (or with an approved retirement/separation date as described in SecAF memorandum, *Supplemental Coronavirus Disease 2019 Vaccination Policy*, December 7, 2021) may receive an administrative exemption. RARs may be approved under DAFI 52-201. Commanders at the MAJCOM, FLDCOM, DRU, or FOA level are the approval authority. The DAF Surgeon General (AF/SG) is the final appeal authority for RARs. See Attachment 3, *COVID-19 Vaccination Process Military Members*.

5.1.1.1. Service members who receive a denial of their RAR, medical, or administrative exemption request have five (5) calendar days to begin a COVID-19 vaccination regimen, submit an appeal to the Final Appeal Authority, request a second opinion (medical), or request to separate/retire (if able) on or before April 1, 2022, or no later than the first day of the fifth month following initial or final appeal denial. For the Air Force Reserve, if eligible, Individual Mobilization Augmentee (IMAs) and Traditional Reserve (TRs) may request to retire on or before 1 June 2022 and will be placed in a no pay/no points status not later than 60 days post notification, while eligible Active Guard and Reserve (AGR) members may be able to retire if they can be in terminal leave status NLT 60 days from RAR notification.

5.1.1.2. Service members who receive a denial of their RAR appeal or second opinion if requested by the member (medical), have five (5) calendar days to begin a COVID-19 vaccination regimen, or request to separate/retire (if able) on or before April 1, 2022, or no later than the first day of the fifth month following initial or final appeal denial. For the Air Force Reserve, if eligible, Individual Mobilization Augmentee (IMAs) and Traditional Reserve (TRs) may request to retire on or before 1 June 2022 and will be placed in a no pay/no points status not later than 60 days post notification, while eligible Active Guard and Reserve (AGR) members may be able to retire if they can be in terminal leave status NLT 60 days from RAR notification.

5.1.1.3. Official documentation from the unit commander including the appropriate administrative code and duration (specific date, temporary, indefinite) of exemption will be presented to the Immunization Clinic to be entered into ASIMS.

**5.2. Healthcare Access Guidelines.** At the time of immunization, all vaccine recipients will be provided information on potential adverse events.

5.2.1. Whenever an individual presents to an MTF expressing a belief that the condition for which the treatment is sought is related to an immunization received in a DoD clinic, they are authorized initial or emergency care to evaluate and treat an actual or perceived adverse reaction. Care may also be provided by a civilian medical facility in the following circumstances: an individual believes the situation to be an emergency and the civilian hospital is the nearest facility or an individual is on leave status, TDY or in a non-duty status (ARC personnel) and there are no MTFs within 50 miles. Pre-approval may still be required depending on the specific circumstances when not an emergent situation. Refer to AFI 48-110 for additional guidance.

5.2.1.1. ARC Personnel. If a member suffers an adverse reaction from a DoD-directed immunization, it is a LOD condition.

### **5.3. Refusal Management.**

5.3.1. Military Members. A commander ordering a military member to take the COVID-19 vaccine constitutes a lawful order. When issuing an order to a military member to take the COVID-19 vaccine, if an individual indicates he or she is going to refuse the COVID-19 vaccination or has initially refused the vaccination the following approach should be used: find out why the individual is reluctant.

5.3.1.1. Provide the member with appropriate education.

5.3.1.2. Combinations of concerns may require education by a number of people; for example:

5.3.1.2.1. Concerns with vaccine safety, efficacy, or health risks should be sent to the supporting medical organization (if not previously accomplished). Medical education should be tailored to the specific concerns of the individual (efficacy, reproduction, allergic reactions, etc.) and should be accomplished by a health care provider knowledgeable about the COVID-19 vaccine and who is able to address the specific medical concerns of the individual. The medical counseling will be documented in the individual's medical record.

5.3.1.2.2. If the member is still reluctant after additional education, send the member to the Area Defense Counsel for an explanation of the potential consequences of his/her refusal. Members of the Air Force Reserve may attend virtual sessions with the Area Defense Counsel.

5.3.1.3. The commander should ensure the order, and accompanying counseling on appropriate resources, is documented in writing.

5.3.1.4. If the member refuses to follow the order to vaccinate, consult with the servicing Staff Judge Advocate's office for appropriate action.

5.3.1.5. Notify the Immunization Clinic of the decision so the proper administrative code can be entered in ASIMS.

#### **5.3.2. Management of Vaccine Refusal in the Immunization Clinic.**

5.3.2.1. If an individual subject to the vaccination requirement, as identified in paragraph 1.2.4 of this guidance, refuses an FDA-approved COVID-19 vaccine, the technician should notify the Immunization Clinic NCOIC/OIC before that individual leaves the clinic. The NCOIC/OIC (or technician if they are not available) should verify again that the individual has been offered the FDA Fact Sheet and the opportunity to ask questions. Notify the SGH. (Note: IAW FDA guidance, Comirnaty (Pfizer) has the same formulation and can be used interchangeably with the FDA-authorized Pfizer-BioNTech COVID-19 vaccine; and Spikevax (Moderna) has the same formulation and can be used interchangeably with the FDA-authorized Moderna COVID-19 vaccine. Providers can use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.)

5.3.2.2. SGH will ensure appropriate commanders are aware of refusals.

5.3.2.3. Vaccine refusal should be handled with the appropriate regard to the individual's privacy.

5.3.3 Service members who continue to refuse to obey a lawful order to receive the COVID-19 vaccine after their exemption request or final appeal has been denied or retirement/separation has not been approved will be subject to initiation of administrative discharge proceedings pursuant to SecAF memorandum, *Supplemental Coronavirus Disease 2019 Vaccination Policy*, December 7, 2021. Discharge characterization will be governed by the applicable Department of the Air Force Instructions. Service members separated due to refusal of the COVID-19 vaccine will not be eligible for involuntary separation pay and will be subject to recoupment of any unearned special or incentive pays.

## Chapter 6

### SCREENING TESTING

#### 6.1. COVID-19 Screening Testing Requirements.

6.1.1. When screening testing is made available and local testing procedures are established, DAF Service members who are not fully vaccinated (as defined in this guidance) are required to undergo COVID-19 screening testing at least weekly when entering a DoD facility. This requirement also applies to foreign military personnel assigned to DAF units and to DAF Service members who have an exemption request under review, or who are exempted from COVID-19 vaccination.

6.1.2. DAF provided COVID-19 screening testing will be executed by DAF using COVID-19 self-collection kits or self-tests that have been authorized or approved by the FDA. For unit/workcenter testing, only the FDA approved (EUA or full FDA approved) Over-The-Counter (OTC) test kits may be used. When DAF does not provide test kits, Host Nation Service members may utilize Host Nation FDA-equivalent approved test kits. Additionally, Host Nation tests may be used to conduct screening testing of Service members and Host Nation civilian employees IAW with DoDI 6200.02 and DoDM 6440.02.

6.1.3. The COVID-19 screening test result must be negative for the individual to access their worksite or otherwise be granted entry into a DoD facility. If the screening test is administered off-site, the negative test result must be from a test performed within the preceding 72 hours. If the negative test result is more than 72 hours old, a new test is required.

6.1.4. Commanders will determine the appropriate manner to execute the DAF screening testing requirement with a locally established testing process using COVID-19 self-collection kits or self-tests that can be performed primarily on-site at the installation or facility with proper supervision (non-medical) and documentation of testing results. If on-site COVID-19 screening testing is not feasible, as an alternative, the self-testing can be performed at home or in other locations. (Note: these COVID-19 self-tests do not require a health care provider's clinical care order and are, therefore, considered an OTC test and do not require medical support or oversight to complete). If an individual wishes to undergo a screening test using a test other than that provided by DAF, a "viral test" (which includes both antigen and molecular tests) can be used.

6.1.5. Screening testing will be conducted at least weekly but commanders may require more frequent testing based on local community transmission, HPCON levels (e.g., HPCON Charlie and Delta), and the specific type of test kit used. Commanders and supervisors must consult with their servicing MTFs in establishing the testing frequency in order to ensure their process complies with test kit requirements. Units with no servicing MTF should defer to associated Public Health Emergency Officer (PHEO) or MAJCOM/FLDCOM PHEO for consultation. If an individual wishes to undergo a screening test using a test other than that provided by DAF, a "viral test (which includes both antigen and molecular tests under EUA or full FDA approval) can be used (in accordance with the instructions for use).

6.1.6. DoD Service members teleworking or working remotely on a full-time basis are not subject to weekly testing, but must provide a negative COVID-19 screening test result from a test performed within the preceding 72 hours prior to entry into a DoD facility.

6.1.7. DAF Service members are responsible for providing acceptable documentation or evidence of negative COVID-19 screening test results, upon receipt, to the appropriate supervisor, or authorized human resources official, in accordance with the locally established testing process. This documentation or evidence will likely consist of the paper test result (or photo thereof), or an electronic result displayed on a cell phone application. DAF Service members are not required to use their own personal equipment (e.g., their cell phones) for the purpose of documenting test results, but they may do so voluntarily.

## **6.2. Recordkeeping.**

6.2.1. Commanders are responsible for tracking, maintaining (and reporting when required) compliance with screening testing requirements for DAF Service members in their organizations. Such compliance tracking need only consist of documenting that each individual who was required to test did so, with the frequency required.

6.2.2. For the purposes of complying with this policy, there is no requirement to maintain a record of screening test results at the individual level. However, if test results are maintained, Commanders are responsible for ensuring that supervisors maintain any COVID-19 test results provided by Service members in accordance with applicable law and policy, including appropriate privacy protection measures including keeping such records in a confidential file separate from other employee records. Any document which contains a test result along with personally identifiable information is considered a medical record and must be treated in accordance with law and policy applicable to medical records.

6.2.3. DAF Service members who are required to undergo COVID-19 screening testing will do so on official duty time, which is expected to take no more than one hour, per test, including travel time. Commanders and supervisors should only authorize DAF Service members to spend time obtaining a test during the Service member's regular duty hours and only for the amount of time necessary to travel to/from and obtain the test.

## **6.3. Actions After Test Results.**

6.3.1. DAF Service members who have positive COVID-19 screening test results will be required to remain away from the workplace. DAF Service members with positive COVID-19 screening test results will take confirmatory laboratory-based molecular (i.e., polymerase chain reaction, or PCR) testing paid for by the DAF, and administered through local MTFs as resources allow. Those who are already eligible to receive care at MTFs should engage the normal appointment system to determine how best to obtain a confirmatory test. Those not already eligible to receive care at a MTF should contact a MTF to determine their capacity to provide the test. MTFs should be prepared for an increase in confirmatory testing, including ensuring adequate collection supplies and viable testing pathways to process the expected increase. If confirmatory testing is not available through an MTF, DAF Service members may be reimbursed for the cost of obtaining the test through a private provider. If confirmatory testing IS available at an MTF, but a DAF Service member declines to be tested there, they will not be eligible for reimbursement of any testing obtained through a private provider.

6.3.2. If the Service member's confirmatory test is negative, the individual is not deemed to be COVID-19 positive and will be allowed into the workplace.

6.3.3. If the Service member's confirmatory test is positive, Installation Public Health/MTF will be notified (for contact tracing) and the Service member will be required to remain out of the workplace in compliance with the most current CDC recommendations for disposition of confirmed or probable COVID-19 cases (in consultation with servicing Medical office).

6.3.4. Obtaining a laboratory-based confirmatory COVID-19 testing for initial positive screening test results is expected to take no more than 2 hours of official duty time; however, results from the screening test will need to be confirmed before the individual can enter the workplace.

6.3.5. Commanders and supervisors will monitor duty time usage and keep duty time used for testing within these parameters to the extent possible.

6.3.6. DAF Service members can be mandated by DAF authorities to quarantine or isolate, but may also be barred from the workplace until authorized to return.

#### **6.4. Testing Refusals.**

6.4.1. If a DAF Service member who is not fully vaccinated refuses COVID-19 screening testing that has been mandated due to their vaccination status (including those with an approved vaccination exemption), supervisors should consult with the servicing legal office regarding the appropriate disciplinary action available. Commanders and supervisors may prohibit service members from their worksites on the installation or facility to protect the safety of others, including while adverse action is pending. While prohibited from their worksites on the installation or facility, such Service members may be required to telework, as appropriate. If commanders do not prohibit such Service members from their worksites (due to critical mission needs), they must ensure appropriate mitigation measures are in place to ensure the safety of all employees.

6.4.2. An exemption from COVID-19 vaccination due to religious or medical accommodation does not result in an exemption from the COVID-19 screening testing required by this policy. If a DAF Service member requests an exemption from participation in COVID-19 screening testing on a religious or medical basis, such requests should be evaluated under DAFI 52-201.

#### **6.5. Testing Kits.**

6.5.1. Commanders will procure (through DLA) and provide these COVID-19 screening self-tests to DAF Service members (as well as contractors and official visitors if available) and establish local processes for where and how the tests will be distributed and conducted for not-fully-vaccinated individuals, and how results are to be reported. Commanders (or their designees) should work with their servicing MTF leadership, installation Public Health Emergency Officer and the MTF Logistics Flight to resource, order and supply organizations with approved testing kits. Organizations are responsible for funding required COVID-19 screening tests. See Attachment 4, *COVID-19 Home Testing Kits*.

6.5.2. COVID-19 self-tests must have Instructions for Use and FDA Approval, 510(K) premarket clearance or have an FDA EUA, and will be made available through the Defense Logistics Agency. Examples include the following:

6.5.2.1. Abbott BinaxNOW™ COVID-19 Self-Test (must test twice over 3 days with at least 36 hours between tests as outlined in FDA EUA).

6.5.3. These self-collection kits/self-tests are to be used within the FDA approved indication and the instructions should be carefully followed to increase the accuracy of the results.

6.5.4. If self-collection kits or self-tests as referenced above are not available to DAF Service members through DAF, Service members will be reimbursed for COVID-19 screening tests that require payment for the purposes of meeting the screening testing requirement (e.g., if the screening test is not available through the DAF and must be administered by a facility who charges for the test). Service members should not purchase or pay for tests without prior supervisory or commander approval.

6.5.5. Cost reporting for purchase of testing materials or reimbursement for DAF Service member tests should be in accordance with Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer of the Department of Defense, April 13, 2020, *DoD Response to the Novel Coronavirus – Cost Reporting Guidance*.

6.5.6. Service members seeking reimbursement should work with the applicable organization's resource advisor to submit OF 1164 Miscellaneous Pay Package to their local comptroller for processing. SAF/FM will provide additional guidance to comptrollers regarding reimbursements under separate cover.

6.5.7. Reserve component Service members who are not in a paid military duty status (and who are not otherwise DAF civilian employees) cannot be required to test at home or other locations not on-site; doing so is voluntary and at the member's own expense and on their own time.

