UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

ROBERT W. GALEY, JR. Plaintiff, v. JOSEPH R. BIDEN, JR., in his official capacity as Commander in Chief; LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; CHRISTINE WORMUTH, in her official capacity as United States Secretary of the Army; YVETTE K. BOURCICOT, in her official capacity as Acting Assistant Secretary of the Army; RAYMOND S. DINGLE, in her official capacity as Surgeon General of the United States Army; UNITED STATES DEPARTMENT OF DEFENSE; Defendants.	Civil Action No. 22-cv-6203 **FIRST AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

FIRST AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiff, by and through counsel, hereby submits his First Amended Complaint against the Defendants and states as follows:

INTRODUCTION

Master Sergeant Robert W. Galey, Jr.'s Christian faith commands him to a life of service. That's why he's given 18 years of his life to the Army as an active-duty infantry Soldier assigned to posts and installations across the country. That's why he's deployed eight times to combat zones like Iraq and Afghanistan. That's why he wants to continue to train and lead the Soldiers under his charge as a First Sergeant at Joint Readiness Training Center, Fort Polk, Louisiana.

Master Sergeant Galey has served for all that time and through all that hardship because

of his strong faith. Now, Defendants have harmed Master Sergeant Galey because of the sincere religious beliefs borne of that faith: that he should not take vaccines created through unethical processes. Master Sergeant Galey told the Defendants about his sincerely-held religious belief and requested a reasonable accommodation for one such vaccine, the COVID-19 vaccine. His immediate commander supported him. His chaplain recognized the sincerity of his belief. Master Sergeant Galey had recovered from COVID-19 and even the Centers for Disease Control ("CDC") has recognized the superior immunity this provides to those who have taken the vaccine.[1] Master Sergeant Galey was willing to social distance, wear a mask, COVID test, and mitigate the minimal threat he posed.

None of this was good enough for Defendants. Despite Defendant Biden's own proclamation that "the pandemic is over,"[2] the pandemic was not over for Master Sergeant Galey: Defendants imperiled his future in the military as they operated their religious accommodation process for vaccines as a sham process, costing Master Sergeant Galey promotions, training opportunities, and continuing threat of unconstitutional separation.

Courts across this nation have taken up this issue and ruled against Defendants repeatedly, protecting the religious liberty rights of Sailors, Airmen, and Marines who have made religious accommodation requests. Soldiers like Master Sergeant Galey, and thousands of his comrades in arms in the country's largest and oldest fighting force – the United States Army – remain threatened by Defendants' arbitrary, capricious, and unconstitutional actions.

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[1] Centers for Disease Control and Prevention, "Science Brief: SARS-COV-2 Infection-induced and Vaccine induced Immunity," (Oct. 29, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated- people.html (hereafter, "CDC Immunity Brief").

[2] Rebecca Falconer, *Biden: "The pandemic is over,"* AXIOS (Sep. 18, 2022), https://tinyurl.com/AxiosPandemic.

While the National Defense Authorization Act ("NDAA") of 2023 contained language requiring the services to rescind their COVID-19 vaccine mandate,[3] this has done nothing to ensure that the Defendants' broader religious accommodation process for vaccines will operate as required under the law and Constitution. Even without the threat of termination, Master Sergeant Galey's enviable record has been permanently marred by career-stunting entries in his Soldier Record Book ("ERB"), loss of training opportunities, and removal from his position in leadership as First Sergeant simply because he requested an accommodation to practice his faith. These actions have done lasting harm to his military career and he remains under threat of vaccine mandates operated without regard to religious accommodation requests if Defendants are not enjoined. They violate the Religious Freedom Restoration Act and the First Amendment and Master Sergeant Galey seeks recourse to this Court to vindicate the law and Constitution.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution of the United States and federal law.

2. This Court has jurisdiction under 28 U.S.C. § 1346 because this is a civil action against the United States.

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[3] On December 6, 2022, the United States House of Representatives Committee on Rules issued Rules Print 117-70, showing the text of the proposed James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. Section 525 of the legislation is titled "Rescission of COVID-19 Vaccination Mandate." In full, Section 525 provides:

> Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall rescind the mandate that members of the Armed Forces be vaccinated against COVID-19 pursuant to the memorandum dated August 24, 2021, regarding "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members."

https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR7776EAS-RCP117-70.pdf.

3. This Court has jurisdiction under 28 U.S.C. § 1361 to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff.

4. This Court has jurisdiction pursuant to 42 U.S.C. § 2000bb-1(c) because Plaintiff's religious exercise has been burdened by Defendants.

5. This Court has jurisdiction to review Defendants' unlawful actions and inactions and enter appropriate relief under the Administrative Procedure Act, 5 U.S.C. §§ 701- 706.

6. This Court has jurisdiction to review and enjoin ultra vires or unconstitutional agency action through an equitable cause of action. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689-92 (1949).

7. This Court has authority to award the requested relief pursuant to 42 U.S.C. § 2000bb-1 and *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020); the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02; the requested injunctive relief pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 2202; and award costs and attorneys' fees pursuant to 42 U.S.C. § 1988(b).

8. Venue is proper in this district pursuant to 28 U.S.C. § 1402 and 28 U.S.C. § 1391(e) because Defendants are officers and employees of the United States and agencies of the United States, and the military workplace and the location in which a substantial part of the events or omissions giving rise to the claims is within this district at Fort Polk in Vernon Parish, Louisiana Plaintiff resides in the Western District of Louisiana. The proximity of the Western District of Louisiana to Plaintiff's base and abode makes that venue the most convenient.

PARTIES

Plaintiff

9. Plaintiff Robert W. Galey, Jr., is a Master Sergeant in the United States Army. Master Sergeant Galey has served honorably for over 18 years on active duty, deploying eight

times to Iraq and Afghanistan (seven with Special Operations). Master Sergeant Galey is a dedicated Soldier who loves his country and wants to finish his career. Master Sergeant Galey is a devout Christian who holds a sincere religious belief developed after prayer and reflection that he must not take the available COVID-19 vaccines because of the use of aborted fetal cell lines in their testing and production. His efforts to vindicate his rights within the military have thus far been systematically denied and his request has been met with punishment: he has been removed from leadership, counseled in his permanent record, and deprived of training and promotion opportunities. He has been threatened with imminent separation, ending his storied military career and resulting in the loss of hundreds of thousands of dollars in benefits for him and his family earned at retirement. Despite the cost, Master Sergeant Galey will not violate his religious principles.

10. Master Sergeant Galey served as the First Sergeant of Task Force 1, Operations Group, Joint Readiness Training Center Fort Polk before making his request, a position of leadership and authority in his unit.

11. On October 14, 2021, Master Sergeant Galey submitted a request for a religious accommodation to be exempted from the Army's COVID-19 vaccination requirement based on his sincerely-held religious beliefs. *See* Plaintiff's Religious Accommodation Requests and Appeals, attached hereto as Exhibit 1.

12. On October 17, 2021, Master Sergeant Galey's minister submitted a letter supporting his request for a religious accommodation request. He wrote,

> knowing Robert and his wife for many years, I can speak to the sincerity of Robert's beliefs and the legitimacy of this request. Robert told me that, upon being made aware of the mandate to receive the COVID vaccine, he began to earnestly pray, fast, and seek the will of God and to search the Scriptures as to how he should respond, and whether he should accept the shot.

13. On October 19, 2021, Captain Christopher S. Kitchens, Chaplain, US Army, interviewed Master Sergeant Galey regarding his religious beliefs and concluded "that 1SG Galey's religious beliefs are sincerely held."

14. On October 21, 2021, Master Sergeant Galey's immediate commander, Captain Benton F. Roe, U.S. Army, supported his religious accommodation request and recommended approval of it.

15. On November 4, 2021, without having conducted a single interview with Master Sergeant Galey, his then Commander, Colonel Andrew O. Saslav, U.S. Army, recommended disapproval of Master Sergeant Galey's religious accommodation request. Colonel Saslav wrote, "I find that MSG Galey does not have a sincerely held religious belief, [sic] which is in opposition to receiving the vaccine" and "I have full confidence in [sic] MSG Galey's request is motivated by misinformation and not based on beliefs…"

16. On March 14, 2022, the Surgeon General of the Army, Lieutenant General Raymond S. Dingle, U.S. Army, denied Master Sergeant Galey's religious accommodation request with a form letter denial, without regard to Master Sergeant Galey's individual circumstances.

17. On March 23, 2022, Master Sergeant Galey appealed the denial of his religious accommodation request to the Assistant Secretary of the Army for Manpower & Reserve Affairs.

18. On September 28, 2022, Master Sergeant Galey's appeal was denied by the Acting Assistant Secretary of the Army for Manpower and Reserve Affairs, Yvette K. Bourcicot with a form letter denial, without regard to Master Sergeant Galey's individual circumstances. This decision, she wrote, was "final."

19. On December 15, 2022, Master Sergeant Galey was informed by his commander that his Commanding General has decided to move forward with a General Officer Memorandum

of Reprimand" ("GOMOR") and separation procedures despite the forthcoming policy language in the NDAA. Master Sergeant Galey was told to come in on December 20, 2022, for the acknowledgement of this career-damaging reprimand.

20. Master Sergeant Galey faced significant career repercussions: he was laterally demoted from his role in leadership as First Sergeant and replaced by a lower ranked Soldier. He has been denied important training opportunities. His orders for important follow-on assignments have been deleted.

21. Master Sergeant Galey's Soldier Record Book now contain entries that show that he was previously "flagged." While the particular flag was removed – the General Officer Memorandum of Reprimand for his failure to take the COVID-19 vaccine – the fact that there was a flag remains. Individuals reviewing the record would rightly wonder why there had been a prior flag on the record.

22. Master Sergeant Galey went before promotion boards and despite his sterling record, was not selected for promotion. *See* Declaration of Robert W. Galey, Jr. attached hereto as Exhibit 2. Master Sergeant Galey wholeheartedly believes that his Soldier Record Book showing a prior flag – solely because of his religious accommodation request – is the reason for these denials of promotion.

23. Master Sergeant Galey has committed to no longer take vaccines that are created through unethical processes.

24. Master Sergeant Galey is frequently subject to various vaccine mandates and requirements as long as he serves in the military.

25. Master Sergeant Galey remains under threat of punishment for the submission of religious accommodation requests for these additional vaccine requirements.

