



# TRUTH FOR HEALTH FOUNDATION

A 501(c)(3) public charity incorporated in Arizona, USA

## Legal Forms Template Package *A Self-Help Guide* *For* *Military Service Members*



## TO ALL OUR MILITARY SERVICE ACADEMY CADETS, AND ACTIVE DUTY MILITARY AND NATIONAL GUARD SERVICE MEMBERS:

The Truth for Health Foundation is a faith-based, 501(c)(3) public charity defending core human and civil rights secured by law, as guaranteed under The Constitution of the United States of America. We have a major focus on Medical Freedom and Legal Defense efforts to assist service members and the general public in preventing abuses of your right to life, right bodily integrity, right to informed consent, right to refuse experimental treatments (whether masks, testing, or vaccines) and your right to refuse or request *any* appropriate medical treatment you may decide is necessary for your health and quality of life.

This self-help guide and sample legal templates for you to use in advocating for your rights under the US Constitution and the UCMJ, has been prepared by attorneys on our Legal Advisory Council, and by active duty military service members on our Military Advisory Council who have themselves faced punitive actions as a result of the DoD mandates for experimental products being required, which we believe violates not only military regulations under the UCMJ but also violates the US Constitution and the Nuremberg Code, to which the United States is a signatory nation.

This guide has been funded and developed by Truth for Health Foundation as an educational resource, not individual legal advice. We hope this package of forms will be a help to you as you advocate for your rights that you have taken an Oath to defend for all Americans. May God bless you in your efforts.

In His Service, Elizabeth Lee Vliet MD, President and CEO.

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LEGAL TEMPLATES, COVID EARLY TREATMENT GUIDE, COVID-Long Haul, and  
COVID VACCINE INJURY TREATMENT GUIDE, FACT SHEETS, and BREAKING NEWS  
UPDATES ON THESE CRUCIAL ISSUES,

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- Join our weekly “action plan” seminar: *Faith Over Fear: Your Roadmap to Recovery and Resilience*.

DATE

From: Servicemember  
To: Commander Navy Reserve Region Readiness and Mobilization Command, Jacksonville  
Via: COC

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE

- Ref:
- (a) Uniform Code of Military Justice, Article 138
  - (b) JAGMAN, Chapter III
  - (c) Uniform Code of Military Justice, Article 92
  - (d) U.S. Constitution
  - (e) Consolidated Department of Defense Coronavirus Disease 2019 Force Health Protection Guidance
  - (f) 21 U.S. Code §355 et. seq.
  - (g) 21 U.S. Code § 360bbb et. seq.
  - (h) UNIT Commanding Officer Command Philosophy
  - (i) US DIST CT N DIST TX 28 MAR 2022
  - (j) US DIST CT MDL 18 APR 2022
  - (k) BUPERSINT 1730.11A
  - (l) Vol. 69, No. 36. MMWR Morb Mortal Wkly Rep 2020;69:1380.
  - (m) The Journal of Infectious Diseases, jiac195. *Fit-tested N95 masks combined with portable HEPA filtration can protect against high aerosolized viral loads over prolonged periods at close range.* Landry et. al., 2022
  - (n) *Facemasks in the COVID-19 era: A health hypothesis.* Vainshelboim. 2021
  - (o) San Francisco Chronicle. *Four COVID experts say it's time to accept reality: Vaccines work, mask mandates don't.* Halperin et. al., 2022
  - (p) New York Times. *The C.D.C. concedes that cloth masks do not protect against the virus as effectively as other masks.* C.D.C Types of Masks and Respirators. Mandavvili, A. 2022
  - (q) *Effectiveness of Adding a Mask Recommendation to Other Public Health Measures to Prevent SARS-CoV-2 Infection in Danish Mask Wearers.* Bundgaard, 2021
  - (r) *SARS-CoV-2 Transmission among Marine Recruits during Quarantine.* Letizia, 2020
  - (s) *Physical interventions to interrupt or reduce the spread of respiratory viruses.* Jefferson, 2020
  - (t) *The Impact of Community Masking on COVID-19: A Cluster-Randomized Trial in Bangladesh,* Abaluck, Heneghan et al. 2021
  - (u) *Evidence for Community Cloth Face Masking to Limit the Spread of SARS-CoV-2: A Critical Review.* Liu/CATO, 2021
  - (v) *Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings— Personal Protective and Environmental Measures.* CDC/Xiao. 2020
  - (w) *CIDRAP: Masks-for-all for COVID-19 not based on sound data.* Brosseau. 2020
  - (x) *Facemask against viral respiratory infections among Hajj pilgrims: A challenging cluster-randomized trial.* Alfelali, 2020
  - (y) *JAMA Rejected my Comment on Masks and HCQ.* Goldstein. 2020

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE

(z) *Absence of Apparent Transmission of SARS-CoV-2 from Two Stylists After Exposure at a Hair Salon with a Universal Face Covering Policy — Springfield, Missouri.*  
Hendrix. 2020

Encl: (1) Servicemember request for Redress dtd \_\_\_\_  
(2) Unit, denial of requested relief dtd \_\_\_\_

1. This complaint of wrongs, under reference (a), is submitted in compliance with reference (b).

2. COMPLAINANT: servicemember

- a. UNIT
- b. UNIT
- c. N/A
- d. CONTACT INFO
- e. CONTACT INFO

3. RESPONDENT:

- a. CO
- b. Commanding Officer, UNIT

4. COMPLAINT:

- a. Improper issuance of an order to, and forcing Complainant to, wear a facemask in order to participate in UNIT drill weekend in violation of DOD guidance.

(1) DATE

(2) DATE

(3) DATE

(4) Days between

(5) On \_\_, Respondent issued Complainant a verbal order to wear a mask. Despite searching the entire UNIT command sharepoint and the bulletin board posted outside the UNIT admin office, Complainant was unable to find any written policy requiring the wearing of mask or COVID-19 testing. Instead, the guidance for such comes from Department of Defense publications. This advice and recommendations was promulgated in consult with the Centers for Disease Control. Respondent's issuance of the verbal order to Complainant is not rationally based and is designed to be harrasive and retaliatory against Complainant for his exercise of applicable legal rights to include submission of a Religious Accommodation Request.

Although not perfect, the DOD guidance considers the applicable community risk levels and overall understanding of COVID-19 over the past more than 2 years. Respondent's arbitrary and capricious order does not consider the facts

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE

regarding COVID-19 and its associated transmission. To avoid repetition of the information and reasoning presented in the Request for Redress, Complainant incorporates Encl. (1) in full.

In addition, there have been more than 150 studies demonstrating that anything other than a properly, medically fitted N-95 mask is at best ineffective and more accurately, completely useless in preventing the spread of aerosol particles of viral transmission such as those associated with COVID-19. The CDC itself reported that masks and face coverings are not effective in preventing the spread of COVID-19, even for those people who consistently wear them. This study found that the “overwhelming majority” of COVID-19 positive tests were received by individuals who “always” or “nearly always” wore face masks. Ref. (1).

Respondent’s denial of Complainant’s request for redress stated the policies are necessary to safeguard the members of her command. This is simply not an accurate assertion as 2 years of combatting COVID-19, and the CDC’s own admission that there is not a single case of asymptomatic spread by an unvaccinated individual, have demonstrated a complete failure of masks to provide any health benefit related to community transmission. Per Ref. (n):

The existing scientific evidences challenge the safety and efficacy of wearing facemask as preventive intervention for COVID-19. The data suggest that both medical and non-medical facemasks are ineffective to block human-to-human transmission of viral and infectious disease such as SARS-CoV-2 and COVID-19, supporting against the usage of facemasks. Wearing facemasks has been demonstrated to have substantial adverse physiological and psychological effects. These include hypoxia, hypercapnia, shortness of breath, increased acidity and toxicity, activation of fear and stress response, rise in stress hormones, immunosuppression, fatigue, headaches, decline in cognitive performance, predisposition for viral and infectious illnesses, chronic stress, anxiety and depression.

Thus, Respondent, by requiring members of her command to wear face masks, is engaged in more harm than good and violates DOD and CDC guidance, common sense, and the Navy’s own operational risk management decision making guidance. Additionally, the latest information on COVID-19 positivity rates demonstrates the vaccinated are more likely to become infected with COVID-19 than the unvaccinated. Thus, if Respondent’s order were truly implemented to “safeguard the members of [her] command” she would require those presenting the greatest risk to take the alleged safety measures and precautions.

Respondent’s policy is further discriminatory and harassing because it is designed to coerce COVID-19 vaccination. Masking is an effective way to dehumanize individuals and removes empathy and compassion from their treatment by others. It makes the mask wearer appear as a lower class individual not worthy of respect and thus subject to mistreatment by others. If there were a tangible benefit to health, then some of these concerns may be outweighed, but since there is no health benefit there is no reason to sacrifice or accept the safety concerns. The DOD, the Navy, and UNIT pride themselves on being open communities that welcome diversity and respect all. The SECDEF stated “[t]hese efforts, among others, will ensure that we provide every member of the Department a safe and supportive place to serve their country- one free from discrimination, hate, harassment, and fear.” However, forcing those who remain unvaccinated from COVID-19, due to their sincerely held religious beliefs, to wear masks is conduct directly violative of

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF  
MILITARY JUSTICE

welcoming diversity and being respectful to others regardless of beliefs. Forcing unvaccinated members of Respondent's command to wear face masks makes them an easily identifiable target and is designed to label those individuals as a health risk; someone to be shunned. This directly prevents interaction and team building, has a negative impact on morale, and "others" those sailors of character who have a valid reason—including sincerely held religious beliefs—not to receive the COVID-19 vaccine. Othering people does not provide a safe and supportive place for Complainant to serve his country. He is being discriminated against, harassed, hated, and comes to work with fear of continued mistreatment and inability to participate openly and welcomingly with his command and fellow sailors. Since Respondent's order is arbitrary and capricious it cannot be lawful and should be removed.

- (6) Redress may be provided by: (1) following DOD guidance limiting the implementation of mask wearing policies only to those situations dictated by community transmission levels; and (2) rescinding any alleged order to Complainant, or any other member of UNIT not vaccinated for COVID-19 to wear a mask in violation of DOD guidance.
- b. Improper issuance of an order to and forcing Complainant to test for COVID-19 in order to participate in UNIT drill weekend in violation of federal law and DOD guidance.

- (1) DATE
- (2) DATE
- (3) DATE
- (4) CALCULATION

(5) On \_\_\_\_, Respondent issued Complainant a verbal order to wear a mask. This order was followed up with direction from the Command Master Chief, UNIT to also comply with "Respondent's directives" and submit to COVID-19 testing. Despite searching the entire UNIT command sharepoint and the bulletin board posted outside the UNIT admin office, Complainant was unable to find any written policy requiring COVID-19 testing. Instead, the guidance for such comes from DOD publications. This advice and recommendations was promulgated in consult with the CDC. Respondent's issuance of the verbal order to Complainant is not rationally based and is designed to be harrasive and retaliatory against Complainant for his exercise of applicable legal rights to include submission of a Religious Accommodation Request. Respondent's denial of Complainant's request for redress states the policies are necessary to safeguard the members of her command. This is simply not an accurate assertion and 2 years of combatting COVID-19 has led to the CDC's own admission that there is not a single case of asymptomatic spread by an unvaccinated individual. Respondent cannot demonstrate how Complainant poses a health risk when he does not present any symptoms of COVID-19. It is physically and medically impossible for Complainant to spread an infection he does not have. As Complainant's physical condition

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF  
MILITARY JUSTICE

does not present a health risk there is no rational basis to “safeguard the members of [her] command” by requiring Complainant to submit to COVID-19 testing.

Further, there are no FDA licensed COVID-19 tests as they are all under Emergency Use Authorization. In fact, the Rapid PCR Test had its EUA withdrawn. Any directive from a government official that compels medical treatment with a non-FDA licensed product is unlawful per se. Article 92 of the UCMJ states “[a] general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it.” NRC Commanding Officer’s testing requirement, ordered without supportive DOD guidance, ordered without an FDA licensed test available, and intended to or with the effect of unlawfully discriminating against those who have the character to exercise their sincerely held religious beliefs is either unachievable and moot or is not lawful. Title 21 U.S. Code § 360bbb–3(e) (1) (a)(ii) reiterates that individuals must be informed of the option to accept or refuse administration of a product that has not received full licensure by the FDA. Withholding informed consent is not a refusal to receive a medical treatment, rather a legally distinct, procedural objection, an assertion of rights. Conditioning drill attendance on COVID-19 testing is coercion to the highest degree and prevents an individual from providing informed consent.

- (6) Redress may be provided by: (1) following DOD guidance limiting the implementation of COVID-19 testing only to those situations based on community transmission levels and for persons demonstrating symptoms of COVID-19; (2) rescinding any alleged order to Complainant, or any other member of UNIT not vaccinated for COVID-19 to submit to COVID-19 testing in violation of DOD guidance; and (3) not ordering the testing of individuals, to include Complainant, for COVID-19 with non-FDA approved COVID-19 testing kits without informed consent.

5. I CERTIFY THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, AND THIS COMPLAINT IS SUBMITTED PER THE GUIDELINES AND PROCEDURAL REQUIREMENTS IN CHAPTER III, MANUAL OF THE JUDGE ADVOCATE GENERAL

SIGNATURE OF COMPLAINANT: \_\_\_\_\_ DATE: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_ DATE: \_\_\_\_\_

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF  
MILITARY JUSTICE

**PRIVACY ACT STATEMENT**

1. Authority. 10 U.S.C. §§ 938, 8013.
2. Principal purpose(s). Used by command authorities and the Office of the Judge Advocate General to review, take action, and make recommendations to the Secretary of the Navy on Article 138, UCMJ, and Article 1150, U.S. Navy Regulations, complaints of wrong.
3. Routine uses. The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation in the Federal Register apply.
4. Mandatory or voluntary disclosure and effect on individual not providing information. Providing requested information is voluntary; however, failure to do so may result in delayed command action and Secretarial review, or the inability to notify complainant of the Secretary's decision.



DATE

From: Servicemember  
To: COC

Subj: REQUEST FOR REDRESS TO COMMANDING OFFICER, UNIT FOR WRONGFUL  
ISSUANCE OF REPORT OF MISCONDUCT ICO Servicemember

Ref: (a) U.S. Constitution  
(b) SECDEF Memo dtd 24AUG21  
(c) NAVPERS15560/D  
(d) NAVADMIN 083/22  
(e) US DIST CT N DIST TX 28MAR22  
(f) MILPERSMAN 1730-020  
(g) 21 U.S. Code § 360bbb-3  
(h) BUPERSINT 1730.11A  
(i) Uniform Code of Military Justice, Article 138  
(j) Uniform Code of Military Justice, Article 107  
(k) JAGMAN, Chapter III

Encl: (1) Report of Misconduct ICO Servicemember  
(2) Appeal of Religious Accommodation Denial ICO Servicemember  
(3) SAFE delivery of Appeal of Religious Accommodation Denial ICO Servicemember  
(4) SAFE receipt of retrieval of Appeal of Religious Accommodation Denial ICO  
Servicemember

1. This request is submitted to Commanding Officer Unit to provide the reasonable opportunity to redress the wrongs committed against servicemember.

2. Servicemember has been wronged by: (1) Commanding Officer Unit's issuance of a report of misconduct for alleged violation of an alleged lawful order and (2) the inclusion of a false official statement in the alleged report of alleged misconduct.

3. The wrongs may be redressed by Commanding Officer Unit by: (1) rescinding the report of misconduct issued ICO Servicemember; (2) correcting the record to properly reflect Servicemember's Religious Accommodation Appeal status; and (3) restraining yourself from taking further adverse, retaliatory, and harrasive actions against Servicemember in response to his exercise of sincerely held religious beliefs.

4. For the reasons stated below, I: (1) have not engaged in misconduct; (2) have not refused to receive vaccination for COVID-19; (3) have not violated a lawful order to receive the COVID-19 vaccination; (4) contrary to your false assertion in the report of misconduct that I did not have a pending or approved vaccine exemption approval, I did, and it was known, or reasonably should have been known, prior to your signature and mailing my report of alleged misconduct, submit such appeal; and (5) notwithstanding any of the above, the report of misconduct was issued in direct violation of Ref (a), (d), and (e).

Subj: REQUEST FOR REDRESS TO COMMANDING OFFICER, Unit FOR WRONGFUL  
ISSUANCE OF REPORT OF MISCONDUCT ICO SERVICEMEMBER

5. On \_\_\_\_, you issued me a notification to acknowledge receipt of my CNO (N1) denial of my religious accommodation request. This denial purported to require me to receive COVID-19 vaccination within 5 days. However, this order did not comply with lawful directives, this order was not issued or received while I was in a duty status, you denied me a duty status to respond, and this order did not provide relief in the event of submission of an appeal pursuant to Ref. (h).

6. On \_\_\_\_, I submitted a Privacy Act request to obtain the documents relevant to denial of my Religious Accommodation request and necessary for my appeal of denial of the same. You responded to this request, although it was not directed to you, but did not fulfill the request and withheld, or were not in possession of, such documents necessary to fulfill the request.

7. On \_\_\_\_, I notified you of my intent to appeal denial of my Religious Accommodation request upon receipt of the above requested documents and authorization of duty status. You denied my request for duty status prior to the next schedule drill period and informed me that you would wrongfully take action against me, despite notification of my intent to appeal.

8. On \_\_\_\_, I submitted my appeal to denial of my Religious Accommodation request, under duress and on personal time due to your wrongful threats of adverse personnel action and failure to provide reasonable accommodation regarding duty status.

9. On \_\_\_\_, the United States District Court, Northern District of Texas, Fort Worth Division issued an Order granting class certification to all Navy Sailors. Ref. (e). This injunction bars adverse administrative action against the class of “all Navy Servicemembers who have submitted religious accommodation requests...” This injunction was granted prior to the mailing of my report of misconduct, yet you willfully chose to take such adverse administration action against me.

10. On \_\_\_\_, you issued me a report of misconduct for alleged failure to follow a lawful order to receive COVID-19 vaccination and included as justification that I had not submitted an appeal. The issuance of this report of misconduct was without basis and at least part, if not the entirety, of your reasoning was demonstrably false as an appeal was submitted prior to your preparation, signature, and mailing of the report of misconduct.

11. Your issuance of the report of misconduct has not only initiated adverse action against me in violation of my legal rights, it has also cast me in a negative light due to your intentional false statement regarding my status and is a violation of Ref. (j).

12. My conduct, neither through act or omission justifies or substantiates a report of misconduct. I submitted my religious accommodation request and appeal. My religious beliefs were deemed to be sincerely held. I have not refused to receive any COVID-19 vaccination as I continue to exercise and exhaust all available legal and administrative remedies, to include submission of my appeal to

Subj: REQUEST FOR REDRESS TO COMMANDING OFFICER, Unit FOR WRONGFUL  
ISSUANCE OF REPORT OF MISCONDUCT ICO SERVICEMEMBER

the Chief of Naval Operations. Finally, no lawful order has been issued requiring me to receive COVID-19 vaccination.

13. Your conduct in taking adverse administrative action against me is discriminatory in that it attempts to prevent me from exercising my legal rights and is thus wrongful.

14. Your conduct in denying my ability to receive and respond to official Navy correspondence while in a duty status is in violation of Congress' intent to ensure fair compensation for reserve force activity.

15. Your conduct in willfully ignoring my appeal of denial of my Religious Accommodation request is harrasive in that it does not treat me with the respect and dignity owed to a Sailor exercising their legal rights to practice their sincerely held religious beliefs.

16. Accordingly, redress may be provided by: (1) rescinding the report of misconduct issued ICO Servicemember; (2) correcting the record to properly reflect Servicemember's Religious Accommodation Appeal status; and (3) restraining yourself from taking further adverse, retaliatory, and harrasive actions against Servicemember in response to his exercise of sincerely held religious beliefs. This requested relief shall be timely provided, but not longer than thirty days from the date of this request, pursuant to Article 138 of the Uniform Code of Military Justice.