## ATTACHMENT 1

Post-Accession Immunization Religious Accommodation Requests	
STEPS	NOTES
1	<p><b>Service member</b> requests exemption of immunization requirement via RAR submitted to unit commander</p> <p>Include, at minimum, Service member's name, grade, DoD identification number, faith group, unit, and specialty code of the Airman or Guardian, nature of the accommodation requested, religious basis for the request, a comment on the sincerity of the request, and the substantial burden on the member's expression of religion (DAFI 52-201, par. 5.3)</p> <ul style="list-style-type: none"> <li>• Example at DAFI 52-201, Attachment 6.</li> <li>• Decision authority is Service member's MAJCOM, FLDCOM, DRU, or FOA commander (DAFI 52-201, par. 6.6.1)</li> <li>• Service member has a temporary exemption from immunization while request is processing (DAFI 52-201, par. 2.12)</li> </ul>
2	<p><b>Unit commander</b> counsels the Service member submitting the RAR</p> <p>Unit commander should counsel member that noncompliance with immunization requirements may adversely affect readiness for deployment, assignment, international travel, or result in other administrative consequences (DAFI 52-201, par. 6.6.1.1)</p> <p>Unit commander's counseling must be documented in a memorandum and included with the RAR package</p>
3	<p><b>Military medical provider</b> counsels the Service member submitting the RAR package</p> <p>Counseling must be documented in a memorandum and included with the RAR package (DAFI 52-201, par. 6.6.1.)</p> <p>Military provider must ensure member is making an informed decision and should address, at minimum, specific info about the disease concerned, specific vaccine info (including product constituents, benefits, risks), and potential risks of infection for unimmunized individuals (AFI 48-110, para 2-6b.(3)(a)2.)</p>
4	<p><b>Military Chaplain</b> interviews Service member submitting the RAR</p> <p>Interview must be documented in a memorandum and included with the RAR package (DAFI 52-201, par. 5.4)</p>
5	<p><b>Religious Resolution Team (RRT)</b> reviews Service member's RAR package</p> <p>At Installation level, the RRT will include the commander (or designee), Senior Installation Chaplain (or equivalent), public affairs officer, staff judge advocate, and a medical provider (DAFI 52-201, par. 3.8.1.1)</p> <p>Wing/Delta Chaplain, as lead for RRT, shall write the memo to the decision authority detailing the RRT recommendation and any dissenting views of others (DAFI 52-201, par. 5.6.3)</p>
6	<p><b>Staff Judge Advocate</b> Provides written legal review of Service member's RAR package</p> <p>Legal review must be documented in a memorandum and included with the RAR package (DAFI 52-201)</p>

<p><b>7</b></p>	<p><b>Each commander</b> shall review the RAR package, endorse the Service member’s request memo with recommendation for approval or disapproval and forward RAR package through the chain of command to the appropriate decision authority</p>	<p>Endorsements must address (DAFI 52-201, par. 6.6.1.5):</p> <ul style="list-style-type: none"> <li>• If there is a compelling government interest and any effect the accommodation will have on readiness, unit cohesion, good order and discipline, health, or safety, and impact on the duties of the member</li> <li>• whether less restrictive means can be used to meet the government’s compelling government interest</li> <li>• 30 business days for CONUS requests (60 business days for OCONUS requests and requests from Reserve Component members not on active duty) from the date of submission to unit to final action by MAJCOM, FLDCOM, DRU or FOA commander and notification to the member (DAFI 52-201, Table 2.1)</li> </ul> <p>NOTE: Although AFI 48-110 says the AF only grants temporary immunization exemptions, the newer DAFI 52-201 states that approvals will remain in effect during follow-on duties, assignments, or locations, and for the duration of a Service member’s military career. However, there may be a change in circumstances that requires the accommodation to be reevaluated in the future (e.g., deployment, new duties, or other material change in circumstances). (DAFI 52-201, par. 5.7.2)</p> <ul style="list-style-type: none"> <li>• DAFI 52-201, par. 5.7.3. New requests for the same accommodation are not necessary upon new assignment, transfer of duty stations, temporary duty, or other significant changes in circumstances, including deployment unless noted on the approval memorandum. DAFI 52-201, par. 5.7.4. Approved accommodations will continue unless the member’s commander determines a compelling government interest exists requiring a temporary or permanent withdrawal of the approval. (T-1).</li> </ul>
<p><b>8</b></p>	<p><b>MAJCOM, FLDCOM, DRU, or FOA commander</b> determines whether RAR approval, partial denial, or complete denial is appropriate</p>	<p>MAJCOM, FLDCOM, DRU or FOA commander will document the decision in a memorandum addressed to the Service member requesting the religious accommodation</p> <p>Memorandum will be routed through the Service member’s wing commander (DAFI 52-201, par. 6.6.1.6)</p> <p>Service member must submit appeal within five (5) calendar days from notification of RAR denial</p>
<p><b>9</b></p>	<p><b>Unit commander</b> notify Service member of the RAR decision</p>	<p>DAFI 52-201, par. 6.6.1.6</p>
<p><b>10</b></p>	<p><b>Service member</b> may appeal a denied RAR to Surgeon General</p>	<p>Member shall address a memorandum to the appeal authority with a copy given to the previous disapproval authority and provide the memorandum to the unit commander for processing (DAFI 52-201, par. 5.8.2). The member must submit the appeal request within five (5) calendar days from the notice of denial.</p> <p>AF/SG is ultimate appeal authority for immunization exemptions (DAFI 52-201, Table 6.1)</p> <p>30 business days to resolve appeal (DAFI 52-201, par. 2.10)</p>

11	<b>Surgeon General</b> determines whether appeal approval, partial denial, or complete denial is appropriate	Within 30 business days of receipt, appellate authority will document the final decision in a memorandum addressed to the Service member requesting the religious accommodation  Memorandum will be sent via CMS to Service member’s wing commander (DAFI 52- 201, par. 2.10 and Table 6.1)
12	<b>Unit commander</b> notify Service member of the appeal decision	DAFI 52-201, par. 6.6.1.6
13	<b>Servicing FSS</b> ensure copy of the RAR package, decision, and final decision (as appropriate) is included in Service member’s automated personnel records	Include all relevant documentation to facilitate future actions should conditions change

<b>Checklist for Required Package Items</b>	
	<b>Member’s request letter</b> (DAFI 52-201, par. 5.3 and 6.6.1)
	<b>Unit CC’s written counseling with requestor</b> (DAFI 52-201, par. 6.6.1.1)
	<b>Chaplain’s interview memo with requestor</b> (DAFI 52-201, par. 5.4 and 4.2.7)
	<b>Military medical provider counseling memo with requestor</b> (DAFI 52-201, par. 6.6.1.2 and AFI 48-110, par. 2-6b.(3)(a)2.)
	<b>Staff Judge Advocate legal review</b> (DAFI 52-201, par. 5.6.2)
	<b>Religious Resolution Team’s recommendation</b> (DAFI 52-201, par. 5.6.1 and 6.6.1.3)
	<b>Chain of Command Recommendations</b> (DAFI 52-201, par. 6.6.1.5). NOTE: there may be a change in circumstances that requires the accommodation to be reevaluated in the future (e.g., deployment, new duties, or other material change in circumstances). (DAFI 52-201, par. 5.7.2). We recommend CC endorsements consider whether to include any recommended circumstances that would require reevaluation (such as overseas PCS or deployments).

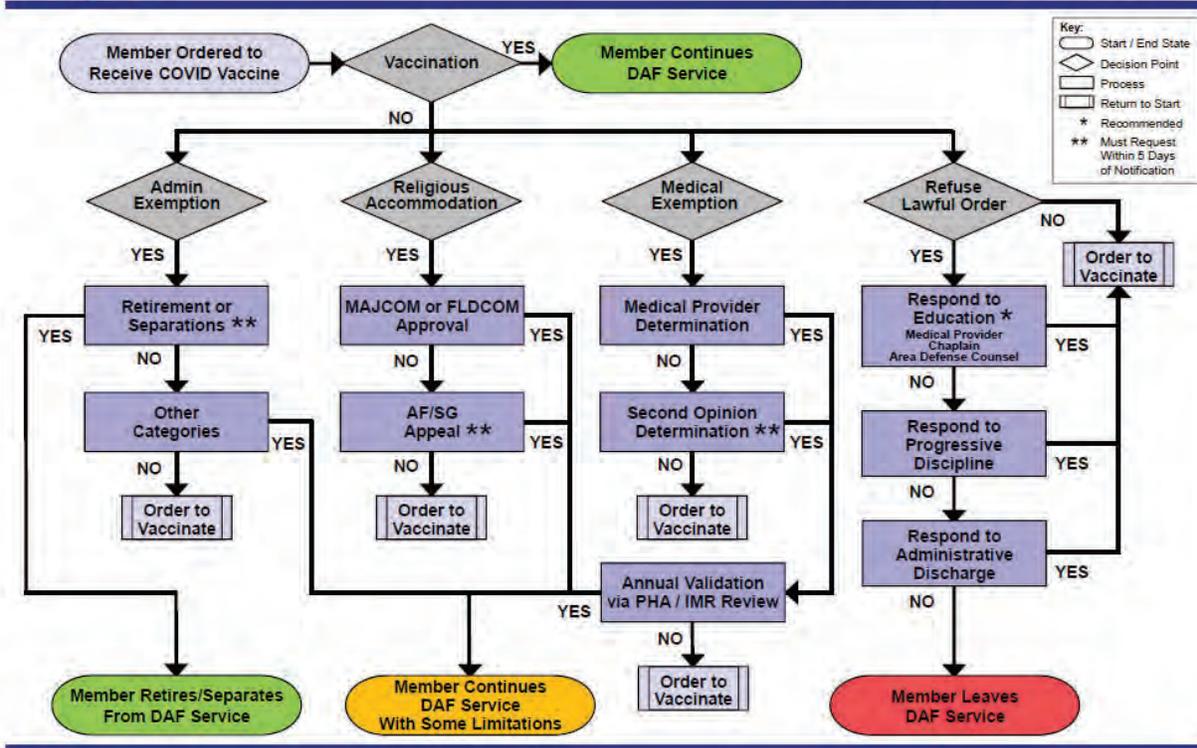
## ATTACHMENT 2

Immunization Medical Exemption Requests		
STEPS		NOTES
1	Member requests medical exemption from COVID-19 immunization requirements	- Member notifies commander of possible contraindication to vaccine
2	Unit commander ensures member is evaluated by military medical provider	
3	Military medical provider evaluates member	- Provider evaluates potential contraindication based on the health of vaccine candidate and the nature of the vaccine under consideration; counsels member on vaccine compliance. Member may seek a second opinion.
4	Medical provider makes determination	- Provider documents exemption in ASIMS and electronic health record
5	Commander reviews ASIMS	- Commander ensures member's readiness status is accurately reported

ATTACHMENT 3



# COVID-19 Vaccination Process Military Members



*Integrity - Service - Excellence*

CAO 10 Dec 21

## ATTACHMENT 4

## COVID-19 Home Test Kits Ordering Procedures

DLA has awarded contracts to three manufacturers for COVID-19 Home Tests. This guide serves as ordering instructions for all federally funded agencies requiring COVID-19 Home Tests. The contract is structured to provide a percentage of awards to each vendor based on the terms and conditions of the statement of work. At any given time one or more of the items may not be available to order due to allocations to each vendor.

Two of the manufacturers' items Quidel Corporation and Orasure Technologies will be available to order through direct delivery. Abbott Rapid DX home test will be available from the DLA Depot. Estimated delivery is 7 days after the placement of an order to CONUS destinations and the Medical Air Bridge for OCONUS. Maximum shelf-life can not be guaranteed.

**At this time, due to allocations, only Quidel QuickVue and Orasure InteliSwab are available to order. Limited supplies of Abbott BinaxNow will be available within 30 days.**

The items have been assigned NSNs and will be eligible for ordering through FEDMALL, MILSTRIP or ECAT as applicable and when available. The Abbott BinaxNow should be ordered through FEDMALL/MILSTRIP, the QuickVue and InteliSwab can be ordered through FEDMALL, MILSTRIP or ECAT. No matter what method is used to place your order, please remember to post receipt upon physical receipt of the material.

- FedMall Ordering - For those Federal customers who typically do not use DLA Troop Support Medical's ECAT system to place Orders, FedMall is available for you. Access FedMall at <https://www.fedmall.mil/>. Once orders are placed in FedMall, the orders will be routed to ECAT for order execution.
- ECAT Web Users - the Quidel and Orasure NSNs below will be available to you when you search for items.
- DMLSS/TEWLS Users - the NSNs below are in the Medical Master Catalog (MMC) and are available for you to source.

NSN	Nomenclature	Manufacturer	P/N	UOI	Notes	CONUS Price	OCONUS Price
6550-01-697-6662	QuickVue At-Home OTC COVID-19 Test	Quidel Corporation	20402	KT	(2 tests per kit)	\$11.83	\$15.67
6550-01-697-6646	InteliSwab™ COVID-19 ST OTC US	Orasure Technologies	1001-0622	CS	1 CS = 24 KT (2 Tests per kit)	\$254.82	\$337.52
6550-01-697-6628	BinaxNow COVID-19 Antigen Self Test	Abbott Rapid DX	195-260	CS	1 CS = 6 KT (2 tests per kit)	\$106.75	\$106.75

**NOTE:** If you get a cancellation for one item please reorder one of the other items that are available. We appreciate your patience as we ensure that each vendor receives the percentage as laid out in the contract. Each week we will update the ordering guide and advise as to which items will be available for ordering.

## **COVID-19 Home Test Kits**

### **6550-01-697-6662 - Quidel QuickVue At-Home OTC COVID-19 Test**

**Manufacturer:** Quidel Corporation,

**Manufacturer Part Number:** 20402

**Sample type:** Anterior nares swab. Dipstick test format; results in as little as 10 minutes.

Two-color results - blue control line and red test line; easy to read and interpret. All components included in kit - Ready to use, no need for additional equipment. Contains built-in procedural control features. Intended for the qualitative detection with or without symptoms.

For use under FDA Emergency use Authorizations

Actual packaging and components may vary from picture

**Unit of Issue:** KT (contains supplies to run 2 tests; intended for one person to run test twice with 24-36 hours in between tests)

**Shelf-life:** 24 months from date of manufacture



### **6550-01-697-6646 - Orasure IntelliSwab™ COVID-19 ST OTC US**

**Manufacturer:** Orasure Technologies

**Manufacturer Part Number:** 1001-0622

**Sample Type:** OTC Two-test rapid antigen test kit; Swab nostrils with gentle swab, swirl in the tube, and see results in 30-40 minutes. Unit box containing: Divided Pouch (2) - Each Containing: Test Device (1), Absorbent Packet (1), Developer Solution Vial (1) - (each vial contains 0.75 mL of a buffered saline solution with an antimicrobial agent); Test Stand (1); Positive Results Reference Card (1); Instructions for Use (in English and Spanish)

**Unit of Issue:** Case (CS) 1 CS = 24 KT (1 KT contains supplies to run 2 tests; intended for one person to run test twice with 24-36 hours in between tests)

**Shelf-life:** 9 months from date of manufacture



### **6550-01-697-6628 - Abbott BinaxNow COVID-19 Antigen Self Test**

**Manufacturer:** Abbott Rapid DX

**Manufacturer Part Number:**

**Sample Type:** Anterior nasal (nares) swab sample; each box contains 2 test kits, each test kit consists of a card, a swab, and an individual small bottle of reagent; results in 15-30 mins; self-collected direct anterior nasal (nares) swab samples from individuals aged 15 years or older or adult collected anterior nasal swab samples from individuals aged two years or older. Test type: Lateral flow immunoassay.

Intended for the qualitative detection with or without symptoms.

**Unit of Issue:** Case (CS) 1 CS = 6 KT (1 KT contains supplies to run 2 tests; intended for one person to run test twice with 24-36 hours in between tests)

**Shelf-life:** 9 months from date of manufacture



## Points of Contact

If you require assistance with ordering or status of orders, please contact the following DLA Troop Support points of contacts:

FedMail users can contact the DLA contact center as well as the following individuals at DLA Troop Support Medical:

- DLA Contact Center:
  - E-mail: [dlacontactcenter@dla.mil](mailto:dlacontactcenter@dla.mil)
  - Telephone:
    - Toll Free: 877-DLA-CALL (877-352-2255)
    - Commercial: 269-704-7921
- DLA Troop Support

Area	POC	Email	Phone	Cell
FedMail Customers	Yvonne Poplawski	yvonne.poplawski@dla.mil	215-737-3102	215-298-2813
FedMail Customers	Stacy Perry	stacy.perry@dla.mil	215-737-3321	215-863-1002

### ECAT Web users

- E-mail: [DSCPECATHELP@dla.mil](mailto:DSCPECATHELP@dla.mil)
- Telephone:
  - Toll Free: 800-290-8201 (7:00 AM to 5:00 PM)

DMLSS/TEWLS users can contact the ECAT Help Desk or the below:

Area	POC	Email	Phone	Cell
North Region	Annemarie Ervin	annemarie.ervin@dla.mil	215-737-3781	267-879-5303
South Region	Francis McGlinn Jr.	Francis.mcglinn2@dla.mil	215-737-2755	267-642-0840
West Region	Angela Atkinson	angela.atkinson@dla.mil	215-737-6033	267-355-3239
Fleet & Marines	Randy Owens	randall.owens@dla.mil	215-737-8704	267-374-7903
ECAT DoD	Marie Boggs	marie.boggs@dla.mil	215-737-4556	267-889-8821

CUI

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INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500

## INFO MEMO

June 02, 2022

FOR: SECRETARY OF DEFENSE

DepSecDef Action \_\_\_\_\_

FROM: Sean W. O'Donnell, Acting Inspector General *Sean W O'Donnell*

SUBJECT: Denials of Religious Accommodation Requests Regarding Coronavirus Disease-2019 Vaccination Exemptions

- **Purpose.** To inform you of potential noncompliance with standards for reviewing and documenting the denial of religious accommodation requests of Service members identified through complaints submitted to my office.
- The Department of Defense (DoD) Hotline received dozens of complaints regarding denied religious accommodation requests from Service members. We found a trend of generalized assessments rather than the individualized assessment that is required by Federal law and DoD and Military Service policies.<sup>1</sup>
- The denial memorandums we reviewed generally did not reflect an individualized analysis, demonstrating that the Senior Military Official considered the full range of facts and circumstances relevant to the particular religious accommodation request. For example, an Air Force general denied one Airman's request with the brief statement: "I disapprove your request for exemption from vaccinations under the provisions of AFI 48-110, paragraph 2-6.b.3."