Defendants

26. Defendant Joseph R. Biden, Jr., is the President of the United States and the Commander in Chief. President Biden directed the DoD to add the COVID-19 vaccine to its list of required immunizations for all service members on July 29, 2021. President Biden is sued in his official capacity.

27. Defendant Lloyd J. Austin, III, is the United States Secretary of Defense. Secretary Austin issued a memorandum on August 24, 2021, which requires the United States Armed Forces to vaccinate all service members, including Plaintiff. Secretary Austin is sued in his official capacity.

28. Defendant Christine Wormuth is the United States Secretary of the Army. Secretary Wormuth issued a directive on September 14, 2021, which required the Army to vaccinate all service members against COVID-19, including Plaintiff. Secretary Wormuth is sued in her official capacity.

29. Defendant Yvette K. Bourcicot is the acting Assistant Secretary of the Army and is responsible for the denial of thousands of religious accommodations appeals as the final appellate authority for the Army. Assistant Secretary Bourcicot is sued in her official capacity.

30. Defendant Raymond S. Dingle is the Surgeon General of the United States Army and the Commanding General, Army Medical Command. He is the Army official responsible for determining the outcome of religious accommodation requests with respect to COVID-19 vaccinations. Lieutenant General Dingle is being sued in his official capacity.

31. Defendant United States Department of Defense ("DoD") is an executive branch department that coordinates and supervises all agencies and functions of the government related to the United States Armed Forces, including the vaccination policies at issue herein.

FACTUAL BACKGROUND

Defendants' Vaccine Mandate and Religious Accommodation Process Practice

32. On or about July 29, 2021, President Joseph Biden directed the DoD to add the COVID-19 vaccine to its list of required immunizations for all service members.[4]

33. On August 24, 2021, Secretary Austin issued a memorandum entitled "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members" ("the DoD COVID-19 Vaccine Mandate"). A true and correct copy of the DoD COVID-19 Vaccine Mandate is attached as Exhibit 3 to this Amended Complaint. The DoD COVID-19 Vaccine Mandate directs DoD to vaccinate all active duty and reserve service members against COVID-19.

34. The DoD COVID-19 Vaccine Mandate provides that service members actively participating in COVID-19 clinical trials are exempted from the DoD COVID-19 Vaccine Mandate until the trial is complete.

35. The DoD COVID-19 Vaccine Mandate states that the Department of Defense will implement the DoD COVID-19 Vaccine Mandate consistent with DoD Instruction 205.02, "DoD Immunization Program," dated July 23, 2019.

36. The DoD COVID-19 Vaccine Mandate states that all service members who previously contracted COVID-19 and now have active antibodies against the virus are not considered fully vaccinated and are still required to receive a vaccination against COVID-19.

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[4] *See* The White House, "FACT SHEET: President Biden to Announce New Actions to Get More Americans Vaccinated and Slow the Spread of the Delta Variant" (July 29, 2021), https://tinyurl.com/WhiteHouseDelta/ ("Today, the President will announce that he is directing the Department of Defense to look into how and when they will add COVID-19 vaccination to the list of required vaccinations for members of the military."); Meghann Meyers & Howard Altman, *Pentagon, Reacting to Biden Order, Working on Plan for Mandatory COVID-19 Vaccinations*, MILITARY TIMES (Oct. 21, 2021), https://tinyurl.com/MilTimesMilMandate/.

37. The DoD COVID-19 Vaccine Mandate states that the Military Departments, including the Army, Army Reserve, and Air National Guard, should use existing policies and procedures to manage mandatory vaccination of service members to the extent practicable.

38. The DoD COVID-19 Vaccine Mandate states that vaccination of service members will be subject to any identified contraindications and any administrative or other exemptions established in Military Department policy.

39. On September 14, 2021, Secretary Wormuth issued an order directing "all Soldiers, not otherwise exempt, to become fully vaccinated against COVID-19." A true and correct copy of the order, FRAGO 5 to HQDA EXORD 225-21 (COVID-19 Steady State Operations), is attached as Exhibit 4. The order states, "If the Soldier continues to refuse to be immunized, counsel the Soldier in writing that he or she is legally required to be immunized, that if the Soldier continues to refuse to be immunized that he or she will be legally ordered to do so and that failure to obey the order may result in adverse administrative or punitive action as deemed appropriate by the commander. Order the Soldier to receive the immunization." *Id.*

40. On November 16, 2021, Secretary Wormuth distributed a memorandum stating that "all Soldiers who refuse the mandatory vaccination order, and who have not received, and are not pending final decision on, a medical or administrative exemption, will remain flagged…" "Favorable personnel actions are suspended for flagged Soldiers… including, but not limited to, reenlistment, reassignment, promotion, appearance before a semi-centralized promotion board, issuance of awards and decorations, attendance to military or civilian schools, application for or use of tuition assistance, payment of enlistment bonus or selective reenlistment bonus, or assumption of command." A true and correct copy of the memorandum is attached as Exhibit 5 to this Amended Complaint. Secretary Wormuth "authorize[d] commanders to impose bars to

continued service . . . for all Soldiers who refuse the mandatory vaccination order." *Id.* "Commanders will initiate a GOMOR on Soldiers who do not receive the vaccination. *Id.* On information and belief, a GOMOR in a service record ends any realistic chance of promotion.

41. On January 31, 2022, Secretary Wormuth distributed a memorandum providing additional guidance on "personnel policies and procedures for unvaccinated individuals . . . who refuse the novel Coronavirus 2019 (COVID-19) vaccination order." *See* memorandum attached hereto as Exhibit 6. That guidance stated:

> Effective immediately, commanders will initiate involuntary administrative separation proceedings for Soldiers who have refused the lawful order to be vaccinated against COVID-19 and who do not have a pending or approved exemption request. Commands will process these separation actions, from initiation to a Soldier's potential discharge, as expeditiously as possible.

Id. The guidance also stated that the basis for enlisted separation will be "Commission of a Serious Offense." *Id.* On information and belief, this separation basis is usually reserved for significant criminal misconduct. Officers who refused the vaccine would be separated on the basis of "Misconduct, Moral or Professional Dereliction." *Id.* The guidance made clear that an administrative separation board's recommendation of retention of an unvaccinated Soldier would be ignored and that "Secretarial Plenary Authority" would be instituted to ensure separation. *Id.*

42. Defendants have discretion in granting religious accommodation requests[5] and medical and administrative accommodations.

43. As of September 16, 2022, the Army had granted 12,039 temporary exemptions and 44 permanent medical exemptions from the DoD COVID-19 Vaccine Mandate.[6]

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[5] *See, e.g.*, Department of Defense Instruction ("DODI") 1300.17, Religious Liberty in the Military Services, dated September 1, 2020.

[6] *See Department of the Army updates Total Army COVID-19 vaccination statistics*, U.S. Army Public Affairs (Sept. 16, 2022), https://tinyurl.com/ArmySeptStats (hereafter "Army Sept. Stats").

44. As of September 16, 2022, the Army had denied 1,804 religious accommodation requests regarding the DoD COVID-19 Vaccine Mandate. *Id.* Out of 8,476 requested across all components of the Army, the Army granted only 32 permanent religious accommodation requests. *Id.*

45. Defendants denied 98.2% of religious accommodation requests. *See id.*

46. On information and belief, those cases in which requests were granted were ones in which the service member was imminently approaching retirement or other voluntary separation from the service. Secretary Wormuth testified before the House Armed Services Committee that the vast majority, if not all, of the approved religious accommodation requests were for those Soldiers who were in the process of leaving the Army.[7]

47. As of September 16, 2022, 97% of Active Army personnel have been fully vaccinated against COVID-19.[8]

48. The United States Army has spent an extraordinary amount of money to provide training to Plaintiff. The monetary costs of training replacement personnel to replace those forced out due to this policy will run into the hundreds of millions of dollars. In 2011, the United States Government Accountability Office ("GAO") published a comprehensive report analyzing the costs associated with separating 3,664 trained service members in the context of subsequently revoked Department of Defense policies and found the costs to be substantial.

> According to GAO's analysis of Defense Manpower Data Center data, 3,664 servicemembers were separated under DOD's homosexual conduct policy from fiscal years 2004 through 2009. . . Using available DOD cost data, GAO calculated that it cost DOD about $193.3 million ($52,800 per separation) in constant fiscal year 2009 dollars to separate and replace the 3,664 servicemembers separated under

[7] Testimony of Secretary of the Army Christine Wormuth before the House Armed Services Committee on May 12, 2022.

[8] *See* Army Sept. Stats.

> the homosexual conduct policy. This $193.3 million comprises $185.6 million in replacement costs and $7.7 million in administrative costs. The cost to recruit and train replacements amounted to about $185.6 million.[9]

The numbers being reported for religious service members unwilling to receive the vaccine are many multiples greater than those lost to this prior policy and will ultimately cost far more.

49. Plaintiff is in excellent physical condition. He is statistically unlikely to suffer significant consequences or hospitalization from contracting COVID-19 again – or other diseases.

50. Plaintiff already had and recovered from COVID-19. He was not hospitalized. He possesses natural immunity as a result, as described more fully below.

51. During the course of the pandemic, Plaintiff practiced social distancing, frequent handwashing, masking, regular COVID-19 testing, and/or working remotely as directed by his commanders.

52. Plaintiff could and did continue to perform his work at the highest level while practicing a combination of social distancing, frequent handwashing, masking, regular COVID-19 testing, and/or working remotely, depending on his duties.

53. Thousands of Army service members with approved medical or administrative accommodations were permitted to work in person and perform their duties without facing adverse employment consequences, involuntary separation from the Army, or early retirement.

Plaintiff's Sincerely Held Religious Objections to Unethical Vaccines

54. Plaintiff objects to receiving a COVID-19 vaccination based on his sincerely held religious beliefs.

55. Plaintiff is a committed member of the Baptist denomination of the Christian faith.

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[9] Government Accountability Office, *Military Personnel: Personnel and Cost Data Associated with Implementing DoD's Homosexual Conduct Policy* (Jan. 2011), https://www.gao.gov/assets/gao-11-170.pdf.

56. Plaintiff's sincerely held religious beliefs forbid him from receiving the COVID-19 vaccine for a variety of reasons based upon his Christian faith as revealed through scripture and prayer.

57. Plaintiff holds the sincere religious belief that all life is sacred, from conception to natural death, and that abortion is the impermissible taking of an innocent life in the womb. Plaintiff is actively involved in pro-life and crisis pregnancy service work at his church.