Signature

22 December 2021

MEMORANDUM FOR: rank, name, service, job, unit

FROM: rank, name, service, DoDid, unit

SUBJECT: Informal Complaint under Article 138, Uniform Code of Military Justice (AFI 51-505)

References:

- a) 10 U.S. Code § 938 - Art. 138. Complaints of Wrongs
- b) AFI 51-505, Complaints of Wrongs Under Article 138, Uniform Code of Military Justice, 4 April 2019
- c) Constitution of the United States of America
- d) Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members Memorandum (Vaccine Mandate) dated 24 August 2021.
- e) Force Health Protection Guidance (Supplement23) Revision 2 - Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification date 29 October 2021
- f) Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination of XXXUNITXXX Personnel – Mandatory Testing for Nonvaccinated Populations (Testing Mandate) dated 9 November 2021
- g) Email correspondence containing informal request for redress and request for UNIT to honor DODI 1300.17 and AFPD 52-2 guidance.

1. This complaint is submitted to afford reasonable opportunity to redress the wrongs committed against Amn Snuffy.

Amn Snuffy has been wronged by: (1) the issuance of written and verbal orders requiring COVID-19 testing for only nonvaccinated individuals; (2) the implementation of the UNIT testing policy; (3) the implementation of the Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination of UNIT Personnel; (4) denial of base access to perform duties; and (5) indifference to DODI 1300.17 in respecting and timely processing of my request for Religious Accommodation.

2. Pursuant to Article 138 of the UCMJ, I am writing to advise you that your verbal order to me on 12 November 2021 implementing UNIT memo “Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination of UNIT Personnel – Mandatory Testing for Nonvaccinated Populations” (Testing Mandate) dated 9 November 2021 is unlawful and as such cannot be followed.<sup>1</sup> There are numerous reasons why the Testing Mandate may be illegal. Notwithstanding the below list, only one violation needs to be true to validate the wrongs committed against me and it is most reasonable to presume they are on target and with standing.
3. You may redress the wrongs committed against me by: (1) withdrawing your verbal order of 12 November 2021; (2) withdrawing any written or oral guidance requiring adherence to an unlawful order or directive issued by yourself or UNIT; (3) allowing me base access to perform my duties;

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<sup>1</sup> FHP Supplement 23-2 - 29 Oct 2021.

(4) providing temporary religious accommodation regarding Mandatory Testing in line with DODI1400.17 and AFPD 52-2; and (5) if you claim lack of discretion or that you lacked authority to issue the order in the first place in this matter due to the mandates and guidance issued by UNIT and chain, the Deputy Secretary of Defense, or the Secretary of Defense, or any other reason for failing to address these complaints, then I request you elevate and share in these concerns to where such discretion is appropriate and where proper lawful authority was or may be exercised.

4. This memo builds upon our prior informal, respectful discussions and email correspondence regarding concerns with the Testing Mandate. To reiterate, I will not subject myself to hazing disguised as public health nor will I be silent against systemic discrimination against protected classes. As an informal complaint, this memo is not to be entered into an officer's official military record. This advisement is not tendered with any malice, but with utmost respect and sense of duty to equip you with the moral and legal basis to influence policy that is irreparably harmful to UNIT, (chain) the Joint Staff, and the Department of Defense and our nation. Violations of Constitutionally protected rights constitute irreparable harm. Independent of a personal exemption that may apply to me, this complaint submits that the Testing Mandate violates law, human rights, and the Constitution. Accordingly, I provide this notice out of duty to and fulfillment of the sacred oath I swore to uphold the U.S. Constitution.
5. In summary, the Testing Mandate violates Article 6 and the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution and U.S. Code, "10 USC 1107a: Emergency use products<sup>2</sup> with the unchecked exercise of emergency authority in violation of separation of powers; in an arbitrary and capricious manner that unfairly and coercively targets protected classes. These wrongs irreparably harm those that are the policy's targets, the unvaccinated—including those who remain unvaccinated for COVID-19 due to sincerely held religious beliefs or accommodatable medical condition, by violating their Constitutional rights. The indifference to legitimate requests for religious accommodation violates the Religious Freedom Restoration Act of 1993.<sup>3</sup> The targeting of individuals who requested religious accommodation is unlawful discrimination just like the targeting of individuals who are not vaccinated, classifying them as being disabled with physical or mental impairment, is unlawful discrimination and harassment.<sup>4</sup> Transcending these violations and similar wrongs is "deeply rooted in this Nation's history and tradition," and "fundamental to our scheme of ordered liberty."<sup>5</sup>
6. While DOD and UNIT may have an interest to require COVID testing and other preventive measures for the health of its mission, DOD does not have the authority to require members to undergo experimental medical treatments nonetheless to make experimentation a condition of employment. DOD's Testing Mandate unlawfully discriminates against people whose conscience

<sup>2</sup> In context of U.S. Code, "Title 21 U.S.C. §355. New drugs", U.S. Code, "21 USC 360bbb-3: Authorization for medical products for use in emergencies,"

<sup>3</sup> Indifference also violates DODI 1300.17 and AFPD 52-2 that implement the RFRA.

<sup>4</sup> Title VII of the Civil Rights Act of 1964, Titles I and V of the Americans with Disabilities Act of 1990 (ADA), potentially Title II of the Genetic Information Non-discrimination Act of 2008 (GINA), and the Civil Rights Act of 1991 and 29 C.F.R. Part 1614

<sup>5</sup> *McDonald v. City of Chicago*, 130 S. Ct. at 3036.

a compelling interest to discriminate, harass, haze, or deny anyone the opportunity to serve based on protected class, which is this Testing Mandate's effect. DOD has other options to achieve its desired end that are legal. DOD can adopt a consensual, risk-based, and supportive policy that treats vaccinated and unvaccinated equally. If there are COVID symptoms or known exposure, which is information readily available and in plain view, then testing may have legal and rational basis solely from a privacy perspective. There must be probable cause, not pretext, to invade privacy. Mandatory weekly screening testing which may be effective against the virus, is assuredly ineffective against our sacred rights and oaths.<sup>6</sup>

7. First, the Testing Mandate to members of the military is wrong because there are no FDA licensed COVID test kits available and therefore the order is not executable without violating the law (coercing members to take investigatory medical treatment). Since DOD issued the policy in the interest of public health, requiring use of test kit medical products regulated by the FDA, to gather one's genetic material, the DOD is mandating a medical treatment.<sup>7</sup> As such it falls under the legal protections that ensure military members have informed consent for unlicensed medical products and procedures. From a legal perspective, Emergency Use Authorization medical procedures, such as those specified in Testing Mandate cannot generally be mandated. Under Title 21 U.S. Code §355(i)(4) and related regulations, people must be told the product in question is not FDA approved, that receipt of the product is voluntary, and the person must agree to the receipt of drug, biologic, or medical product before it can be administered.<sup>8</sup>
  
8. Before law, a sovereign individual solely has the authority to determine what medical treatments he or she accepts. As such any person may assert a right to determine what treatments and immunizations, they, as sovereign individuals, deem to be experimental. Otherwise, per the law, they are not secure in their persons and effects and deprived of life, liberty, or property without due process of law. The implicit assumption of bodily autonomy is so deeply embedded in American identity and explicitly stated in the Bill of Rights that laws surrounding medical treatment prescribe duty of the government or citizens to provide information or remove means and modes of coercion in the consensual receipt of treatment.<sup>9</sup> There is no implied authority to coerce medical treatment because derived laws don't explicitly forbid government tyranny. Why would a legislature need to restate the Constitution and separated powers structure of our

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<sup>6</sup> "our system does not permit agencies to act unlawfully even in pursuit of desirable ends." Ala. Ass'n of Realtors, 141 S. Ct. at 2490.

<sup>7</sup> 21 U.S. Code § 321 The term "drug" means. (A) articles recognized in the official United [States](#) Pharmacopoeia, [\[1\]](#) official Homoeopathic Pharmacopoeia of the United [States](#), or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than [food](#)) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

<sup>8</sup> U.S. Code, "Title 21 U.S.C. §355. New drugs".

<sup>9</sup> Section 564(e)(1)(A)(ii)(III) of the of the Food, Drug, and Cosmetic Act; 10 U.S.C. § 1107a(a)(1); 21 U.S.C. § 355(i)(4), U.S. Code, "21 USC 360bbb-3 among others.

government?<sup>10</sup> The few explicit prohibitions in law to prevent private or government coercion of medicine assume bodily autonomy from the Bill of Rights. Only under the most extreme circumstance is the President authorized to violate bodily autonomy and coerce medicine and that authority has never been exercised and thus never challenged in court.<sup>11</sup>

While full FDA licensure and labeling provide legal authority behind state assertions of what is experimental or not, ultimately, the Constitution (and human rights) preserve the authority for individuals to be “secure in their person and effects” (pursuant to the 4<sup>th</sup> Amendment), to have sovereignty over their life, liberty, and property (pursuant to the 5<sup>th</sup> Amendment)—the legal foundation for bodily autonomy. Congress has made no law mandating a vaccine or any mandatory medical treatment, as such law would violate the Constitution. As Congress has made no law mandating medical treatments, the executive branch exercises uncertain authority to mandate them, especially those even the FDA deems investigatory or experimental.

9. Congress has passed laws to ensure information is available so individuals can consent to medical treatments. In fact, Section 564(e)(1)(A)(ii)(III) of the Food, Drug, and Cosmetic Act, Title 21 U.S.C. §355. New drugs, U.S. Code, "21 USC 360bbb-3: Authorization for medical products for use in emergencies" all mandate that medical product makers and regulators provide information to individuals. The furnishing of this information is an implicit nod of the importance of consent. The information provided includes statements unambiguously stating “option to accept or refuse” and “It is your choice to receive or not receive.” It builds upon the explicit assertions of restraint on the government from our Bill of Rights concerning bodily autonomy. What DOD and some courts seem to miss is that consent can’t be given under coercion. The consequences of choosing not to receive this medical treatment is stigmatization, administrative processing for discharge, removal of command, denial of job participation, negative performance reports, etc.—i.e. choose the vaccine or lose your job. This mandate is wrong because it is coercing medical treatment. There is no law for this Testing Mandate, nor to require use of experimental products. There are laws preserving privacy of medical information and forbidding medical procedures without informed consent.<sup>12</sup> Sovereign individuals ultimately determine what medical treatments they consent to and hopefully with the benefit of information dutifully provided under the principles set forth in the Nuremburg Code and enshrined into our laws.<sup>13</sup>
10. As the Nuremberg Code established, every person must "be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision." Violating the informed consent legal standard resulted in hangings 75 years ago. Title 21 U.S. Code § 360bbb–3(e) (1) (a)(ii) reiterates that individuals must be informed

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<sup>10</sup> All laws keep the company of the Constitution and the sacred rights it is purposed to preserve. “*noscitur a sociis*, the well-worn Latin phrase that tells us that statutory words are often known by the company they keep”

<sup>11</sup> 10 U.S.C. § 1107a(a)(1).

<sup>12</sup> e.g. HIPAA & Title 21 U.S. Code §355(i)(4) and related regulations

<sup>13</sup> Bible Romans 14 and Universal Declaration of Human Rights are similarly relevant

is not a refusal to receive a medical treatment, rather a legally distinct, procedural objection, an assertion of rights. Conditioning continued service, daily attendance, and performance evals on treatment, testing, or vaccination is coercion to the highest degree and prevents an individual from providing informed consent.

11. In the military, due to other responsibilities and authorities, the opportunity to override individual consent is available through Congressional prohibition; only by adherence to Section 1107a of Title 10. Section 1107a of title 10 reflects the concern that service members, unlike civilian employees, could face serious criminal penalties if they refused a superior officer's order to take an Emergency Use Authorization (EUA) product.<sup>15</sup> Service members do not have the same "option" to refuse to comply with a vaccination requirement as other members of the public. The military's officer and enlisted contract structure with its binding service commitments elevates the necessity to protect their rights and requisite levels of legal scrutiny. While students in a civilian university or job can pursue studies and work elsewhere when questionable authorities are exercised, military members do not have such liberty.<sup>16</sup> When DOD summarily changes policy contrary to decades of practice and experience, and when DOD needlessly or unwisely exercises unallocated or unnecessary authorities, service members are stuck. Unilaterally changing the terms and conditions of employment and contract, while the prerogative of management or principle, is never without consideration of rights of employee or agent. Even so, the court's deference to DOD authority is not blind, typically ending when service members risk rank, reputation, and livelihood to rightly assert that the Constitution they swore to support and defend is under attack.<sup>17</sup>
  
12. Military members are protected by the laws outlined above. However, Title 10 U.S. Code 1107a grants the President sole, nondelegable authority to waive informed consent for service members receiving EUA products only in the event the President determines, in writing, that informed consent is not in the interests of national security.<sup>18</sup> The implication for this extreme Presidential authority is the most extreme, existential-level circumstance. A Presidential waiver of informed consent has not been granted at this time. Even if it had, USC 10 § 1107a(a)(1) could be deemed unconstitutional violating the 4<sup>th</sup> & 5<sup>th</sup> Amendments upon challenge. As the law stands, absent Presidential waiver, informed consent is required to administer a medical treatment under EUA to a military member. In *Doe #1 v. Rumsfeld*, this requirement was upheld, and the court held "Absent an informed consent or presidential waiver, the United States cannot demand that members of the armed forces also serve as guinea pigs for experimental drugs."<sup>19</sup> Furthermore,

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<sup>14</sup> U.S. Code, "21 USC 360bbb-3: Authorization for medical products for use in emergencies"

<sup>15</sup> See 10 U.S.C. § 890; see also *United States v. Kisala*, 64 M.J. 50 (C.A.A.F. 2006) (upholding a soldier's punishment for refusing to take a vaccine).

<sup>16</sup> *Klassen v. Tr. of Ind. Univ.*, 7 F.4th 592, 593 (7th Cir. 2021), emergency application for relief denied, No. 21A15

<sup>17</sup> *Alaska Oil and Gas Ass'n v. Jewell*, 815 F.3d 544 (9th Cir. 2016) ("A court must not substitute its judgment for that of the agency, but also must not "rubber-stamp" administrative decisions.")

<sup>18</sup> U.S. Code, "10 USC 1107a: Emergency use products".

<sup>19</sup> *John Doe #1 v. Rumsfeld*, --- F.Supp.2d ----, 2003 WL 22994225, (D.D.C. Dec 22, 2003).

Per **21 U.S. Code § 321** The term "[drug](#)" means.... (B) articles intended for use in the diagnosis of disease



Congress wrote laws to protect military members rights regarding anthrax as a mandatory medical treatment setting precedence to restrain executive overreach of servicemember's rights.

13. There are no licensed COVID tests as they are all under Emergency Use Authorization.<sup>20</sup> In fact, the Rapid PCR Test had its EUA withdrawn.<sup>21</sup> Any directive from a government official that compels medical treatment with a non-FDA licensed product is unlawful per se. Article 92 of the UCMJ states “[a] general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it.” The Testing Mandate, ordered from a guideline, at this time with no FDA licensed test available, is either unachievable and moot or is not lawful and in need of redress.
14. The Testing Mandate cleverly attempts to address some informed consent and privacy concerns by having the member self-administer the tests, but Damocles’ coercive sword hangs over the order. Yes, having members self-test instead of test under surveillance provides some degree of consent and privacy. However, members cannot give informed consent without adequate information. For instance, cotton swabs for nasal COVID self-tests are often sterilized in Ethylene Oxide which is a known carcinogen,<sup>22</sup> meaning the effects of repeated exposure, such as through weekly testing, can cause cancer. This fact is deceitfully hidden from the Testing Mandate and buried in small print. Members cannot be “secure in their person, papers” when they must share private information. Mandated extraction and testing of bodily specimens to obtain information for a third party constitutes a Fourth Amendment search.<sup>23</sup> A Fourth Amendment search requires a warrant, individualized suspicion of wrongdoing, or a special needs exception to be upheld. Being unvaccinated due to religious belief or medical prohibition is not wrongdoing; being unvaccinated is explicitly protected by law.
15. Even with self-testing, there is considerable and irreparable harm. The mandate’s coercive nature manifests from the invasion of privacy, extra duty of taking and reporting the test, the opportunity cost to primary duties in a competitive bureaucracy, the soft stigmatization and othering, the distraction and unavailability of having to focus for two hours a week on testing, the worry of false positives and unscheduled disruption, the exposure to carcinogens, the direct coercion such as denial of base access and punishment for disobedience, the potential for political targeting, the possibility of enemies exploiting private medical and religious information, the violation of Constitutional rights, and the destruction of trust from the preceding items. The harm is magnified for a military member who cannot collect damages for pain, suffering, distress, or damage to professional reputation by the hands of government officials with immunity.

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<sup>20</sup> [In Vitro Diagnostics EUAs - Molecular Diagnostic Tests for SARS-CoV-2 | FDA](#)

<sup>21</sup> [https://www.cdc.gov/csels/dls/locs/2021/07-21-2021-lab-alert-Changes\\_CDC\\_RT-PCR\\_SARS-CoV-2\\_Testing\\_1.html](https://www.cdc.gov/csels/dls/locs/2021/07-21-2021-lab-alert-Changes_CDC_RT-PCR_SARS-CoV-2_Testing_1.html).

<sup>22</sup> [Ethylene Oxide - Cancer-Causing Substances - National Cancer Institute](#)

<sup>23</sup> *Skinner v. Ry Labor Executives' Ass'n*, 489 U.S. 602, 616 (1989). Urine tests raise the most obvious problem. Coercion to yield even a breath for testing compromises bodily integrity and constitutes a Fourth Amendment search. *Id.* at 616-617 (citing, among others, *California v. Trombetta*, 467 U.S. 479, 481 (1984), and *Schmerber v. California*, 384 U.S. 757, 767-68 (1966)).

Under this specter of so called ‘self-testing consent,’ DOD coercively commits assault, battery, and trespass by mandating this experimental medical treatment under duress. The test is a real threat of imminent harm, unwanted physical touch, and forced violation of one’s person and property. Failing to comply in my case results in “career-ending” return to service and reputational harm. It may initiate a slippery slope of adverse administrative actions that result in denial of my promotion to Colonel, having been recently selected, loss of Veteran’s Affairs benefits, loss of retirement benefits, or premature discharge.

Does having the tests self-administered eliminate the transgressional and coercive nature of the requirement? No. The standard to function or gain base access in military ought not be that one has to punch themselves in the face, take Communion, or any other unproven ritual once a week to provide some false sense of security. Whereas self-beating and Communion are known to be ineffective in detecting SARS-COV-2, Emergency Use Authorization (EUA) medical treatments are not known to be safe or effective, which is why they are not fully licensed by the FDA. According to the law, individuals require the ability to deny treatment without coercion making this Testing Mandate illegal.

16. Second, under pretext of emergency and public health interest, the executive branch exceeds its authority by abusing emergency declaration powers it does not have in unconstitutional ways confirmed by acting in an arbitrary and capricious manner. “The presence of pretext is enough to render a rule arbitrary and capricious.”<sup>24</sup> The implicit assertion by the Testing Mandate is that we are under emergency conditions. Such assertion is meritless. Many states have recognized the SARS-COV-2 virus is endemic and moved on. Emergency claims to necessity after 22 months of successfully coping with SARS-COV-2 lack merit or reasonable justification. Since Jan ’20, DoD never shutdown and UNIT has delivered 100% mission success. Holiday letters from Senior Leaders proclaim our resilience for being ready through the pandemic. This Testing Mandate is sudden and extraordinary. Even when there was arguably a real emergency during “15 days to flatten the curve” the Federal government never implemented an arbitrary testing mandate. If this were an emergency, the President would waive informed consent for the military per U.S. Code, "10 USC 1107a: Emergency use products," but he hasn’t. The criteria hasn’t been met. In a real emergency, the Testing Mandate would be implemented with immediate effect and not contingent upon vaccination status or future deadline. The state of the “pandemic” hasn’t materially changed to warrant emergency declaration or exercise of power. Emergence of new variants and seasonal and geographic shifts in viral presence are expected. Testing has been available, but not required as a condition of employment until now.
17. The sudden change in policy under faux emergency indicates arbitrary action. What is the basis for DOD’s contradiction to its long-standing practice of encouraging rather than forcing—by governmental mandate—testing? When agencies contradict a prior policy, they must show “good reasons for the new policy.”<sup>25</sup> “Because of the guidance’ or ‘just following orders’ is insufficient

<sup>24</sup> [Judge Finds It ‘Puzzling’ That Biden Admin Didn’t Consider ‘Natural Immunity’ for Healthcare Workers; Blocks Mandates to Protect ‘Liberty Interests of the Unvaccinated’ \(msn.com\)](#)

justification for violating the Constitution. Particularly, when the discrimination and malintent was announced in advance and blatant.