<sup>1</sup> The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb-1(a), (b). The U.S. Supreme Court has clarified that RFRA "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726-27 (2014) (citation omitted).

DoD Instruction 1300.17, "Religious Liberty in the Military Services," paragraph 3.2.d. ., requires that "[o]fficials charged with making recommendations or taking final action on a Service member's request for the accommodation of religious practices will review each request individually, considering the full range of facts and circumstances relevant to the specific request. . . . The means that is least restrictive to the requestor's religious practice and that does not impede a compelling governmental interest will be determinative." [Emphasis added.]

Prepared By: John Fitzakerley, SA (A) DIG AI  
Phone Number: 703-604 8764

Controlled by: DoD OIG  
Controlled by: Administrative Investigations  
CUI Category: PRIIG/INV/WHSTL  
Limited Dissemination Control: FEDCON  
POC: Marguerite Garrison 703-604-8500

CUI



OSD004843-22/CMD006126-22

- We also reviewed appellate authority decisions that overturned denials of religious accommodation requests. Some of the appellate decisions included documentation that demonstrated a greater consideration of facts and circumstances involved in a request.
- Additionally, the volume and rate at which decisions were made to deny requests is concerning. The appeal authorities of the Services we reviewed indicated that an average of 50 denials per day were processed over a 90-day period. Assuming a 10-hour work day with no breaks or attention to other matters, the average review period was about 12 minutes for each package. Such a review period seems insufficient to process each request in an individualized manner and still perform the duties required of their position.
- We bring this to your attention for any action you deem appropriate to ensure that published guidance, including DoD Instruction 1300.17, "Religious Liberty in the Military Services," are followed when acting on requests for religious exemption from coronavirus disease-2019 (COVID-19) vaccination requirements. We will make available to the DoD General Counsel the complaints received by the Hotline that support our comments.
- Finally, we want to remind you of our recently announced Audit of Military Departments' Processing of Coronavirus Disease-2019 Vaccination Exemptions and Disciplinary Actions for Active Duty Service Members (Project No. D2022-D000AW-0081.000). The objective of this audit is to determine whether the Military Departments are processing exemption requests for the COVID-19 vaccination and taking disciplinary actions for active duty Service members in accordance with Federal and DoD guidance.
- If you have any questions, please contact me at 703-604-8300 or Marguerite Garrison, Deputy Inspector General for Administrative Investigations at 703-604-8500, or [marguerite.garrison@dodig.mil](mailto:marguerite.garrison@dodig.mil). If you wish to discuss the specifics of the ongoing audit, please contact Brett Mansfield, Deputy Inspector General for Audit at 703-604-8900, or [brett.mansfield@dodig.mil](mailto:brett.mansfield@dodig.mil).

cc:

General Counsel of the Department of Defense

CUI



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

SEP - 2 2022

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND  
READINESS

SUBJECT: Referral of Info Memo from the Office of Inspector General Regarding Coronavirus  
Disease 2019 Religious Accommodation Requests

Mandatory vaccination against coronavirus disease 2019 (COVID-19) is necessary to protect the Force and ensure its readiness to defend the American people. Uniform standards must be applied to all requests for medical or administrative exemption in a manner consistent with the law and DoD policy, including DoD Instruction 6205.02, "DoD Immunization Program," and DoD Instruction 1300.17, "Religious Liberty in the Military Services."

The DoD Office of Inspector General transmitted the attached Info Memo regarding information it received and reviewed concerning denials of religious accommodation requests from COVID-19 vaccination requirements. I am referring the Info Memo to you for appropriate action, in coordination with the Secretaries of the Military Departments and the DoD Office of General Counsel, as necessary and appropriate.

Attachment:  
As stated

cc:  
Secretaries of the Military Departments  
General Counsel of the DoD  
Acting Inspector General of DoD



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# The Navy needs more chaplains

*All three sea services want and need more chaplains — but the recruiting deficit is extreme.*



The United States Navy's third Nimitz-class supercarrier, the USS Carl Vinson (CVN-70), leaves port in San Diego, California. Photo by William Rudolph/Unsplash/Creative Commons

May 15, 2023

By *Gregory N. Todd*



Listen to this article



(RNS) — Not since the end of the Cold War has the Department of the Navy wanted to increase the size of the Chaplain Corps: Those religious ministry professionals dedicated to the well-being of sailors, Marines, Coast Guardsmen and their families. And yet, that's where we are today: All three sea services want and need more chaplains.

It's not that the Navy, Marine Corps and Coast Guard have proscribed religion. The federal government and the U.S. Military, while defere

EN too important t

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Sound like a concept cooked up by the Chaplain Corps or maybe a philosophy class? Not so. More than 30 years of peer-reviewed research from Columbia University, Duke and Harvard in mental health, epidemiology and spirituality demonstrate the value of the spiritual for human flourishing.

For example, [those engaged in spiritual practices](#) (including religion) are 50-80% less likely to die by suicide, 60% less likely to suffer depression, 80% less likely to suffer addiction and 70% less likely to participate in risky behaviors.

Dr. Lisa Miller, of Columbia University, has spent a career researching how spiritual practices impact depression and other disorders, most notably the rise in suicide among young adults. She states that there is no protective factor identified by the clinical sciences that in scope or scale compares to the protective benefits of religious and spiritual engagement against suicide.



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How to tap into the Navy chaplains minister to an sailor's no matter their religious affiliation. (Theodore J. C. Clark)

Our leaders' desire for more chaplains in the Navy, Marine Corps and Coast Guard is purely a matter of taking care of people. Chaplains have proven themselves as a resource to strengthen the force and are outstanding partners with mental health professionals to get people the help needed should they find themselves in crisis. More chaplains simply means more care for our people.

Throughout our history, America's religious organizations have encouraged the Navy to adequately provide for the religious needs of sea service personnel, but we cannot provide for their needs where there are no chaplains. In order to care for the Navy, Marine Corps and Coast Guard, the Navy needs chaplains, and, despite the Department of the Navy asking for more, the recruiting deficit is extreme.



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In this fiscal year, the Navy needs 70 new chaplains for active duty. So far, we've only brought 18 on board. For the Naval Reserve, we need 20 new chaplains, but only 12 have become part of the team. This puts the Navy Chaplain Corps at a disadvantage in caring for the religious and spiritual needs of sailors, Marines, Coast Guardsmen and their families.

I am appealing to America's religious organizations and their leaders to prioritize ministry to the Americans who have chosen to serve our nation. The bulk of our "flock" are 18- to 25-year-olds, often faced with adult challenges for the first time in their lives. We need more chaplains to care for these young people and their families.

I consider these young people America's greatest treasure, and it is a sacred honor and privilege to care for them. Please, send the Navy more of your best and brightest to serve as Navv chanlains.

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HOME > NEWS > SCIENCEINSIDER > ABORTION OPPONENTS PROTEST COVID-19 VACCINES' USE OF FETAL CELLS

SCIENCEINSIDER BIOLOGY

## Abortion opponents protest COVID-19 vaccines' use of fetal cells

Two candidates on White House short list will receive up to \$1.7 billion

5 JUN 2020 • BY MEREDITH WADMAN



Several vaccines on the U.S. vaccination schedule are made in cells from fetuses aborted decades ago. They include vaccines against rubella, hepatitis A, and chicken pox. J. COHEN/SCIENCE

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### Science's COVID-19 reporting is supported by the Pulitzer Center.

Senior Catholic leaders in the United States and Canada, along with other antiabortion groups, are raising ethical objections to promising COVID-19 vaccine candidates that are manufactured using cells derived from human fetuses electively aborted decades ago. They have not sought to block government funding for the vaccines, which include two candidate vaccines that the Trump administration plans to support with an investment of up to \$1.7 billion, as well as a third candidate made by a Chinese company in collaboration with Canada's National Research Council (NRC). But they are urging funders and policymakers to ensure that companies develop other vaccines that do not rely on such human fetal cell lines and, in the United States, asking the government to "incentivize" firms to only make vaccines that don't rely on fetal cells.

"It is critically important that Americans have access to a vaccine that is produced ethically: no American should be forced to choose between being vaccinated against this potentially deadly virus and violating his or her conscience," members of the U.S. Conference of Catholic Bishops and 20 other religious, medical, and political organizations that oppose abortion [wrote to](#) Stephen Hahn, commissioner of the U.S. Food and Drug Administration (FDA), in April. "Thankfully, other [COVID-19] vaccines ... utilize cell lines not connected to unethical procedures and methods."

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"We urge your government to fund the development of vaccines that do not create an ethical dilemma for many Canadians," wrote Archbishop of Winnipeg Richard Gagnon, president of the Canadian Conference of Catholic Bishops, and 17 other antiabortion religious, medical, and politic groups and individuals in a [21 May letter](#) to Prime Minister Justin Trudeau. "The ... manufacture of vaccines using such ethically-tainted human cell lines demonstrates profound disrespect for the dignity of the human person."

FDA and senior White House officials did not respond to emails requesting comment on the letter to Hahn. In Canada, the health ministry has promised to respond to the letter to Trudeau, says Moira McQueen, executive director of the Canadian Catholic Bioethics Institute and lead signatory on the letter.

Cells derived from elective abortions have been used since the 1960s to manufacture vaccines, including current vaccines against rubella, chickenpox, hepatitis A, and shingles. They have also been used to make approved drugs against diseases including hemophilia, rheumatoid arthritis, and cystic fibrosis. Now, research groups around the world are working to develop more than 130 candidate vaccines against COVID-19, according to the World Health Organization; 10 had entered human trials as of 2 June.

At least five of the candidate COVID-19 vaccines use one of two human fetal cell lines: HEK-293, a kidney cell line widely used in research and industry that comes from a fetus aborted in about 1972; and PER.C6, a proprietary cell line owned by Janssen, a subsidiary of Johnson & Johnson, developed from retinal cells from an 18-week-old fetus aborted in 1985. Both cell lines were developed in the lab of molecular biologist Alex van der Eb at Leiden University. Two of the five vaccines have entered human trials (see table, below).

Developer	Vaccine type	Fetal cells used	Human trials	Potential U.S. funding	Warp Speed pick
CanSino Biologics, Inc./Beijing Institute of Biotechnology	Replication-deficient adenovirus	HEK-293	Yes (phase II)	No	No
University of Oxford/AstraZeneca	Replication-deficient adenovirus	HEK-293	Yes (phase II/III)	\$1.2 billion	Yes (short list*)
Janssen Research & Development USA	Replication-deficient adenovirus	PER.C6	No	\$456 million	Yes (short list*)
University of Pittsburgh	Protein subunit	HEK-293	No	No	No
ImmunityBio/NantKwest	Replication-deficient adenovirus	HEK-293 or derivative E.C7	No	No	Yes (long list)

\*THE NEW YORK TIMES REPORT

In four of the vaccines, the human fetal cells are used as miniature "factories" to generate vast quantities of adenoviruses, disabled so that they cannot replicate, that are used as vehicles to ferry genes from the novel coronavirus that causes COVID-19. When the adenoviruses are given as a vaccine, recipients' cells begin to produce proteins from the coronavirus, hopefully triggering a protective immune response.

The fifth vaccine, which has shown promise in monkeys and is headed for human trials as soon as this summer, is what is known as a protein subunit vaccine. Researchers at the University of Pittsburgh use HEK-293 cells to manufacture the coronavirus' spike protein—a vital part of its structure—which is used to trigger an immune response. The vaccine is delivered through a skin patch with 400 tiny needles.

The fetal cell lines are key to producing both types of vaccine. "HEK-293 [cells] are essential for making protein subunit vaccines," says Andrea Gambotto, a vaccine scientist at the University of Pittsburgh School of Medicine and the vaccine's lead developer. Their human origin is important, he says: "Cultured [nonhuman] animal cells can produce the same proteins, but they would be decorated with different sugar molecules, which—in the case of vaccines—runs the risk of failing to evoke a robust and specific immune response." (Among the developers of the five vaccines, only Gambotto responded to a request for comment.)

David Prentice, vice president and research director at the Charlotte Lozier Institute, which opposes abortion, notes researchers making adenovirus vaccines have modified HEK-293 cells to be adept at packaging new genes—such as those that direct cells to assemble the coronavirus spike protein—into adenoviruses. But he adds that other technologies are available, including using cells captured from amniocentesis that are engineered to make replication-deficient adenoviruses.

"The use of cells from electively aborted fetuses for vaccine production makes these five COVID-19 vaccine programs unethical, because they exploit the innocent human beings who were aborted," Prentice and a co-author—molecular biologist James Sherley, a Lozier Institute associate scholar and director of the adult stem cell company Asymmetrex—wrote [in a position paper](#) published last month.

But Arthur Caplan, a bioethicist at the New York University School of Medicine, counters: "There are better ways to win the abortion wars than telling people not to use a vaccine. These are long-over abortions. These cells are decades old, and even major religious leaders like the pope have acknowledged that for the greater good it's not worth the symbolism to put the community at risk."

The Vatican's Pontifical Academy for Life [declared in 2005](#) and [reaffirmed in 2017](#) that in the absence of alternatives, Catholics could, in good conscience, receive vaccines made using historical human fetal cell lines.

A vaccine made by the Chinese company CanSino Biologics was the first COVID-19 vaccine to enter phase II human trials. It was developed using adapted HEK-293 cells that the company licensed from Canada's NRC, where the cells were developed. (NRC-developed HEK-293 cells have already been used to develop an approved Ebola vaccine.) Last month, NRC [announced a collaboration with CanSino Biologics](#) under which it is preparing to run late-stage clinical trials of the vaccine in Canada, and scale up facilities to produce the vaccine in quantity.

The two U.S.-backed vaccines that have drawn criticism from antiabortion groups are [on a short list of candidates](#) targeted to get financial and logistical support from the U.S. government under the White House's Operation Warp Speed, which aims to accelerate the development and approval of at least one COVID-19 vaccine by January 2021, according to [a 3 June report in The New York Times](#).

One of the Warp Speed candidates, made by Janssen Research & Development, uses PER.C6 cells. The second, from University of Oxford researchers and AstraZeneca, uses HEK-293 cells. Both have received U.S. government commitments of, respectively, \$456 million and \$1.2 billion, if they meet milestones, through the Biomedical Advanced Research Development Authority (BARDA).

Another vaccine that relies on HEK-293, [being developed by two companies](#) owned by the billionaire scientist and businessman Patrick Soon-Shiong, made an earlier, Warp Speed long list of 14 promising candidates, according to a [press release](#) from one of companies, NantKwest.

Prentice says: "As they are choosing—BARDA and the Warp Speed people— what vaccines to move ahead, they should at least recognize that there is some portion of the population who would like an alternative vaccine they can take in good conscience."

Caplan disagrees. "If you are going to say the government shouldn't fund things that a minority of people object to, you will have a very long list of things that won't get funded by the government, from research on weapons of war to contraceptive research."