58. As a result of his sincerely held religious beliefs regarding life and abortion, Plaintiff is unable to receive any of the currently available COVID-19 vaccines due to what he believes and understands is a connection between these vaccines and their testing, development, or production using aborted fetal cell lines.

59. Plaintiff believes that receiving a COVID-19 vaccine that was tested, developed, or produced using aborted fetal cell lines would force him to violate his sincerely held religious beliefs by causing him to participate in the abortion enterprise, which he believes to be immoral and repugnant to God.[10]

60. Plaintiff, prior to learning about the production or testing of the COVID-19 vaccines using aborted fetal cell lines, was unaware that such cell lines were used in the production or testing of any medications or vaccines.

[10] *See, e.g.*, Annette B. Vogel et al., *BNT162b Vaccines Protect Rhesus Macaques from SARS-Cov-2*, NATURE (Feb. 1, 2021), https://www.nature.com/articles/s41586021-03275-y (explaining that the BNT162b vaccines (the Pfizer/BioNTech vaccine also known as Comirnaty) were tested using HEK293T aborted fetal cells); Meeting of the Vaccines and Related Biological Products Advisory Committee, U.S. Food and Drug Administration (May 2016, 2001) (Statement of Dr. Alex van der Eb, emeritus professor at the University of Leiden) ("The fetus [from whom the HEK 293 cell lines were acquired], as far as I can remember was completely normal. Nothing was wrong. The reasons for the abortion were unknown to me. I probably knew it at the time, but it got lost, all this information.").

61. Plaintiff, having learned that other medications may be tested or produced using aborted fetal cell lines, has since committed to refuse to take any medication that is thus developed or tested. A wide variety of vaccines are created through these process, and Plaintiff will not take any vaccines that he believes were created through unethical processes.

62. Plaintiff holds to the sincere religious belief that the human body is God's temple, and that he must not put anything into his body that God has forbidden.

63. The COVID-19 vaccines use mRNA technology, which causes human cells to produce a spike protein they would not normally produce.[11] Despite repeated denials by the Centers for Disease Control that the COVID-19 vaccines could alter a person's DNA, a recently published, peer-reviewed study out of Sweden "showed that SARS-CoV-2 RNA can be reverse-transcribed and integrated into the genome of human cells."[12]

64. Plaintiff believes that he is a steward of his body's health. The COVID-19 vaccine has resulted in a statistically significant number of serious adverse reactions, including myocarditis, a potentially fatal inflammation of the heart muscles, and pericarditis, a potentially fatal inflammation of the heart tissue.[13]

65. On January 24, 2022, a United States Senate subcommittee held a roundtable on the efficacy, safety, and overall response to COVID-19. At that roundtable, an attorney

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[11] *See* Center for Disease Control, "Understanding mRNA COVID-19 Vaccines," http://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mrna.html (Mar. 4, 2021).

[12] Markus Alden *et al.*, *Intracellular Reverse Transcription of Pfizer BioNTech COVID-19 mRNA Vaccine BNT162b2 in vitro in Human Liver Cell Line*, Current Issues in Molecular Biology 2022, 44(3), 1115-1126, (Feb. 25, 2022), https://doi.org/10.3390/cimb44030073.

[13] *See* Patricia Kime, *DoD Confirms: Rare Heart Inflammation Cases Linked to COVID-19 Vaccines*, Military.com (June 30, 2021), https://www.military.com/daily-news/2021/06/30/dod-confirms-rare-heart-inflammation-cases-linked-covid-19-vaccines.html.

representing three Department of Defense whistleblowers, Thomas Renz, "revealed disturbing information regarding dramatic increases in medical diagnoses among military personnel."[14] Military whistleblowers alleged that based on data from the Defense Medical Epidemiology Database ("DMED"), there has been "a significant increase in registered diagnoses . . . for miscarriages, cancer, and many other medical conditions in 2021 compared to a five-year average from 2016-2020," including a 472% increase in "female infertility" and a 437% increase in "ovarian dysfunction."[15]

66. U.S. Army Lieutenant Colonel (LTC) Theresa Long, M.D., M.P.H., F.S., submitted a sworn affidavit, under penalty of perjury, as a whistleblower under the Military Whistleblower Protection Act, 10 U.S.C. §1034, in support of a Motion for Preliminary Injunction in *Robert, et al. v. Austin, et al.*, 1:21-cv-02228-RM-STV (D. Colo., filed Aug. 17, 2021).

67. In her affidavit, LTC Long expressed her expert opinion that:

> None of the ordered Emergency Use COVID-19 vaccines can or will provide better immunity than an infection-recovered person…
> All three of the [Emergency Use Authorization] EUA COVID-19 vaccines (Comirnaty is not available)…are more risky, harmful, and dangerous than having no vaccine at all, whether a person is COVID-recovered or facing a COVID infection…
> Direct evidence exists and suggests that all persons who have received a COVID-19 vaccine are damaged in their cardiovascular system in an irreparable and irrevocable manner.

68. LTC Long does not hold an isolated opinion. In a sworn declaration, Dr. Jayanta Bhattacharya and Dr. Martin Kulldoff, professors of medicine at Stanford University and Harvard

[14] Letter from Senator Ron Johnson to Secretary of Defense Lloyd Austin (Feb. 1, 2022) available at https://www.ronjohnson.senate.gov/services/files/FB6DDD42-4755-4FDC-BEE9-50E402911E02.

[15] *Id.*

Medical School, respectively, expressed similar conclusions.[16] Dr. Hooman Noorchashm, M.D., Ph.D.—who is well-published in the medical field and has held multiple prestigious faculty appointments—reached a similar conclusion in his own sworn declaration. He concluded that "[a] series of epidemiological studies have demonstrated to a reasonable degree of medical certainty that natural immunity following infection and recovery from the SARS-CoV-2 virus provides robust and durable protection against reinfection, at levels equal to or better than the most effective vaccines currently available."[17]

69. Plaintiff has contracted and recovered from COVID-19 and has natural immunity.

70. Plaintiff holds the sincere religious belief that, upon seeking guidance from God through prayer as to whether to receive a COVID-19 vaccine, God directed him not to do so.

71. Fidelity to his religious beliefs is more important to Plaintiff than his military career, but the Constitution of the United States prohibits Defendants from forcing him to choose between his beliefs and his military service to our country.

72. The DoD COVID-19 Vaccine Mandate has lowered Plaintiff's morale because he has been forced to choose between his sincerely held religious beliefs and his military career. The DoD COVID-19 Vaccine Mandate has lowered the morale of other service members for the same reasons.

73. Plaintiff believes that the DoD operated its religious accommodation process to the COVID-19 vaccine as a sham process. Plaintiff believes that the DoD will continue to operate its religious accommodation process for other vaccine requirements in the same manner.

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[16] *Zywicki v. Washington*, 1:21-cv-00894-AJT-MSN (E.D. Va., filed Aug. 3, 2021).

[17] *Id.*

DoD and Army Regulations Recognize Religious and Medical Accommodations for Immunizations under RFRA and the Free Exercise Clause Generally

74. Department of Defense Instructions 1300.7, Religious Liberty in the Military Services, dated September 1, 2020, establishes DoD policy in furtherance of RFRA and the Free Exercise Clause of the First Amendment to the Constitution of the United States, recognizing that service members have the right to observe the tenets of their religion or to observe no religion at all.

75. DODI 1300.17 provides that it is DoD policy that "Service members have the right to observe the tenets of their religion or to observe no religion at all, as provided in this issuance."

76. DODI 1300.17 provides that "[i]n accordance with Section 533(a)(1) of Public Law 112-239, as amended, the DoD Components will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety. A service member's expression of such beliefs may not, in so far as practicable, be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, and assignment."

77. DODI 1300.17 provides that "[a]ccommodation includes excusing a Service member from an otherwise applicable military policy, practice, or duty. In accordance with RFRA, if such a military policy, practice, or duty substantially burdens a Service member's exercise of religion, accommodation can only be denied if:

(1) The military policy, practice, or duty is in furtherance of a compelling governmental interest; and

(2) It is the least restrictive means of furthering that compelling governmental interest."

78. Department of Army Instruction ("DAFI") 52-201, ¶ 1.3, states: "A member's expression of sincerely held beliefs may not be used as the basis for any adverse personnel action, discrimination, or denial of promotion; and may not be used as a basis for making schooling, training, or assignment decisions."

Defendants' Refusal to Grant Religious Accommodation Exemptions

79. Plaintiff requested religious accommodations or exemptions from Defendants' vaccine mandates that set forth Plaintiff's sincerely held religious beliefs regarding the COVID-19 vaccine.

80. Defendants have implemented a system of processing religious accommodation requests whereby all, or virtually all, such requests are denied without being considered individually.

81. On information and belief, Defendants' communications with service members rejecting their religious accommodation requests have used identical, pre-written, "boilerplate" language to deny their requests. The letters did not reflect the consideration of any of the specific circumstances of individual service members. The letters did not include any explanation of why the individual circumstances of each service member warranted rejection.

82. Plaintiff's appeal was denied. As a result, he faced the threat of involuntary separation from the Army and other adverse actions including permanent records in his Soldier Record Book.

83. Plaintiff believes that his request has been rejected without any consideration of the specific information included in his religious accommodation request.

84. All of the rejection letters received by service members rely on the falsified assumption that receiving a vaccination prevents a person from acquiring or spreading COVID-19. The assumption that receiving a vaccination prevents a person from acquiring or spreading COVID-19 has been proven false. This was publicly acknowledged by the CDC in January 2022.

Defendants' Punishment of Plaintiff for Merely Filing a Religious Accommodation Request

85. The uncertainty about his future, constant questions from peers, and denials of training, travel, leadership, and deployment opportunities have already been detrimental to Plaintiff's career. For example, Master Sergeant Galey's entire unit traveled to Hawaii on training in October 2021, and to Alaska in March 2022, but he was not allowed to attend and he has not been allowed to attend any schools while his religious accommodation request was still pending.

86. This adverse workplace treatment for merely requesting a religious exemption amounts to punishment for asserting one's religious beliefs. Like the termination that Plaintiff faces, it is also a punishment that violates both RFRA and the Free Exercise Clause of the First Amendment.