DOD's delay in implementing this new Testing Mandate undermines its "emergency" justification for bypassing notice and comment requirements for legitimate rulemaking. The fact that this mandate effects issues relating to irrevocable health and privacy matters increases the importance for deliberate processing even further.<sup>26</sup> As such, a considered regulation consistent with law and rulemaking is warranted, not an overreaching emergency order or goalpost shifting guideline.

Even in an emergency, limited government and constitutional rights persevere. "Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical."<sup>27</sup>

"Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the federal government and its limitations of the power of the States were determined in the light of emergency, and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system. While emergency does not create power, emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.'<sup>28</sup>

An emergency does not allow unreasonable or unlawful discrimination of this Testing Mandate, because that power does not exit.

18. The current situation is not an emergency because adequate standards have been demonstrated the past 22 months since the virus first emerged. UNIT Commander proudly proclaimed during a Commander's Call on 9 November 2021 that of the 90 UNIT members who have verifiably tested positive for COVID-19, there have been zero cases traceable to contact at UNIT. That is a perfect record under UNIT leadership. As such, any change to policy is unwarranted for UNIT and defies reason.<sup>29</sup> There is no data to support the pretextual assertion that Mandatory Testing helps.

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<sup>25</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); accord *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 510 (2014) (holding that agency "retained discretion to alter its course [under a regulation] provided it gave a reasonable explanation for doing so").

<sup>26</sup> See *Nat'l Ass'n of Farmworkers*, 628 F.2d at 621 ("Especially in the context of health risks, notice and comment procedures assure the dialogue necessary to the creation of reasonable rules."); *Cnty. Nutrition Inst. v. Butz*, 420 F. Supp. 751, 754 (D.D.C. 1976) (noting that "when a health-related standard such as this is involved, the good cause exemption may not be used to circumvent the legal requirements designed to protect the public").

<sup>27</sup> *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor of New York* 592 U. S. \_\_\_\_ (2020), slip opinion at 3.

<sup>28</sup> [HOME BUILDING & LOAN ASS'N v. BLAISDELL et ux. | Supreme Court | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

<sup>29</sup> *Michigan v. EPA*, 576 U.S. 743, 750 (2015) (requiring agencies to engage in "reasoned

There is no theory to improve upon perfection here. Even on a theoretical basis, the policy defies reason when it excludes vaccinated persons who can also catch and transmit the virus. Numerous studies show (see [paragraph 39](#)) those who have been vaccinated do not lead to a reduction in transmission, but rather may mask some of the symptoms of an infected individual, therefore limiting testing to one portion of the population where the risk may be greater is an arbitrary decision. Where is the data to support the policy? There is no “good cause” for unilateral Testing Mandate change in policy under emergency authority or otherwise.<sup>30</sup> Outbreaks at military installations aren’t in news cycles indicating absence of military emergency. Standards for less restrictive means, where no one is required to test without legitimate cause, have been set in practice.

Standards for medical testing criteria exist. Asymptomatic people with no known exposure or symptoms have a pre-test probability of zero. Doing a test then would yield completely unreliable results. The standard response for a requested test for strep throat without reasonable basis (e.g. just because you are curious if you have it) is to deny the test. Medical professionals will NOT run the test without signs and symptoms consistent with strep throat because if it’s positive it would be likely “false positive.” The standard threshold for Ebola is similar. If there are no symptoms or no exposure medical professionals will say NO to a test request because it is not indicated. A false positive rate goes up when the pre-test probability is zero. Testing someone for Ebola with a pretest probability of zero could shutdown the country and isolate the individual for Ebola, or perhaps a new test would be run because of an assumption of a false positive. An alternate standard would require all to test when exposed to confirmed COVID per the CDC.<sup>31</sup> Such a standard would violate 5<sup>th</sup> Amendment privacy protections, however. The protocols that delivered [UNIT](#) success to this point don’t warrant extraordinary or new testing means, nonetheless new measures that violate rights. Supporting members by making test kits available to anyone who might be sick would be consistent with the law. Invasive, burdensome, and discriminatory Mandatory Testing offers minimal benefit compared to the current standards of self-assessment, distancing, minimizing exposure, masking, and sanitation.

In absence of emergency, the appropriate action is deference to known standards. The speculative benefit of discriminatory testing of subordinates is irreparable harm of an unconstitutional action. It is knowable and incontrovertible that mandatory testing either violates or threatens to chill a member’s rights to be secure in their person and effects (4<sup>th</sup> Amendment), to not be illegally deprived of liberty (5<sup>th</sup> Amendment), to be treated equally (14<sup>th</sup> Amendment), to request redress without retaliation (1<sup>st</sup> Amendment), to exercise their religion (1<sup>st</sup> Amendment), to consent to any medical treatment one receives (4<sup>th</sup> & 5<sup>th</sup> Amendment), and to serve their nation in the offices to which they are appointed without prejudice arising from religion or easily accommodated medical limitations (Article 6, 1<sup>st</sup> Amendment, Americans with Disabilities Act, Religious Freedom Restoration Act of 1993).

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decision making”); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 220 (2016) (“[A]n agency must give adequate reasons for its decisions.”).

<sup>30</sup> Use of the “good cause” exception is “limited to emergency situations” and is “necessarily fact-or context-dependent.” *Thrift Depositors of Am., Inc. v. Off. of Thrift Supervision*, 862 F. Supp. 586, 591 (D.D.C. 1994).

<sup>31</sup> “Based on evolving evidence, CDC recommends fully vaccinated people get tested 5-7 days after close contact with a person with suspected or confirmed COVID-19.” [Interim Public Health Recommendations for Fully Vaccinated People | CDC](#)

19. Applying the Testing Mandate to only the unvaccinated is arbitrary because the vaccine has insufficient effect upon transmissibility of the virus as vaccinated members can catch and transmit the virus.<sup>32</sup> Therefore, if the intent was to detect the virus to prevent its transmission for public health, the vaccinated should also be subject to the testing, but this policy expressly does not, thereby indicating ulterior motive and unlawful discrimination. Such exclusion is counter to CDC guidance: “Based on evolving evidence, CDC recommends fully vaccinated people get tested 5-7 days after close contact with a person with suspected or confirmed COVID-19.”<sup>33</sup> The Testing Mandate does not follow this guidance. The CDC does not recommend weekly testing of unvaccinated without exposure or symptom risks because UNIT is at low transmission.<sup>34</sup> Again, the Testing Mandate deviates from the CDC. Rather, the CDC recommends the organization “Facilitate diagnostic testing for symptomatic persons and all close contacts of cases.” Note, that the CDC’s use of “facilitate” means optional and supportive, not mandatory and coercive. Regardless of CDC guidelines, employers must use discretion as they are further bound by other factors such as Constitutionally protected rights. Unfortunately, OSD, JS, and UNIT used its discretion to unreasonably and unlawfully discriminate and abuse some of its members. As such, the Testing Mandate is arbitrary because it requires excessive, baseless, invasive, and coercive weekly tests as indicated by failing to follow the CDC’s risk factor guidance on screening.
20. The Testing Mandate becomes arbitrary, because DOD, JS, and UNIT implementation of the Testing Mandate takes “Guidance” and in “a discretionary act or omission by a commanding officer, under color of Federal military authority,”<sup>35</sup> turns it into legally binding and unlawful orders, that adversely affect me personally. Guidance does not establish legally enforceable rights or responsibilities. Guidance does not legally bind the public or DOD. Guidance requires discretion. Upon advisement from me that the guidance was illegal, inadvisable, ignorable, detestable, and with an acceptable alternative, you ordered that I submit to the Testing Mandate and told me that I could not come on base to well and faithfully discharge my duties until I was tested. Despite having only 2 hours of duty on base in the next 1.5 months at the time of the order, an active telework agreement, and demonstrated 100% mission accomplishment in a remote capacity, you levied an arbitrary, indefinite weekly testing requirement with an experimental medical treatment “to comply” with guidance. What is the legal authority DOD possesses to detain or impede one’s access based on vaccination status? Many Congressional authorities exist to protect member’s right to serve unimpeded in the military. While I appreciate support towards UNIT Commander honoring my preexisting and in-process religious accommodation request that specifically seeks accommodation from discriminatory testing, the Constitutional harm to our organization of which I am a part remains.

<sup>32</sup> [Shedding of Infectious SARS-CoV-2 Despite Vaccination when the Delta Variant is Prevalent - Wisconsin, July 2021 | medRxiv](#)

<sup>33</sup> [Interim Public Health Recommendations for Fully Vaccinated People | CDC](#) as of 24 November 2021

<sup>34</sup> [SARS-CoV-2 Testing Strategy: Considerations for Non-Healthcare Workplaces | COVID-19 | CDC](#) as of 25 November 2021

<sup>35</sup> AR 27-10, Military Justice (20 Nov 2020), Chapter 19-4.c

21. The Testing Mandate is arbitrary because it is indefinite.<sup>36</sup> “The Supreme Court has explained that intrusive testing must be the exception and not the norm, allowable only in “certain limited circumstances.”<sup>37</sup> [DOD’s Testing Mandate] unilaterally turns “certain limited circumstances” into uncertain, unlimited circumstances in which testing (or even greater intrusions) would be imposed.”<sup>38</sup> This indicates an intent to demoralize and harass, not to identify and address any legitimate public health risk.
  
22. The Testing Mandate is arbitrary because it does not tailor its privacy invasion to an individual suspected of wrong-doing, but rather is a categorical stigmatization of protected classes exercising Constitutionally protected rights.<sup>39</sup> This violates the 5<sup>th</sup> Amendment.

Until the deliberate spread of a disease becomes a crime, there is no basis for search or seizure such as the Testing Mandate. Even if deliberate spread of a disease were a crime, the Government would have to wait for there to be a harm. **As UNIT has had zero instances of community spread, there is no harm.** Furthermore, holding anyone accountable for a disease as uncontrollable as COVID is blatant tyranny and victim blaming, not justice or deterrence. COVID isn’t a crime, it’s a disease. Not being vaccinated harms no one. There is no assault, battery, trespass, or harm from a person existing without a medical treatment. Regardless, the unvaccinated with COVID have symptoms and are victims. The vaccinated with COVID may or may not have symptoms are victims. There are no perpetrators here as COVID is a disease not a crime. There is no crime, there can be no legal search and seizure. Consider, how does this victim-blaming Testing Mandate policy hold up in the all too predictable outcome of a COVID outbreak on a 100% vaccinated cruise?<sup>40</sup>

The Testing Mandate incorrectly implies that the Vaccine Mandate is legal by mandating search for the wrong of not being vaccinated. Support and compliance to the Testing Mandate lends support to the Vaccine Mandate. The Testing Mandate capriciously inflicts reputational harm upon those who can’t receive the vaccine due to their sincere beliefs.

23. The Testing Mandate lacks evidentiary and rational basis indicating an arbitrary nature. As mentioned, OSD fiat and claim that the Testing Mandate improves public health is made without evidence or even theoretical basis. The Testing Mandate is outside CDC guidance. This unprecedented mandate lacks a “rational connection between the facts found and the choice

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<sup>36</sup> Camp v. Pitts, 411 U.S. 138, 143 (1973) (“If [a] finding is not sustainable on the administrative record made, then the [agency’s] decision must be vacated[.]”)

<sup>37</sup> Chandler v. Miller, 520 U.S. 305, 308 (1997) (quoting Nat’l Treasury Employees v. Von Raab, 489 U.S. 656, 668 (1989))

<sup>38</sup> MICHELLE LEMONS, et al., Plaintiffs, vs. CITY OF LOS ANGELES, et al., Defendants Case No.: 2:21-cv-07296-RGK-JPR

<sup>39</sup> See, e.g., Lanier v. City of Woodburn, 518 F.3d 1147 (9th Cir. 2008) (striking down drug testing program applied to library page position); Taylor-Failor v. County of Haw., 90 F. Supp. 3d 1095 (D. Haw. 2015) (granting temporary restraining order to legal clerk to prevent urinalysis before she started work).

<sup>40</sup> [COVID outbreak on cruise ship approaching New Orleans | AP News](#) “the company requires all passengers and crew members to have been vaccinated against the virus at least two weeks prior to departure.”

made.”<sup>41</sup> When an organization like UNIT has a perfect record of zero cases of community spread, discretion warrants tailoring of the requirement as there is no rational upside to a change. Improving upon perfection is not a reasonable cause to change policy.<sup>42</sup> Testing just the unvaccinated defies all reason because the premise that the vaccinated do not carry the vaccine is unequivocally false as evidenced by the number of vaccinated UNIT members who got COVID off-post. Similarly, ignoring natural immunity in defiance of OSD Policy on Immunization further indicates favor for arbitrary action in lieu of reason.<sup>43</sup> Combined with the shortcut through traditional law and rulemaking, OSD is exercising fiat discretion beyond CDC guidance to make the mandate coercive and targeted upon protected classes without reasonable basis.<sup>44</sup>

24. The Testing Mandate is arbitrary because it improperly rejects alternatives. The status quo that is 100% successful at UNIT over the past 20 months is a viable alternative. Alternatively, if leadership is concerned about SARS-CoV-2 across the workforce, it would test the workforce and not just protected classes it seeks to haze. If leadership wanted to gather information for some scientific purpose, it would [solicit volunteers and] test the whole workforce. Paragraph 38 outlines more alternatives.
25. The Testing Mandate is arbitrary because it assumes consent or coerces the employee in absence of consent. Submitting to prior physical exams as part of one’s fitness for duty, or by submitting information about one’s vaccine status under coercion is not consent for a new and continually abusive testing requirement.<sup>45</sup> Case law staunchly defends the public employees’ rights not to be tested without their consent, even when there is no coercion because of the testing. A known infringement upon one’s right to privacy is superior to speculative public health benefit.
26. Applying the mandate only to the unvaccinated is capricious because it overwhelmingly targets members with sincere beliefs or medical prohibitions—those who sought or obtained accommodations and exceptions to the Vaccine Mandate. The Testing Mandate is capricious because it confirms the proclaimed intent of making life for the unvaccinated so difficult that they choose to get vaccinated. On its face, the Testing Mandate is an adverse employment action imposed upon those who failed to comply to the Vaccine Mandate, but potentially to subject the unvaccinated, who are disproportionately religious, to stigmatization and harassment. This capricious aspect is evidenced by DOD’s failure to provide any reasonable accommodation for

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<sup>41</sup> State Farm, 463 U.S. at 43; see also *Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 90 (D.D.C. 2006)

<sup>42</sup> *Michigan v. EPA*, 576 U.S. 743, 750 (2015) (requiring agencies to engage in “reasoned decision making”); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 220 (2016) (“[A]n agency must give adequate reasons for its decisions.”)

<sup>43</sup> See *State Farm*, 463 U.S. at 43 (finding agency action arbitrary and capricious if the agency explained its decision in a way that “runs counter to the evidence before the agency”); see also *Bethesda Health, Inc. v. Azar*, 389 F. Supp. 3d 32, 41 (D.D.C. 2019) (setting aside as arbitrary and capricious agency action that contradicts its own regulations).

<sup>44</sup> “Based on evolving evidence, CDC recommends fully vaccinated people get tested 5-7 days after close contact with a person with suspected or confirmed COVID-19.” [Interim Public Health Recommendations for Fully Vaccinated People | CDC](#)

<sup>45</sup> *Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260 (9th Cir. 1998)

their beliefs to date.<sup>46</sup> The forced identification of deeply held beliefs may expose members to discriminatory practices in the future.

27. The Testing Mandate is capricious because while it targets those with on-going religious accommodation requests, it does not explain a member's rights to request exemption or accommodation from a mandatory medical treatment. Mentioning those seeking accommodation for the Vaccine Mandate is insufficient transparency for those with rights relative to the Testing Mandate. Combined with the stigmatization and harassment, the lack of availing accommodation for the Testing Mandate appears to be a strategy to purge certain segments of the military and civil service more so than a desire for public health. Regardless of intent; purge, harassment, and diminishment is the outcome. A legitimate emergency wouldn't discriminate along such an unreasonable, arbitrary, and capricious line as vaccination status given the state of the vaccine's performance regarding the SARS-COV-2 virus.
28. Similarly, the Testing Mandate doesn't offer or suggest means other than testing and vaccination, like telework or isolation. It requires testing for those who don't have duty on base. It doesn't offer a telework option. **Due to my duty requirements, I only must be on base for 2 hours in the last 1.5 months of 2021.** Yet I'm supposed to come in weekly and potentially be exposed to all the vaccinated members who are just as likely to have Corona Virus just to take a test? This arbitrary order indicates that the Testing Mandate's intent isn't to protect public health, but inconveniencing and stigmatizing those who haven't received the vaccine in a capricious manner.
29. Arbitrary and capricious testing requirements levied against individuals who seek or have received accommodation from vaccination requirements due to religious or medical reasons indicates reprisal and retaliatory action. The time of the testing requirements does not reflect a legitimate emergency and the purpose does not reflect a need to find the virus. Additionally, mandatory testing is not required until the respective service deadline for vaccination has passed, thus it is not truly based on vaccination status, but rather compliance with a directive demonstrated capricious intent. As such, the selective targeting indicates a means of punishment for those who did not comply with the Vaccine Mandate.
30. Third, the Testing Mandate exercises authority not granted to the executive branch, violating separation of power principles of the Constitution.<sup>47</sup> Unelected officials may not usurp the prerogative of the legislature. The executive branch may not circumvent the will of the people that expressly prohibits violation of their rights. As Montesquieu stated in *The Spirit of the Laws*:  
"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the

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<sup>46</sup> [Zero Religious Exemptions Granted for COVID Vaccines in Air Force, As Deadline Passes - Defense One](#)

<sup>47</sup> [Covid Restrictions and Mandates Imposed by "the whims of public health bureaucrats" are Illegal, Missouri Court Rules \\* Brownstone Institute](#)



legislator. Were it joined to the executive power, the judge might behave with violence and oppression."

Decades of law highlight the trend of executive overreach tempered by the judicial branch. Indeed, the Religious Freedom Restoration Act expressly countered judicial rulings outside the will of the people. The will of the people established a restrained government purposed with securing liberty, not providing pathways for tyranny such as this Testing Mandate.

31. The executive branch may not issue orders with the effect of regulations that exceed lawful protections as is the case with this Testing Mandate. DOD authorities have created generally applicable orders, both in writing and verbally, requiring individuals within their jurisdictions to wear masks, limit gathering sizes, create capacity restrictions, limit usage of facilities, mandate spacing between people, [and] order members be excluded from work or entitled benefits via quarantine and isolation rules based on purported benefits from criteria not adequately constrained by legal standards.<sup>48</sup> Regulations that delegate unfettered and unbridled rulemaking to an administrative official based on claims for "necessity" or "under emergency" are invalid.<sup>49</sup>
32. Laws and regulations require compliance with the formal rulemaking.<sup>50</sup> As an example, the CDC arbitrarily changing the definition of a vaccine without going through essential rigor impacts Congressional law and DOD regulations based on that definition. When DOD ignores its own policies derived from rigorous rulemaking to arbitrarily ignore natural immunity in its vaccine mandate, it creates harmful legal problems and outcomes. While the military can make its own rules, it must bear accountability for when those rules, having not adhered to rulemaking law, violate the guardrails set forth by the Constitution, Congress, or Judiciary ruling. Similarly, while the authority proclaimed by the Testing Mandate is theoretically in line with the government's compelling interest for safety and health, the government explicitly does not have a compelling interest to discriminate or deny anyone the opportunity to serve based on protected class to achieve safety and health. In other words, the government's more compelling interest is to secure rights, not ephemeral health security. Therefore, the government can either comply with the legal restraints, protections, and precedence in a Testing Mandate for public health by, for instance, consensually offering testing to everyone to take completely privately or it can break the law by coercively discriminating against protected class (those seeking accommodation based on religion or medical).
33. Authority to executive branch officials regarding public health extends to allocation and tasking of resources in a just manner. It extends elsewhere of course. Executive authority does not extend to coercive measures forbidden by the Constitution or to unconstitutional laws passed by the legislature. Accordingly, Mandatory Testing, being coercive and unlawful, assumes authorities not present. There are many different ways to achieve the interest of public health within existing authorities other than the coercive and unlawful manner prescribed in Mandatory Testing. Consider the example where DOD's interest in Vietnamization did not warrant a My Lai village

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<sup>48</sup> ibid

<sup>49</sup> ibid

<sup>50</sup> Ibid

5 U.S.C. § 553(b)(B) "good cause" exception (setting out notice-and-comment procedures for rulemaking)

massacre. An interest in public education did not warrant segregation by race. An interest in public health for a 2-year endemic virus does not warrant new, discriminatory testing with experimental products.