The Trump administration has restricted the use of human fetal tissue from elective abortions in biomedical research. One year ago, it [adopted a policy](#) that forbids researchers at the National Institutes of Health (NIH) from using fetal tissue from elective abortions in their studies. And it imposed an extra layer of review on non-NIH scientists seeking agency funding to do research using such tissue. But the policy did not stop either group from using decades-old fetal cell lines like HEK-293 and PER.C6.

*\*Clarification, 8 June, 12:10 p.m.: This story has been updated to clarify that the Vatican approves of Catholics receiving vaccines manufactured using human fetal cells only in the absence of alternatives.*

doi: 10.1126/science.abd1905

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**Meredith Wadman**

Author

Meredith Wadman's beat includes biology research, policy, and sexual harassment .

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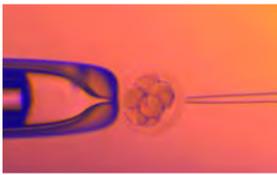
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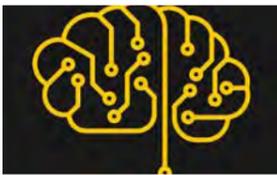
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# THE COMPLEX ROLE AND DIVERSE ARRAY OF CHAPLAINS IN THE MILITARY



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NOVEMBER 06, 2023 BY INDEPENDENT

LENS IN BEYOND THE FILMS

BY IVONNE SPINOZA

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When you hear the term *chaplain*, if you're not in the military, what usually comes to mind? It could be a pop culture reference, like Father Mulcahy in *M\*A\*S\*H\**, or prison chaplains in a movie with a death row setting, or perhaps something from history, like the famed "[Four Chaplains](#)" from WWII. But what actually *is* a chaplain, and what are the different types of chaplains represented in the military?

Chaplains are usually attached to an otherwise secular institution, like a hospital, the U.S. Senate, or, say, the military. As Hans Zeiger wrote for Pepperdine's School of Public Policy, "[no office in America is so delicately balanced between church and state as that of the military chaplain.](#)" A big part of a chaplain's job is to be there to listen without judging, no matter who they are talking to, making them the de facto spiritual leaders inside the organization.

Active duty service members don't only go to chaplains for religious reasons, but faith—any faith— is a way for those serving to endure the challenges of the military experience. Beyond performing religious rites and conducting worship services, [chaplains provide confidential counseling.](#)





1948 stamps issue of Four Chaplains (George L. Fox, Clark V. Poling, John P. Washington, and Alexander D. Goode) who sacrificed their lives in the 1943 sinking of the S. S. Dorchester. Public domain (U.S. Post Office)

“Soldiers and cadets of all faiths and some with no faith come and talk to me,” said [Captain David Ruderman](#), Jewish chaplain at West Point. Echoing that experience, retired Lieutenant Colonel Chaplain Abdul-Rasheed Muhammad says that “oftentimes, people who are not of our profession think that [military personnel] only come to us for religious reasons [but] people come to us with the things that normally burden their souls.”

Each squadron is supposed to have a chaplain who, regardless of their personal religious affiliation, serves the spiritual needs of all the members in that group. Per the official directive, the chaplain must “protect and promote the free exercise of religion for all faith groups [inside the military]”.

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## Following the Journey of Interpreters We Left Behind

“Chaplaincy is not merely about religious instruction,” Chaplain Saleha Jabeen, pictured at top right, adds. “It is about being better at being human. In a military environment, such a presence serves as a moral compass that the senior-most members are in need of as much as the junior member needs it, to remain resilient, to serve the nation with integrity, and to care for their fellow service member with complete dignity and respect.”

Her experience with military members in crisis has led her to confirm that “[the] reality is people have the courage it takes to battle through negative force and stay alive regardless of the intensity of it. They just need someone to hold their pain while they try to catch a breath,” further cementing the importance of this position.

## HOW RELIGIOUSLY DIVERSE IS THE MILITARY?

“Religion and culture outpace politics across all regions surveyed as the root cause of tension between Muslim and Western worlds,” [according to the Gallup Center](#). An estimated 5,000 to 6,000 U.S. military members practice Islam.

For Captain Chaplain Rafael Lantigua, there was never doubt about expecting some level of hostility for being a Muslim because, as he states in the documentary [Three Chaplains](#): “Just because of the nature of what’s going on in the world, the news footage continues to propagate this idea that

Muslims are terrorists...” Despite that expectation, a poll from 2022 showed an [increased willingness of Muslim Americans to serve in the U.S. military.](#)



Rafael Lantigua at US Air Force Academy; credit: David Washburn

While getting exact numbers is complicated because of differing practices in record-keeping, the [Military Association of Atheists and Freethinkers](#) (MAAF, a “community for atheists, humanists, and other nontheists in the military”), in a 2012 survey, found that “the modern military includes over 100 religious preferences both among the general population and the chaplaincy, with the majority being Christian.” This is in contrast to earlier eras, where “at the outset of the chaplaincy in the 18th century and even [up to] part of the 20th century, it is fair to say military...chaplains were almost uniformly Protestant.”

Seeing a hundred different preferences recorded may make it look like there’s thriving diversity, but in reality, [the current](#)

lack of balance in religious demographics can threaten the interfaith nature of the chaplaincy.

This is a concern from the MAAF's perspective, as some chaplains may put their evangelization or conversion duties above their military ones, thus subverting the spirit and responsibilities of the chaplain's office. That's why they also endorse Humanist candidates, and have cheered the (so far unsuccessful) attempts to address the need for non-religious chaplains in the military, a mission shared by the Secular Coalition for America.



Frocking ceremony for U.S. Navy's first Muslim chaplain, when Navy (rabbi) Chaplain Arnold Resnicoff attaches new shoulder boards with Muslim Chaplain crescent insignia to uniform of Imam Monje Malak Abd al-Muta Noel Jr, 1996. Photo by U.S.Navy photographer Hank Buermeyer, public domain.

Regardless of affiliation, military chaplain numbers are plummeting, to the extent that some religions even encourage joining the military. According to this WUNC American Homefront Project report, "The Catholic church now

provides incentives for priests to join the military, such as paying for half their religious education,” adding that the Pentagon may decide to provide additional incentives of its own for chaplains of all faiths.”

“But the job carries unique responsibilities that don’t appeal to some faith leaders. Chaplains train with soldiers. They don’t carry weapons, but they do deploy to war zones.”

While there’s a chaplain shortage in general, the most startling numbers are those of Muslim chaplains.

There are approximately 3,000 chaplains currently serving in the military, but out of those, not even 20 are Muslim, for an estimated 6,000 Muslim American soldiers, or 0.3%.

(Interestingly, there’s an even more striking shortage of Muslim chaplains in the U.S. prison system, according to an NPR report, with 13 chaplains representing 11,073 Muslims serving time.)

***“WE GO WHEREVER THE TROOPS ARE TO PROVIDE RELIGIOUS SUPPORT, TO BE A MORAL AND ETHICAL COMPASS DURING DILEMMAS, AND TO SERVE AS REMINDERS OF THE SACRED.”***

While Muslim chaplain numbers are scant, on the surface it appears numbers for Jewish chaplains aren’t any stronger. As of a few years ago, Ruderman was one of 11 active-duty Jewish chaplains of about 1,455 chaplains of all faiths in the Army, about 0.7%, but U.S. Dept. of Defense data shows that number is more in line with the number of active personnel

who declare themselves Jewish.

[One way to incentivize more chaplains to join the military ranks is making religious accommodations](#), including cases of those who wish to change their appearance in accordance with their religion (one member of the Church of the Flying Spaghetti Monster, also known as “Pastafarianism,” applied for a beard exemption as part of his strict devotion but was ultimately denied by the Army.)

It can also be complicated by those who, while religious, challenge the oldest traditions of their own faiths. Such is the case of Shareeda Hosein and Saleha Jabeen, both featured in *Three Chaplains*, who each, during different times and with different outcomes, fought to become [female Muslim chaplains](#), despite women being forbidden from leading prayer in Islam.



## INDEPENDENT LENS

### Trailer | Three Chaplains

Preview: Season 25 Episode 3 | 30s

## A HOME FOR THE RELIGIOUSLY UNAFFILIATED

Perhaps surprisingly, when polling military members, recent numbers suggest “No Religious Preference” constitutes the largest single affiliation, at nearly 23%. While it includes those who identify as part of mainstream religions but nonpracticing, and those who self-define as “spiritual but not religious,” it also includes atheists. In fact, the Pew Research Center notes that [“about three-in-ten U.S. adults are now religiously unaffiliated.”](#)

MAAF affirms that while there is a clear upward trend for those who would rather not be directly associated with organized religion, [the stigma makes many avoid openly identifying as atheists.](#)

But ultimately, whatever a service member’s affiliation or belief, they share similar needs for support and comfort, and at the end of the day, during times of crisis, military personnel deserve all the support they can get, not only from chaplains, [but also from mental health professionals.](#)

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As American Homefront Project’s Sarah Harris wrote, chaplains are “expected to minister to the needs of all



service members, not just the ones who worship in the chaplain’s denomination.”

Finally, Chaplain Lantigua told me that he would like the public to understand that chaplains are “the primary advocates for religious accommodations for men and women in uniform, particularly as it pertains to grooming and attire, dietary restrictions, medical procedures and immunizations.” He adds that though military chaplains are noncombatants, “we go wherever the troops are to provide religious support, to be a moral and ethical compass during dilemmas, and to serve as reminders of the sacred.”

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NPR Morning Edition on *Three Chaplains*:

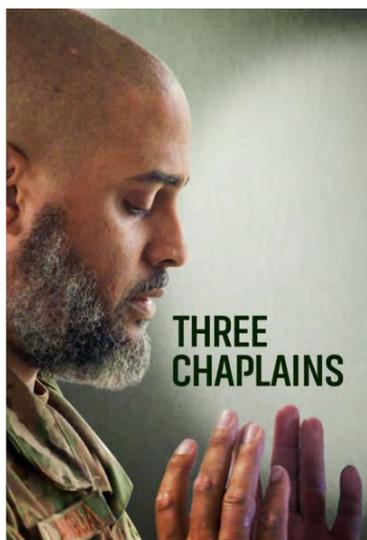
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*Ivonne Spinoza is a South American trilingual Latina writer and illustrator. She writes both for TV and about it, and her*



*work aims to contribute to better representation while advancing equality. She writes mostly genre fiction and cultural analysis, but quite often will branch out wherever curiosity takes her. Find her everywhere online as @IvonneSpinoza.*

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# Secretary of Defense Austin Issues Guidance for Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members

Aug. 25, 2021

Today, Secretary of Defense Lloyd J. Austin III issued a memorandum for Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members.

The memo directs the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.

Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance. Service members voluntarily immunized with a COVID-19 vaccine under FDA Emergency Use Authorization or World Health Organization Emergency Use

Listing in accordance with applicable dose requirements prior to, or after, the establishment of this policy are considered fully vaccinated. Service members who are actively participating in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

The Secretaries of the Military Departments were also directed to impose ambitious timelines for implementation and to report regularly on vaccination completion using established systems for other mandatory vaccine reporting.

View the memo for Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members.

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PERSONNEL AND  
READINESS

**UNDER SECRETARY OF DEFENSE**  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

**FEB 27 2023**

The Honorable Mike D. Rogers  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your February 8, 2023 letter to the Secretary of Defense regarding coronavirus disease 2019 (COVID-19) vaccine requirements for Department of Defense (DoD) personnel. I am providing additional information on his behalf.

I appreciate your concern regarding implementation of the rescission of the COVID-19 vaccination mandate as required by section 525 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. Per Secretary of Defense Memorandum, "Rescission of the August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces," January 10, 2023 (January 10, 2023 memorandum), all DoD policies, directives, and guidance implementing the Secretary's August 24, 2021 and November 30, 2021 vaccination mandate are no longer in effect.

On February 24, 2023, the Deputy Secretary of Defense released additional guidance on the implementation of the Secretary's memorandum rescinding the COVID-19 vaccination mandate (enclosed). This guidance directed that DoD Component heads formally rescind any policies, directives, or guidance (collectively "policies") related to the COVID-19 vaccination mandate if the policies had not yet been rescinded, noting that they have not been operative since the issuance of the January 10, 2023 memorandum.

Please find additional information below regarding the Department's efforts in this regard.

**Status of Mandate:**

- The mandate for Service members to be vaccinated against COVID-19 has been rescinded. This includes, but is not limited to, rescission of any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.
- The rescission of the mandate applies to all Service members.
- There are no COVID-19 vaccination requirements for new accessions (enlisted or officer candidates).

- No Military Service Academy requires a COVID-19 vaccination for a diploma or commission.
- There are no occupations in the Department that require COVID-19 vaccination at this time.

**Implementation:**

- The Military Departments are responsible for the implementation of the rescission.

**Data (as of January 10, 2023):**

- Approximately 2,000,000 Service members serve in the Active, Reserve, and Guard Components (collectively “Service members”).
- Approximately 69,000 Service members did not receive the COVID-19 vaccination.
- Approximately 53,000 Service members sought a medical or administrative (including religious) exemption or accommodation.
  - Of those approximately 53,000, approximately 37,000 requested a religious accommodation.
  - Approximately 19,100 religious accommodation requests were denied.
  - Approximately 400 religious accommodation requests were approved.
  - The remainder were pending adjudication.
- Approximately 8,100 Service members were separated for failing to comply with COVID-19 vaccination requirements.
- As of November 2022, 46 percent of Service member separations were characterized as honorable and 54 percent were characterized as general, under honorable conditions.

**Recoupment:**

- By law, and with certain exceptions, a Service member who is paid a bonus, incentive pay, or similar benefit and fails to satisfy the conditions for receipt of the bonus, such as completing a term of additional obligated service, must repay to the United States the amount of any unearned portion of the bonus.

- The Military Departments recouped unearned payments from Service members who were separated from their Military Service for any reason prior to completion of their obligations, including for refusing a lawful order to take the COVID-19 vaccine.
- Service members and veterans may apply at any time to the appropriate Discharge Review Board or Board for Correction of Military/Naval Records should they believe an action requires correction and/or redress.

**Back Pay:**

- As a matter of policy, the Department is not providing back pay or credit to Service members or veterans who did not comply with COVID-19 vaccination requirements.

**Unvaccinated Service members:**

- No Service members currently serving will be separated based solely on their refusal to receive the COVID-19 vaccination if they sought an accommodation based on religious, administrative, or medical grounds.
- The Military Services will update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand.
- Appropriate officials within the Military Services continue to review cases on an individual basis to determine appropriate action for Service members who did not submit an exemption or accommodation request, remained unvaccinated, and refused a lawful order to take the vaccine.

**Re-instatement:**

- Should former Service members desire to return to service, they may follow the standard accession policies and process of their respective Military Service.

**Requests for Accommodation:**

- Secretary Austin directed the Secretaries of the Military Departments to cease any ongoing reviews of current Service member religious, administrative, or medical accommodation or exemption requests related solely to the COVID-19 vaccination requirement or appeals of denials of such requests.
- The COVID-19 vaccine is no longer required by the DoD. Therefore, each Military Service will return religious, administrative, or medical accommodation or exemption requests related solely to the COVID-19 vaccination to each requesting Service member in their current state without action.

**Civilian Travel:**

- DoD personnel on official travel follow all applicable Federal, State, local, and commercial air carrier requirements, as well as applicable host nation requirements to respect host nation law.

Thank you for your continued strong support for our Service members. I am sending a similar letter to Representative Banks.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert R. Cisneros, Jr.", written in a cursive style.

Gilbert R. Cisneros, Jr.

cc:

The Honorable Adam Smith  
Ranking Member

Enclosure:

As stated



PERSONNEL AND  
READINESS

**UNDER SECRETARY OF DEFENSE**  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

**FEB 27 2023**

The Honorable Jim Banks  
Chairman  
Subcommittee on Military Personnel  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your February 8, 2023 letter to the Secretary of Defense regarding coronavirus disease 2019 (COVID-19) vaccine requirements for Department of Defense (DoD) personnel. I am providing additional information on his behalf.