Defendants' Patently Unconstitutional Policies and Practice have been Enjoined by Courts Across the Country and Defendants Have Agreed to Further Relief in Other Cases

87. Defendants' policies and practices have been challenged in multiple federal district courts which have ruled in favor of service members and taken a dim view of the Defendants'

claims. Service members in the Navy,[18] Air Force,[19] and Marine Corps[20] were class certified and protected from involuntary separation through the grant of preliminary injunctions.

88. Subsequent to the passage of the NDAA, the Government brought mootness challenges to the preliminary injunction grants. The United States Court of Appeals for the Fifth Circuit granted the Government's mootness request on the preliminary injunction in a similar case regarding U.S. Navy SEALs, but did not rule on plaintiffs' claims on the merits. *See, e.g.*, *U.S. Navy Seals 1-26 v. Biden*, 72 F.4th 666, 675 (5th Cir. 2023) ("the issues Plaintiffs raise can still be litigated in the district court and appealed after a final judgment, assuming they remain justiciable.").

89. After the Circuit Court's ruling, the district court in the Navy SEALs case determined that the case was not moot as it challenged defendants' broader vaccination policies and operation of their religious accommodation processes. *U.S. Navy SEALs 1–26 v. Austin*, No. 4:21-cv-01236-O (N.D. Tex. Feb. 14, 2024) (Order on Mootness) attached hereto as Exhibit 7.

90. Thereafter, the Government agreed to a wide range of relief and policy changes for its religious discrimination against servicemembers. No. 4:21-cv-01236-O (N.D. Tex. May 31, 2024) (Motion to Approve Class Action Settlement), attached hereto as Exhibit 8. These changes included:

a. Personnel Records Corrections:

[18] *U.S. Navy Seals 1-26 v. Biden*, 578 F. Supp. 3d 822 (N.D. Tex. 2022); *Seals v. Austin*, 594 F. Supp. 3d 767 (N.D. Tex. 2022).

[19] *Doster v. Kendall*, No. 22-3497/3702, 2022 U.S. App. LEXIS 32847 (6th Cir. Nov. 29, 2022).

[20] *Colonel Fin. Mgmt. Officer v. Austin*, No. 8:22-cv-1275-SDM-TGW, 2022 U.S. Dist. LEXIS 153590 (M.D. Fla. Aug. 18, 2022).

i. Correct the personnel records of all Class Members to remove any negative proceedings or adverse information related to non-compliance with the COVID-19 vaccination mandate.

ii. Correct the personnel records of all current or former Class Members who were discharged solely on the basis of non-compliance with the COVID-19 vaccination mandate to remove any indication that the servicemember was discharged for misconduct.

b. Selection Board Convening Orders Reform:

i. Include language in selection board convening orders prohibiting the consideration of COVID-19 vaccination refusal where accommodation was requested.

c. Policy Amendments:

i. Amend the policy that was changed during the mandate period, which prohibited servicemembers from resubmitting requests for religious accommodation if there are changes to their assignment or to relevant policies.

d. Prevent Future Discrimination:

i. Publicly post a statement reaffirming the value of religious expression to the Navy, the importance of accommodating sincere beliefs, and stating that religious discrimination conflicts with the Navy's core values.

ii. Publicly post information informing servicemembers of their rights related to requesting religious accommodation and the process for doing so.

iii. Create and make available in multiple training databases a PowerPoint presentation informing commanders, supervisors, and other decision-makers in the religious accommodation process of their obligations in processing those requests in accordance with the law and the Navy's own policies. This includes required time limitations for decisions, individual assessment of each request, and individualized justification for granting or denying a request, as well as the importance of accommodating religious beliefs to the Navy and the dignity and respect that must be afforded to all servicemembers, including those with sincere religious beliefs.

e. Pay Attorney's Fees: Pay Class Counsel $1,500,000.00 to cover their attorneys' fees in prosecuting the action.

91. There is no principled reason that Army servicemembers such as Master Sergeant Galey should not benefit from similar relief as the Army operated the same sham religious accommodation process as the Navy.

FIRST CAUSE OF ACTION

Violation of Plaintiff's Rights under the

Religious Freedom Restoration Act 42 U.S.C. § 2000bb et seq.

92. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs of this Amended Complaint.

93. The Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000b et seq. ("RFRA"), states that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 U.S.C. § 2000bb-1.

94. RFRA broadly defines the "exercise of religion" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000bb-2(4) (citing 42 U.S.C. § 2000cc-5(7)(A)).

95. In *Burwell v. Hobby Lobby Stores*, the Supreme Court stated that the exercise of religion involves "not only belief and profession but the performance of (or abstention from) physical acts that are engaged in for religious reasons." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (internal citation omitted).

96. The Supreme Court has articulated repeatedly that courts may not question whether sincerely held religious beliefs are reasonable. *Hobby Lobby*, 573 U.S. at 724.

97. The Supreme Court of the United States has held that no state official may second-guess whether a person's sincerely held religious beliefs are correct, reasonable, or sufficiently based in relevant scripture. Doing so impermissibly entangles the state official with religion, in violation of the Establishment Clause of the First Amendment of the Constitution of the United States. *See Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378, 396, (1990).

98. RFRA imposes strict scrutiny on all actions of the federal government that "substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(b).

Application of Strict Scrutiny

99. Defendants' religious accommodation process for their vaccine mandates fails strict scrutiny.

100. Unless the government satisfies the compelling interest test by "demonstrat[ing] that [the] application of the burden to the person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest," 42 U.S.C. § 2000bb-1(b), the governmental act violates RFRA.

101. Plaintiff has sincerely held religious beliefs that he cannot receive certain vaccines.

102. Defendants' vaccine mandates substantially burden Plaintiff's sincerely held religious beliefs by requiring him to take an action – injecting vaccines into his body – that would violate those religious beliefs or suffer adverse employment action, financial harm, and potential physical harm.

103. A person's exercise of religion is substantially burdened whenever a measure imposes substantial pressure on the person to modify his behavior and to violate his beliefs.

104. The DoD's vaccine mandates impose on Plaintiff the choice between violating his religious beliefs and ending his military career and livelihood.

105. The adverse actions to which Plaintiff is subject may include: involuntary discharge, court-martial (criminal) prosecution, involuntary separation, relief for cause from leadership position, removal from promotion lists, inability to attend certain military training and education schools, loss of special pay, placement in a non-deployable status, recoupment of money spent training the service member, and loss of leave and travel privileges for both official and unofficial purposes.

106. Plaintiff has already suffered and continues to suffer adverse employment actions merely for requesting relief that is protected by RFRA.

107. Defendants do not have a compelling government interest in refusing to grant religious exemptions and requiring Plaintiff to violate his sincerely held religious beliefs by taking various vaccines.

108. Defendants do not have a compelling government interest in refusing to grant religious exceptions to their vaccine mandates when they have granted thousands of medical and administrative exemptions to their vaccine mandates.

109. Allowing thousands of accommodations across the services for reasons other than religious ones demonstrates that Defendants can tolerate the risk posed by some service members remaining unvaccinated — and that Defendants are treating religious members of the military differently — in defiance of RFRA and the First Amendment.

110. Defendants do not have a compelling government interest in refusing to offer religious exemptions to their vaccine mandates.

111. Defendants may not rely on generalized or broadly formulated interests to satisfy the compelling interest test.

112. Defendants must establish that they have a compelling interest in denying each individual service member an accommodation. Asserting a compelling interest in maximizing the vaccination of Army personnel does not satisfy the compelling interest test.

113. The letters denying personnel their religious accommodation requests are conclusory and cite only generalized interests in maximizing the vaccination of Army personnel in defiance of the DoD's purported protection of religious liberty in DODI 1300.17.

114. Defendants' vaccine mandates are also not the least restrictive means of accomplishing the government's purported interest in a healthy force.

115. Defendants possess multiple less restrictive methods of mitigating the spread of diseases, including masking, remote teleworking, physical distancing, and regular testing.

116. Defendants' denials of Plaintiff's religious accommodation request fails to provide any explanation of why Plaintiff could not continue to fulfill his duties in the manner he has done through masking, remote teleworking, physical distancing, and regular testing.

117. Requiring the vaccination of a service member who possesses natural immunity, as Plaintiff did for COVID-19, does nothing to reduce the risk of infection to other service members.

118. RFRA requires that Defendants grant an accommodation in every case where denying one does not pass strict scrutiny.

119. Because of Defendants' policy and practice, Plaintiff has suffered, and will continue to suffer, irreparable harm. Plaintiff is entitled to equitable relief.

120. Plaintiff is entitled to a declaration that Defendants violated his rights under RFRA to freely exercise his religion and an injunction against Defendants' policy and actions. Plaintiff is also entitled to the reasonable costs of this lawsuit, including reasonable attorneys' fees.

SECOND CAUSE OF ACTION

Violation of Plaintiff's First Amendment Right to the Free Exercise of Religion

121. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs of this Amended Complaint.

122. The First Amendment's Free Exercise Clause prohibits the government from enacting non-neutral and non-generally applicable laws or policies unless they are narrowly tailored to achieve a compelling government interest.

123. The original public meaning of the Free Exercise Clause is that the government may not burden a sincerely held religious belief unless the government can demonstrate a compelling interest and that the law or policy burdening religious exercise is the least restrictive means to achieve that compelling interest.

124. Plaintiff has sincerely held religious beliefs that prohibit his receipt of presently-available COVID-19 vaccines and other vaccines.

125. Defendants' vaccine mandates substantially burden Plaintiff's sincerely held religious belief by requiring him to take an action that would violate those religious beliefs or suffer adverse employment action and financial harm.

126. The adverse actions to which Plaintiff is subject may include: court-martial (criminal) prosecution, involuntary separation, relief for cause from leadership positions, removal from promotion lists, inability to attend certain military training and education schools, loss of special pay, placement in a non-deployable status, recoupment of money spent training the service member, loss of leave and travel privileges for both official and unofficial purposes.

127. Defendants' vaccine mandates are not a neutral and generally applicable law or policy. The policy vests DoD and Army decisionmakers with the discretion to exempt service members from the mandates for medical reasons and to exempt service members already participating in COVID-19 vaccine trials, regardless of whether those medical trials provide those service members with any protection from infection or serious illness from COVID-19.

128. Defendants' vaccine mandates fail strict scrutiny.

129. Defendants do not have a compelling government interest in requiring Plaintiff to violate his sincerely held religious beliefs by taking various vaccines.

130. Defendants' vaccine mandates are also not the least restrictive means of accomplishing the government's purported interest because DoD operated for well over a year during the COVID-19 pandemic with a ready and healthy force that had not been fully vaccinated.