34. Fifth, the testing mandate is a violation of Article 6 of the Constitution which states “No religious test shall ever be required as a qualification to any office or public trust under the United States.” The Mandatory Test policy states “Once the applicable mandatory vaccination date has passed, COVID-19 screening testing as described in Attachment 7 is required at least weekly for Service members who are not fully vaccinated, including those who have an exemption request under review.” This Mandatory Test policy is an indirect religious test as it largely effects those with sincere religious beliefs that prohibit them from accepting the specified COVID-19 products in the Vaccine Mandate. As implemented, the Testing Mandate exercises DOD’s authority to ensure the health of the organization with the effect of denying rights and imposing a religious test in its weekly test ritual to the state. The Testing Mandate as implemented is expressly and strictly forbidden by the Constitution because it may and in this instance is burdening members of certain faith from participating in our self-government as duly appointed officers of the executive branch. Of note, **my religious beliefs have never been a problem in the past 20 years active duty until these unconstitutional Vaccine and Test mandates violated my sacred oath of office.**
35. The absence of the Testing Mandate to specify a means for religious accommodation violates the Constitution, Article 6 by indirectly targeting certain members of faith and precluding them from service. Worse, the Mandatory Testing specifically targets those who are seeking accommodation or exemption from the COVID-19 Vaccine Mandate. The availability of accommodation is key to the legitimacy for any medical mandate. Absent real, proven exemptions or accommodation the mandates are illegitimate and unconstitutional. As of this writing, the Air Force has approved zero religious accommodations for the vaccine mandate, busting its own timelines. In effect, the DOD proclaims to be compassionate and respectful of member’s beliefs, implementing robust accommodation procedures to obtain legality, but then DOD denies or withholds accommodation wholesale to perpetuate unlawful discrimination. Since accommodations are not being granted for the vaccine mandate and are not even being offered for the Testing Mandate, thus impossible to grant, the mandates unconstitutionally impose an effective religious test under a medical screening façade.
36. Sixth, using vaccination status as a basis for Mandatory Testing is illegitimate and illegal because it defies reason to target protected classes. The Testing Mandate’s proclaimed intent is to “reduce the transmission of the virus that causes coronavirus disease 2019.” The perception of this vaccine-or-test approach is to make life for the unvaccinated so burdensome that they choose to take the vaccine. This coercive approach abuses and harasses protected classes. The evidence for this perception exists in nearly every aspect of the Testing Mandate. While unwise and incoherent policies can be exercised unchecked by a sovereign DOD, unlawfully discriminating and unconstitutional policies can and must be checked.
37. Rather than addressing public health in a coherent, reasonable, and Constitutional manner, DOD has chosen to unlawfully discriminate. If DOD wanted to reduce

transmission of the virus it would have the medical community adopt a different standard of care such as that offered by the Front Line COVID-19 Critical Care Alliance (FLCCC). DOD would emphasize health and wellness, rather than a vaccine only strategy. It would educate and prepare people for early treatment, rather than fail to provide compassionate care until the disease has already ravaged a person.<sup>51</sup> It would recognize and encourage natural immunity. It would follow CDC guidance for consensual, risk-based screening rather than arbitrary, wasteful, and abusive weekly tests.<sup>52</sup> It would allow and encourage organizations like **UNIT** that have had zero community transmission events since the pandemic began to tailor the CDC guidelines rather than micromanaging a deliberate campaign to target protected classes. It would provide test kits so that COVID-at-risk individuals can inform their personal decisions regarding exposure. COVID-at-risk individuals are self-identified individuals who show symptoms, have been exposed to confirmed COVID cases, or participated in high-risk events such as travel. These test kits would be self-administered and results optionally reported via existing daily muster protocols. If someone intentionally becomes a super spreader at this point, DOD has bigger problems. DOD trusts its employees with nuclear weapons, but won't trust them to stay at home if they are sick? The Testing Mandate doesn't stop infected people from coming in. DOD would make additional information about the test kits and their performance available to ensure **UNIT** members were fully informed and remove all elements of coercion so there could be consent. It would provide information about accommodations, rather than targeting those who seek accommodation. Instead, DOD designed a policy antithetical to who we are as a nation, or, rather, who we ought to strive to be.

38. The distinction between vaccinated and unvaccinated lacks morality and legality. The scientific factual basis for treating vaccinated members differently than unvaccinated members in terms of policy is irrelevant to the moral basis. The potential benefit of testing is subordinate to the known irreparable harm of violating rights. Our Equal Employment and Opportunity laws essentially prevent the distinction between vaccinated and unvaccinated in the workplace,<sup>53</sup> so the scientific facts on differences between vaccinated and unvaccinated don't matter because we make these decisions through a moral frame. We are to treat all as if each is of equal moral and legal worth. Failing to do so, by segregating the vaccinated for the unvaccinated and imposing abusive requirements on a group, violates the 14<sup>th</sup> Amendment where all citizens are to be afforded "equal protection of the laws." That is the way to unit cohesion, good order and discipline, mission readiness, and even health. Alternatively, the Testing Mandate sets neighbor against neighbor, feeding hysteria, and stigmatizing a group. This type of discrimination and harassment is directly in violation of the SECDEF's guidance: "These efforts, among others, will ensure that we provide every member of the Department a safe and supportive place to serve their country- one

<sup>51</sup> [Treatments Your Healthcare Provider Might Recommend if You Are Sick | CDC](#)

<sup>52</sup> [Interim Public Health Recommendations for Fully Vaccinated People | CDC](#) as of 24 November 2021

[SARS-CoV-2 Testing Strategy: Considerations for Non-Healthcare Workplaces | COVID-19 | CDC](#) as of 25 November 2021

<sup>53</sup> Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Sections 501 and 505 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990 (ADA), Title II of the Genetic Information Non-discrimination Act of 2008 (GINA), and the Civil Rights Act of 1991

free from discrimination, hate, harassment, and fear.”<sup>54</sup> Thus the Testing Mandate not only seeks to coerce the following of an unlawful order, but in itself it violates the SECDEF’s lawful guidance to treat all equally by enabling and encouraging discrimination, harassment, hate, and fear.

39. The scientific facts supporting the Testing Mandate are debatable and arguably irrelevant to the moral and legal questions at hand, but they are integral to the assumptions driving the policy so they must be addressed. The Testing Mandate implicitly assumes that vaccines confer a net benefit, that the vaccines stop transmission, and that the Federal Government can legally force people to take vaccines without exception. Having made these assumptions, the Testing Mandate asserts the Federal Government can legally force people to take experimental tests. Consider the following “facts” that undermine the assumptions, rendering the policy illegitimate. A recent FOIA shows that the CDC has zero evidence of asymptomatic spread from unvaccinated despite that assertion being the basis for CDC screening recommendations.<sup>55</sup> “Clinicians and public health practitioners should consider vaccinated persons who become infected with SARS-CoV-2 to be no less infectious than unvaccinated persons.”<sup>56</sup> “NIH confirms that vaccinated and unvaccinated have similar viral counts (which is a good proxy for contagion).”<sup>57</sup> There is “No reduction in infected rate among vaccinated”<sup>58</sup> and “similar COVID transmission among vaccinated populations.”<sup>59</sup> In addition to the numerous studies that show those who have been vaccinated do not lead to a reduction in transmission, the fact that the vaccine may mask some of the symptoms of an infected vaccinated individual provides plausible theory that they are more likely to unknowingly spread the virus. Consider that few studies adequately control for preexisting natural immunity, early treatment, vitamin D levels, climate factors, comorbidities, days since first vaccination as opposed to being fully vaccinated, track long-term outcomes such as excess deaths, and numerous other criteria making the situation difficult to understand. Even Pfizer’s studies upon which the FDA based its approval have significant credibility issues whether it’s the whistleblower detailing its many flaws or the fact that more people who received the vaccine died than those who received the placebo.<sup>60</sup> Yet, with all the factual uncertainty, the government acts with moral certainty that causes irreparable harm.

Consider the following view of debatable science. If someone is asymptomatic from a variant of COVID that indicates a weaker strain, which could, from a public health and immunological

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<sup>54</sup> SECDEF Message to the Force, 4 March 2021. *See also* SECDEF Message to the Force, 5 February 2021: “Service members, DoD civilian employees, and all those who support our mission, deserve an environment free of discrimination, hate, and harassment.”

<sup>55</sup> CDC Admits Crushing Rights of Naturally Immune Without Proof They Transmit the Virus - by Aaron Siri - Injecting Freedom (substack.com) <https://aaronsiri.substack.com/p/cdc-admits-crushing-rights-of-naturally>

<sup>56</sup> [Transmission potential of vaccinated and unvaccinated persons infected with the SARS-CoV-2 Delta variant in a federal prison, July—August 2021 | medRxiv](#)

<sup>57</sup> [Viral Loads Similar Between Vaccinated and Unvaccinated People | UC Davis](#)

<sup>58</sup> [Increases in COVID-19 are unrelated to levels of vaccination across 68 countries and 2947 counties in the United States \(nih.gov\)](#)

<sup>59</sup> [Community transmission and viral load kinetics of the SARS-CoV-2 delta \(B.1.617.2\) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study - The Lancet Infectious Diseases](#)

<sup>60</sup> [Covid-19: Researcher blows the whistle on data integrity issues in Pfizer’s vaccine trial | The BMJ](#)  
[FDA quietly discloses that 21, not 15, people died during Pfizer’s jab trials - LifeSite \(lifesitenews.com\)](#)

standpoint, help us obtain herd immunity. That asymptomatic variant enables the public to develop superior, long-lasting, durable, and robust natural immunity to the 28 proteins of corona virus the immune system can target rather than the mistargeted and vanishing protection rendered by vaccines designed for the single alpha-spike protein from 20 months ago. Natural immunity is superior to vaccination.<sup>61</sup> Mandatory Testing and isolating asymptomatic members miss an opportunity to build natural immunity. Yet, the Vaccine Mandate and Testing Mandate denies this science. Early treatment options such as those offered by Frontline COVID-19 Critical Care Alliance are superior to the military's current standard of care which is essentially 'go home until you are almost dead then come into the clinic to finish the job.'<sup>62</sup> The real emergency and pandemic is fear, hysteria, and lack of care, which the Testing Mandate exacerbates making it illegitimate, in addition to already being unlawful. Again, the science is debatable and immaterial to the moral and legal question of this informal complaint.

40. Mandatory testing becomes illegitimate when the DOD makes someone like me a casualty to achieve readiness. **Threatening me with a return to service because I won't worship at the alter of the state since I am sworn to God is a most incoherent strategy.** DoD's means and modes of implementation to achieve readiness regarding COVID-19 have resulted in decreased readiness. Each member stigmatized, harassed, and unlawfully discriminated against by this Mandatory Testing policy, every vaccine adverse event, each new corona virus infection amongst the vaccinated who now feels lied to is an effective causality whether by disillusionment, separation, simple administrative loss, disruption, injury, or suicide. The costs for replacing the training and experience, for generating return on investment, and for the lost trust and opportunities is incalculable, but not even considered.<sup>63</sup> The government must consider its interest in public health with its interests to secure liberty and rights, to retain dedicated public servants, to foster diversity and inclusion, to obtain a return on investment from its deliberately developed members, and to reliably do its mission with the specific skill sets it has hired, placed, and entrusted.
41. Mandatory Testing is illegitimate because it stigmatizes a group of people. Those being coerced into testing without a probable cause of disease are stigmatized—and our peers are encouraged to engage in harassment and discrimination, in violation of SECDEF policy, under color of compliance with the Testing Mandate. **For example, on 24 November 2021, I was uninvited from my own promotion party when the Air Force Colonel-selects decided to make the D.C. area party, vaccinated only, with vaccine passports required for entry.** There is no moral or risk management basis for the distinction.<sup>64</sup> Whether or not the assumptions or facts supporting segregation by vaccination status are true is irrelevant to the fact that the stigmatization is abhorrent, counter to

<sup>61</sup> [132 Research Studies Affirm Naturally Acquired Immunity to Covid-19: Documented, Linked, and Quoted \\* Brownstone Institute](#)

<sup>62</sup> [Home - FLCDC | Front Line COVID-19 Critical Care Alliance \(covid19criticalcare.com\)](#)

DOD Primary Care providers refer patients to CDC. CDC refers patients to providers. Both wait for tragedy. [Treatments Your Healthcare Provider Might Recommend if You Are Sick | CDC](#)

<sup>63</sup> [Inhofe Urges DOD to Suspend Vaccine Mandate \(senate.gov\)](#)

<sup>64</sup> [COVID-19: stigmatising the unvaccinated is not justified - The Lancet](#)

unit cohesiveness, and unlawful discrimination because it disproportionately affects protected classes. This policy legitimizes ostracization and cleaving of the Force.

42. Mandatory Testing is illegitimate when it fails to explain member's rights. The availability of accommodation and exemption is essential to the moral and legal basis for the exercise of the purported authority asserted by the Testing Mandate. Not only does the Mandatory Testing fail to provide avenue for accommodation, it specifically targets those who sought accommodation from the Vaccine Mandate. This targeted harassment has a chilling effect on service member's rights.
43. Testing is unlawfully discriminatory (illegal) by indirectly targeting those with religious beliefs. Just as making people eat pork to fulfill the government interest of health would be illegal, so too is this testing. While the intent to discriminate doesn't have to be proven, such intent has been proclaimed by a number of senior administration officials. Senior DOD leaders implied that testing was a means to coerce vaccine compliance in statements. It follows that religious members will bear the brunt of that coercion. This discriminatory intent is further manifest in the incoherent and baseless assertion that testing the unvaccinated provides any more benefit than self-screening or even simple, non-discriminatory temperature checks for all personnel accessing a site. In addition to religious discrimination, discriminatory testing violates due process, and privacy protections.
44. The Testing Mandate stimulates unlawful discrimination based on disability. By targeting the unvaccinated for testing, DOD qualifies those members so targeted into a disabled status according to the EEOC under the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Per the EEOC, "A person has a disability if he or she is subject to an adverse employment action and is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment)." The Testing Mandate institutionally sanctions the stigmatization of all unvaccinated persons by creating a belief that the unvaccinated are unclean, contagious, and dangerous requiring weekly testing as a preventive measure. "they" must be singled-out and tested, because "they" are dangerous. The asymptomatic unvaccinated, according to some scientists, are the least likely to have the virus, but that doesn't change the toxic perceptions created by this policy. **Being denied access to base and unfairly prevented from doing my job because I am unable to participate in unconstitutional and discriminatory Testing Mandate because of deeply held beliefs and my perceived disability is a first grievance. The second indicator is being denied access to my own promotion party. The third is this informal Article 138.**
45. The violation of privacy caused by these mandates creates opportunities for unlawful religious discrimination. Having to undergo testing or follow different rules because of my religious beliefs isolates me from the unit making me susceptible to harassment. Members who sought religious accommodation were asked and provided deeply personal questions regarding their sincere beliefs that could be used to target them in the future. In today's data-driven world where things live on the internet forever, will a data breach by the Chinese expose me as a Christian 30 years from now or result in persecution of my children? Look what's happening across DOD right now.

My Christian chatrooms are filled with Christian members separating. Woe, to the nation that loses those members of conscience, the anti-bodies to brownshirts and tyrants. Is this policy achieving its desired effect?

46. Mandatory Testing introduces legally concerning administration risks. The record keeping aspects of the policy can result in data breaches. Assertions that HIPAA doesn't apply naively implies a lack of accountability for the inevitable data security failures that will occur. If my data isn't protected by HIPAA, am I obligated to provide it? Who is responsible for its mismanagement? Will test kits have special disposal protocols for my sampled genetic material?<sup>65</sup> Those protections exist to prevent abuse and those protections don't exist here. The absence of liability and security measures is legally concerning.
47. Denying base access to me and disrupting my ability to perform my duties places me in a legal jeopardy where I can disobey a direct order to fulfill my duty, or I can fail to fulfill my duty. Similarly, the arbitrary requirement to test appears to be an attempt to characterize me as unfit for duty despite the success demonstrated the past 20 months without testing. Fortunately, I have demonstrated 100% mission accomplishment over the past 20 months via telework/hiflex, done enough advance work, and made professional relationships to mitigate the unnecessary imposition. Denial of base access introduces an unfair burden to my coworkers, peers, and friends who cover down for the arbitrary burden. That burden shifting creates animosity and resentment further stigmatizing me due to my religious beliefs and the illusory medical condition assigned to me by the Testing Mandate's stigmatization.
48. Because the Testing Mandate invades my privacy with public, institutional sanction of discriminatory testing, it associates the unvaccinated with crime feeding stigmatization. Invasions of privacy are only allowable under law where there is probable cause for a crime. Even drug sampling, where there is a potential crime, requires broad screening and not targeted discrimination to be legal. There is no crime here, yet my chain of command, under color of Federal authority, is publicly invading my privacy as if I am a criminal or suspect. Therefore, the Testing Mandate stigmatizes the unvaccinated as being guilty of a crime with its institutional sanction to invade privacy. Again, that targeting exclusively effects protected classes of those who self-identified for religious or medical accommodation.
49. Those who fight against the Vaccine Mandate and the Testing Mandate defend the principle of sovereign individuals being secure in their person. Once the precedence is established that the state can dictate a medical treatment or that health interest is superior to Constitutional and human rights, we lay the foundation for tyranny from which few nations peaceably recover. Consider some hypotheticals of invasive medical procedures as a condition of living. In Lithuania, Austria, and Australia people like me can't go to grocery stores right now. Adherence and doubling down on the Testing Mandate will place our military and our country on the wrong side of history and the law.

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<sup>65</sup> [LA Sheriff Refuses County's COVID Testing Over Alleged China Connection to Test Provider \(msn.com\)](#)

50. Weekly reporting of COVID test results enables leaders to perpetuate the stigmatization of the unvaccinated. When only unvaccinated members are mandated to test, the majority of positive tests results will be from the unvaccinated. Asymptomatic false-positive flukes will increase case counts and needless assertions of emergency authority. This biased data gathering program will yield the desired headlines like “95% of COVID cases amongst Unvaccinated” and “Unvaccinated Perpetuate Pandemic.” This allows an inaccurate narrative to form that stokes and blames never-ending emergency on the unvaccinated, perpetuates disunity and fear, and historically results in shame and tragedy after the hysteria runs its course.
51. With these legal and moral issues of the Testing Mandate, participating in it makes us complicit. When we condone that which we know to be wrong, we provide indirect material support to the practice. As a matter of conscience, we must act to address the issues identified.

Accordingly, I respectfully request the following relief under Article 138, Uniform Code of Military Justice:

- A. That the Testing Mandate be rescinded at UNIT and clarified to include that testing at this time is voluntary and encouraged for individuals who may be symptomatic, recently exposed, or at high risk. That resources be made available to support public health.
- B. That all policy regarding a medical treatment explicitly state the rights members have to refuse, to obtain information, and to obtain exemption or accommodation.
- C. That UNIT treat members of its organization equally regardless of vaccination status, personal medical choices, or religious beliefs.
- D. That all military members of UNIT be made aware of their right to refuse any medical treatment to include testing and those that are experimental or investigatory, unless the President signs an Executive Order specifying the need for emergency testing having satisfied all criteria Congress set forth to warrant such extreme action.
- E. That the UNIT Health and Fitness obtain less invasive and toxic saliva-based test resources that weren't developed with the use of aborted fetal cells.
- F. That this information be elevated to UNIT, Joint Staff, and DoD leadership to make them aware of issues with the Testing Mandate.
- G. That the legal review for the Testing Mandate policy be shared with me.