I appreciate your concern regarding implementation of the rescission of the COVID-19 vaccination mandate as required by section 525 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. Per Secretary of Defense Memorandum, "Rescission of the August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces," January 10, 2023 (January 10, 2023 memorandum), all DoD policies, directives, and guidance implementing the Secretary's August 24, 2021 and November 30, 2021 vaccination mandate are no longer in effect.

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Gilbert R. Cisneros, Jr.

cc:

The Honorable Andy Kim  
Ranking Member

Enclosure:

As stated



DEPUTY SECRETARY OF DEFENSE  
1010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1010

FEB 24 2023

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP  
COMMANDERS OF THE COMBATANT COMMANDS  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Guidance for Implementing Rescission of August 24, 2021 and November 30, 2021  
Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed  
Forces

In today's rapidly changing global security environment, vaccines continue to play a critical role in assuring a ready and capable force that is able to rapidly deploy anywhere in the world on short notice. Department leadership is committed to ensuring the safety of our Service members and will continue to promote and encourage vaccinations for all Service members along with continued use of other effective mitigation measures. This includes monitoring changing public health conditions, relevant data, and geographic risks; and updating policies and processes as required to maintain the strategic readiness of our forces and our ability to defend national security interests around the globe.

This memorandum provides additional guidance to ensure uniform implementation of Secretary of Defense Memorandum, "Rescission of the August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces," January 10, 2023 (January 10, 2023 memorandum).

As required by section 525 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, the January 10, 2023 memorandum rescinded the August 24, 2021 and November 30, 2021 Secretary of Defense mandates that members of the Armed Forces be vaccinated against the coronavirus disease 2019 (COVID-19) and thereby also rendered all DoD Component policies, directives, and guidance implementing those vaccination mandates as no longer in effect as of January 10, 2023. These include, but are not limited to, any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.

DoD Component policies, directives, and guidance have not been operative since the January 10, 2023 memorandum was issued, regardless of the status of the DoD Component conforming guidance. DoD Component heads shall formally rescind any such policies, directives, and guidance as soon as possible, if they have not done so already. DoD Component heads shall certify to the Under Secretary of Defense for Personnel and Readiness in writing that these actions have been completed no later than March 17, 2023.

The January 10, 2023 memorandum recognizes that other standing Departmental policies, procedures, and processes regarding immunizations remain in effect, including the ability of commanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions, such as when vaccination is



required for travel to, or entry into, a foreign nation. This continues to be the case, in accordance with the guidance below.

The Department's Foreign Clearance Guide will be updated to reflect that DoD personnel must continue to respect any applicable foreign nation vaccination entry requirements, including those for COVID-19. Other than to comply with DoD Foreign Clearance Guidance, DoD Component heads and commanders will not require a Service member or group of Service members to be vaccinated against COVID-19, nor consider a Service member's COVID-19 immunization status in making deployment, assignment, and other operational decisions, absent establishment of a new immunization requirement in accordance with the process described below. It is my expectation that any requests to the Assistant Secretary of Defense for Health Affairs (ASD(HA)) for approval to initiate mandatory immunizations of personnel against COVID-19 will be made judiciously and only when justified by compelling operational needs and will be as narrowly tailored as possible.

Department of Defense Instruction (DoDI) 6205.02, "DoD Immunization Program," July 23, 2019, will be updated as follows to establish a process requiring the Secretary of a Military Department, the Director of a Defense Agency or DoD Field Activity that operates medical clinics, or the Commandant of the Coast Guard, to submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel. Effective immediately, I direct the following action:

Paragraph 2.11. of DoDI 6205.02 is revised by adding a new subsection g., which will read:

"Submit requests to the ASD(HA) for approval to initiate, modify, or terminate mandatory immunizations of personnel and voluntary immunizations of other eligible beneficiaries determined to be at risk from the effects of deliberately released biological agents or naturally occurring infectious diseases of military or national importance."

The Commander of a Combatant Command must submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel through the Joint Staff, consistent with existing processes specified in DoDI 6205.02.

The Director of Administration and Management will make the revision directed above as a conforming change to the version of DoDI 6205.02 published on the DoD Issuances website.



FILED: May 16, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 23-1419  
(1:22-cv-00876-AJT-JFA)

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ISRAEL ALVARADO; STEVEN BARFIELD; WALTER BROBST; JUSTIN BROWN; DAVID CALGER; MARK COX; JACOB EASTMAN; THOMAS FUSSELL; NATHANAEL GENTILHOMME; DOYLE HARRIS; JEREMIAH HENDERSON; ANDREW HIRKO; KRISTA INGRAM; RYAN JACKSON; JOSHUA LAYFIELD; JAMES LEE; BRAD LEWIS; ROBERT NELSON; RICK PAK; RANDY POGUE; GERARDO RODRIGUEZ; PARKER SCHNETZ; RICHARD SHAFFER; JONATHAN SHOUR; JEREMIAH SNYDER; DAVID TROYER; SETH WEAVER; THOMAS WITHERS; JUSTIN WINE; MATTHEW WRONSKI; JERRY YOUNG; BRENTON C. ASBURY; JORDAN BALLARD; CHAD BOOTH; JEREMIAH BOTELLO; CLAYTON DILTZ; MICHAEL HART; JACOB LAWRENCE; LANCE SCHRADER; JONATHAN ZAGDANSKI

Plaintiffs - Appellants

v.

LLOYD J. AUSTIN, III, in his official capacity as Secretary of Defense, U.S. Department of Defense; FRANK KENDALL, in his official capacity as Secretary of the Air Force, Department of the Air Force; CARLOS DEL TORO, in his official capacity as Secretary of the Navy, Department of the Navy; CHRISTINE WORMUTH, in her official capacity as Secretary of the Army, Department of the Army; XAVIER BECERRA, in his official capacity as Secretary, U.S. Department of Health and Human Services; ROBERT CALIFF, M.D., in his official capacity as Commissioner of the U.S. Food and Drug Administration; ROCHELLE WALENSKY, in her official capacity as Director, Centers for Disease Control and Prevention

Defendants - Appellees

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ORDER

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The court grants the motion to suspend briefing pending resolution of the motion to dismiss.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

*ISRAEL ALVARADO, ET AL.* :  
:  
v. :  
:  
*LOYD AUSTIN, III, ET AL.,* :  
:

**DECLARATION OF CHAPLAIN DAVID ANDREW CALGER**

Pursuant to 28 U.S.C. §1746, I, David Andrew Calger declare as follows:

1. My name is David A. Calger. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein. All statements made in this Declaration are true to the best of my own personal knowledge.

2. I currently reside at 206 Kindred Blvd. My home of record and where I am domiciled is Port Charlotte, Charlotte County, Florida.

3. I make this declaration to supplement my original April 24, 2022, and subsequent declarations in support of my challenge to the Department of Defense and Department of Army mandates requiring that I be vaccinated against COVID-19, the Army’s retaliation and continuing against me for filing a religious accommodation request (“RAR”), including its denial of my opportunity to attend the Chaplains Captain Career Course -Reserve Component (“C4-RC”) because of my RAR, which became the basis for my two failures to select to Major and my subsequent separation on December1, 2023, therefore.

3. I was a reserve chaplain in the United States Army serving at the rank of Captain (O3) until separated on December 1, 2023. Separation order at Exhibit 1. I was formally assigned to the 841<sup>st</sup> Engineer Battalion, 11700 NW 27<sup>th</sup> AVE. Miami, FL.

4. My May 24, 2023, declaration, incorporated by reference, was provided “to specifically address the deceptive, false and/ or misleading statements in the Department of Defense’s

Motion to Dismiss (“MTD”) filed by the Appellees ... [ 23-1419] ECF No. 10-1, that say or imply that “any plaintiff that had an adverse action on his or her file has had that adverse action removal from his or her records.” *Id.* ¶ 3.

5. That Declaration’s Exhibit 1 provided “Headquarters of the Army and Headquarters, a first Readiness Division (RD), Fort Jackson, SC” letter informing me that I must be separated ... because I failed my second consideration for selection to the rank of Major.” *Id.* at ¶ 5.

6. Paragraph 6 explained:

6. The exact and obvious reasons I failed of selection was my inability to personally attend the “in-person” portion of the Chaplain Career Course (“C 4”) which is mandatory for promotion to major, a direct result of the travel restrictions placed upon me as a result of requesting an RAR to avoid taking the COVID-19 vaccine.

7. Paragraph 8 further explained that for the Reserve Component of C4:

8. C4 has two components, first what is called the “zero” phase which is completed online and is a prerequisite to take to the next phase, the in-person instruction at the Chaplain School. I had completed the zero phase before the Mandate; I was not allowed to travel, which is necessary to attend the in-person instruction, after I submitted my RAR and was “flagged”, a personal code which means no favorable personnel actions may be granted to the individual.

8. The fact that I was flagged after Sec. Austin ordered rescission precluded my attendance at the two week RC “in-person C4 class which met before the major promotion board convened on February 2023”, for which I was ineligible because of my inability to complete C4.

9. After I was officially notified of my discharge in May 2023 after the 2023 Major promotion board reported its results, my unit unsuccessfully attempted to intervene on my behalf.

10. I would argue that my discharge after the Secretary’s rescission was due **solely** to the “adverse personnel action” deliberately taken against me in retaliation for my filing a RAR contrary to the Secretary’s wishes. This is a violation of my rights under the Religious Freedom

Restoration Act, § 533 of the 2013 NDAA, the First Amendment and the 2023 NDAA.

11. This is unconstitutional retaliation pure and simple by the Army and the Army Chaplain Corps leadership. The message to the public, DoD, and to the Army is, “we do not want people who believe in following their conscience as formed by their faith.”

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, it represents a testimony I would give if called upon to testify in a court of law.

Dated: December 4, 2023

/s/  
David A. Calger

CUI

# Department of the Army

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119656013

28 November 2023

CPT Calger, David A 1107798745, 56A, WRKGT0 - 0841 EN BN HHC ENGINEER BN Miami, FL 33167

Address: 206 KINDRED BLVD, Pt Charlotte, FL, ,

Action: Separation

Reason: Discharge - Involuntary

Effective Date: 01 December 2023

Report To: W0CQ0Y - W0CQ ARCHIVED RECORD

1600 SPEARHEAD DIVISION AVENUE, FORT KNOX, KY 40122

Position Number: 08534106

Position Title: COMMAND AND UNIT CHAPLAIN

Force Management ID: 72063297771777570

Assignment Loss Reason: NP

Separation Program Designator: JGB

Character of Service: A

For Military resources please visit the [Military One Source](#) website.

Additional Information:

By Authority of Department of the Army

Approved By: MAJ Ngenzirabona, Yves, #2 Sr Human Resource Off, W47AAA

**SUPPLEMENTAL DECLARATION OF  
CDR JOHN J. I. EASTMAN**

Pursuant to 28 U.S.C. §1746, I, John J.I. Eastman declare as follows:

1. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this Supplemental Declaration to support my challenge to the Department of Defense requiring that I be vaccinated against COVID-19 and address the continuing illegal damage done to me and my career because I requested a religious accommodation request (“RAR”) to avoid receiving the mandated treatment. All statements made in this Declaration are true to the best of my own personal knowledge.
3. Due to submitting a RAR, I was prevented from going to a billet outside the Continental US and later prevented from any other orders than to PCS locally; all this under the unrelenting threat of discharge at 18 yrs. despite being in what is called “sanctuary” with no retirement benefits. The pain, stress and suffering on my family throughout this ordeal was horrendous, ultimately leaving me with no confidence in a cowardly leadership who never even offered an apology for a bogus, predetermined process for elimination of chaplains who followed their conscience which was ultimately uncovered by Liz Wheeler at Fox News.
4. Despite this, the Navy never communicated any concern for my conscience

nor of the other numerous accommodations I facilitated, thereby destroying the credibility of my role as the Subject Matter Expert for religious accommodations within the Command.

5. This also occurred during a time of competing with other chaplains, for a milestone billet, a key to Navy chaplain promotions. Not surprising, with an impeccable record at the time, I was not selected for a milestone billet, which ultimately resulted in failing promotion to Captain. The only ethnically Jewish-Christian to my knowledge on active duty at the time of the processing of the RAR's to present. If I had known better at the time, I should have submitted an EO complaint for what appeared to be antisemitism on a number of levels.

6. I did receive a fitness report from a command that may have been tainted by the reaction for my RAR from prior billet. Ironically, it contained the lowest marks of my entire career. So it goes for someone who lived and consistently tried to model: God, Family, Country throughout his career.

I make this statement under penalty of perjury so that it may be submitted as a legal "supplemental declaration" to my previous declarations pursuant to 28 U.S.C. §1746, or cited as such in a report. It is accurate and true to the best of my ability and reflects the testimony I would give under oath in a court of law.

Dec. 18, 2023

/S/ John J. I. Eastman  
CDR, JOHN J. I. EASTMAN

**SUPPLEMENTAL DECLARATION OF  
CHAPLAIN MAJ DARREL LANCE SCHRADER**

Pursuant to 28 U.S.C. §1746, I, Darrel Lance Schrader declare as follows:

1. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this Supplemental Declaration to support my challenge to the Department of Defense requiring that I be vaccinated against COVID-19 and address the continuing illegal damage done to me and my career because I requested a religious accommodation request (“RAR”) to avoid receiving the mandated treatment. All statements made in this Declaration are true to the best of my own personal knowledge.
3. This supplement supports and updates my most recent supplements from January 18, 2023, and May 25, 2023, that reported on the continuing harm and injury to my career because of the Air Force and its officials’ response to the exercise of my right to request a RAR. This declaration addresses what has happened since the Mandate’s rescission.
4. It is incorrect and misleading to state adverse actions in my file have been removed and that it is theoretical that requesting and being unlawfully denied religious accommodation have had a negative impact on my career progression. As I will outline below, my selection for promotion to Lt Col with a line number of

nine of 13 during the June 2023 promotion board proves without a doubt that an unresolved negative impact has occurred, and it real and not theoretical. I will outline the non-removal of the records of adverse actions, the ongoing markings in my record as someone who requested and was denied religious accommodation, and the impact on my career of requesting a religious accommodation. Harder to quantify but no less real are the emotional and psychological impacts on me and my family because of the unjust treatment I have received from the DoD and the United States Air Force.

5. Concerning adverse actions against me, I was given a Letter of Reprimand (LOR) on 12 Jan 2023 for requesting an RAR and refusing to take the COVID-19 vaccine. Per the Department of the Air Force Inspector General Office (IG), my LOR is not being removed from the IG files in the Automated Case Tracking System (ACTS). This conflicts with the 24 Feb 2023 Secretary of the Air Force memo entitled Department of the Air Force (DAF) Guidance on Removal of Adverse Actions and Handling of Religious Accommodations Requests, which states, “Adverse actions removed under the provisions of this guidance memorandum contained in Inspector General files pursuant to AFI 90-301 **will be removed from those files**”<sup>1</sup> (emphasis added).

6. I inquired of the Air University Inspector General’s Office whether my LOR

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<sup>1</sup> SecAF Memorandum, *Department of the Air Force (DAF) Guidance on Removal of Adverse Actions and Handling of Religious Accommodations Requests*, 24 Feb 2023.

had been removed from IG files in compliance with this instruction. On 9 May 2023, I received an email response from the AU/IG that stated:

As far as the IG database goes, the admin actions are **not actually removed**. As I understand it, what actually happens is that a case note is added, at the SAF/IG level, which acknowledges that the admin actions were removed/rescinded by command and that those action [sic] should not be considered for officer screening/promotions. (Emphasis added.)

7. A second adverse administrative action that has not been removed is the referral Officer Performance Report (OPR) that I was given for the 1 Feb 2021 to 31 Jan 2022 reporting period. During this reporting period, on 12 Jan 2022, I was issued a Letter of Reprimand (LOR), which was sustained on 27 Jan 22. Although I only received this LOR with only four days left in the reporting period, the entire period was a referral OPR stating that I did not “meet standards” of “professional qualities” because of my stand against the Mandate.