131. Moreover, Defendants possess multiple lesser restrictive methods of mitigating the spread of disease, including masking, remote teleworking, physical distancing, and regular testing.

132. Accordingly, Defendants' vaccine mandates violate Plaintiff's right to the free exercise of religion under the First Amendment.

133. Because of Defendants' policy and practice, Plaintiff has suffered and continue to suffer irreparable harm, and is entitled to equitable relief.

134. Plaintiff is entitled to a declaration that Defendants violated their First Amendment rights to free exercise of religion and an injunction against Defendants' policy and actions. Additionally, Plaintiff is entitled to the reasonable costs of this lawsuit, including reasonable attorneys' fees.

THIRD CAUSE OF ACTION

Violation of Plaintiff's Rights Under the Administrative Procedure Act

135. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs of this Amended Complaint.

136. Defendants are "agencies" under the APA, 5 U.S.C. § 551(1), the vaccine mandates complained of herein are each a "rule" under the APA, id. § 551(4), and Defendants' actions complained of herein are "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court," id. § 704.

137. The APA prohibits agency actions that are "not in accordance with law." 5 U.S.C. § 706(2)(A). The vaccine mandates, as applied to Plaintiff, are not in accordance with law.

138. RFRA states that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." 42 U.S.C. § 2000bb-1.

139. DODI 1300.17 explicitly recognizes RFRA protections for Department of Defense and Department of the Army Service members.

140. Unless the agency satisfies the compelling interest test by "demonstrat[ing] that [the] application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest," 42 U.S.C. § 2000bb-1(b), the agency action violates RFRA.

141. The APA prohibits agency actions that are "contrary to constitutional right." 5 U.S.C. § 706(2)(B). The vaccine mandates, as applied to Plaintiff, are contrary to his constitutional rights under the Free Exercise Clause of the First Amendment.

142. The First Amendment's Free Exercise Clause prohibits the government from enacting non-neutral and non-generally applicable laws or policies unless they are narrowly tailored to a compelling government interest.

143. The APA prohibits agency actions that are "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A). The Vaccine mandate and Defendants' actions implementing the Vaccine mandate are arbitrary, capricious, and an abuse of discretion for several reasons.

144. Defendants' vaccine mandates substantially burden Plaintiff's sincerely held religious beliefs by requiring him to take an action (receiving various vaccine injections) that would violate those religious beliefs or suffer adverse employment action and financial harm.

145. The adverse actions to which Plaintiff is subject may include: court-martial (criminal) prosecution, involuntary separation, relief for cause from leadership positions, removal from promotion lists, inability to attend certain military training and education schools, loss of special pay, placement in a non-deployable status, recoupment of money spent training the service member, loss of leave and travel privileges for both official and unofficial purposes.

146. Defendants do not have a compelling government interest in requiring Plaintiff to violate his sincerely held religious beliefs by taking various vaccines.

147. Defendants' vaccine mandates are also not the least restrictive means of accomplishing the government's purported interest because DoD operated for over a year during the COVID-19 pandemic with a ready and healthy force that had not been fully vaccinated.

148. Moreover, Defendants possess multiple lesser restrictive methods of mitigating the spread of disease, including masking, remote teleworking, physical distancing, and regular testing.

149. For the reasons discussed above, the vaccine mandates are not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A) as they violate Plaintiff's rights under RFRA.

150. For the reasons discussed above, the vaccine mandates exceed statutory authority within the meaning of 5 U.S.C. § 706(2)(C) as they violate Plaintiff's rights under the First Amendment.

151. By exempting service members from the mandates for medical reasons and exempting service members participating in COVID-19 vaccine trials, regardless of whether those medical trials provide those service members with any protection from infection or serious illness from COVID-19, while refusing to provide similar exemptions for service members who request exemptions for religious reasons, Defendants have acted in a manner that is arbitrary, capricious, and an abuse of discretion within the meaning of 5 U.S.C. § 706(2)(A).

152. Plaintiff has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

153. Plaintiff has no adequate remedy at law.

154. Absent injunctive and declaratory relief against the vaccine mandates, Plaintiff will have been and continues to be harmed.

155. The Court should declare the vaccine mandates and each of the Defendants' decisions invalid and set them aside.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendants and provide Plaintiff with the following relief:

(A) A declaratory judgment that Defendants' vaccination policies and practice challenged in this Amended Complaint violate Plaintiff's rights under the First Amendment to the United States Constitution;

(B) A declaratory judgment that Defendants' vaccination policies and practice challenged in this Amended Complaint violate Plaintiff's rights under the Administrative Procedure Act;

(C) A preliminary and permanent injunction prohibiting the Defendants, their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing the vaccination policies challenged in this Complain, and requiring:

(1) correction of any personnel records to remove any negative proceedings or adverse information related to non-compliance with the COVID-19 vaccination mandate, including indications of the removed flag from Plaintiff's Soldier Record Book;

(2) inclusion of language in selection board convening orders prohibiting the consideration of COVID-19 vaccination refusal where accommodation was requested;

(3) amendment of the religious accommodation policy, which prohibited servicemembers from resubmitting requests for religious accommodation if there are changes to their assignment or to relevant policies;

(4) publicly posting a statement reaffirming the value of religious expression to the Army, the importance of accommodating sincere beliefs, and stating that religious discrimination conflicts with the Army's core values;

(5) publicly posting information informing servicemembers of their rights related to requesting religious accommodation and the process for doing so;

(6) creating and making available in multiple training databases a PowerPoint presentation informing commanders, supervisors, and other decision-makers in the religious accommodation process of their obligations in processing those requests in accordance with the law and the Army's own policies, including the required time limitations for decisions, individual assessment of each request, and individualized justification for granting or denying a request, as well as the importance of accommodating religious beliefs to the Army and the dignity and respect that must be afforded to all servicemembers, including those with sincere religious beliefs;

(D) An order declaring unlawful and setting aside Defendants' vaccination policies;

(E) Plaintiff's reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and

(F) All other further relief to which Plaintiff may be entitled.

Respectfully submitted this 23rd day of July 2024.

/s/ *James Baehr*

James Baehr (LSBA 35431)
Sarah Harbison (LSBA 31948)
PELICAN CENTER FOR JUSTICE
PELICAN INSTITUTE FOR PUBLIC POLICY
400 Poydras Street, Suite 900
New Orleans, LA 70130
Telephone: (504) 475-8407
james@pelicaninstitute.org
sarah@pelicaninstitute.org
Attorneys for Plaintiff

Exhibit 1

DEPARTMENT OF THE ARMY
HEADQUARTERS, JOINT READINESS TRAINING CENTER AND FORT POLK
7260 ALABAMA AVENUE
FORT POLK, LOUISIANA 71459

REPLY TO
ATTENTION OF

ATZL-JRB 14 OCT 21

MEMORANDUM FOR: Commander, Operations Group

SUBJECT: Request for Religious Accommodation – 1SG Robert W. Galey Jr, 11Z, Task Force 1, Operations Group

1. References:

a. Religious Freedom Restoration Act of 1993.

b. Title 42, United States Code, section 2000bb-1-4 (Free Exercise of Religion Protected).

c. AR 600-20, Army Command Policy, 24 July 2020.

d. DoD Instruction 1300.17, Religious Liberty in the Military Services, 01 September 2020.

e. AR 40-562, Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, 07 October 2013.

2. I request a religious accommodation to immunizations and vaccines in accordance with standards provided in Army Regulation 600-20 Chapter 5-6 (Accommodating religious practices), Appendix P, Section P-2 (Processing requests related to medical care), 24 July 2020, and DoD Instruction 1300.17 Section 2.3 (Secretaries of the Military Departments) and Section 3.3 (Required Principles and Rules for Military Regulations and Policies), 01 September 2020.

3. I request a religious accommodation for a waiver of Army Regulation 40-562 Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, regarding an exemption from all future immunizations.

ATZL-JRB
SUBJECT: Request for Religious Accommodation – 1SG Robert Galey Jr., 1SG, Task Force 1, Operations Group

4. This request is based on immunizations being in extreme violation of my personal religious beliefs. The following describes how immunizations and/or vaccines infringe on my religious practices: The Adenovirus, Polio, DTAP/Polio/HiB Combo, Hepatitis A, Hepatitis A/Hepatitis B Combo, Rabies, Varicella, Sh1ngias, MMR, MMRV Pro Quad, Influenza vaccines, and the current COVID-19 mRNA vaccines and the Jansen vaccine use or contain cells, cellular debris, protein, and/or DNA from willfully aborted human children. Receiving a vaccine containing these materials, developed using these materials, or researched using these materials requires complicit approval of violating the commands found in Exodus 20:13 and Deuteronomy 5:17, "You shall not murder".

a. The following ingredients were derived from dozens of unborn human souls who were sacrificed for social and/or personal reasons and then used in past and ongoing vaccine research and development: PER.C6, HEK-293, WI-38 (RA 27/3), WI-1, WI-2, WI-3, WI- 4, WI-5, WI-6, WI-7, VI-8, WI-9, WI-10, WI-11, WI-12, WI-13, WI-14, WI-15, WI-16, WI-17, WI-18, WI-19, WI-20, WI-21, WI-22, WI-23, WI-24, WI-25, WI-26, WI-27, WI-38, WI-44, MRC-5, Walvax-2, Johnson and Johnson vaccine stem cells from an aborted fetus in 1985, and the Pfizer and Moderna vaccines testing the mRNAs on fetal cell lines from an aborted fetus from 1973.

b. Receiving vaccinations and supporting vaccine research and development is an endorsement of the sacrificial murder of unborn children. Genesis 4: 1, Jeremiah 1:5, and Psalm 139:13-16 demonstrate that the aborted unborn children used in the cell lines previously listed were recognized by the LORD God as human lives from the point of conception. Genesis 1:27-28, Genesis 4:1, Exodus 23:7, 2 Kings 17:17-18, Psalm 22:10, Psalm 106:34-43, Psalm 113:9, Psalm 127:3-5, Psalm 139:13-16, Amos 1:13-15, Matthew 18:1-6, Matthew 19:13-15, and John 16:21 are just a few verses that show children, born and unborn, as blessings from the LORD God that are valued and loved by Him, their Creator. It is in His image these aborted children as well as all human beings were and are created, and their murder is abhorred and condemned by the LORD God, according to His Word, causing his anger to bum against their murderers as well as those complicit. Exodus 20:13, Leviticus 18:21, Leviticus 20:1-5, Deuteronomy 6:17, Deuteronomy 12:30-32, Deuteronomy 18:10, 2 Kings 16:3, and Psalm 106:38 demonstrate that all child sacrifice is condemned by the LORD God with no exceptions allowing for medical advancement, social acceptance, or even the "greater good".

c. 1 Corinthians 6:19-20 and 1 Corinthians 10:31 state, "That your body is a temple of the Holy Spirit within you, you are not your own, for you were bought with a price. So, glorify God in your body," and "So, whether you eat or drink, or whatever you do, do all to the glory of God" (ESV). Aside from the presence of aborted human fetal cells and debris in vaccinations, the inclusion of neurotoxins, hazardous substances, attenuated viruses, animal cells, foreign DNA or mRNA, carcinogens, and chemical wastes is in violation of the command to treat my body as a temple for the Holy Spirit of the LORD God. Genesis 9:4, Leviticus 17:10-11, Leviticus 17:14, Deuteronomy 12:23, Acts 15:19-20, and Acts 15:28-29 demonstrate how blood represents the life force of humans and that human blood is to be kept pure under all circumstances and free from contaminants such as foreign human and animal cells and debris.