Snuffy, Amn, USAF  
Job

CC:

Xxx

Attach:

xxx



29 Oct 2021

From:

To:

Subj: STATEMENT TO ACCOMPANY NAVPERS 1070/613 COVID-19 VACCINATION  
ADMINISTRATIVE COUNSELING/WARNING ICO SVM\_\_\_\_\_

Ref: (a) MILPERSMAN 1070-320  
(b) SECDEF MEMORANDUM dtd 24 August 2021 Mandatory Coronavirus Disease  
2019 Vaccination of Department of Defense Service Members  
(c) FDA Biologics License Application (BLA) for Comirnaty dated 23 August 2021  
(d) ALNAV 062/21  
(e) NAVADMIN 190/21  
(f) NAVADMIN 225/21  
(g) BUPERSINST 1730.11A  
(h) Manual for Court Martial Pt. IV, Article 92 (10 U.S.C. § 892)

Encl: (1) NAVPERS 1070/613 ICO SVM\_\_\_\_ dtd \_\_\_\_ October 2021

1. On 16 October 2021 I signed enclosure (1) as directed by Executive Officer NOSC Omaha. This enclosure was returned via email.
2. I hereby submit this statement to accompany the signed NAVPERS 1070/613 due to inaccurate nature of many statements contained in that document as well as to object against the arbitrary and capricious nature of that document.
3. The first paragraph correctly stated the SECDEF vaccination direction and the accompanying DoN implementation guidance. However, the SECDEF's memo states, "[m]andatory vaccination can only use COVID-19 vaccines that receive full licensure from the FDA, in accordance with FDA-approved labeling and guidance." The guidelines listed in paragraph 1 are incapable of being followed because there are not currently any available FDA approved or licensed COVID vaccinations available in the U.S. Despite DoN issuances assertions to the contrary; "[p]er the FDA's guidance, the Pfizer-BioNTech and Comirnaty vaccines have the same formulation and are interchangeable; Navy medical providers are authorized to use Pfizer-BioNTech doses distributed under the Emergency Use Authorization to administer mandatory vaccinations." This statement is incorrect because the formulas of the Pfizer-BioNTech vaccine and Comirnaty are legally distinct products and they do not have identical formulations. The Emergency Use Authorization (EUA) statute, 21 U.S.C. § 360bbb-3, explicitly states that anyone to whom an EUA product is administered must be informed of the option to accept or to refuse it, as well as alternatives to the product and the risks and benefits of receiving it. If the DoN is treating the Pfizer-BioNTech and the Comirnaty vaccines as interchangeable then the EUA is being violated and servicemembers being forced to receive this vaccine are not providing informed consent.
4. Comirnaty and Pfizer-BioNTech do not have the same formula. Comirnaty contains a redacted ingredient that Pfizer-BioNTech vaccine does not. There are different levels of Sodium

Chloride between the two vaccines. There are redacted unique ingredient identifiers (UNII) in the approved Comirnaty. The UNII of Dibasic sodium phosphate dehydrate is different between the two vials. Therefore, if they have different UNII, different ingredients, and different amounts of the same ingredients they are of a different formulation and cannot be considered identical formulations. While the vaccines may be similar, they are in fact different, and therefore legally distinct. Since these vaccines do not have the same formulation the above highlighted statement in the NAVPERS 1070/613 is a factually inaccurate and misleading statement.

	Pfizer-BioNTech COVID-19 Vaccine	Comirnaty
Ingredient per dose	Amount per dose (pre-dilution)	
Nucleoside-modified mRNA	30 mcg	30 mcg
UNII	5085ZFP6SJ	5085ZFP6SJ
((4-hydroxybutyl)azanediyl)bis(hexane-6,1-diyl)bis(2-hexyldcanoate)	.43 mg	.43 mg
UNII	AVX8DX713V**	Redacted
2-(polyethylene glycol 2000)-N,N-ditetradecylacetamide	.05 mg	.05 mg
UNII	PJH39UMU6H*	Redacted
1,2-distearoyl-sn-glycero-3-phosphocholine	.09 mg	.09 mg
UNII	043IP1M0K	043IP12M0K
Cholesterol	.2 mg	.2 mg
UNII	97C5T2uQ7J	97C5T2UQ7J
Potassium chloride	.01 mg	.01 mg
UNII	660YQ98I10	660YQ98I10
Monobasic potassium phosphate	.01 mg	.01 mg
UNII	4J9FJ0HL51	4J9FJ0HL51
Sodium Chloride	.36 mg	2.52 mg
UNII	451W47IQ8X	451W47IQ8X
Dibasic sodium phosphate dihydrate	.07 mg	.07 mg
UNII	94255I6E2T	GR686LBA74
Sucrose	6 mg	6 mg
UNII	C151H8M554	C151H8M554
Redacted	N/A	.450 mL (per vial)
UNII	N/A	Redacted
Water	Unknown	Unknown
UNII	059QF0K00R	Unknown

\* Listed as ALC-0159

\*\* Listed as ALC-0315

5. Comirnaty received full FDA licensure on 23 Aug 2021. Pfizer-BioNTech COVID-19 Vaccine received a reissued EUA in its entirety with revisions, on 23 Aug 2021. On 14 Sep 2021, the Assistant Secretary of Defense issued an updated memorandum authorizing the use of EUA Pfizer-BioNTech vaccine as if it were the fully approved and licensed product Comirnaty. The cited source for the FDA guidance is the “Q&A for Comirnaty (COVID-19 Vaccine

mRNA)”. The Q&A produced by the FDA is NOT a legally binding document. Nowhere within the BLA Approval is interchangeability of Pfizer-BioNTech and Comirnaty discussed or authorized, rather it specifically states that the vaccines are “legally distinct with certain differences”. The FDA’s Comirnaty approval letter facially states, the CDC: (1) explicitly distinguishes the Comirnaty and Pfizer-BioNTech vaccines; (2) expressly distinguishes that Comirnaty is approved and Pfizer-BioNTech is not FDA-approved but under EUA; (3) asserts that Comirnaty and Pfizer-BioNTech have the same “formulation”; (4) alleges that Pfizer-BioNTech can be used interchangeably with Comirnaty despite “certain differences” existing between the two different vaccines; and then with abject audacity, advises that “[a]lthough Comirnaty is approved... there is not sufficient approved vaccine available for distribution to this population in its entirety n at the time of reissuance of [the BioNTech] EUA.” Since they are “legally distinct with certain differences” they cannot be the same product, further invalidating the statement made in the NAVPERS 1070/613.

6. On 24 Aug, 2021, the Secretary of Defense issued a mandate for all DoD Service Members to receive mandatory vaccination using “only usi[ng] COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA approved labeling and guidance.” This means that DoD Service Members can only be mandated to receive the BLA approved Comirnaty vaccine and not a nearly similar yet different vaccination. The SECDEF memo does not mention interchangeability of Comirnaty and Pfizer-BioNTech, as Pfizer-BioNTech is not legally licensed and does not meet BLA labeling requirements. The FDA Q&A is not a legally binding document, nor can it be considered an authorization of the Pfizer-BioNTech vaccine. Therefore, the DoD is unable to mandate the use of Pfizer-BioNTech vaccine without a Presidential waiver IAW Title 10 § 1107a. Since Pfizer-BioNTech cannot be mandated, the NAVPERS1070/613 statement authorizing Navy medical providers to “use Pfizer-BioNTech doses distributed under the Emergency Use Authorization to administer mandatory vaccinations” is an illegal and unlawful order.

7. Any directive from a government official that compels vaccination from a non-FDA approved vaccine is unlawful *per se*. The second paragraph states that USFF has issued a lawful order directing all assigned members to receive an initial vaccine does by 30 September 2021. Article 92 of the UCMJ states “[a] general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or for some other reason is beyond the authority of the official issuing it.” Since the NAVPERS 1070/613 incorrectly and unlawfully orders vaccination with a non FDA approved Pfizer-BioNTech vaccine it is contrary to the laws of the United States, including but not limited to U.S.C. Title 10 § 1107a. The Constitution further provides protections for religious liberty. 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). An order that forces a servicemember to violate his or her religious principles is an order in violation of the Constitution and cannot be deemed lawful. This NAVPERS 1070/613 directly contradicts the Constitution and the laws of the United States, therefore it cannot be a lawful order and its enforcement is illegal.



8. Notwithstanding the above, I have submitted a religious accommodation request in order to ensure my freedom to practice religion is maintained. Any assertion that I am in violation of an order while my request and or appeal(s) are pending is a violation of my rights to pursue administrative remedies. Taking further action against me for exercising my administrative and constitutional rights will be considered actions of harassment and discriminatory retaliation.

24 Mar 22

From: Service member  
To: Chief of Naval Operations  
Via: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1)  
COC

Subj: REQUEST TO GRANT RELIGIOUS ACCOMMODATION ICO Servicemember

Ref: (a) U.S. Constitution Amendment I  
(b) 42 U.S.C §2000bb-1  
(c) DoD Instruction 1300.17 of 1 Sep 20  
(d) SECNAVINST 1730.8B  
(e) BUMEDINST 6230.15B  
(f) Religious Freedom Restoration Act of 1993, 42 U.S.C §§ 2000bb et. seq.  
(g) Archdiocese for the Military Services, USA ltr from The Most Reverend Timothy P. Broglio dtd 19 Aug 2021  
(h) DoD Directive 5124.02  
(i) BUPERSINT 1730.11 A

Encl: (1) Denial letter  
(2) Appeal extension Request  
(3) PA request  
(4) COC letter  
(5) Executive Order 13798 of May 4, 2017, Federal Register/Vol. 82, No. 88  
(6) Federal Register/Vol. 82, No. 206/Thursday, October 26, 2017

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except the Government may substantially burden a person's exercise of religion 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.

3. This appeal is submitted under duress, without appropriate reference, and without appropriate legal counsel. All those reasons may be of little solace because this request is an exercise in futility as the Navy has no intention of following the law, considering the less restrictive means available, nor my sincerely held religious beliefs. The Navy describes its own process as pre-filling a denial template. Further, every single person in my chain of command has asked me what I intend to do when my request is denied. Not one person has considered the fact that my religious beliefs entitle me to an approval of this request. Surely with this basis it is a foregone conclusion that my request will be denied. However, in good faith and reliance on the process I prayerfully submit this request knowing that I am entitled to the requested relief.

Subj: REQUEST TO GRANT RELIGIOUS ACCOMMODATION ICO Servicemember

4. Per Encl. (1) my religious accommodation request has been denied. This denial is not in accordance with the law stated above. The denial letter does not include any individual or personal evaluation of my beliefs, my assignment, my training, or my proposed accommodation. This denial does not address how the government has considered any less restrictive means, nor does it address the substantial burden on my faith. The government's burden is to prove there are no lesser restrictive means. That burden is completed through thorough analysis and conclusion that there is not one other single method which would achieve the government's alleged compelling interest. Summarily concluding, without evaluation, that there are no other lesser restrictive means is not the government satisfying its burden. I know of many other less restrictive means available and could analyze each one, however that is not my burden. Unless and until, which it cannot, the government eliminates each and every one of those options, it has not met its burden and therefore it is unlawfully denying me the freedom to practice my religion.

5. The freedom of religion is a fundamental right of paramount importance, expressly protected by federal law. RFRA prohibits the federal government from substantially burdening any aspect of religious observance or practice, unless imposition of that burden on a particular religious adherent satisfies strict scrutiny. The federal government must demonstrate in my situation that the COVID-19 vaccine is the least restrictive means of achieving a compelling government interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion and must be applied to the particular adherent (case-by-case). Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise of religion is the least restrictive means of achieving that interest. Under the required legal analysis, the government must show it cannot accommodate the religious adherent while achieving its interest through a viable alternative.

6. By all accounts the denial letter employs the same political theater of the entire religious accommodation request process—that it is a burdening process to which no relief is going to be granted. My denial letter is exactly the same, except for the name, as the other denial letters I have been able to review. Every single substantive sentence is verbatim word for word. The fact that many, if not all, the Navy's denials are identical is prima facie evidence individual consideration was not included, or even considered. Take as example one of the denials received by an enlisted reservist, in early November 2021, in a completely separate region from myself, with a different warfare qualification and unit assignment was exactly verbatim to my own. In yet another, an active duty officer counterpart, in mid January 2022, stationed at a different base and a member of a different community is word for word the same as mine. Through at least five months, with no distinction for career path, unit assignment, geographic location, expression of religious beliefs, or consideration of the medical community's evaluation of COVID threat these denials have remained verbatim.

7. My religious accommodation request was submitted on \_\_\_\_\_, yet not returned until \_\_\_\_\_. It took the Navy \_\_\_\_\_ days to summarily, without consideration deny my request. Notwithstanding that during those \_\_\_\_\_ days, and the preceding time since COVID was identified as a medical threat in the United States, I did not miss a single day of work—whether that was pursuant to my civilian employment or any execution of orders for the Navy. During the same period, I was called to cover for many counterparts who were ill with COVID despite having received COVID vaccination. It did not matter that I may have been exposed to those same people, since I was

Subj: REQUEST TO GRANT RELIGIOUS ACCOMMODATION ICO Servicemember

healthy, I was relied upon to complete the mission. The Navy's own process of picking and choosing when to enforce its COVID guidance demonstrates there is not a compelling interest in 100% COVID vaccination. During the pendency of the consideration of the request I was also required to drill in person. If my medical status was such a threat to good order and discipline due to close contact with other Sailors then the Navy would have allowed me to continue maximum remote or telework drilling, consistent with policy and common practice. Instead, the Navy disingenuously required I drill in person. It is ironic, while immediately contrary to their own proclaimed policy, for Navy leaders to proclaim those who have not been vaccinated for COVID are a huge threat while simultaneously mandating that threat be in proximity with other Sailors. The Navy cannot have it both ways, either my medical status makes me a huge threat and thus I should not be in proximity to other Sailors, or my medical status is not actually a threat, and I can engage with my fellow Sailors. Of course, the past two years have demonstrated the later to be true, yet out of blind disobedience to the law and ignorance of the scientific and medical evidence the Navy continues to proclaim the non-vaccinated for COVID pose a threat to unit readiness and cohesion.

8. Despite the Navy ignoring the timelines of its own instructions, taking \_\_\_\_\_ days to consider my request, I was only provided 5 days to respond, in order to protect against adverse action. I was not provided my denial while in a duty status despite the denial letter being dated \_\_\_\_\_, signed on \_\_\_\_\_, and my having attended drill/been present on \_\_\_\_\_. Despite not being on orders, I timely submitted a notification of extension for response and a Privacy Act Request to allow me to review the documents which were relied upon in making the determination of my request. A notification blatantly ignored by Commander UNIT. Commander UNIT attempted to short circuit the Privacy Act Request by providing most of the documents requested, however she failed to provide at least one of the documents, thus my appeal does not have the benefit of full review. Commander UNIT further denied me right to legal counsel by refusing to either extend the time for adverse action until my next scheduled drill weekend or authorizing rescheduled drill(s). Without the benefit of drilling status, I am unable to consult with Navy JAG for legal guidance in this appeal. Additionally, I am required to prepare this appeal while not on orders in violation of the congressional design for compensation of reserve affairs.

9. While timelines and guidance are allegedly so important to good order and discipline, it is a shame the Navy does not set a proper example. It is hypocritical for the Navy to demand its Sailors follow every timeline exactly or comply with even unlawful orders while at the same time the Navy conveniently makes its own excuses for ignoring timelines or sightlessly operating outside of the law. The process has become so corrupted that our own supposed leaders are prevented from the exercise of common sense and individual evaluation.

10. The simplest understanding of the exercise of good order and discipline is that good leaders are first and continually good followers. This is essentially the summation of the entire teachings of the Gospel: "follow Me."<sup>1</sup> But what has the Navy chosen to follow? The Navy has chosen not to follow the precepts of religion, the Navy has chosen not to follow its own instructions, the Navy has chosen not to follow the well documented medical and scientific knowledge, learning, and

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<sup>1</sup> The Gospel of Matthew (six times) 4:19; 8:22; 9:9; 16:24; 19:21, 28; The Gospel of Mark (four times) 1:17; 2:14; 8:34; 10:21; The Gospel of Luke (five times) 5:27; 9:23, 59; 18:22; The Gospel of John (seven times) 1:43; 8:12; 10:27; 12:26; 13:36; 21:19, 22.

Subj: REQUEST TO GRANT RELIGIOUS ACCOMMODATION ICO Servicemember

practice available, the Navy has chosen not to follow the statues emplaced by Congress, the Navy has chosen not to follow the Constitution, and above all it has chosen not to follow HIM. I on the other hand have taken the path less traveled and made the decision to follow HIM through the faithful practice of my religion and my adherence to the very principles of citizenship documented in this Country's founding papers. It would be easier to have gone along with the masses, in the same manner each of my supposed leaders has, yet there would be no reward for such action.

11. Under both DoD Instruction 1300.17 and 42 U.S.C. §§ 2000bb et seq. the government can only burden religion if the government demonstrates that the application of the burden to me: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. The Department of Defense is unable to satisfy this burden of strict scrutiny. Even if a compelling interest is assumed in protecting the health and readiness of the force, the Navy has already surpassed COVID-19 immunization rates of the general public and the highest estimates needed to establish herd immunity. Additionally, the currently available COVID-19 immunizations are not the least restrictive means of ensuring a healthy and ready force. Numerous other avenues exist, such as natural immunity to COVID-19 through recovery from the disease; reducing or limiting co-morbidities—with the most prevalent being obesity; common over the counter, readily available methods of maintaining health such as regular regimens using Vitamin C, Vitamin D, and Zinc, among others; and some of the various methods employed by the Navy and the DoD to maintain a ready force throughout 2020 and 2021 before the COVID-19 immunizations were available. After acknowledging herd immunity—through either natural immunity or high immunization rates, the average age and health of the military population, and the corresponding risk of COVID-19, there is not a compelling reason to vaccinate the entire force—over religious objection. Further, the likelihood of recovery—without hospitalization or serious complications—for someone in my age category with minimal potential co-morbidities, obviates any medical necessity for immunizations tainted by use of aborted fetal cells. Consistent with force readiness and mission accomplishment, including consideration of potential medical risks to others in the unit, this waiver will have little to no adverse effect due to the already achieved high immunization rate and the low overall risk category of the military. Since the government will be unable to satisfy its burden of strict scrutiny a waiver for my sincerely held religious beliefs is appropriate.

12. I, Servicemember, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

13. That is the Oath I took, it is the same Oath each officer in my chain of command has taken, including both VADM Nowell and ADM Gilday. This Oath requires us to uphold the Constitution regardless of where the enemies originate. The enemies to the Constitution are those demanding we violate the very tenets of our religion by engaging in sin through desecrating the value of human life, ignoring informed consent, and forcing unwanted and unwarranted medical treatment on individuals without consideration of their sincerely held religious beliefs. As I boldly continue to live that Oath, despite mistreatment, despite ridicule, despite adverse action, despite loss of the benefits I have labored to secure for my family, I implore you to do the same. Not only because it



Subj: REQUEST TO GRANT RELIGIOUS ACCOMMODATION ICO Servicemember

is the correct course of action, but because as the leader of this Navy you are required to model the Oath for all your subordinates. What purpose or good is served by swearing an Oath only to discard the Oath when it seems personally convenient?

14. The Oath does not end by asking for assistance from the medical community, or a group of politicians, or even the community of sailors. This Oath ends with appeal to One who is the source of all power and authority: "So help me God." I stand by that appeal and in confidence to the Creator know that despite any personal opinion you must grant this religious accommodation in order to be compliant with the law.

15. "As for me and my house, we will serve the Lord."<sup>2</sup> I pray for you, and I pray your decision is guided by proper authority and consideration of the principles of religion, in accordance with the law preventing you from substantially burdening the free exercise of religion. May the one true God open your heart and your mind to fulfill your responsibility of leadership and enforce the Constitution the American people trust you to uphold.