8. This OPR included 10 months of work prior to my RAR appeal being denied and 361 days prior to the sustained LOR. On this OPR was the documentation of the 2020 Wing Staff Agencies Field Grade Officer of the Year award I received during my time in the 81st TRW at Keesler AFB, and the final month of a seven-month deployment to an undisclosed location in SW Asia where I served as the Wing Chaplain for an Air Expeditionary Wing. After the Mandate was rescinded, this OPR was deleted from my record and replaced with a blank Letter of Evaluation (LOE) that states “Not rated for the above period. Evaluation removed

by order of the SECAF.”

9. AFI 36-2406, 14 November 2019 (the current version at the time) states that “the duration of authorized non-rated periods may also vary depending on the circumstances and other factors. Therefore, non-rated periods must be considered individually [(emphasis in original)] as each Airman’s circumstance and response are unique” (para 1.4.11). I have no record of any individual consideration, rather it appears to be a blanket response in accordance with the 24 Feb 2023 DAF memorandum which states “Referral Performance Reports issued solely for vaccine refusal after requesting an exemption...will have the referral report removed from the member’s personnel record and replaced with a statement of non-rated time.”<sup>2</sup> This appears to be the same blanket actions taken as the blanket denial of RARs from the vaccine requirement. AFI 36-2406 also states “The rater will not consider nor comment on the Airman’s performance during a non-rated period. However, the rater may include significant accomplishment if requested by the ratee. If the non-rated period covers the entire reporting period, enter the statement” ‘Airman is not rated for this period: (date) through (date)’” (para 1.4.11.7). First, the non-rated period should only have been four days of the reporting period, thus did not warrant the removal of the entire OPR, or the statement that I was not rated during this period. Secondly, if the entire period was

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<sup>2</sup> SecDef Memorandum, *Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirement for Members of the Armed Forces*, 10 Jan 2023.

to be considered a non-rated period, by regulation I should have had the opportunity to request significant accomplishment be included. I was not given this opportunity, and there were significant accomplishments that should have been included.

10. Furthermore this blank LOE does not constitute “removal of adverse actions” as required by the Secretary of the Air Force<sup>3</sup> or the requirement of the Secretary of Defense “to remove any adverse actions”,<sup>4</sup> rather, it leaves a hole in my record with no explanation, and erases the record of my contribution to the mission, providing no evaluation of my performance for this period which is not insignificant. This supposed fix has actually become an impediment, which anyone familiar with the competitiveness of Air Force promotions would understand and acknowledge. This impediment is another continuing consequence of the damage done to my career because I requested an RAR in accordance with my conscience.

11. For the entire next OPR period 1 Feb 22 - 30 Nov 22 I was prohibited by my commander and leadership from performing my primary duties and was relegated to other assigned administrative duties. On this OPR I also received a second or third-tier job push recommending a Joint Position or a one-deep position, ostensibly stating that even though my rank and experience indicate I should be

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<sup>3</sup> SecAF Memorandum, *Department of the Air Force (DAF) Guidance on Removal of Adverse Actions and Handling of Religious Accommodations Requests*, 24 Feb 2023.

<sup>4</sup> SecDef Memorandum, *Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirement for Members of the Armed Forces*, 10 Jan 2023.

leading teams of people, my commander recommends I should be assigned next to a position where I am not leading others. The appropriate job recommendation for me having been at the top third of my year group(s) prior to the mandate would have been for a Wing Chaplain or future Staff or Strategic Chaplain Corps leadership.

12. There are ongoing markers in my record that identify me as a member who requested and was denied a religious accommodation and will subject me to further ongoing discrimination. First is the Air Force Surgeon General's appeal denial letter in my personnel record. Per the Air Force Personnel Center, the Air Force Surgeon General's appeal denial memo is not being removed from my permanent record. When I inquired about this memo being removed, the email response I received said, "The RaR denial letter will remain in your ARMS record."

13. A second marker on my record, despite the Mandate's rescission, is my Individual Medical Readiness (IMR) record that still shows a COVID-19 Vaccine status as "Admin (Refusal)". Since there is no policy requiring the vaccine, there is no reason to continue to categorize me with an Admin (Refusal) code.

14. These two markers on my record in my personnel file and medical file that do not return my records to the same status prior to the mandate are unfair, arbitrary, and capricious because not all military members who sought a religious accommodation had their RAR or RAR denial appeal fully adjudicated prior to the

rescission of the mandate. On 10 Jan 2023, in the memorandum rescinding the vaccination requirement, the Secretary of Defense stated, “The Secretaries of Military Departments will further cease any ongoing reviews of current Service member religious, administrative, or medical accommodations request solely for exemption from the COVID-19 vaccine or appeals of denials of such requests.”<sup>5</sup>

This means that only Service members like me, who for whatever reason, had their RAR on the top of the pile and made it all the way through the perfunctory RAR denial process, have this fact recorded in our permanent file. I was one of the first 195 Airmen in the USAF to have their RAR final appeal denied<sup>6</sup>, and because of this, my permanent record on the matter is different from similarly situated Service members whose RARs were at the bottom of the pile, despite the mandate being rescinded.

15. Concerning fair treatment, up until my permanent change of station in June 2023 I was not allowed to serve at my full capacity even after the mandate was rescinded. This inhibited my opportunity to contribute to the mission and to be evaluated on an even playing field with my colleagues. It was even determined by

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<sup>5</sup> SecDef Memorandum, *Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirement for Members of the Armed Forces*, 10 Jan 2023.

<sup>6</sup> <https://www.af.mil/News/Article-Display/Article/2831845/daf-covid-19-statistics-january-2022/>, this reference shows that as of 4 Jan 2022, 195 Airmen had been denied their final appeal by the Air Force Surgeon General. This is more than 30 days after my appeal was denied on 1 Dec 2021. Why my RAR was denied so quickly is not fully known. However as I outlined in previous declarations I was made aware that after my initial RAR was submitted in Sept 2021, it was hand-selected by the AETC Command Chaplain, my former boss, to be provided to the AETC Commander in preparation for the meeting he would have with other senior leaders at the October 2021 Corona conference. It is at this conference that I allege a coordinated effort was enacted to deny all religious accommodation requests. My RAR was quickly denied after the conference on 1 Nov 2021.

my commander that I did not deserve an end-of-tour decoration even though it was her decision to remove my direct contribution to the mission. No explanation was ever given to me for why I was not returned to full duty immediately after the mandate was rescinded, or for why I was not given a decoration, nor am I aware if an explanation was ever sought by my Chaplain supervisor. It appears they were content to keep me sidelined even when there was no administrative justification to do so and to further mar my record with no decoration from a vectored staff position assignment.

16. It was clear to anyone close to the situation and paying attention that I was treated differently than other instructors and/or members of Air University. Not all similarly situated members of Air University received the harsh punishment that I did. This lack of an end-of-tour decoration in my permanent record is also a clear sign from my commander to future supervisors and/or board evaluators that from her perspective I am a sub-par officer and not worth to being recognized. Being withheld from functioning at my full capacity for two years is having a negative effect on my career when it comes to assignments, schooling, and/or promotion opportunities; it has robbed me of the opportunity for life-changing ministry and superior performance to the Air Force as I've been able to do in the past.

17. I was officially removed from my Instructor, Course Director, and Student Mentor duties as a Staff Chaplain and Instructor at the Air Force Chaplain Corp

College in early December 2021 after being issued a Letter of Counseling. (This is documented in my commander's previous declaration for this case.) My commander and my supervisor very reluctantly returned me to instructor duties on 27 Apr 23. This was done not because the mandate was rescinded and my record cleaned; it was only because of a last-minute staff shortage on the team. To be clear on this point: I was removed from duty in December 2021 and not returned even to partial instructor duties until late April 2023, well after the mandate was rescinded.

18. I was never allowed in my two years as a Staff Chaplain to serve as a course director, or to represent the AFCCC in any other instructor capacity across Air University as would be normal for Staff Chaplain Instructors at AFCCC. It should be noted that I am not the only Air University staff or instructor to not receive the COVID-19 shot, but the others weren't removed from their jobs, and they continued to teach, direct courses, etc. This is true in multiple schools throughout Air University and can be proven by the personal testimony of these individuals. There is no doubt I was treated differently and more harshly than other officers in Air University.

19. Concerning the impact to my career advancement, prior to the Mandate the record shows I was in the top third of my year group. Prior to the Mandate I was selected as an alternate for in-residence Intermediate Development Education (Air

Command and Staff College (ACSC)). After the mandate, it seems that I was removed from the alternate list, and the Air University Commander and President chose to not recommend me for my third and final look despite the strengthening of my record between my second and third consideration.

20. As my 1/18/2023 declaration, ¶ 7 states:

In the year between my second consideration (when I was selected as an alternate) and my third consideration (not recommended), I finished a deployment as a Wing Chaplain in an O-5 billet (one rank above my current rank), was recognized by the Air Force Central Command (AFCENT) Chaplain for leading the best team for our rotation, was awarded two MSMs, named FGO [Field Grade Officer] of the year for the Wing Staff Agencies at my permanent duty station, and was selected for a vectored position as a Staff Chaplain at the Air Force Chaplain Corps College. It is unquestionable that my performance record during this period should have only strengthened my competitiveness prior to my third consideration. However, my senior rater chose not to recommend me. His letter to the RAR decision authority provides evidence that this non-recommendation is because of my religious beliefs outlined in my RAR and not due to my professional performance.

21. Professional Military Education (PME) is a competitive process and confirmation of one's strength of record and reputation within the Chaplain Corps. To clearly have had the strength of record to make the alternate list, and then to have not been recommended the next year is a purposeful decision to disqualify someone, and to take away any competitive advantage they had previously earned amongst their peers. In the letter to the RAR decision authority the Air Education and Training Command Commander, my senior rater (the Commander and

President of Air University), revealed his prejudice against me and revealed why he chose not to recommend my RAR be approved as well as why he chose not to recommend me for ACSC. This is what he wrote about my religious sincerity and his interpretation of the oath of office he and I have both taken:

While I accept the sincerity of Maj Schrader's beliefs, his position that getting the vaccine constitutes an act of worship to a false God (i.e., the State) arguably appears to be in conflict with his service as a [sic] an officer—service he entered voluntary [sic] and in doing so bore allegiance to the State, which at times requires him to do it's [sic] bidding. His assertion on this point, though sincere, seems inconsistent and falls flat.<sup>7</sup>

22. Had it not been for the Mandate and my RAR request I would have likely attended Air Command and Staff College in residence during the 2022-23 school year (as an alternate), maintaining my position near the very top of my year group for promotion in June 2023. Had I not received a spot from the alternate list for the 2022-23 school year, and the Mandate had not been issued, I would have likely been selected as a primary attendee in the 2023-24 school year and again been positioned near the very top of my year group for promotion in June 2023.

23. Of the three Chaplains on the 2022-23 alternate list, I am the only one who will have not attended ACSC in residence. I have tried to ascertain my rank among those other alternates, but the Chief of Chaplains' office would not give me the information. The negative and adverse actions described herein made promotion in

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<sup>7</sup> Lt Gen James B. Hecker, 1<sup>st</sup> Ind, AU/CC, 13 Oct 2021, Religious Accommodation Request for Maj Darrel L. Schrader, MEMORANDUM FOR AETC/CC, para 3.

a competitive environment questionable. This is due solely to the consequences of challenging the Mandate and exercising my right to request a RAR.

24. Concerning the clear impact the mandate has had on my career progression, I was selected for promotion in the summer of 2023 with a line number of nine out of the 12 selected. This promotion proves that the adverse actions and treatment I received due to my RAR move dropped me from the top third to the bottom third of my competitive year group.

25. The Air Force promotes selected officers in order of merit based on the strength of their record.<sup>8</sup> Prior to the mandate, my record consistently scored in the top third of my year group, which would have provided me a promotion line number between #1 and #4. However, because of the impact of the mandate on my record, I received a line number of 9 out of the 12 members selected. In my year group, there were 13 members considered, and 11 were selected. One additional member was selected above the primary zone, for a total of 13. The promotion schedule has not yet been published, but the most likely situation is that one member will be promoted per month starting in January for 13 months. This means for every line number that my record fell, I will have lost out on another month of pay at a higher rank, as well as the time in grade and the opportunities for the responsibilities that go along with it, which puts me at a further disadvantage for

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<sup>8</sup> <https://www.afpc.af.mil/Promotion/Officer-Promotions/>

the next promotion. All of this wouldn't be so bad if it was only about the money, but the whole point of the merit-based line numbers is to continue to ensure we have the best of the best leading in our force. The reason I have dropped down this list is not because of my performance, but because of my commitment to my oath of office, and maintaining a clear conscience before God and man.

26. Lingering hostility remains due to my challenging a corrupt and hostile system that has shown it punishes those who follow their conscience, which is especially concerning given that chaplains are supposed to follow their conscience, and Section 533 protects that right.

27. I have been the recipient of further religious discrimination as a result of my RAR for the COVID-19 Vaccine and involvement in litigation. I submitted an RAR for the influenza vaccine on 6 Dec 2021 and received no response or update until 6 Jan 2023. On 6 Jan 2023 I was called into my commander's office and given a written order to receive the flu vaccine even though I already submitted an RAR and by regulation had a temporary exemption while my request was pending. I was ordered to repeat the entire process and interviews again. Finally, on 19 May 2023, 530 days after submitting the request, I received a denial of my request. (While the flu shot is not the focus of this case, it does show a continuation of the pattern of denial without satisfying the requirements of RFRA or respecting the Section 533 protections for Chaplains. This shows a pattern of discrimination in the Air Force.)

As it stands today, the appeal of my 19 May 2023 denial remains unanswered. Like the situation with Covid-19, which I never caught, and therefore any hinderance to the mission that my unvaccinated status may have caused ended up being theoretical, I have remained flu free for these 704 days without the flu vaccine, proving once again that the denial of my accommodation due to mission accomplishment was and remains theoretical.

28. Finally, as a result of being removed from instructor duty as outlined above, with no hope that my supervisor or commander would let me return to full duty despite the rescission of the mandate, I requested a permanent change of station a year early. I was told I would need to accept a Deputy Wing Chaplain assignment if I was granted my request. I was happy to do so even though it was at best a lateral move and would reduce my staff Chaplain experience by a year. This may or may not negatively impact my career progression, but it was necessary for the mental health of my family and none of it would have happened had it not been for the mandate and denial of my religious accommodation request.

29. The military defense in this case has attacked us plaintiffs, calling our assertion of post-rescission injury as theoretical saying:

boiled down to the assertion that their careers will be impeded, either because of opportunities they could not pursue while the vaccine requirement was in effect or because decisionmakers will view them negatively on the basis of their religious exemption requests.

That is not speculation, but reality and has been proven without a shadow of a

doubt with the movement of my record from the top third to the bottom third of my year group. It is a disgrace that anyone who knows anything about the competitive nature of Air Force promotions would suggest that having taken a stand against something like the Mandate, which was pushed from the highest levels, would not have serious consequences. This is willful blindness or outright religious hostility.

I make this statement under penalty of perjury so that it may be submitted as a legal “supplemental declaration” to my previous declarations pursuant to 28 U.S.C. §1746, or cited as such in a report. It is accurate and true to the best of my ability and reflects the testimony I would give under oath in a court of law.

Nov 10, 2023

/S/ D. Lance Schrader  
DARREL LANCE SCHRADER

## **SUPPLEMENTAL DECLARATION OF CH (MAJ) JERRY BARTON YOUNG**

Pursuant to 28 U.S.C. §1746, I, Jerry B. Young declare as follows:

1. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this Supplemental Declaration to support my challenge to the Department of Defense requiring that I be vaccinated against COVID-19 and address the continuing illegal damage done to me and my career because I requested a religious accommodation request (“RAR”) to avoid receiving the mandated treatment. All statements made in this Declaration are true to the best of my own personal knowledge.
3. Prior to my COVID-19 religious accommodation request (RAR), I had an impeccable record as a field grade Army officer and chaplain with a top-secret SCI clearance. In 2019, I graduated top of my Army Family Life cohort and entire class, Summa Cum Laude. Consequently, I was selected for a nominative assignment as the only Family Life instructor and subject-matter-expert (SME) amongst more than 50 others worldwide to serve at the U.S. Army Institute for Religious Leadership (USA-IRL) as the Family Life Instructor/SME. I was on an upward glide path until the reprisal and discrimination began from the submission of my RAR from the COVID-19 mandated “vaccine.”