5. I accepted Jesus Christ as my Lord and Savior when I was 12 years old. I have attended church all of my life and joined St. Helen Baptist Church once I was baptized. When my family moved, we moved our membership to Oakland Woods Baptist Church where I remained a member until I joined the military in 2006 and was stationed at Ft. Benning, GA. There I transferred my membership to Edgewood Baptist church. I am currently a member of First Baptist Church DeRidder. When I joined the military I received all vaccinations that the army required and have sense received all vaccinations required. I was completely ignorant of the ingredients and how the vaccines were researched and tested. While a member at Edgewood Baptist church I became more active in my opposition to the great national sin of abortion. I volunteered my time to help the church run Sound Choices conferences that my pastor led. The purpose of the organization is to counsel women who are considering an abortion through crises pregnancy centers around the country. I donated money to the same organization. Over time I began to understand more and more how aborted children were used in medical experiments and research and that there are huge profits being made exploiting these murdered children. As my religious convictions grew stronger on the matter, I felt compelled to find out more. This is what caused me to begin in-depth research into the ingredients within vaccines, how they are researched, and what trials and tests they are subjected to before marketing. I did not assume a religious dilemma would present itself, but as I did more research it became clear that I cannot practice my religion according to my convictions while still receiving immunizations and vaccines researched, produced, and containing the ingredients which I stated above for the reasons in the Bible referenced above. For this reason, I am petitioning The Surgeon General for a Religious Accommodation waiving AR 40-562, providing an exemption to all vaccines and/or immunizations in accordance with AR 600-20, chapter 5-6, and Appendix P, Section P-2, and DoD Instruction 1300.17 so that I may continue my service in the Army while still adhering to my convictions for

practicing Christianity in accordance with the Holy Scriptures of the Bible, the Word of the LORD God."

6. I do not believe this request for religious accommodation is a hardship for the Army, or for Operations Group. I have contracted and recovered from Covid-19. This was a documented case and can be seen in my medical record. I have natural immunity from surviving the disease. Additionally, wearing masks and the practice of social distancing adds more protection.

7. I understand that I must continue to comply with the medical standards if I am notified my request is disapproved. If my request is disapproved, I understand that I may continue to serve without an accommodation or I may request administrative separation. I also understand that an approved commendation continues throughout my Army Career, but may be suspended, modified, or revoked by appropriate authorities when required by military necessity.

8. Point of contact for this memorandum is 1SG Robert Galey at [redacted] and [redacted]

Robert W. Galey Jr
1SG, 11Z
TM 1SG

DEPARTMENT OF THE ARMY
HEADQUARTERS, JOINT READINESS TRAINING CENTER AND FORT POLK
OPERATIONS GROUP, JOINT READINESS TRAINING CENTER
7260 ALABAMA AVENUE
FORT POLK, LOUISIANA 71459-5313

AFZL-JRI 19 October 2021

MEMORANDUM FOR GCMCA for waiver request

SUBJECT: Religious Accommodation Request Chaplain Interview – 1SG Galey, Robert

1. On 19 October 2021 I conducted a telephonic interview with 1SG Robert Galey regarding his religious accommodation request for the COVID-19 immunization.

2. 1SG Galey identifies as a Southern Baptist, and holds to a conservative world view that is consistent with the tenants of the Southern Baptist faith tradition. He currently attends First Baptist Church in DeRidder on a weekly basis.

3. 1SG Galey believes the Bible to be the authorative word of God and views the command to not murder found in Exodus 20:13 and Deuteronomy 5:17 as being at the center of his desire for religious accommodation. More specifically, he believes the current COVID-19 vaccines use or contain cells from “willfully aborted human children.” To partake of this vaccine would be seen as “an endorsement of the sacrificial murder of unborn children” and an act that is “abhorred and condemned” by God. He acknowledges that past vaccines he has received during his military service may fall into this category, but the pandemic and individual research, has helped him understand and come to terms with his positions. Should the accommodation not be approved, he will separate from the Army.

4. I assess that 1SG Galey’s religious beliefs are sincerely held and recommend that his request be submitted for further review.

5. The POC for this memorandum is CH (CPT) Christopher Kitchens at ([redacted] or c[redacted].

CHRISTOPHER S. KITCHENS
Chaplain (CPT), USA
JRTC Deputy Operations Group Chaplain

DEPARTMENT OF THE ARMY
HEADQUARTERS AND HEADQUARTERS COMPANY
JOINT READINESS TRAINING CENTER OPERATIONS GROUP
BUILDING 1633, SUITE 103, ALABAMA AVE.
FORT POLK, LOUISIANA 71459

ATZL-JRH

21 October 2021

MEMORANDUM FOR RECORD

SUBJECT: MSG Robert Galey Religious Accommodation Request Recommendation

1. The purpose of this memorandum is to voice my support for MSG Galey's Religious Accommodation Request submitted on 21 October 2021.

2. After reviewing MSG Galey's request, conducting an in-person interview with him and carefully considering Chaplain Kitchens' recommendation as the Operations Group Chaplain, I recommend approval of MSG Galey's request.

3. I would be remiss if I did not provide recommendations to risk-mitigation for MSG Galey. I believe that COVID mitigations that are currently in place are sufficient to prevent risk to mission or risk to force by approval of MSG Galey's request. I would stipulate however, that strict adherence to "social distancing" and PPE requirements will allow MSG Galey to continue to perform his duties in the United States Military without undue stress to his current or future units. This decision is based on the current guidance that "masking" and "social distancing" are enforced regardless of vaccination status. Should force protection guidance change in the future I recommend MSG Galey and his leadership to carefully construct an updated risk-mitigation plan at that point.

4. I have discussed the ramifications of denial of his request with MSG Galey to include his right to request separation under the provisions of AR 600-20, Chapter 5 and the referenced regulatory process outlined in AR 635-200. MSG Galey has acknowledged that he understands all facets of this discussion.

5. The POC for this memorandum is the undersigned and can be contacted at [redacted] or [redacted]

ROE.BENTON.FREDERICK.[redacted]
Digitally signed by ROE.BENTON.FREDERICK[redacted]
Date: 2021.10.22 07:50:08 -05'00'

Benton F. Roe
CPT, IN
Commanding

DEPARTMENT OF THE ARMY
JOINT READINESS TRAINING CENTER OPERATIONS GROUP
7260 ALABAMA AVENUE
FORT POLK, LOUISIANA 71459-5304

ATZL-JR (ARIMS) 4 November 2021

MEMORANDUM FOR Commander, Joint Readiness Training Center and Fort Polk, 6661 Warrior Trail, Building 350, Fort Polk, LA 71459

SUBJECT: Request for Religious Accommodation for Exemption from Immunizations – MSG Galey, Robert W. Jr., JRTC Operations Group, 11Z5O, DoDID 1245956289

1. MSG Galey, Robert W. Jr., JRTC Operations Group, 11Z5O, DoDID 1245956289, requests a religious exemption for immunizations in accordance with the standards provided in Army Regulation (AR) 600-20, Appendix P-2.

2. I recommend disapproval of this request for the following reasons:

a. I find that MSG Galey does not have a sincerely held religious belief, which is in opposition to receiving the vaccine.

b. I have full confidence in MSG Galey's request is motivated by misinformation and not based on beliefs. He has received every vaccination that the Army has required up to this point, most of which were developed using the same process.

c. The health and welfare of all Soldiers to accomplish our mission is my responsibility. This request could put other Soldiers at risk and therefore I cannot support it.

d. I find that MSG Galey's exercise of his religious beliefs would not be burdened by him receiving the COVID-19 vaccine.

e. Given the circumstances of MSG Galey, I find that the COVID-19 vaccine is the least restrictive means of furthering the compelling government interest in Soldier and unit readiness.

f. This position differs from the position of the immediate commander. My position is based on my responsibility IAW AR 600-20, the impacts on readiness that COVID has had on the Army. Impacts that I saw as the commander of the Immediate Response Force last year and as a BCT CDR. My experience in the Army and over the past 18 months of COVID tells me that masks are insufficient and vaccination is the best way to preserve the health and readiness of the force.

ATZL-JRO (ARIMS)
SUBJECT: Request for Religious Accommodation for Exemption from Immunizations – MSG Galey, Robert W. Jr., JRTC Operations Group, 11Z5O, DoDID 1245956289

3. The point of contact for this memorandum is the undersigned at [redacted] or [redacted]

ANDREW O. SASLAV
COL, IN
Commanding

DEPARTMENT OF THE ARMY
OFFICE OF THE SURGEON GENERAL
7700 ARLINGTON BOULEVARD
FALLS CHURCH, VA 22042-5140

DASG-ZA

14 MAR 2022

MEMORANDUM THRU Commanding General, Joint Readiness Training Center (JRTC) and Fort Polk, Fort Polk, LA 71459

FOR First Sergeant (1SG) Robert Galey, Jr., Headquarters and Headquarters Company (HHC), Task Force 1, JRTC Operations Group, Fort Polk, LA 71459

SUBJECT: Denial of Request for Religious Accommodation

1. I reviewed your religious accommodation request for an immunization exemption from the Army's COVID-19 vaccine mandate and other various vaccine requirements.

a. Your request for exemption from the Army's COVID-19 vaccine mandate is denied.

b. Your request for exemption from other vaccine requirements is overly broad as it relates to vaccines you have already received as well as possible future immunization requirements. If, in the future, your duties and circumstances change and you are required to receive any additional immunizations, you may submit a new religious accommodation request for adjudication at that time for those particular vaccines.