16. Military readiness will be more detrimentally impacted through the permanent loss of my service and experience than any mere theoretical loss of a temporary quarantine due to infection. Refusing to permit me to participate fully in my assignments is a self-imposed punishment upon the Navy and not one required by any law or foreign agreements. Separating me from the Navy for the false allegation of a failure to follow an alleged lawful order will result in absolute loss of the knowledge and ability I bring to the Navy team. One cannot argue, without being hypocritical, that the people are the most important asset of the Navy, while at the same time separating those who are willing to stand up for their beliefs and their Oath at all costs.

17. I may be contacted at [servicemember@us.navy.mil](mailto:servicemember@us.navy.mil).

Signature block

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<sup>2</sup> Joshua 24:15

Subj: REQUEST TO GRANT RELIGIOUS ACCOMMODATION ICO Servicemember

Date

From: Servicemember  
To: CHIEF OF NAVAL OPERATIONS (CNO) N1  
Via: COC

Subj: REQUEST FOR RELIGIOUS ACCOMMODATION ICO servicemember

Ref: (a) MILPERSMAN 1730-020  
(b) DoD Instruction 1300.17  
(c) BUMEDINST 6230.15B  
(d) SECNAVINST 1730.8  
(e) Religious Freedom Restoration Act of 1993, 42 U.S.C §§ 2000bb et. seq.  
(f) Archdiocese for the Military Services, USA ltr from The Most Reverend Timothy P. Broglio dtd 19 Aug 2021  
(g) DoD Directive 5124.02  
(h) BUPERSINT 1730.11 A

1. Servicemember requests a religious exemption protecting him against the mandatory receipt of immunizations tainted by the immoral act of abortion in any stages of development, procurement, testing, or delivery to include the current FDA authorized or approved immunizations designed to protect against COVID-19 pursuant to MILPERSMAN 1730-020. These types of immunizations use and/or support the cause of abortion for the production of medical treatment in violation of his sincerely held religious belief that any cooperation in abortion offends the right to life for all persons.

2. “Eternity, it really is not something at the end; it is that which influences every moment of the now.” Fulton Sheen, *The Wisdom of Fulton Sheen*. From its origins, the Christian faith centers on Eschatology which is the concern about the “last things.” It is part of my sincere religious beliefs that, as part of the creed which I profess daily, I need to prepare my soul for its human destiny, judgment, resurrection of the body, heaven, purgatory, and hell.<sup>1</sup> Eternal life is only granted to those who die in the grace and friendship of God.<sup>2</sup> As Pope Saint John Paul II never tired of proclaiming to the world, “the Church has always taught and continues to teach that the result of human procreation, from the first moment of its existence, must be guaranteed that unconditional respect which is morally due to the human being in his or her totality and unity as body and spirit.”<sup>3</sup> I cannot receive immunizations that are complicit in abortion, through the use of these cells whether they are used for the development and/or simply just testing or verification. Further, I cannot in good conscience prepare myself for my final judgment if I choose to cooperate in this moral evil. As cooperation would make me complicit with the sin of the manufacturers an accommodation is appropriate in light of my sincerely held religious beliefs.

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<sup>1</sup> Catechism of the Catholic Church, Nicene Creed

<sup>2</sup> Id. 988 & 1020

<sup>3</sup> *Evangelium Vitae*, no. 60; *Moral Considerations Regarding The New COVID-19 Vaccines*. Chairmen of the Committee on Doctrine and the Committee of Pro-Life Activities, United States Conference of Catholic Bishops, 11 December 2020.

3. “According to Catholic moral teaching and tradition, it is morally unacceptable for an individual or institution to contribute to and influence an immoral act committed by another in a way that shows they approve or intend the immoral act. It is also wrong for them to contribute components that are essential to the immoral act, even if they do not intend the act of the other, and to lead others by example to engage in an immoral act.”<sup>4</sup> My sincerely held religious belief, conscience, and moral principle sustains the understanding that abortion and any concomitant fetal tissue research and experimentation is gravely immoral. Further, this medical research is contrary to the law of Christ and the order of nature. I do not and cannot condone any aspect of abortion and consequently must reject the use of aborted babies in the production of any vaccine.<sup>5</sup> In furtherance of this purpose, I live every aspect of my life to champion the sanctity of life. My family always has and openly welcomes children as a blessing from God. We do not use contraceptives or in any manner inhibit the openness of life through marital acts. I do not receive other immunizations that I know are tainted by abortion. It would be hypocritical of me to attempt to justify the receipt of any immunization tainted by abortion by only considering diminished participation in the evil of abortion.<sup>6</sup> As I cannot condone any research or production at the expense of an aborted child of God, an accommodation is appropriate in light of my sincerely held religious beliefs.

4. Guidance from the Catholic Church states: “[w]e maintain that the decision to receive the COVID-19 vaccine remains one of individual conscience in consultation with one’s healthcare provider. We also maintain that in no way does the Church’s position diminish the wrongdoing of those who decided to use cell lines from abortions to make vaccines.”<sup>7</sup> The guidance goes on to further state, a sentiment echoed by our own leader of faith, The Most Reverend Timothy P. Broglio, “vaccination, is not as a rule, a moral obligation, and that, therefore, it must be voluntary.” Thus, it is fundamental that each person must answer for his own actions when preparing his conscience for final judgment. Even if others who share the same or similar faith may draw a different conclusion, the matters of conscience are so important that each individual is responsible for his own actions. I have been an active participating member of my church since baptism as an infant. Along with my family we attend mass on weekends, holydays of obligation, and as many weekday masses as possible. We are committed to daily prayer through morning offers, prayers before meals, offering the Rosary together as a family every day for an end to abortion, and I carry a Rosary in my pocket at all times except when exercising. Further I have been a participating member of the Knights of Columbus beginning with my service as a Columbian Squire in middle school. Then, I transitioned to the Knights of Columbus as an 18-year-old and I earned my 4<sup>th</sup> Degree in the Knights of Columbus in 2009 committing myself to the principles of being a champion for life. As a 4<sup>th</sup> Degree Knight I have served in several leadership positions within this organization and have always been a visible recruit for the

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<sup>4</sup> Catholic Moral Teaching and Tradition on COVID-19 Vaccines, <https://www.catholic.org/CCC-vaccine-moral-acceptability>; accessed 26 July 2021

<sup>5</sup> Congregation for the Doctrine of Faith. *Dignitas Personae*. September 8, 2008, cf. nn. 34 and 35. [T]he use of human embryos or fetuses as an object of experimentation constitutes a crime against their dignity as human beings who have a right to the same respect owed to a child once born, just as to every person”.

<sup>6</sup> “For those who argue that participation becomes licit if receiving the vaccine is looked at as a temporary solution to a significant public health danger, they should know that it is not temporary but expanding and that it will be forced regardless of whether it helps public health or not.” Fr. Michael Copenhagen *Restore Ye to Its Owners: on the Immorality of Receiving Vaccines Derived From Abortion*.

<sup>7</sup> <https://nolacatholic.org/news/a-statement-regarding-the-janssen-johnson-johnson-covid-19-vaccine>; Accessed 3 March 2021.

sanctity of life. The concerns of my conscience prevent me from accepting anything less than full protection of life from the moment of conception until natural death.

5. I sincerely believe the importance of life begins at the moment of conception due to our creation in the image and likeness of God. “Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations.” (Jer 1:5). Cell lines procured from aborted children of God have been used by all the currently available or FDA approved/authorized COVID-19 immunizations, even if not directly incorporated inside the vial.<sup>8</sup> Both Pfizer and Moderna COVID-19 immunizations use Human Embryonic Kidney (HEK-293) cells, an aborted fetal cell line, as the medium of expression for COVID spike proteins and as an efficacy verifier for “in vivo” production of proteins. Johnson & Johnson uses Human Embryonic Retinal (PER.C6) cells, also an aborted fetal cell line, to propagate the adenoviral vector portion of their vaccine. Factually and quite simply, these COVID-19 immunizations do not exist except for their use of aborted children of God. This experimentation or development in any form always constitutes a grave moral disorder, at least on the part of those directly involved and may constitute grave harm for those who participate.<sup>9</sup> “It is immoral to produce human embryos intended for exploitation as disposable biological material.”<sup>10</sup> The development,<sup>11</sup> employment, testing,<sup>12,13</sup> and economic effects of the vaccine directly support scientific exploitation that does not protect or preserve the rights to life, health, and safety for all, thus increasing the likelihood that human embryos will be used, harvested, developed, or maintained for biological experimentation. Since the production of the currently available COVID-19 immunizations violate my sincerely held religious beliefs through their contribution to and support of abortion, an accommodation from the mandatory receipt of the currently approved COVID-19 immunizations as well as other mandatory vaccinations that are tainted by abortion is appropriate.

6. “So God created man in his own image, in the image of God he created him; male and female he created them.” Gen 1:27. This belief in the dignity of human life, made in the image and likeness of God, is central to my religion and therefore consistent with the definition of religious practice.

<sup>8</sup> <https://www.nejm.org/doi/full/10.1056/NEJMoa2022483>; Moderna vaccine uses HEK 293 aborted fetal cells in design, development, protein production and testing. Accessed 3 March 2021; <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetacgi/html%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=10,669,322.PN.&OS=PN/10,669,322&RS=PN/10,669,322>; Biotech and Pfizer vaccine use K562 cells in development of the protein and HEK-293 cells in the testing of the vaccine. Accessed 3 March 2021; <https://www.jni.com/johnson-johnson-announces-a-lead-vaccine-candidate-for-covid-19-landmark-new-partnership-with-u-s-department-of-health-human-services-and-commitment-to-supply-one-billion-vaccines-worldwide-for-emergency-pandemic-use>; this vaccine directly uses cell lines from aborted fetal tissue. Accessed 3 March 2021.

<sup>9</sup> <https://ctk-tampa.org/2021/01/12/to-take-the-vaccine-or-not-to-take-the-vaccine/> “[Formal cooperation with evil] is always wrong and can never be justified.”

<sup>10</sup> CDF *Donum vitae* I, 5.

<sup>11</sup> <https://www.jni.com/johnson-johnson-announces-a-lead-vaccine-candidate-for-covid-19-landmark-new-partnership-with-u-s-department-of-health-human-services-and-commitment-to-supply-one-billion-vaccines-worldwide-for-emergency-pandemic-use>; this vaccine directly uses cell lines from aborted fetal tissue. Accessed 3 March 2021.

<sup>12</sup> <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetacgi/html%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=10,669,322.PN.&OS=PN/10,669,322&RS=PN/10,669,322>; Biotech and Pfizer vaccine use K562 cells in development of the protein and HEK-293 cells in the testing of the vaccine. Accessed 3 March 2021.

<sup>13</sup> <https://www.nejm.org/doi/full/10.1056/NEJMoa2022483>; Moderna vaccine uses HEK 293 aborted fetal cells in design, development, protein production and testing. Accessed 3 March 2021.

“The inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by society and the state; they belong to the human nature and are inherent in the person by virtue of the creative act from which the person took his origin. Among such fundamental rights one should mention in this regard every human being’s right to life and physical integrity from the moment of conception until death.”

CDF, *Donum Vitae III*; Catechism of the Catholic Church 2273.<sup>14</sup> We are cautioned against justifying an action based on civil perception or community acceptance of the issue in the Gospel of Mark: “You disregard God’s commandment but cling to human tradition.” Mark 7:8. God, through the church, has always taught us that life is sacred from conception to natural death without exception, including societal views or excuses for the heinous act of murder of the most innocent. The development of the currently available COVID-19 immunizations do not protect the right of every human being’s right to life as they show a concession from the state that medical research can be important enough to justify the use of human embryos to create vaccinations. In addition to the above patterns which demonstrate my sincerity as a champion of life for all, I continually advocate for policy positions which support life whether through monetary donation, public witness, or written advocacy using legal and congressional channels. In light of my sincerely held religious beliefs that immunizations tainted by abortion do not maintain the image of God in the life of every conceived being, nor follow his lasting commandment to champion life at all costs, an accommodation is appropriate.

7. If it is possible to choose among a number of equally safe and effective COVID-19 vaccines, the vaccine with the least connection to abortion-derived cell lines should be chosen.<sup>15</sup> This official statement from the Secretariat of Pro-Life Activities further cements the belief that I cannot receive any of the currently available COVID-19 immunizations, or other immunizations tainted by the use of aborted fetal cells. There are COVID-19 immunizations in development which are not tainted by abortion.<sup>16</sup> The U.S. Conference of Catholic Bishops has even petitioned the Food and Drug Administration to approve a COVID-19 immunization that does not violate the tenets of the Catholic Church.<sup>17</sup> This is a position with which I strongly advocate, but neither the medical community nor the FDA has chosen to recognize this strongly held commitment to life and submit for and/or approve a COVID-19 immunization which would be morally acceptable for reception by a sincere and devout pro-life Catholic. As I stand for the right to life in all aspects and at all stages of life, I cannot receive an immunization which

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<sup>14</sup> “The inalienable right to life of every innocent human individual is a constitutive element of a civil society and its legislation.”

<sup>15</sup> “Answers to Key Ethical Questions About COVID-19 Vaccines” Secretariat of Pro-Life Activities, January 2021. “As of the date of this document, there are no available COVID vaccine options that are completely free from a connection to abortion-derived cell lines. But there are some COVID vaccines in development that may end up free of such connection.”

<sup>16</sup> *COVID-19 Vaccine Candidates and Abortion-Derived Cell Lines*. Charlotte Lozier Institute.

<https://s27589.pcdn.co/wp-content/uploads/2020/12/COVID-19-Vaccine-Candidates-and-Abortion-Derived-Cell-Lines.pdf>

<sup>17</sup> *Moral Considerations Regarding The New COVID-19 Vaccines*. Chairmen of the Committee on Doctrine and the Committee of Pro-Life Activities, United States Conference of Catholic Bishops, 11 December 2020.

desecrates the life of another human being, no matter the degree of participation, because my soul is what I must answer for at the end of my life.

8. Amendment I of the United States Constitution protects the rights of the people to the free exercise of religion.<sup>18</sup> DoD Instruction 1300.17 Sec 1.2 (a) grants all service-members the right to observe the tenets of their religion. Pursuant to these established rights, I raise a religious objection to forced receipt of any immunization or medical treatment tainted by a connection to the use of aborted fetal cells on the basis that receipt of any of these immunizations is a violation of my sincerely held matter of conscience in protecting the right to life at all stages. A policy of mandatory immunization substantially burdens my free exercise of religion because it places substantial pressure, through moral coercion, to engage in conduct contrary to my sincerely held religious belief.<sup>19</sup> Under the provisions of the Constitution and DoD Instruction 1300.17 an accommodation is appropriate to protect my right to the free exercise of my religion.

9. Under both DoD Instruction 1300.17 and 42 U.S.C. §§ 2000bb et seq. the government can only burden religion if the government demonstrates that the application of the burden to me: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. The Department of Defense is unable to satisfy this burden of strict scrutiny. Even if a compelling interest is assumed in protecting the health and readiness of the force, the Navy has already surpassed COVID-19 immunization rates of the general public and the highest estimates needed to establish herd immunity.<sup>20</sup> Additionally, the currently available COVID-19 immunizations are not the least restrictive means of ensuring a healthy and ready force. Numerous other avenues exist, such as natural immunity to COVID-19 through recovery from the disease; reducing or limiting co-morbidities—with the most prevalent being obesity;<sup>21</sup> common over the counter, readily available methods of maintaining health such as regular regimens using Vitamin C, Vitamin D, and Zinc, among others; and some of the various methods employed by the Navy and the DoD to maintain a ready force throughout 2020 and 2021 before the COVID-19 immunizations were available. After acknowledging herd immunity—through either natural immunity or high immunization rates, the average age and health of the military population, and the corresponding risk of COVID-19, there is not a

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<sup>18</sup> “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of religion thereof...”

<sup>19</sup> *Religious Freedom Restoration Act* 42 U.S.C. §§ 2000bb et. seq., 1993: “[Government] is prevented from substantially burdening a person’s exercise of religion even if the burden results from a rule of general applicability...”

<sup>20</sup> Recent reports show that the Navy has achieved an 85% COVID-19 vaccination rate. As these are the publicly available numbers, the actual percentage is likely to be even higher.

<sup>21</sup> Obesity is a leading cause of death in America before COVID, and is a major comorbidity in many if not most of all US COVID deaths. See also: Obesity rarely listed as cause of death for obesity-related illness (healio.com); accessed 27 February 2021; <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> accessed 3 April 2021; *Severe obesity, increasing age and male sex are independently associated with worse in-hospital outcomes, and higher in-hospital mortality, in a cohort of patients with COVID-19 in the Bronx, New York*. *Metabolism* Palaiodimos L, Kokkinidis DG, Li W, Karamanis D, Ognibene J, Arora S, Southern WN, Mantzoros CS. 2020 Jul;108:154262. doi: 10.1016/j.metabol.2020.154262; *Obesity and mortality of COVID-19. Meta-analysis*. *Obes Res Clin Pract*. Hussain A, Mahawar K, Xia Z, Yang W, El-Hasani S. 2020 Jul-Aug;14(4):295-300. doi: 10.1016/j.orcp.2020.07.002; *Obesity is the comorbidity more strongly associated for Covid-19 in Mexico. A case-control study*. Eduardo Hernández-Garduño. *Obes Res Clin Pract*. 2020 July-August; 14(4): 375–379. Published online 2020 Jun 12. doi: 10.1016/j.orcp.2020.06.001

compelling reason to vaccinate the entire force—over religious objection. Further, the likelihood of recovery—without hospitalization or serious complications—for someone in my age category with minimal potential co-morbidities, obviates any medical necessity for immunizations tainted by use of aborted fetal cells. Consistent with force readiness and mission accomplishment, including consideration of potential medical risks to others in the unit, this accommodation will have little to no adverse effect due to the already achieved high immunization rate and the low overall risk category of the military. Since the government will be unable to satisfy its burden of strict scrutiny an accommodation for my sincerely held religious beliefs is appropriate.

10. My sincerely held religious convictions prevent receipt of any vaccinations tainted by the use of aborted fetal cells, to include the currently approved and/or authorized COVID-19 immunizations. Therefore, an accommodation—exempting me from forced receipt of vaccinations tainted by aborted fetal cells—should be granted.

11. I certify that I understand that any approved or partially approved accommodation may not be appropriate for future duty to which I may be assigned, including operational, non-operational or training command(s), and may be suspended or withdrawn in accordance with reference (h).

12. I request an accommodation of the currently authorized and/or approved COVID-19 immunization and other abortion tainted immunizations. I hereby state that my request is based upon the above set forth sincere religious belief in the sanctity of life from conception until natural death. I acknowledge having received the following counseling:

- A. Failure to obtain immunization could pose some additional risk to my health upon exposure to disease.
- B. In the event of foreign travel, I may be detained during travel across foreign borders due to international health regulations.
- C. If granted, an accommodation may be revoked by my commanding officer if I am at imminent risk of disease or due to international health regulations.
- D. If my job duties change, I may need to route a new request.
- E. If I am at my permanent change of station while my accommodation is in effect, I may need to route a new request if my job duties change, my geographic region exposes me to the aforementioned disease, or other factors exist that could put me at imminent risk of disease.

Signature block

Date

From: Servicemember  
To: Chain of command

Subj: NOTIFICATION OF EXTENSION OF TIMELINE FOR RESPONSE TO  
RELIGIOUS ACCOMMODATION REQUEST DENIAL ICO servicemember BY  
REASON OF PRIVACY REQUEST FOR RECORDS ICO servicemember

Ref: (a) 42 U.S.C §2000bb-1  
(b) DoD Instruction 1300.17 of 1 Sep 20  
(c) SECNAVINST 1730.8B  
(d) Privacy Act of 1974 (5 U.S.C. § 522a)  
(e) DoDI 5015.02, Change 1 of 17 Aug 17  
(f) DoDI 5400.11, Change 1 of 8 Dec 2020  
(g) SECNAVINST 5211.5F

Encl: (2) Privacy act Request  
(3) Certified mailing receipt  
(4) Receipt and acknowledgment of Enclosure (1) RA denial

1. I received my religious accommodation request denial letter from the Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1), on \_\_\_\_\_. The letter directed I begin COVID 19 vaccination series no later than five days from receipt of that letter. However, I intend to appeal DCNO N1's response to the Chief of Naval Operations (CNO) per references (b) and (c) thus necessitating extension of that alleged timeline.