4. I was directly and indirectly punished in numerous ways for adhering to my conscience and my religious convictions; some of the significant occurrences are enumerated in my May 2022 declaration in paragraphs 12, 16, 18(h), 25. These include public shaming over my RAR, incessant pressure to violate my conscience, and threats of separation with a career ending separation code.

5. The environment in the Chaplain Schoolhouse where I was assigned as an instructor is dictated by the Chief of Chaplains, Chaplain (MG) Solhjem. The Chaplain Corps, which adheres to the directives of the Office of the Chief of Chaplains (OCCH), has not allowed chaplains under its leadership to follow their conscience apart from reprisal. The position of OCCH was 100% COVID-19 vaccination with encouragement by CH (MG) Thomas Solhjem for chaplains to exit the Army if we took a different stance, since the Army is an all-volunteer force. He made it very clear the Chaplain Corps has no place for those who refuse the vaccine, regardless of reason. My declaration of May 2022, paragraph 18(h), memorializes the speech CH (MG) Thomas Solhjem made from the Pentagon to those of us at the Chaplain Schoolhouse.

6. The attitude of hostility toward my conscience and religious beliefs was manifest throughout my USA-IRL experience, so much so that it caused my leadership to ignore the reasons for my selection as Family Life SME at the Schoolhouse. CH (COL) Hardin, the Training Director and my senior rater, curtly

told me in our first meeting that I should not be there and inquired as to where I would like to be moved (18 months early). In summary, all the actions taken against me were designed to retaliate against me for requesting a religious accommodation request and to destroy my career by making my record uncompetitive in comparison to my peers with whom I compete for promotion. This is an indirect method to punish me for what the Chaplain Corps cannot do directly, to destroy my career because I exercised my right under section 533 of the 2013 NDAA to act according to my conscience, and my rights under the first amendment to be free from religious coercion, hostility and retaliation for the exercise of my protected rights. No deviations in OCCH's hostile position against those who made RARs has occurred to this day.

7. The same absolute 100% vaccination position was dictated by the two Fort Jackson Commanding Generals during my time, BG Milford Beagle and BG Patrick Michaelis. BG Beagle commanded all his battalion commanders to get the experimental vaccine in order to prove to their troops that they would not "grow a third eye-ball." In my 30-minute meeting with BG Michaelis on May 10, 2022, he emphasized that "leaders lead" and asked pointed questions as to why I was *afraid* to take the vaccine unlike everyone else. In accordance with the Religious Freedom Restoration Act (RFRA) of 1993 *least restrictive means*, BG Michaelis was unwilling to accept my prophylactic regimen, masking, and natural immunity as

evidence by a recent t-detect test showing strong positive antibodies. It was clear by my meetings with CH (COL) James Palmer and BG Patrick Michaelis that the concern was not about my actual health and readiness or accommodating my religion via least restrictive means (before recommending disapproval of my RAR to the Surgeon General of the Army), but it was about following the predetermined agenda from higher for 100% vaccination no matter the cost or circumstance. Thus, there was no intent for the flag officers and chaplain officers over me to adhere to our nation's Religious Freedom Restoration Act (RFRA) of 1993. RFRA was merely a nice platitude on the wall.

8. As outlined in my May 2022 declaration, paragraph 18(c), on September 10, 2021, the Chaplain School Commandant, CH (COL) James Palmer said to the Training Director, CH (COL) Dennis Hysom that he would not endorse approval on any chaplain RAR except in extremely rare circumstances, but *certainly not for Christian objections*. Ironically, this statement was made directly under a large framed American flag with engraved text quoting the free exercise clause of the First Amendment. According to BG Michaelis, CH (COL) Palmer communicated his position to him on my RAR directly before my meeting with BG Michaelis. It was apparent that BG Michaelis' position was pre-determined before meeting with me. All three of these senior Army officers disregarded RFRA and the resulting retaliation which damaged my chaplain career and all three gentlemen

expeditiously retired.

9. The next USA-IRL Training Director, CH (COL) Daniel Hardin, under whom I received my last two officer evaluation reports (OERs) also took up the expressed COVID-19 vaccine philosophy from higher at OCCH. CH (COL) Hardin embraced CH (MG) Solhjem's passion for punishing, sidelining and eliminating chaplains who believed in following their conscience. He followed the direction of OCCH and CH (BG) William Green, Jr., the Deputy Chief of Chaplains at the time. CH (COL) Hardin who reports directly to CH (BG) William Green, Jr., is well adept as using "cat's paw" to use other senior chaplains under his leadership, in the personnel office, and within his Anglican denomination to reach out and negatively affect my career. I was slandered and my reputation was tarnished. Emails and conversations have taken place with my current command chaplain at my new duty station which affect my new commander's perspective. Slander has a significant impact in the chaplaincy where reputation follows a senior chaplain, and the members of the promotion board are primarily chaplains, and the board is chaired by the Chief or the Deputy Chief of Chaplains.

10. For two consecutive officer evaluation rating periods immediately prior to my primary zone board for promotion, my senior rater was hostile in his interactions with me. In recurring meetings, CH (COL) Daniel Hardin threatened to move me, de-platform me and end my career. He said he was well aware that I

needed a “cookie,” as he called it, or a most-qualified (MQ) OER from him to have any chance of promotion at the February 2024 board. In June 2022, CH Hardin had assured me of a most-qualified (MQ) evaluation in order to show a heart-beat on my second evaluation with specific performance measures (all accomplished), but after knowledge of my RAR class-action, he said that I was “creating a hostile work environment for him” and his tenor drastically changed. He actively worked against me in a cat and mouse manner. He met with my personnel managers in order to examine my last five evaluations as a major (against Army regulations) which would be viewed by the promotion board before he wrote my MAY 2023 OER. In our final meeting, CH (COL) Hardin said I was his #3 performer out of his 22 chaplain majors, but said he would rank me #5 (because of his view of my “being”...and because he did not want to give me the MQ I deserved and he assured). CH (COL) Hardin had the ability to give MQs to his top 49% of 22 majors; and #3 is the top 13%, clearly meriting a MQ top block evaluation. CH (COL) Hardin falsely stated that his #5 enumeration would be viewed favorably by the board; the narrative is meaningless if he were to give me a second consecutive HQ rating.

11. About a week after our meeting, I received an email from CH (COL) Hardin stating that my OER was ready for my signature. When I saw this second HQ blocking on this final evaluation before the board (a career killer), I met with my

rater, CH (LTC) David Mvondo in order to engage with CH (COL) Hardin. CH (LTC) Mvondo said he would talk to CH (COL) Hardin concerning the matters of contradictions. For example, CH Mvondo was nominating me for both *USA-IRL Instructor of the Year* and for the *Four Chaplains Medal*, yet CH (COL) Hardin claimed that I was trying to self-nominate which he said was clear-cut selfish service. I sent an email and made follow up calls to CH (LTC) Mvondo while on PCS leave, but did not receive a timely response.

12. On May 30, CH (LTC) Mvondo returned my call about one hour after CH (COL) Hardin had sent my OER to HRC unsigned. CH (COL) Hardin had unsigned my evaluation and added two sentences at the beginning of his narrative on potential to the board, spitefully stating, “**Rated Soldier refused to sign. Rater Soldier refused to sign.**” CH Hardin’s clear message by this redundant statement to the board with an HQ blocking is: DO NOT PROMOTE.

13. Furthermore, this narrative is a false official statement as I did not refuse to sign; rather I was never granted a conversation with my senior rater after reading my OER.

14. Because of my RAR, CH (COL) Hardin treated me differently than chaplain peers who took the covid vaccine, who in their words, “he took care of” them in preparation for their board. CH (COL) Hardin told me he was actively working to take care of chaplains prior to their board but winced at me when I told him my

board was upcoming as well.

15. When I voiced my RAR retaliatory concerns in my exit interview with CH (BG) William Green, CH (BG) Green stated that my evaluation didn't involve him at this point, that it was a strictly a matter for my rater and senior rater.

16. Additionally, I was intentionally double slotted for 7 months before my final OER with CH (MAJ) Hans Ruska who was mentored, trained, and supervised by our senior rater, CH (COL) Hardin, for several years. CH (MAJ) Ruska told CH (LTC) Dan Kersey and me that he was brought in early from his brigade time to be protected from another HQ evaluation in a brigade supervisory position. In other words, CH Hardin was going to "take care of him" with a MQ evaluation before his upcoming board, but not "take care of" me. Though CH Ruska and I worked as a team to further develop family lessons for the school, CH (COL) Hardin made derogatory comparative comments about me in relation to CH (MAJ) Ruska who the Chaplain Corps intentionally double slotted me with. This double slotting protocol was one of the many methods the Chaplain Corps utilized to sideline and marginalize chaplains who submitted RARs. Because of this, my official record still falsely indicates that I served 41 months as "Training Officer #2" at USA-IRL.

17. I was slotted for supervisory brigade time by two consecutive personnel managers and had "request for orders" (RFO) and official orders in IPPS-A for Fort Rucker's 1<sup>ST</sup> AVN BDE, which intentionally included the required

supervisory time before my upcoming board.

18. However, in April 2023, just 4 weeks before I was due to report, my orders were changed electronically without notice the day after I made contact with the incumbent brigade chaplain. Furthermore, my orders were changed to a small group unit of one fifth the size (not a brigade) without battalions chaplains, which means no supervisory experience, which translates to a non-competitive board file with my peers and no promotion potential. Chaplain Lieutenant Colonel (LTC) board statistics show that 100% of those selected for LTC promotion have had brigade supervisory experience. I was informed by CH (COL) Kim, the USA-IRL Deputy Commandant, and other chaplains in positions of knowledge that there were “other considerations” for my assignment change which came from OCCH.

19. I have ample supporting evidence (recordings, affidavits, emails, eyewitness testimony, etc.) which can be supplied during discovery to substantiate the retaliation and discrimination outlined in this declaration.

20. I make this statement under penalty of perjury so that it may be submitted as a legal “supplemental declaration” to my previous declarations pursuant to 28 U.S.C. §1746, or cited as such in a report. It is accurate and true to the best of my ability and reflects the testimony I would give under oath in a court of law.

Dec 2, 2023

CH (MAJ) JERRY B. YOUNG

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

ISRAEL ALVARADO, et al.,

Plaintiffs-Appellants,

v.

LLOYD J. AUSTIN, III, et al.,

Defendants-Appellees.

No. 23-1419

**DEFENDANTS-APPELLEES' MOTION TO DISMISS APPEAL AS MOOT**

Defendants move to dismiss this appeal as moot. Plaintiffs' suit challenges the military's COVID-19 vaccination requirement, which was rescinded in January 2023 at Congress' direction. The military has halted all pending separations and removed from service members' files any adverse actions associated with the denial of a COVID-19 vaccination exemption. No plaintiff in this case was separated as a result of their decision to decline the COVID-19 vaccine, nor do any have adverse actions in their files associated with that decision. As a result, plaintiffs' claims are now moot. Plaintiffs oppose this motion and intend to file a response in opposition.

**BACKGROUND**

**A. The Military's Former COVID-19 Vaccination Requirement**

1. On August 24, 2021—the day after the Food and Drug Administration (FDA) approved a license for the Pfizer-BioNTech vaccine—the Secretary of Defense added

the COVID-19 vaccine to the list of nine others required of all service members. *See* Department of Defense, *Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members* (Aug. 24, 2021), <https://perma.cc/4F46-ELPS> (August 2021 Memorandum). Service members could satisfy the requirement by getting the Pfizer vaccine or by getting another COVID-19 vaccine authorized by FDA or listed by the World Health Organization. *Id.*

As with other required vaccines, service members could seek religious exemption from the COVID-19 vaccination requirement. *See* August 2021 Memorandum. If a service member's religious exemption request was denied, the service member could appeal to a senior official. *See* A179-82 (Mahoney Decl., RE 65-4, PageID754-57); A196-98 (Merz Decl., RE 65-5, PageID1043-45); A221-27 (Streett Decl., RE 65-13, PageID1316-22).<sup>1</sup> If that too was denied, the service member could either receive the vaccine, wait for the military to initiate separation proceedings, or—if eligible—retire. Although separation proceedings vary by service, rank, time in service, and other factors, they generally take many months, involve multiple levels of review at which the service member can present arguments against separation, and can result in a decision to retain the member in service. *See* A183-87 (Mahoney Decl., RE 65-4, PageID758-62); A199-205 (Merz Decl., RE 65-5, PageID1046-51); A229-34 (Hernandez Decl., RE 65-17, PageID1338-43). Service members were not subject to separation based on their

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<sup>1</sup> Citations to A\_\_ are to the addendum to this motion.

decision to decline the COVID-19 vaccine if they had a pending exemption request or administrative appeal. *Id.* Moreover, were a service member discharged for declining the COVID-19 vaccine, he or she would receive an honorable discharge or, at worst, a general discharge under honorable conditions. *See* A173-74 (Mahoney Decl., RE 65-4, PageID748-49); A203-04 (Merz Decl., RE 65-5, PageID1050-51); A233-34 (Hernandez Decl., RE 65-17, PageID1342-43).

2. On January 10, 2023, the Secretary of Defense rescinded the military's COVID-19 vaccination requirement. A254 (Rescission Memorandum, RE 94-1, PageID3382). The prior month, Congress had passed, and the President signed into law, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (2023 NDAA), Pub. L. No. 117-263, 136 Stat. 2395 (2022). Section 525 of the 2023 NDAA—enacted over the objection of the Department of Defense—obligated the Secretary of Defense to rescind the requirement laid out in the August 2021 Memorandum. 136 Stat. at 2571-2572; *see, e.g.*, Transcript of Press Briefing by Deputy Pentagon Press Secretary (Dec. 7, 2022), <https://perma.cc/EXQ2-FNBN>.

The Secretary of Defense's Rescission Memorandum provided that “[n]o individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds.” A254 (Rescission Memorandum, RE 94-1, PageID3382). In addition, it directed the military departments to “update the records of such individuals to remove any adverse actions solely associated with denials

of such requests, including letters of reprimand,” and to “cease any ongoing reviews of current Service member religious, administrative, or medical accommodation requests solely for exemption from the COVID-19 vaccine or appeals of denials of such requests.” A254 (Rescission Memorandum, RE 94-1, PageID3382). It further stated that former service members who were discharged on the sole basis that they failed to obey an order to receive a COVID-19 vaccine “may petition their Military Department’s Discharge Review Boards and Boards for Correction of Military or Naval Records to individually request a correction to their personnel records, including records regarding the characterization of their discharge.” A255 (Rescission Memorandum, RE 94-1, PageID3383). The memorandum noted that commanders retained the ability “to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions.” A255 (Rescission Memorandum, RE 94-1, PageID3383).

The Department of Defense has since issued guidance implementing the rescission and updating other vaccination-related policies. In February 2023, for example, the Deputy Secretary of Defense issued guidance emphasizing that the Rescission Memorandum “rendered all Department of Defense Component policies, directives, and guidance implementing [the] vaccination mandates as no longer in effect as of January 10, 2023.” Department of Defense, *Guidance for Implementing Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces* (Feb. 24, 2023), <https://perma.cc/ZBU8-YELM>. This

included, but was not limited to, “any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.” *Id.* The Deputy Secretary directed commanders to comply with foreign-nation entry requirements, but has otherwise prohibited individual commanders from requiring vaccination against COVID-19 or considering a member’s COVID-19 immunization status when making “deployment, assignment, and other operational decisions, absent establishment of a new immunization requirement” to be approved at the level of the Assistant Secretary of Defense for Health Affairs, which will occur “only when justified by compelling operational needs and will be as narrowly tailored as possible.” *Id.*

Each of the military services has also issued its own implementing guidance, halting ongoing enforcement actions and removing adverse actions from service members’ files. *See, e.g.,* Air Force, *DAF Issues Guidance on COVID-related adverse actions; Religious Accommodation Requests* (Feb. 27, 2023), <https://perma.cc/4NF3-UFPD>; Secretary of the Army, *Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission* (Feb. 24, 2023), <https://perma.cc/7JZG-G2ZA>; Navy, NAVADMIN 065/23, *Follow On COVID-19 Vaccine Rescission Actions* (March 6, 2023), [https://www.mynavyhr.navy.mil/Portals/55/Messages/NAVADMIN/NAV2023/NAV23065.txt?ver=5D-VSbRc-Pt\\_Qjy8WecHeQ%3d%3d](https://www.mynavyhr.navy.mil/Portals/55/Messages/NAVADMIN/NAV2023/NAV23065.txt?ver=5D-VSbRc-Pt_Qjy8WecHeQ%3d%3d); *see also* National Guard Bureau, *Return of Non-Federalized T32 National Guard Service Members to Non-Federalized Title 32 Duty* (Jan. 18, 2023),

<https://perma.cc/3JHS-MJEK> (stating that non-federalized National Guard members could resume participation in drills, training, and other duties conducted under Title 32 of the U.S. Code).