2. I considered your request, based on your Christian faith, and reviewed your specific case. This review included an examination of your chain of command recommendations, your unit chaplain finding of a sincere religious belief, and your current duties and role as an 11Z, Infantry Senior Sergeant. Additionally, I considered how your chain of command described your current responsibilities as an observer coach/trainer (OC/T), tasked with mentoring company commanders from rotational training units while they are training at JRTC. As such, you work in a squad-sized element and supervise eight subordinate OC/Ts and occasionally interact with foreign units that come to JRTC for training, and there is potential to travel OCONUS one to two times a year. Moreover, the JRTC mission relies on the operation group OC/Ts' ability to fulfill their training mission. Furthermore, your chain of command emphasized that JRTC is unlike many other installations in that international armed forces go there to train; thus, those training individuals have an increased risk of contracting COVID-19 based on exposure during international travel and may unwittingly bring the disease to the installation.

3. COVID-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army's compelling government interests, which includes protecting your health, the health of the force, and ensuring mission accomplishment.

DASG-ZA
SUBJECT: Denial of Request for Religious Accommodation

4. You may appeal this decision through your chain of command to the Assistant Secretary of the Army for Manpower & Reserve Affairs. If you choose to do so, you have seven calendar days from notification of my decision to submit any matters.

RAYMOND S. DINGLE
Lieutenant General, U.S. Army
The Surgeon General and
Commanding General, USAMEDCOM

DEPARTMENT OF THE ARMY
HEADQUARTERS AND HEADQUARTERS COMPANY
TASK FORCE ONE, OPERATIONS GROUP
7205 ENTRANCE RD.
FORT POLK, LOUISIANA 71459-5314

ATZL-JRO-N 23 March 2022

MEMORANDUM THRU Commander Operations Group

FOR Assistant Secretary of the Army for Manpower & Reserve Affairs

SUBJECT: Appeal of Religious Accommodation Decision by the Office of the Surgeon General – 1SG Galey, Robert W. Jr., Task Force One, Operations Group

1. This memorandum is my appeal to the denial of my Religious Accommodation Request. Below I have provided additional information that should provide a better perspective as to why my original request for religious accommodation was more than reasonable and how the denial of my request is inappropriate, very likely in violation of law (The Religious Freedom Restoration Act of 1993), and not in the best interest of the United States Army.

2. The Surgeon General denied my request for religious accommodation despite the validation that my beliefs were sincere by Rev. Rittinger and my unit chaplain. The denial memorandum labeled my request "overly broad" because I have, in the past, received vaccinations which I currently want to be exempt from taking. The reason I am making this request presently, and have not done so before is easy to explain. I was unaware that aborted fetal cells were used in the development and/or production of vaccines. I was first made aware of the possible use of aborted fetal cells for the Covid-19 vaccine from a newsletter written by the Commander of Operations Group (COG), that was hung over the urinal in the Task Force One latrine in late August 2021. Upon further research, I found that many vaccines use aborted fetal cells in their development and/or production. Had I been aware of this grotesque use of murdered children before, I would have taken action sooner. To require me to continue to take vaccines that I have a moral objection to just because I have done so in the past shows a lack of compassion and flippant intolerance of my religious convictions and is flat out discriminatory to my beliefs as a Christian, which challenge me to test myself constantly and excise sin in my life whenever and wherever I find it, according to the Scriptures and the conviction of the Holy Spirit. And allow me to be clear, I am not anti-vaccine. I requested an exemption from the influenza vaccine because I found through my research that some of the influenza vaccines used aborted fetal cells. When I discovered in December 2021 that all three influenza vaccines produced for, and distributed in, the United States were cultured in a dog's kidney cells instead of using aborted fetal cells I was relieved, and I elected to receive the vaccine because I felt no convictions that these vaccines condoned evil. For the purpose of this appeal, however, I will focus exclusively on the Covid-19 vaccination and will endeavor to apply for

separate religious accommodations for future vaccines if they become necessary, as the Surgeon General recommends.

3. The denial I received from the Surgeon General states "Covid-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army's compelling government interest, which includes protecting your health, the health of the force, and ensuring mission accomplishment." The Surgeon General does not qualify or quantify any of his claims in this denial and this denial is all that he provided. The Religious Freedom Restoration Act of 1993 (RFRA) states the Government may substantially burden an individual's exercise of religion only if it demonstrates that the application of the burden to the person is (1) in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that interest. The burden rests with the government to demonstrate both factors in their entirety, not the individual requesting the exemption per DoDI 1300.17, September 1, 2020. The Surgeon General declined to provide any evidence to me, that my being vaccinated would further the stated compelling government interest. Nor did the Surgeon General show evidence that he considered any less restrictive means when pronouncing that I must violate my religious convictions or be separated from the Army.

4. The denial letter I received is nearly identical (substitute name, rank, and prescribed Christian denomination) to all of the other OC/Ts from my unit, despite each of us submitting our own unique accommodation request based off our own beliefs and personnel situations. It is not evident that The Office of the Surgeon General read my accommodation request. For instance, there was no mention in my denial letter from the Surgeon General of me having tested positive for Covid-19 in September of 2021 (positive lab test attached) as stated in my original request for accommodation. CDC studies claim "By early October (2021), persons who survived a previous infection had lower case rates than persons who were vaccinated alone." (https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm#suggestedcitation JAN 28, 2022) Proof of prior infection is in and of itself a less restrictive means of furthering the governmental interest of protecting the force according to the CDC's own findings. It is a much less restrictive means than forcing me to violate my religious convictions or separating me from the Army. This CDC study was published almost two months before the Surgeon General decided my request. I have faith in my Creator and the God given natural immunity I have as a result of contracting and surviving Covid-19.

5. In the Surgeon General's denial letter he highlighted that "Furthermore, your chain of command emphasized that JRTC is unlike many other installations in that international armed forces go there to train; thus, those training individuals have an increased risk of contracting COVID-19 based on exposure during international travel and may unwittingly bring the disease to the installation." This emphasis by my chain of command and echoed by the Surgeon General is baffling and sounds xenophobic. Covid-19 is everywhere on Earth and doesn't seem to care if someone is vaccinated or

not. And to imply that one is more likely to catch Covid-19 from a foreigner that you come into contact with versus casual interaction with a local Louisiana resident at the movie theater or Walmart, or a fellow Soldier at the class VI is a disturbing world view. Besides, there is a host of tools available to mitigate the spread of Covid-19; verifying vaccination status or recovery from a prior infection, requiring a negative PCR test, quarantine procedures upon arrival with suspected symptoms, or a bunch of other protocols available to the unit and widely used at Fort Polk). Also, JRTC is not a unique 'installation'. (JRTC is not an installation as referenced by the Surgeon General, it is the Joint Readiness Training Center, a Command located on Fort Polk in Louisiana.) JRTC on Ft. Polk is also not unique because it hosts international guests. Most installations in the United States and OCONUS have Service Members that are routinely sent TDY abroad or have a temporary or permanent LNO from one or many countries. Every installation has Service members with relatives that live in foreign countries or are married to their spouses who have relatives in foreign countries. We live in a global world, and to assume that anyone is unique or special because they come into contact several times a year with 'obvious' foreigners is a narcissistic world view. We all come into constant contact with people that have recently traveled from far away, almost every day.

6. The Army has already approved seven permanent medical exemptions. If these seven Soldiers can obtain a waiver from the vaccine because of medical concerns and continue to safely serve their country in uniform, then religious accommodations must be granted if the they are determined to be sincerely held. Anything less is religious discrimination born out of fear or hate. In a letter to the Hebrew Congregation in Newport, Rhode Island, President George Washington wrote, "It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support." From the founding, our nation has stood for religious toleration and guaranteed its citizens peace from bigots and persecution. After reviewing my chain of command's recommendations I am now reminded it is often the senior leaders, who are charged with upholding and defending the Constitution, who are often the first to succumb to their fears and prejudice, and are also the first to lead the effort to trample over those rights contained in the Constitution. I pray that this is not another dark time in American history.

7. Finally, it is in the U.S. Army's best interest to accept a less restrictive means of furthering its interests. I will not violate my sincere religious beliefs for anything, let alone because my career and livelihood is being threatened. This means that if my accommodation is ultimately denied, I will likely be separated from the Army. The Army has invested 16 years and millions of dollars training me. I have eight combat deployments filled with stressful combat experiences that the Army will never be able to replicate and replace. The Army has trained me to be a leader. I have spent the last

three years training and coaching units on how to fight in Large Scale Combat Operations (LSCO) as we pivot away from the counter insurgency fight we have been fighting for the last 20 years. I am set to PCS to a deploy-able unit in the next 3 months and will be bringing all of that experience and expertise with me. If this appeal is denied, the Army will lose a dedicated and patriotic Senior NCO that still has a lot to offer the Army. It also bears mentioning that the mandate for Federal Civilian Employees and Federal Contractors has been blocked in the courts. This command utilizes hundreds of these employees that are not required to be vaccinated against Covid-19 to support and accomplish its mission every month with out presenting a grave danger to mission success. This also means that I could apply for one of these jobs if I am separated from the Army and could wind up working for the same command in the very same building and field environment that I currently work in.

8. In closing, the Founders envisioned a nation where religious people are free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects this freedom without undue interference by the Federal Government. James Madison said the free exercise of religion is "in its nature an unalienable right because the duty owed to one's creator is precedent both in order of time and in degree of obligation to the claims of Civil Society." Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with a law or mandate. Thank you for your time and your consideration of this appeal.

9. The POC for this memorandum is the undersigned and can be contacted at (cell) [redacted] or at [redacted]

1SG Robert W. Galey Jr.
Task Force One, Operations Group

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

28 SEP 2022

SAMR (600-20f)

MEMORANDUM THRU Commanding General, Joint Readiness Training Center (JRTC) and Fort Polk, Fort Polk, LA 71459

FOR 1st Robert Galey Jr., Headquarters and Headquarters Company (HHC), Task Force 1, JRTC Operations Group, Joint Readiness Training Center (JRTC), Fort Polk, LA 71459

SUBJECT: Denial of Appeal for Religious Accommodation Request for Immunization Exemption

1. Your appeal of The Surgeon General's denial of your religious accommodation request for an immunization exemption for the COVID-19 vaccination is denied. This decision is final.