2. I hereby notify you that I require an extension of the imposed alleged five day deadline for vaccination while I appeal to CNO. Integral to this appeal is the inclusion of and information from the documents relied upon by DCNO N1 in denying my religious accommodation request. Therefore, I have submitted a Privacy Act Request to the Privacy Act Officer for DCNO N1. I will be unable to draft a properly informed appeal until receipt of those documents. Therefore, any deadline for vaccination shall be tolled until my receipt of those documents, submission of my appeal to CNO, and final decision on my religious accommodation request from the appropriate highest authority.

3. Per enclosure (1), I submitted a Privacy Act Request to obtain all relevant and supporting documentation considered in making a determination on my religious accommodation request. I am unable to control the timelines of the office responsible for response of the requests and therefore cannot provide an exact date my appeal will be submitted. Additionally, I will seek legal counsel to review and advise on my appeal.

4. It is evident that short timelines cannot be placed on the exercise of my Constitutional rights without due process, and as such, I require time to exercise my rights to counsel over this matter. I have not received the necessary unredacted copies of the information which the DCNO relied upon in making his decisions and therefore cannot adequately generate an



Subj: NOTIFICATION OF EXTENSION OF TIMELINE FOR RESPONSE TO RELIGIOUS ACCOMMODATION REQUEST DENIAL ICO Servicemember BY REASON OF PRIVACY REQUEST FOR RECORDS ICO Servicemember

informed appeal in response. I rebut any presumption that this can be construed as a denial or refusal. Any attempt to change my status from 'pending religious accommodation' to 'refuser' without first allowing me the exercise of my right to counsel and my right to make an informed appeal response with the necessary documentation will be considered a knowing and intentional violation of my rights.

5. Additionally, per your previous pattern in denying my requests to reschedule or denying my muster for rescheduled drills I am unable to draft my appeal response until the drill weekend following my receipt of the above requested documents. As it is my right to request religious accommodation pursuant to my religion and status as a service member, I am obligated to be on orders at the time I draft, research, and respond to official correspondence regarding my rights as a servicemember. Additionally, I must be on orders when receiving legal assistance from the Department of the Navy. In lieu of waiting until the next drill weekend I will accept your written confirmation, to the below e-mail, approving reschedule(s) for the use of any necessary drills for the purpose of submitting my religious accommodation request appeal to the CNO. Without such a response my appeal must be delayed until the indicated drill weekend.

6. If you have any questions, please reach me at by email at [servicemember@navy.mil](mailto:servicemember@navy.mil).

Signature block



DATE

From: Servicemember  
To: Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1), Privacy Act Officer

Subj: PRIVACY ACT REQUEST FOR ACCESS TO RECORDS ICO Servicemember

Ref: (a) Privacy Act of 1974 (5 U.S.C. § 522a)  
(b) DoDI 5015.02, Change 1 of 17 Aug 17  
(c) DoDI 5400.11, Change 1 of 8 Dec 2020  
(d) SECNAVINST 5211.5F

Encl: (1) RA Denial Letter

1. Pursuant to references (a)-(d), I hereby request a hard or electronic copy of any and all records pertaining to my religious accommodation file associated with my request for religious accommodation request maintained at your agency. I am requesting this documentation as it pertains to me and my religious accommodation file and is necessary to make an informed and adequate appeal response. I further request expedited processing because failure to obtain the records on an expedited basis could result in my loss of substantial due process.

2. To further describe the requested records, I am requesting any and all documentation used as a reference or for review and consideration in the DCNO (N1)'s determination and response to my religious accommodation request. These documents include, but are not limited to, the references listed on enclosure (1), all enclosures or endorsements received with or in connection to enclosure (1), vaccination and COVID-19 statistics and medical data considered or associated with the determination you made that vaccination for COVID-19 is the least restrictive means available to preserve the Department of Defense's alleged compelling interest, higher guidance to include any memorandums or references directing or advising a course of action or conclusions for COVID-19 related religious accommodation requests, references, instructions, NAVADMINs, ALNAVs, spreadsheets and/or trackers associated with decision-making, spreadsheets or trackers documenting the process and timeline of enclosure (1) including those from commands subordinate to your review, my personnel record information, and any other relevant information that was a part of my request in this process.

3. After reviewing references (a) – (d) I have found that no exemptions apply, outside of legal counsel to the reviewing authority. Should you require additional information or further clarification to process this request, please contact me via email at [servicemember@navy.mil](mailto:servicemember@navy.mil).

Signature block

Date

From: Servicemember  
To: Chief of Naval Operations  
Via: COC

Subj: RELIGIOUS ACCOMMODATION APPEAL ICO servicemember DENIED  
REQUESTED RELIGIOUS ACCOMMODATION DATED 5 OCTOBER 2021

Ref: (a) DoD Instruction 1300.17 of 10 February 2009  
(b) SECNAVINST 1730.8  
(c) BUPERSINST 1730.11A  
(d) Religious Freedom Restoration Act of 1993, 42 U.S.C §§ 2000bb et. seq.  
(e) MILPERSMAN 1730-020  
(f) BUMEDINST 6230.15B  
(g) DoD Directive 5124.02

Encl:

- (1) My ltr of 1 Sep 21
- (2) Denial
- (3) Broglio's statement

1. I hereby request, through appeal, approval of my requested religious accommodation. My religious accommodation request (encl (1) dated 1 September 2021, was denied 5 October 2021 (encl (2)), and returned through my chain of command, where I received notified of denial on 12 October 2021 by Captain?? Spore.

2. My firmly, conscientiously, and sincerely held Roman Catholic beliefs have not decreased since submission of my original request. I object with my properly formed and sound conscience to abortion tainted vaccines, necessitating my need to seek, and the Navy's need to grant my most reasonable requested religious accommodation. My letter of 1 September 2021, included as an enclosure, rather sufficiently demonstrates a sincere faith In addition to my original request it is significant to note the recent statement from the Catholic faith leader of the U.S. Military. , Our own Archbishop, The Most Reverend Timothy P. Broglio is in the most relevant billet situation to understand both the position of the Church Militant and the Government. He stated in unequivocal terms that:

*The denial of religious accommodations, or punitive or adverse personnel actions taken against those who raise earnest, conscience-based objections, would be contrary to federal law and morally reprehensible.<sup>1</sup>*

Not only does this statement elucidate the position of someone seeking a religious accommodation in conscience, it also firmly demonstrates the clear and necessary responsibility

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<sup>1</sup> Timothy P. Broglio. Archbishop (2021, Oct 12). *Statement on Coronavirus Vaccines and the Sanctity of Conscience*. <https://s3.amazonaws.com/files.milarch.org/archbishop/abp-statement-on-covid19-vaccines-and-conscience-12oct2021.pdf>

Enclosure (1)

of those who adjudicate such decisions. As a practicing Roman Catholic, with sincerely held religious beliefs protecting the right to life of the unborn and the understanding that my religious freedom protects me from forced receipt of medical treatment that violates my conscience this request must be granted.

3. The requirement of Title 42 United States Code (U.S.C) instructs the DoD Components to normally accommodate practices of a Service member based on a sincerely held religious belief.<sup>2</sup> 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.<sup>3</sup> Thus, by federal law and DoD/DoN instruction the only acceptable instances where my the DoD could substantially burden my religious beliefs is when there is a compelling Governmental interest and only then, through the least restrictive means of achieving that interest. The burden of proof in strict scrutiny analysis rests with the Government, a burden the Government cannot satisfy in this case.

### Compelling Governmental Interest

6. It is not a foregone conclusion that the COVID-19 vaccination campaign is a compelling Governmental interest or even in the best interests of the military. Rather, the compelling Government interest is to maintain the safety and health of its Armed Forces. Three specific instances that cover broad ground suggest that hesitation, caution, and prudence ought to be exercised instead of mass military vaccination from a relatively innocuous disease, especially as related to the military population. Without knowledge or foresight of other health risks to the force or potential future abortion-tainted shots that may be required during my military tenure, I will restrict my analysis to the current problematic case at hand, but maintain my religiously grounded opposition to the use of any abortion-tainted vaccines.

7. First, from a national security perspective, 100 percent COVID-19 vaccination is likely to cause more harm than potential benefit., “[T]he present COVID-19 vaccines may compromise U.S. national security due to the unknown extent of serious vaccine complications.”<sup>4</sup> Indeed, VAERS data corroborates this credible potential of “serious complications.” The database documents over 800,000 COVID-19 Vaccine Adverse Events, with almost 17,000 resulting in death.<sup>5</sup> Moreover, not only do the shots come with significant risks to national security, but they also present very questionable efficacy. Two studies published this month in the prestigious New England Journal of Medicine document both “a significant waning” of antibody response<sup>6</sup>, and that “effectiveness declines to reach approximately 20 percent in months five through seven after

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<sup>2</sup> DoDI 1300.17. (2009, Feb 10). *Accommodation of Religious Practices Within the Military Services*. p.2

<sup>3</sup> *Ibid*, p.4

<sup>4</sup> Furman, J. CDR (2021, Sep 15). *Naval Commander Warns that Military Vaccine Mandate Poses Threat to National Security*. <https://www.thethinkingconservative.com/naval-commander-warns-that-military-vaccine-mandate-poses-threat-to-national-security/>

<sup>5</sup> OpenVAERS. <https://openvaers.com/> Retrieved 15 October 2021.

<sup>6</sup> Levin, Einav G. et al. (2021, Oct 6). *Waning Immune Humoral Response to BNT162b2 Covid-19 Vaccine over 6 Months*. [https://www.nejm.org/doi/full/10.1056/NEJMoa2114583?query=featured\\_home](https://www.nejm.org/doi/full/10.1056/NEJMoa2114583?query=featured_home)

the second dose.”<sup>7</sup> Furthermore, Dr. Rochelle Walensky, the Director of the Center for Disease Control (CDC) has stated in part that

*And even though our vaccines are currently working well to prevent hospitalizations, we are seeing concerning evidence of waning vaccine effectiveness over time and against the Delta variant,*

and

*Additionally, reports from our international colleagues, including Israel, suggest increased risk of severe disease amongst those vaccinated early.*<sup>8</sup>

Clearly, these shots have substantially dangerous consequences and their effectiveness in a military setting or elsewhere is questionable at best.

8. Secondly, DoD doctors, whose profession is to know and care for us aviators have documented *extensive* severe complications in individuals after receiving the COVID-19 vaccine, directly echoing the information contained in the VAERS database. Some of these severe complications include, but are not limited to, myocarditis, pericarditis, arrhythmias, and shingles.<sup>9</sup> While correlation is not causation, these side effects demand attention for they inexplicably occur in an extremely healthy age group which does not normally experience these issues. Occurrence of these issues is a concern which has the potential to cause catastrophes in the skies. These significant abnormalities should be cause for at least pause and potentially even alarm.

9. Finally, it is the standard of the Federal Aviation Administration (FAA) that their own Medical Examiners are not to issue any pharmaceuticals or therapeutic medications which the Food and Drug Administration (FDA) has approved within the preceding twelve months, stating that “this observation period allows time for uncommon, but aeromedically significant, adverse effects to manifest themselves.”<sup>10</sup> By definition and application of that rule, no aviator can be issued any of the COVID-19 vaccines. The COVID-19 vaccines are prohibited by this timeline, because only one COVID-19 vaccine is approved by the Food and Drug Administration, Comirnaty, authorized by the FDA less than two months ago, is not yet available in production and the other three available COVID-19 vaccines have not received FDA approval.<sup>11</sup> Pilots and Naval Flight Officers are engaged in the aviation profession, and in most cases, where there

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<sup>7</sup> Chemaitelly, Hiam M.Sc. et al. (2021, Oct 6). *Waning of BNT162b2 Vaccine Protection against SARS-CoV-2 Infection in Qatar*. [https://www.nejm.org/doi/full/10.1056/NEJMoa2114114?query=featured\\_home](https://www.nejm.org/doi/full/10.1056/NEJMoa2114114?query=featured_home)

<sup>8</sup> The White House. (2021, Aug 8). *Press Briefing by White House COVID-19 Response Team and Public Health Officials*. <https://www.youtube.com/watch?v=ciVGAPuruoQ> Retrieved 15 October, 2021.

<sup>9</sup> Long, T. LTC, MD, MPH, FS. (2021, Sep 24). *Affidavit of Ltc. Theresa Long M.D. in support of a motion for a preliminary injunction order*. [https://americasfrontlinedoctors.org/2/wp-content/uploads/2021/09/AFFIDAVIT\\_OF\\_LTC2\\_Long.pdf](https://americasfrontlinedoctors.org/2/wp-content/uploads/2021/09/AFFIDAVIT_OF_LTC2_Long.pdf) Retrieved 15 October, 2021.

<sup>10</sup> Federal Aviation Administration (FAA). (2021). [https://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/ame/guide/pharm/dni\\_dnf/](https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/pharm/dni_dnf/) Retrieved 15 October, 2021.

<sup>11</sup> Add FDA approval information here.

are not military specific exemptions, follow FAA guidelines as the standard. Specifically, the forced COVID-19 vaccination is an unnecessary risk for our aviators and violates the FAA's guidance. Taken together with the negative effects established in these points, it is readily demonstrated that the Government's compelling interest in a healthy and safe force is not achieved through mandated vaccinations that fail to provide 100% protection and instead cause the military to incur unnecessary risk.

10. Our Navy system is designed to produce sensible Officers. We are taught to balance risks, analyze less risky alternatives, develop and apply an ORM Matrices, and then make the most appropriate complex decisions based on understanding of acceptable risk. A well trained Officer, applying those skills, would ultimately conclude that mandatory COVID vaccination, especially without exceptions, is not a compelling governmental interest "of the highest order" to overbalance a legitimate claim to the free exercise of religion. This officer would instead discern the exact opposite, that more harm is being caused overall. A particular and incisively significant point of emphasis in the context of risk management supporting the previous claim is the analysis of the DoD's COVID-19 death rate. The value and dignity of human life cannot be diminished, but these deaths can be useful for determining acceptable risk. On Friday, August 20<sup>th</sup>, the military COVID death rate stood at 34 souls.<sup>12</sup> The Secretary of Defense signed his memorandum for mandatory shots four days later, the 24<sup>th</sup> of August. As of the 15<sup>th</sup> of October, there are now 67 military deaths from COVID.<sup>13</sup> **The keen observer notices that within just two months**, the number of military lives lost by COVID-19 doubled. Conversely, the military operated for 17 months through this pandemic, from March 2020 to August 2021, without any vaccine for half of that time and recorded 34 deaths. Yet, after the vaccine was made mandatory, the military death toll doubled, and in only 12% of the time it took to previously reach the same number. This is in stark contrast with the civilian population in America. The Military death rate was always significantly lower than the overall population until the COVID-19 vaccination was made mandatory. After the policy, the military, which proudly boasts a higher vaccination rate than the civilian population saw a rise in its death rate, while the civilian population did not suffer this same doubling of deaths. This is clear evidence that mandatory COVID-19 vaccination is not achieving the Government's compelling interest of safe and healthy force.

11. Further, the Government, using the definition of the Center for Disease Control (CDC), has made it virtually impossible to recognize deaths as occurring from the shot. The CDC considers an individual fully vaccinated "2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines."<sup>14</sup> However, according to VAERS data, over 90 percent of reported deaths happen *before* 14 days<sup>15</sup>, which means that *all* of those individuals count as

<sup>12</sup> Myers, Meghann. (2021, Aug 20) *Five troops, including first Marine, dead from COVID-19 during pandemic's deadliest week*. <https://www.militarytimes.com/news/your-military/2021/08/20/five-troops-including-first-marine-dead-from-covid-19-during-pandemics-deadliest-week/>

<sup>13</sup> U.S Department of Defense. (2021) <https://www.defense.gov/Spotlights/Coronavirus-DOD-Response/> Retrieved 15 October, 2021.

<sup>14</sup> Center for Disease Control (CDC). (2021, Oct 5). *When you have been fully vaccinated*. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>

<sup>15</sup> OpenVAERS. (2021, Oct 8). *VAERS COVID vaccine mortality reports*. <https://openvaers.com/covid-data/mortality> Retrieved 15 October, 2021.

“unvaccinated” according to the CDC and therefore similarly for the Navy. NAVADMIN 225/21, released October 13, 2021, disingenuously drives this narrative by stating

*Tragically, there have been 164 deaths within the Navy family due to COVID-19, far exceeding the combined total of all other health or mishap related injuries and deaths over the same time period. 144 of these were not immunized and 20 had an undisclosed immunization status.<sup>16</sup>*

Notice, how the Navy seems unwilling or incapable, possibly intentionally, of recognizing that the very definition of “fully vaccinated” disallows the possibility to acknowledge many of these recent deaths might have occurred *because* of the shot, not despite it, especially when considering how deaths exponentially increased and the only factor change was a mandatory shot. Additionally, it is prejudicial to a compelling government interest analysis, how the NAVADMIN uses language like “the Navy family” to bolster the death count for COVID, likely counting dependents and anyone else that falls under “family” but does not use the same measure for “all other health or mishap related injuries”, and flatly ignores the 91 Navy service members who died from suicide from Q2 CY-20 to Q2 CY-21.<sup>17</sup> It is unreasonable to suggest that the pandemic got worse after 17 months, and in fact so much worse that it overcame all that time and all those people who have already gotten the shot. It stands to reason therefore that the shot may instead be a cause of the increased problems, not a solution. Therefore, it is very much the Government’s compelling interest that in order to provide a healthy and safe force it should halt COVID-19 vaccinations, instead of the contrary.

### Least Restrictive

13. The government is able to deny religious accommodation requests, only when it satisfied the burden of proof that there are no other less restrictive means to accommodating my religious beliefs. The military has demonstrated an ability to maintain a healthy and ready force throughout the COVID-19 pandemic, including the time before vaccines were available. For example, the COVID-19 environment has persisted since approximately March 11<sup>th</sup> of 2020<sup>18</sup>, yet EUA was not granted until December of that same year<sup>19</sup>. Therefore, at least 9 months passed where the military achieved its mission and readiness goals, even to the point of allowing the Secretary of Defense to say we are most ready ever, when he was appointed. The ability to maintain mission readiness without vaccines, demonstrates the vaccine is not the least restrictive means. Additionally, before the vaccines were mandated for the military, the military endured less deaths related to COVID-19 than deaths related to operations, training accidents, and

<sup>16</sup> NAVADMIN 225/21. (2021, Oct 13). *Covid-19 Consolidated Disposition Authority (CCDA)*.

[https://www.mynavyhr.navy.mil/Portals/55/Messages/NAVADMIN/NAV2021/NAV21225.txt?ver=EfkG2psijl2X0IEKSid\\_5w%3d%3d](https://www.mynavyhr.navy.mil/Portals/55/Messages/NAVADMIN/NAV2021/NAV21225.txt?ver=EfkG2psijl2X0IEKSid_5w%3d%3d)

<sup>17</sup> Defense Suicide Prevention Office (DSPO). (2021). *Department of Defense (DoD) Quarterly Suicide Report (QSR) 2nd Quarter, CY 2021*.

[https://www.dspo.mil/Portals/113/Documents/TAB%20A\\_20210929\\_OFR\\_Rpt\\_Q2%20CY%202021%20QSR.pdf?ver=7vDYCTnjJZPN\\_qKR5pU9Q%3d%3d](https://www.dspo.mil/Portals/113/Documents/TAB%20A_20210929_OFR_Rpt_Q2%20CY%202021%20QSR.pdf?ver=7vDYCTnjJZPN_qKR5pU9Q%3d%3d) Retrieved 16 October 2021.

<sup>18</sup> National Library of Medicine. (2020, Mar 19). *WHO declares COVID-19 a pandemic*.

<https://pubmed.ncbi.nlm.nih.gov/32191675/>

<sup>19</sup> U.S. Food and Drug Administration (FDA). (2021, Aug 23). *FDA approves first COVID-19 vaccine*.