## **B. Plaintiffs' Challenge to the Military's Former COVID-19 Vaccination Requirement**

1. Plaintiffs are 42 military chaplains who objected to the military's former COVID-19 vaccination requirement and who sought religious exemptions from that requirement. Plaintiffs filed suit in the Middle District of Florida in May 2022 on behalf of a putative class of military chaplains, asserting statutory and constitutional claims against the military, the Department of Health and Human Services (HHS), FDA, and the Centers for Disease Control and Prevention (CDC). Specifically, plaintiffs argue that the COVID-19 vaccination requirement and the military's alleged "policy of uniformly denying religious accommodations" related to that requirement violate the Religious Freedom Restoration Act and the Administrative Procedure Act, as well as a number of constitutional provisions and principles, including Article VI's prohibition on religious tests, various clauses of the First Amendment, due process, and separation of powers. A93-123 (Compl., RE 1, PageID93-123).

Plaintiffs also argue that requiring them to receive the COVID-19 vaccine would violate Section 533(b) of the 2013 National Defense Authorization Act (2013 NDAA), which prevents the military from "requir[ing] a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the

chaplain.” National Defense Authorization Act for Fiscal Year 2013, § 533(b), Pub. L. 112-239, 126 Stat. 1631, 1727 (2013). A90-93 (Compl., RE 1, PageID90-93). And they argue that the military has failed to provide “comprehensive training” on “religious liberty,” which plaintiffs claim is implicitly required by Section 533(b) of the 2013 NDAA and by a Senate Committee Report on the 2018 National Defense Authorization Act. A90-93 (Compl., RE 1, PageID90-93).

More generally, plaintiffs challenge the military’s COVID-19 vaccination requirement on the basis that it “rest[ed] on an erroneous, fraudulent, and unlawful bureaucratic change in September 2021 to the centuries-old definition of a vaccine.” A11 (Compl., RE 1, PageID11). Because (in plaintiffs’ view) the available COVID-19 vaccines do not prevent recipients from contracting COVID-19, they are not properly referred to as “vaccines.” A11 (Compl., RE 1, PageID11).

Plaintiffs’ complaint sought prospective relief. Specifically, plaintiffs asked the district court to enjoin the military’s COVID-19 vaccination requirement and alleged policy of denying religious exemptions to that requirement, as well as any adverse or retaliatory action against plaintiffs relating to their exemption requests or legal challenges. A123-24 (Compl., RE 1, PageID123-24). Plaintiffs also asked the district court to declare that defendants had acted in bad faith and to declare unlawful the military’s alleged no-exemption policy and CDC’s “vaccine redefinition.” A123-24 (Compl., RE 1, PageID123-24). Finally, plaintiffs asked the court to order the military

to “repair and restore Plaintiffs’ careers and personnel records.” A124 (Compl., RE 1, PageID124).

In June 2022, ten months after the Secretary imposed the COVID-19 vaccination requirement, plaintiffs moved for a preliminary injunction in the Middle District of Florida. Following a hearing on that motion, the court transferred the case to the Eastern District of Virginia, where plaintiffs renewed their motion for a preliminary injunction, asking the court to “enjoin the Defendants’ constitutional and statutory violations in connection with the [military’s] COVID-19 ‘vaccine’ mandate.” A127 (Preliminary Injunction Motion, RE 60, PageID314). By the time plaintiffs moved for a preliminary injunction in the Eastern District of Virginia, district courts had enjoined separation proceedings for Navy and Air Force service members who had requested religious exemptions. *See Doster v. Kendall*, No. 1:22-cv-84, 2022 WL 2974733 (S.D. Ohio July 27, 2022) (class-wide preliminary injunction for Air Force service members who had requested a religious exemption); *Navy SEALs 1-26 v. Austin*, 594 F. Supp. 3d 767 (N.D. Tex. 2022) (class-wide preliminary injunction for Navy service members who had requested a religious exemption).

2. The district court denied plaintiffs’ motion for a preliminary injunction and dismissed the case for lack of subject-matter jurisdiction. A253 (Order, RE 86, PageID3209). Not only had plaintiffs asked the court to overturn non-justiciable military judgments, the court reasoned, plaintiffs had also failed to exhaust their intraservice remedies. *See Mindes v. Seaman*, 453 F.2d 197, 201 (5th Cir. 1971); *Williams v.*

*Wilson*, 762 F.2d 357, 360 (4th Cir. 1985). A251-52 (Order, RE 86, PageID3198, 3207-08). At the time, some plaintiffs had not even received an initial decision on their religious exemption requests, while others still had administrative appeals pending. None had “actually gone through separation proceedings,” much less presented their arguments against the vaccine requirement in those proceedings. A246 (Order, RE 86, PageID3202).<sup>2</sup>

3. Plaintiffs moved for reconsideration and the district court denied that motion in February 2023. A283 (Memorandum Opinion and Order, RE 98, PageID3540). According to the district court, the passage of the 2023 NDAA confirmed that the vaccination requirement was subject to civilian review through the political branches and underscored the prematurity of plaintiffs’ claims. A284 (Memorandum Opinion and Order, RE 98, PageID3541). In light of the 2023 NDAA, plaintiffs were no longer at risk of separation based on their objection to the COVID-19 vaccine. A285 (Memorandum Opinion and Order, RE 98, PageID3542-43). And any alleged ongoing or future harms were entirely speculative because the military was still in the process of implementing the rescission. In short, plaintiffs’ claims based on their religious exemption requests were “now stale,” and any remaining grievances plaintiffs might

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<sup>2</sup> Plaintiffs had also moved to certify a class of all military chaplains who requested religious exemptions from the COVID-19 vaccination requirement. *See* Class Certification Motion, RE 72, PageID2868. The district court denied that motion as moot when it dismissed the case. A253 (Order, RE 86, PageID3209).

have as to the way in which the rescission was implemented were not ripe for adjudication. A285-86 (Memorandum Opinion and Order, RE 98, PageID3542-43).

## ARGUMENT

The Court should dismiss this appeal as moot. Plaintiffs challenge the military's COVID-19 vaccination requirement, which has now been rescinded at Congress' direction. As a result, the relief that plaintiffs seek—prospective relief aimed at shielding plaintiffs from the effects of that requirement—would have no practical effect. In short, plaintiffs have no ongoing stake in challenging the military's now-defunct COVID-19 vaccination requirement.

1. The mootness doctrine is rooted in Article III's "case-or-controversy limitation on federal judicial power." *Lighthouse Fellowship Church v. Northam*, 20 F.4th 157, 162 (4th Cir. 2021). A case is moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* (quoting *Porter v. Clarke*, 852 F.3d 358, 363 (4th Cir. 2017)); *Eden, LLC v. Justice*, 36 F.4th 166, 169 (4th Cir. 2022). Absent a live stake in the litigation, a court ruling "would constitute an impermissible advisory opinion." *Lighthouse*, 20 F.4th at 162. In other words, the Court "may only decide cases that matter in the real world' at the time [the Court] decide[s] them." *Eden*, 36 F.4th at 170 (quoting *Norfolk S. Ry. Co. v. City of Alexandria*, 608 F.3d 150, 161 (4th Cir. 2010)). If a ruling would not have "any practical effect," the case is moot and must be dismissed. *See Long v. Pekoske*, 38 F.4th 417, 423 (4th Cir. 2022) (quoting *Norfolk S. Ry.*, 608 F.3d at 161).

The termination of a challenged policy typically moots a case. In *Lighthouse*, for example, a church challenged two Virginia executive orders designed to combat the spread of COVID-19. 20 F.4th at 159-60. When those and other COVID-19 orders expired, the Court observed that it was “clear” that the “proceedings no longer present[ed] a live controversy, absent some exception to mootness.” *Id.* at 162; *see also Eden*, 36 F.4th at 168 (challenge to West Virginia executive orders on COVID-19 was moot because the orders had been terminated and were not likely to be reimposed); *Lux v. White*, 99 F. App’x 490, 492 (4th Cir. 2004) (per curiam) (repeal of challenged ordinance without indication that it would be reenacted had “clearly rendered the entire case moot”).

In the same vein, a case is typically moot when factual developments provide the plaintiff with the relief he seeks. *See, e.g., Eden*, 36 F.4th at 170 (“Win or lose, [plaintiffs] have already received the ‘precise relief’ they sought in this case.”). In *Long*, for example, an individual challenged his inclusion on the government’s “No Fly List.” 38 F.4th at 423. When the government removed the plaintiff from the No Fly List and assured the Court that it had no plans to re-add him, plaintiffs’ challenge was moot. *Id.* As the Court explained, “any future controversy of Long’s No-Fly status is not only distant and hypothetical but would also depend on a new set of facts. A declaratory judgment on his *past* status would therefore have no practical effect.” *Id.*

Plaintiffs seek prospective relief from the military’s former COVID-19 vaccination requirement. As in *Lighthouse* and *Eden*, because there is no longer a

COVID-19 vaccination requirement to enjoin, plaintiffs' request for injunctive relief as to that requirement is moot. And so too is their request for declaratory relief, which cannot present a live issue unless "there is a substantial controversy . . . of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Long*, 38 F.4th at 423 (quoting *Preiser v. Newkirk*, 422 U.S. 395, 402 (1975)). There is no such controversy here. A declaratory judgment opining on the validity of a former policy (or on the CDC's "vaccine redefinition" that plaintiffs say undergirded the military's requirement) would have no practical effect on plaintiffs. No plaintiff in this case was separated as a result of his or her decision to decline the COVID-19 vaccine. And any plaintiff that had an adverse action in his or her file has had that adverse action removed from his or her records. Going forward, no plaintiff will be required to receive the COVID-19 vaccine under the now-rescinded August 2021 policy or be disciplined for declining it. Plaintiffs have therefore received all the relief for which they could have hoped in their suit. As a result, there no longer remains a live case or controversy under Article III.

In district court, plaintiffs' theory of post-rescission injury boiled down to the assertion that their careers will be impeded, either because of opportunities they could not pursue while the vaccine requirement was in effect or because decisionmakers will view them negatively on the basis of their religious exemption requests. *See* A273-76 (Reconsideration Reply, RE 95, PageID3403-06). Such speculation is not sufficient to maintain a case or controversy. *See O'Leary v. TrustedID, Inc.*, 60 F.4th 240, 245 (4th Cir.

2023). Nor is it within the power of the judiciary to dispense promotions and rewrite evaluations on behalf of military commanders. *See, e.g., Orloff v. Willoughby*, 345 U.S. 83, 92 (1953) (“Whether Orloff deserves appointment is not for judges to say and it would be idle, or worse, to remand this case to the lower courts on any question concerning his claim to a commission.”); *see also Austin v. Navy SEALs 1-26*, 142 S. Ct. 1301, 1302 (2022) (Kavanaugh, J., concurring) (“As the Court has long emphasized, . . . the ‘complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments.’” (quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973)); *cf.* A275 (Reconsideration Reply, RE 95, PageID3405) (plaintiffs’ suggestion that they will not consider their careers “restored” until the military “acknowledge[es] publicly [that] Plaintiffs have demonstrated the highest quality and character of officers and chaplains” and “order[s] selection boards to consider COVID related issues as things to reward”). Plaintiffs cannot sustain their challenge with requests that are not in the Court’s power to grant. In any event, to the extent plaintiffs’ claims of injury depend on new facts, those are more properly pursued by filing a new case, not by attempting to fit those into a challenge to a non-existent requirement.

2. No exception to mootness calls this conclusion into question. Congress mandated—over the objection of the Department of Defense—that the military rescind its COVID-19 vaccination requirement. *See supra* p. 3. In other words, the military did not voluntarily change the challenged policy. As a result, there is “no whiff

of any of the opportunism, on the part of the defendant, that typically supports invocations of mootness exceptions where voluntary cessation of the challenged conduct is at issue.” *Lighthouse*, 20 F.4th at 164 (quoting *American Federation of Gov. Emps. v. Office of Special Counsel*, 1 F.4th 180, 188 (4th Cir. 2021)). Moreover, there is no “reasonable chance that the [challenged] behavior will resume.” *See Eden*, 36 F. 4th at 170-72; *see also Chapin Furniture Outlet Inc. v. Town of Chapin*, 252 F. App’x 566, 571 (4th Cir. 2007) (“Only if reenactment is not merely possible but appears probable may [the Court] find the harm to be ‘capable of repetition, yet evading review’ and hold that the case is not moot.”). The military has complied with Congress’ directive to remove the vaccination requirement in question and has no intention to reinstate it. Furthermore, to the extent that the military might one day impose a different (*e.g.*, more limited) COVID-19 vaccination requirement—itsself the sort of speculation that cannot satisfy Article III, *see O’Leary*, 60 F.4th at 245—there is no basis to presume that plaintiffs would be subject to it or that their requests for religious exemptions would be denied. At minimum, any challenge to such a policy would raise different questions than the now-moot dispute presented here. *See Long*, 38 F.4th at 423.

3. Since the Rescission Memorandum, multiple courts have dismissed as moot similar appeals challenging the enforcement of the military’s COVID-19 vaccination requirement. *Short v. Berger*, Nos. 22-15755, 22-16607, 2023 WL 2258384, at \*1 (9th Cir. Feb. 24, 2023) (dismissing appeal of preliminary injunction denial and dismissal order as moot); *see also Dunn v. Austin*, No. 22-15286, 2023 WL 2319316, at \*1 (9th Cir. Feb.

27, 2023) (dismissing appeal of preliminary injunction denial as moot); *Roth v. Austin*, 62 F.4th 1114, 1119 (8th Cir. 2023) (same); *Navy SEAL 1 v. Austin*, No. 22-5114, 2023 WL 2482927, at \*1 (D.C. Cir. Mar. 10, 2023) (per curiam) (same), *reh'g en banc denied*, 2023 WL 2795667 (D.C. Cir. Apr. 4, 2023); *Creaghan v. Austin*, No. 22-5135, 2023 WL 2482927, at \*1 (D.C. Cir. Mar. 10, 2023) (per curiam) (same); *cf.* Order, *Navy SEAL 1 v. Secretary of Defense*, No. 22-10645 (11th Cir. May 9, 2023) (remanding preliminary injunction appeal in light of district court's indicative ruling dismissing the case as moot); Order, *Captain v. Secretary of Defense*, No. 22-12029 (11th Cir. May 12, 2023) (same); Order, *Chief Warrant Officer 4 v. Secretary of Defense*, No. 22-13522 (11th Cir. May 12, 2023) (same). The same result is required here.

## CONCLUSION

For the foregoing reasons, this appeal should be dismissed.

Respectfully submitted,

CHARLES W. SCARBOROUGH

/s/ Sarah J. Clark

SARAH J. CLARK

(202) 305-8727

*Attorneys, Appellate Staff*

*Civil Division*

*U.S. Department of Justice*

*950 Pennsylvania Ave NW*

*Room 7216*

*Washington D.C. 20530*

MAY 2023

## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2) because it contains 3,504 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

*/s/ Sarah J. Clark*

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SARAH J. CLARK

**CERTIFICATE OF SERVICE**

I hereby certify that on May 16, 2023, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

*/s/ Sarah J. Clark*

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SARAH J. CLARK