<https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>



suicides<sup>20</sup> As noted above, I do not have the foresight to predict potential future abortion-tainted shots that may be required during my military tenure and thus limit my analysis to the current circumstances of the approved COVID-19 vaccines. Denying my religious accommodation request, which would preserve my religious convictions and prevent me from being forced to receive an abortion-tainted vaccine, is without question not the least restrictive means necessary to further the government's compelling interest of maintaining a safe and healthy force.

15. The Navy's failure to consider natural immunity as an adequate form of protection of the health and safety of the force is clear ignorance of the least restrictive means. BUMEDINST 6230.15B states the standard acceptance of natural immunity through serologic or documented evidence and even suggests natural immunity is the preference for some immunizations within the medical community.<sup>21</sup> There is already a medical exemption code, "MI," that is for evidence of immunity (for example, by serologic antibody test) or documented previous infection.<sup>22</sup> Moreover, it is readily apparent that a prior COVID infection provides superior protection to the vaccine<sup>23,24,25,26</sup>, while, significantly for my religious accommodation, still meeting the Secretary's intent to maintain a "healthy and ready force" and preserving my religious liberty. The average military member is both young and healthy, especially when compared to our fellow citizens. The chance of recovery from COVID for all Americans hovers near 99.97%.<sup>27</sup> I myself am included in that greater than 99% recovery statistic. I have documented recovery from COVID-19 and possess significant COVID-19 antibody levels. Without a vaccine I have continued to contribute to my squadron's mission and operational readiness without experiencing death or serious hospitalization. Therefore, one of many less restrictive means of ensuring a safe and ready force is allowing accommodations for those who have verifiable natural immunity. The Navy's own standard of recognizing natural immunity is sufficient precedent to justify natural COVID-19 immunity as a less restrictive means of maintain a safe and healthy force, and prevents the Navy from incurring additional risk of the potential serious side effects of receiving the COVID-19 vaccine.

### Burden of Proof and Strict Scrutiny

17. The Navy's denial of my religious accommodation request is a violation of the Constitutional protection of my Frist Amendment rights, as and DoD Instruction. DoDI 1300.17 states, "in applying the standard in Paragraphs 1.2.e.(1) and 1.2.e.(2), the burden of proof is

<sup>20</sup> Maybe need another citation here for the operational and mishap deaths....

<sup>21</sup> BUMEDINST 6230.15B. (2013, Oct 7). *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*. [https://media.defense.gov/2017/Mar/16/2001717444/-1/-1/0/CIM\\_6230\\_4G.PDF](https://media.defense.gov/2017/Mar/16/2001717444/-1/-1/0/CIM_6230_4G.PDF). p.16.

<sup>22</sup> Ibid. p.34.

<sup>23</sup> New York University, (May 3, 2021). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3838993](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3838993)

<sup>24</sup> Israel, Ariel et. al. (2021, Aug 21). *Large-scale study of antibody titer decay following BNT162b2 mRNA vaccine or SARS-CoV-2 infection*. <https://www.medrxiv.org/content/10.1101/2021.08.19.21262111v1>

<sup>25</sup> Gazit, Sivan et al. (2021, Aug 24). *Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections*. <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1.full.pdf>

<sup>26</sup> Masia, Mar et al. (2021, Jul 20). *Durable antibody response one year after hospitalization for COVID-19: A longitudinal cohort study*. <https://pubmed.ncbi.nlm.nih.gov/34303083/>

<sup>27</sup> CDC. (2021). *United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction*. [https://covid.cdc.gov/covid-data-tracker/#cases\\_totaldeaths](https://covid.cdc.gov/covid-data-tracker/#cases_totaldeaths) Retrieved 16 October 2021.

placed upon the DoD Component, not the individual requesting the exemption.”<sup>28</sup> I have gone to great lengths, in good faith and in good conscience, to pursue a religious accommodation. Without needing to, I also supplied the government alternative less restrictive means of maintaining and healthy and safe force. What I received in reply, with disapproval, was zero evidence that the Government attempted to satisfy its requirements regarding burden of proof. Nor is there any indication that my request was adjudicated on an individual basis, much less even read. I have many brothers in faith who are seeking the same accommodation, and they received the *exact same response*, word for word. This demonstrates that we are being given a generalized assertion from the Government, with no tailored analysis, and are not even afforded a basic suggestion that our individual request mentally registered. The obvious and clear takeaway is that this process is not legitimate, that the Government does not value a Constitutionally protected right, and that our experiences as Christians and Sailors are insignificant to the point of receiving only minimal lip-service.

### Conclusion

18. In summary, I am a man aimed at eternal life, dedicated to his family, and possess a deep love for my America with a desire to continue in public service to this country. Faith, Family, and Freedom are three values of utmost prominence in my life, therefore an approval of my religious accommodation request is appropriate. In the above *heavily* detailed, cited, and sourced considerations, both the Government’s compelling interest and the lack of a possibility of less restrictive means available, fall *significantly* short of the burden of proof and strict scrutiny required for the most protected right under our U. S. Constitution. At the conclusion of Vice Admiral Nowell’s denial of my original request, he stated “While every Sailor is welcome to express a religion of choice or none at all, our *greater mission* sometimes requires reasonable restrictions.”<sup>29</sup> I understand the depth of sacrifices that must occasionally be made for our beloved nation. However, our greater mission as a Navy and as a military must not come at the cost of our even greater mission, the oath we have all sworn to support and defend the U. S. Constitution, which holds in sacred regard our First Amendment and the respect of religion thereof.

19. Sir, it would indeed be most sincere and compatible with the DNA of our country, planted by those who sought relief from religious persecution, to grant my earnest and prayerful request for religious accommodation.

Signature block

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<sup>28</sup> DoDI 1300.17, p5

<sup>29</sup> Emphasis mine.

1. Request of medical exemption to COVID-19 vaccination (7 pages plus exhibits) at Medical: <https://drive.google.com/file/d/1tQQFVTteLeWvfXfMXqt-HDSHLw2uiC5z/view?usp=sharing>
2. Request for consideration of denial of religious accommodation at Request for reconsideration:

<https://drive.google.com/file/d/1CaXFQbVBULSrtvQB2mcj67ESw3ZBtdEp/view?usp=sharing>

11 September 2022

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

FROM: Attorney XXXX, Esquire<sup>1</sup>

SUBJECT: Response to Discharge Notification – Captain DC

1. **Bottom Line Up Front.** My client is being considered for discharge because of an unlawful order. This memorandum is submitted to document a formal objection to an unlawful order to receive the COVID-19 vaccine. My client submitted a request for a medical exemption request, but in doing so did not waive objection to the original vaccine mandate order or follow-on orders. My client's request for a medical exemption was reasonable and medically appropriate but was never given appropriate consideration due to the political pressure being placed on Commanders and medical professionals to ensure a 100% vaccinated force. The available evidence and information demonstrate that the military has multiple methods to accommodate my client's medical concerns without negative impact to the mission. In addition to objecting to the lawfulness of the order, my client respectfully requests an extension to the current deadline to receive the vaccine while federal litigation related to the vaccine mandate is pending.

2. **Background.**

a. Captain C is an outstanding officer, whose hard work, determination, and character have enabled him to excel in all aspects of his career. In his most recent OER he was rated #1 among his

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<sup>1</sup> Attorney XXX is an experienced military law attorney with over 19 years' experience. Mr. is a former Active-Duty JAG who served as the Chief of the Military Justice Division at the XXX JAG School and as the Staff Judge Advocate at multiple units. Mr. XXX represents this client in a private capacity as a civilian attorney.

peers by his rater.<sup>2</sup>

b. Prior to the issuance of an unlawful order that required him to ignore significant medical concerns, Captain C has never been accused of misconduct nor have there ever been concerns with his quality or integrity of his service.

3. **Lawfulness of the Order.**

a. As you are aware, a military member may have a legal and moral obligation to disobey an unlawful order, particularly where that order violates Constitutional law or principles that make up the law of war. Military Courts have held that a military member has an affirmative obligation to disobey an order that a “man of ordinary sense and understanding would know to be illegal.” *United States v. Calley*, 22 USCMA 534 (1973); 48 CMR 19 (1973) (*Habeas corpus* granted sub. nomine *Calley v. Calloway*, 382 F. Supp. 650 (1974); rev’d 519 F 2d. 184 (1975); *cert. den.* sub. nomine *Calley v. Hoffman*, 425 U.S. 911 (1976). It is worth noting that specific issues related to this vaccine mandate and the lawfulness of mandating an experimental vaccine is the subject of ongoing federal litigation.

b. The order at issue does not meet the definition put forth in military law of a lawful order because there is no clear relationship of this order to military duty or a military necessity, particularly where an officer has demonstrated natural immunity or has been repeatedly exposed to COVID-19 without becoming ill. Natural immunity has been recognized as being more effective in preventing a health and safety risk to others and my client than a vaccination. Pursuant to Articles 90 and 92 of the Uniform Code of Military Justice, an order must have a relationship to military duty. “The order must relate to military duty, which includes activities *reasonably necessary* to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of member of a command and directly connected with the maintenance of good order in the Service. The order may not without such a valid military purpose interfere with private rights or personal affairs.” MCM, pt. IV, para. 16c.(2)(a)(iv) (*emphasis added*). Further, “[t]he order must not conflict with statutory or Constitutional rights of the person receiving the order.” MCM, pt. IV, para. 16c.(2)(a)(v). Here the order has no valid or logical connection to the military mission or military necessity and forces military members to take an experimental medical treatment in violation of their Constitutional rights, statutory law, and military regulations.

c. There are significant concerns that my client has been ordered to receive a vaccine that

is not currently available in the United States. In this case, my client has not been offered informed consent or had the opportunity to confirm that the vaccine available is a vaccine with FDA approval. This is a critical legal issue. The only vaccines that can be mandated by federal law must be fully FDA approved and labeled “Comirnaty” or “Spikevax.” Neither is available in the United States.<sup>3</sup> The 22 September 2021 letter from the FDA to Pfizer also cites the fact that Comirnaty is not currently available. The Department of the Defense does not have the legal authority to mandate any of the EUA vaccines as the Food, Drug, and Cosmetic Act, Section 564(e)(1)(A)(ii) requires public and private entities that wish to require vaccines that have only been authorized under EUA (i.e., not FDA approved) to provide informed consent. Two provisions require: 1) that individuals be informed of the fact that the FDA “has authorized the emergency use of the product.” 564(e)(1)(A)(ii)(I); and 2) of “the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown.” 564(e)(1)(A)(ii)(II). Perhaps most importantly, Section 564(e)(1)(A)(ii)(III)— Required conditions for authorization of a non-FDA-approved product—requires that vaccine recipients be informed of “the option to accept or refuse” the product. In order to make an EUA drug mandatory, the President must issue, in writing, a waiver under 10 USC 1107a.” 10 U.S.C. 1107a states that “administration of a product authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act to members of the armed forces” requires informed consent absent a determination by the President that “complying with such requirement is not in the interests of national security.” The FDA’s letter of authorization (LOA) to Pfizer specifically states the EUA is being authorized under section 564 of the Act. To date, no such waiver under 10 USC 1107a has been issued.<sup>4</sup> Thus, it is clear under Federal law that no military member may be forced to take the Moderna or Pfizer EUA Vaccines, or be punished (if there is no exemption pending or granted), until at least the FDA Licensed vaccine is available in accordance with Federal Law. To address this particular issue, one legally appropriate option would be to use following the medical code, MS (i.e. Medical, supply), in accordance with AR 40-562, Appendix C, until the FDA approved version of the Comirnaty vaccine or Spikevax is available. This is a recognized medical exemption that allows for extensions of 90 days at a time to any vaccine mandate due to lack of vaccine supply. Note despite making knowingly false statements that the Moderna and Pfizer EUA Vaccines were “interchangeable” with the FDA approved vaccine, the DoD has now admitted that no vaccine manufactured prior to FDA approval is in fact an FDA approved vaccine. Not only does this demonstrate for a fact that the order issued to my client was unlawful, but it also show theDoD was or should have been aware that the order was unlawful.<sup>5</sup>

d. Additionally, the order appears to violate regulatory guidance that specifically permits exemptions from vaccinations based on positive serology. In accordance with AR 40–562/BUMEDINST 6230.15B/AFI 48–110\_IP/CG COMDTINST M6230.4G, Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, 2-6, a.(1)(b), one of the bases for a medical exemption from an immunization is “[e]vidence of immunity based on serologic tests, documented infection, or similar circumstances.” Based on the current state of scientific and medical evidence regarding the lasting effectiveness of natural immunity, there is no rational or legal basis to deviate from regulatory guidance or take this decision out of the purview of a medical provider and their patient.<sup>6</sup>

e. My client has a good faith basis to believe that the vaccine mandate presents a potential danger to readiness and the health and safety of military members, and civilians. My client is particularly concerned about the risk of myocarditis in military personnel and that CDC studies show viral load by vaccinated individuals. The documented viral loads of the vaccinated can result in the spread of the virus by individuals who have been vaccinated to other military members and civilians.<sup>7</sup> My client is also concerned that the documented risks of the vaccine may violate the legal principle of proportionality given the possibility that, unlike natural immunity, vaccinations may actually contribute to the spread of COVID-19. Further, more than one hundred studies now demonstrate that individuals with natural immunity are at increased risk of an adverse event as a result of receiving the vaccine.<sup>8</sup> Further, the most recently available study regarding the efficacy of natural immunity shows that “[p]rotection against severe reinfection remains very strong, with no evidence for waning, irrespective of variant, for over 14 months after primary infection.”<sup>9</sup>

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<sup>5</sup> JOHN DOE #1-#14 and JANE DOE #1-#2, v. LLOYD AUSTIN, III, in his official capacity as Secretary of Defense, et al., 3:21-cv-1211-AW-HTC, Document 47.

<sup>6</sup> Positive COVID Test Result – Exhibit 6.

<sup>7</sup> <https://www.npr.org/sections/coronavirus-live-updates/2021/07/30/1022867219/cdc-study-provincetown-delta-vaccinated-breakthrough-mask-guidance>

f. As adjudicated thus far, the handling of this matter appears to be a violation of my client's administrative due process rights. In accordance with the 5<sup>th</sup> Amendment and Supreme Court Jurisprudence, resolution of whether administrative procedures are constitutionally sufficient requires analysis of the governmental and private interests that are affected. Arnett v. Kennedy, 416 U.S. 134 (Powell, J., concurring in part) (1974) and Goldberg v. Kelly, 397 U.S. 254 (1970). More precisely, due process requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. See, e.g., Goldberg v. Kelly, supra, 397 U.S., at 263-271. Here, all of the Services have intentionally engaged in a process that is designed to deny reasonable and appropriate medical exemptions and the ability to continue to serve in the military through a process that has pre-determined that the majority of reasonable medical exemption requests will be denied without any consideration for the individual facts of the case, legal standards, or the relevance of natural immunity. Beyond failing to follow statutory law and regulations, this is a violation of Constitutional due process rights.

4. **Appropriateness of Discharge and Reconsideration of Medical Exemption.** My client is being forced as the result of an unlawful order and illegal process to choose between his health and his service to his country. Not only should he not be forced to make this choice, but he should not be discharged as the result of a flawed and politicized process. This memorandum serves as further support of an official request for reconsideration of my client's request for a medical exemption. In addition to the matters raised above, new evidence is available that proves there is no compelling governmental interest that is furthered by mandating the COVID-19 injection. Specifically, on 31 March 2022 the Lancet released a comprehensive study on the efficacy of natural immunity as well as the efficacy of the mandated COVID-19 injections. Notably the study found, "[t]he risk of SARS-CoV-2 reinfection and COVID-19 hospitalisation in individuals who have survived and recovered from a previous infection remained low for up to 20 months. Vaccination seemed to further decrease the risk of both outcomes for up to 9 months, although the differences in absolute numbers, especially in hospitalisations, were small. These findings suggest that if passports are used for societal restrictions, they should acknowledge either a previous infection or vaccination as proof of immunity, as opposed to



vaccination only.”<sup>10</sup>

5. **Service Characterization.** If the decision is made to discharge Captain C, it is clear that the only appropriate characterization of service is Honorable. First, Captain C’s career has been exemplary, and his records justify an Honorable service characterization. As recently as May 2020, he was ranked #1 by his rater and most qualified. Even a cursory review of his OERs and his personnel records demonstrates a consistent pattern of commitment and excellence. See Exhibit 1 – ORB, OERs, and other Records. Second, an Honorable service characterization is appropriate because Captain C has done nothing more than question the lawfulness of an order in accordance with military standards and the law. In doing so, he has been appropriate, professional, and followed the Chain of Command. As a military officer, he had an obligation to ask questions and seek clarification of an unlawful order. Because he has handled this situation appropriately and professionally there is nothing about his actions that justifies a General Discharge and the lifelong stigma that a negative service characterization will cause.<sup>11</sup>

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6. **Conclusion.** After the incredible harm that was done to thousands of military members as a result of an unlawful anthrax vaccine mandate, it took over five years for Federal courts to intervene and rule that the orders were unlawful.<sup>12</sup> In the intervening time, many military members were court- martialed or discharged, and thousands died or suffered permanent neurological damage as a result of experimental vaccines. After that tragedy, Congress acted and implemented protections for military Members. Sadly, in this case, federal law, Congressional intent, and history have been ignored by the Army. The idea that simply because a memo exists expressing an opinion that the medical products are interchangeable does not make the order legal and even if FDA approved vaccines were available as a starting point -- the order still violates my client’s constitutional rights and federal law. On behalf of my client, I respectfully request that the questions raised regarding the lawfulness of this order be addressed in writing, that all adverse actions be rescinded and that his Medical Exemption Request receive a proper review consistent with the Constitution and federal law.

7. **Point of Contact:**

This serves as notice that my client is represented by counsel and will invoke his Article 31 (b) rights if Questioned. I can be reached at \_\_\_\_\_(phone).

XXXXXX, Esquire



<sup>4</sup> See Exhibit 2 – Excerpts from Federal Statutes and cases.

<sup>8</sup> See Exhibit 5.

<sup>9</sup> <https://www.medrxiv.org/content/10.1101/2022.07.06.22277306v1.full.pdf>

<sup>10</sup> [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(22\)00143-8/fulltext?dgcid=hubspot\\_email\\_newsletter\\_lancet\\_covid22&utm\\_campaign=lancet\\_covid22&utm\\_medium=email&\\_hsmi=208715824&\\_hsenc=p2ANqtz-\\_AO3uXwTxLsMyAfWMQXIVjUgufbQdtu66PW6Io59idwFocxkexNMzsh0m-u6pQSp6-99fruJB1TAoft8FJ99XykaU3-mUqnxAIUvhCGIxWFs8FG6M&utm\\_content=208715824&utm\\_source=hs\\_email](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(22)00143-8/fulltext?dgcid=hubspot_email_newsletter_lancet_covid22&utm_campaign=lancet_covid22&utm_medium=email&_hsmi=208715824&_hsenc=p2ANqtz-_AO3uXwTxLsMyAfWMQXIVjUgufbQdtu66PW6Io59idwFocxkexNMzsh0m-u6pQSp6-99fruJB1TAoft8FJ99XykaU3-mUqnxAIUvhCGIxWFs8FG6M&utm_content=208715824&utm_source=hs_email) – Exhibit 3.

<sup>11</sup> The United States Court of Federal Claims, Military Appellate Courts and Federal District Courts have all recognized the punitive nature of less than honorable service characterizations. For example, the Court of Federal Claims has noted “[s]ince the vast majority of discharges from the armed forces are honorable, the issuance of any other type of discharge stigmatizes the ex-serviceman. It robs him of his good name. It injures his economic and social potential as a member of the general community.” Sofranoff v. United States, 165 Ct. Cl. 470 (Ct. Cl. 1964). Similarly, Federal District Courts have recognized that a military discharge on anything other than honorable grounds is punitive in nature, “since it stigmatizes the serviceman’s reputation, impedes his ability to gain employment and is in life, if not in law, prima facie evidence against the serviceman’s character, patriotism or loyalty.” Stapp v. Resor, 314 F. Supp. 475, 478 (U.S.D.N.Y. 1970).

<sup>12</sup> See Anthrax Case Studies – Exhibit 4.

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