2. I considered your appeal and reviewed your specific case. This included an examination of your chain of command's recommendations, your unit Chaplain's finding that you hold a sincere religious belief, and your current duties and role as an Infantry Senior Sergeant (11Z), where you are required to coach and train company commanders from rotational and foreign units. Additionally, I considered the Director of the Public Health Directorate's assessment, risk of exposure and transmission, and medical resources available at Fort Polk, LA. Further, I considered all matters you submitted, both in your original request for exemption and in your appeal. When rendering my decision, I took into account the nature and sincerity of your religious beliefs regarding the COVID-19 vaccine.

3. Having weighed all these factors, in your case I have determined that vaccinating you is the least restrictive means to further the Army's compelling governmental interests of protecting the health of the force, ensuring Servicemembers are medically fit and ready to deploy worldwide, while minimizing the risk to, and maximizing the success of, a plethora of dangerous and critical missions. I find that alternatives such as masking and social distancing are insufficient because while they may provide some protection in the most optimal of circumstances, they do not provide protection from the likelihood or increased risk of serious illness, hospitalization, and death in the event of infection.

4. I strongly encourage you to reconsider your position regarding this vaccination Immunizations in general and the COVID-19 vaccine in particular are a safe and effective means of reducing the risk of serious illness or death as a result of infection by a vaccine-preventable disease. Additionally, COVID-19 vaccines continue to be developed for use, to include new vaccines that may have received approval since you

sought an exemption. Therefore, I advise you to seek updated information about COVID-19 vaccines and consult with your healthcare provider and religious advisor in the event a vaccine is, or becomes available that would satisfy your religious concerns and enable you to comply with the Department of Defense's COVID-19 vaccine mandate.

5. If you elect not to receive the COVID-19 after notification of this denial, you may be processed for separation under applicable regulations or face other adverse action.

YVETTE K. BOURCICOT
Acting Assistant Secretary of the Army
(Manpower and Reserve Affairs)

DEVELOPMENTAL COUNSELING FORM

For use of this form, see ATP 6-22.1; the proponent agency is TRADOC.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY:	5 USC 301, Departmental Regulations; 10 USC 3013, Secretary of the Army.
PRINCIPAL PURPOSE:	To assist leaders in conducting and recording counseling data pertaining to subordinates.
ROUTINE USES:	The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems or records notices also apply to this system.
DISCLOSURE:	Disclosure is voluntary.

PART I - ADMINISTRATIVE DATA

Name *(Last, First, MI)*	Rank/Grade	Date of Counseling
GALEY, ROBERT	MSG/E8	20221006

Organization	Name and Title of Counselor
HHC, JRTC OPS GRP, Fort Polk, LA 71446	CPT Myers, Julissa J./Company Commander

PART II - BACKGROUND INFORMATION

Purpose of Counseling: *(Leader states the reason for the counseling, e.g. Performance/Professional or Event-Oriented counseling, and includes the leader's facts and observations prior to the counseling.)*

--NOTIFICATION OF EMPLACEMENT OF FLAG CODE B (Involuntary Separation)--

PART III - SUMMARY OF COUNSELING

Complete this section during or immediately subsequent to counseling.

Key Points of Discussion:

The purpose is to notify you of the initiation of a suspension of favorable personnel actions FLAG Code B (Involuntary Separation).

MSG Galey, you are being counseled today 05 October 2022, because you have been FLAG'd for a code B (Involuntary Separation) Chapter 14-12c due to COVID vaccination refusal.

Involuntary Separation EXPLAINED (AR 600-8-2, p.4):
"Involuntary separation or discharge" (field initiated (Flag code B) or Headquarters, Department of the Army initiated (Flag code W)). Soldiers pending involuntary separation or discharge (AR 635-200 AR 600-8-24, AR 135-175, or AR 135-178) to include the Qualitative Management Program, must be flagged (except entry level performance and conduct separations initiated under AR 635-200). Soldiers will not be flagged solely for undergoing a medical evaluation board. The effective date of the Flag will be the date the commander signs the intent to separate notification memorandum to the Soldier or the date HQDA initiates an involuntary separation action.

REMOVAL CRITERIA (AR 600-8-2, p.9):
Involuntary separation or discharge. Remove the Flag on the date HQDA or the appropriate commander approves retention of the Soldier, or on the date the Soldier is reassigned to the transition point (Active Component) or discharge orders are published (Reserve Component).

ACTIONS PROHIBITED BY A FLAG (AR 600-8-2, p.11-12):
A properly imposed Flag prohibits the following personnel actions unless otherwise specified in this regulation:
o Promotions in grade, lateral appointments, and frocking (AR 600-8-19, AR 600-8-29, and AR 135-155).
o Recommendation for, and receipt of, individual awards and decorations. Exceptions to this policy are outlined in AR 600-8-22.
o Attendance at military or civilian schools. The waiver approval authority for attendance at military or civilian schools is the DCS, G-3/5/7 (DAMO-TR).
o For Officers, military schools include Officer Education System courses and functional area and skill specialty training courses. The Basic Officer Leader courses are not included.
o Assumption of Command (AR 600-20).

r. Flag code W "Involuntary separation or discharge." (Headquarters, Department of the Army initiated). Soldiers pending a Show Cause action, involuntary separation, or discharge (AR 635 – 200, AR 600 – 8 – 24, AR 135 – 175, or AR 135 – 178) to include selection for separation under the Qualitative Management Program, must be flagged (except entry level performance and conduct separations initiated under AR 635 – 200). Soldiers will not be flagged solely for referral, to include required referral, to the DES. The effective date of the Flag will be the date HQDA
AR 600–8–2 • 5 April 2021 8
initiates an involuntary separation action. The Soldier will separate and the Flag will remain on the Soldier's record, this applies to both Regular Army and USAR Soldiers. HQDA initiated Flag is authenticated by HRC (AHRC – OPL – R (officer) or AHRC – EPF – M (enlisted)) (see para 1–10d).

OTHER INSTRUCTIONS

This form will be destroyed upon: reassignment *(other than rehabilitative transfers)*, separation at ETS, or upon retirement. For separation requirements and notification of loss of benefits/consequences see local directives and AR 635-200.

Plan of Action *(Outlines actions that the subordinate will do after the counseling session to reach the agreed upon goal(s). The actions must be specific enough to modify or maintain the subordinate's behavior and include a specified time line for implementation and assessment (Part IV below)*

o Attend all required Medical [Labs, Hearing, Dental, PHII], EBH Evaluation, SFL-TAP, and subsequent pre-clearing with escort of higher rank, as required by installation.

o Completion of all separation requirements is required prior to returning to full work-related duties/functions.

o Continue to be a productive member of the Operations Group Team

Session Closing: *(The leader summarizes the key points of the session and checks if the subordinate understands the plan of action. The subordinate agrees/disagrees and provides remarks if appropriate.)*

Individual counseled: ☐ I agree ☐ disagree with the information above.

Individual counseled remarks:

Signature of Individual Counseled: _____ Date: _____

Leader Responsibilities: *(Leader's responsibilities in implementing the plan of action.)*

Signature of Counselor: _____ Date: _____

PART IV - ASSESSMENT OF THE PLAN OF ACTION

Assessment: *(Did the plan of action achieve the desired results? This section is completed by both the leader and the individual counseled and provides useful information for follow-up counseling.)*

Counselor: _____ Individual Counseled: _____ Date of Assessment: _____

Note: Both the counselor and the individual counseled should retain a record of the counseling.

Exhibit 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

ROBERT W. GALEY, JR. Plaintiff, v. JOSEPH R. BIDEN, JR., in his official capacity as Commander in Chief; LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; CHRISTINE WORMUTH, in her official capacity as United States Secretary of the Army; YVETTE K. BOURCICOT, in her official capacity as Acting Assistant Secretary of the Army; RAYMOND S. DINGLE, in her official capacity as Surgeon General of the United States Army; UNITED STATES DEPARTMENT OF DEFENSE; Defendants.	)	Civil Action No. 22-cv-6203

DECLARATION OF ROBERT W. GALEY, JR.

I, Robert W. Galey, Jr., hereby state and declare as follows:

1. In October of 2021, I submitted a Religious Accommodation (RA) request to be exempted from the mandated COVID-19 vaccine. I was interviewed by an Army Chaplain and my immediate commander, both of whom acknowledged in writing that they believed my beliefs to be genuine. My immediate commander recommended that my RA be granted in a Memorandum for Record. My packet was then sent higher and higher through my chain of command, all the way the Surgeon General of the Army. I was not interviewed or addressed by anyone higher than my immediate commander.

2. In March of 2022, I was informed in writing by the Surgeon General that my request was denied. The denial letter was identical to another Soldier's denial in my unit, and we both

received them on the same day. I was counseled by my commander that I had seven days to submit a rebuttal. I asked for an extension of an additional seven days and for copies of all the commanders' recommendations so that I could write a proper rebuttal. Both requests were denied. I filed a Congressional Complaint through Senator Bill Cassidy's office. This pressure on my chain of command persuaded them to release the recommendation of my Brigade Commander that went with my packet. In his recommendation, Colonel Saslav declared that he believed that my beliefs were not sincere and that my RA should be denied. Colonel Saslav does not know me, nor have we ever spoken.

3. I submitted my rebuttal on time. In the meantime, my follow on assignment orders were deleted two months before I was to conduct an intra-post transfer. In October, of 2022, my rebuttal came back denied and once again it was a form letter identical to thousands of other Soldier's denials. I was immediately ordered to take the vaccine. When I refused to violate my beliefs, I was immediately flagged for involuntary separation and adverse action. I was also removed from my leadership position as First Sergeant that same day. I was forced to attend mandatory appointments to speed my departure from the Army and had to bring a commissioned officer to these appointments. This is how the Army treats people who have committed serious infractions and/or crimes. This was all being done administratively, meaning that I had no recourse for a trial under UCMJ.

4. In December of 2022, I was issued a General Officer Letter of Reprimand. When that was issued, a copy of my current Soldier Record Brief (SRB) was published to my Permanent Personnel File. This SRB shows that I was flagged in December of 2022 for adverse action and involuntary separation. The General Officer Letter of Reprimand was withdrawn in March of 2023 due to the National Defense Authorization Act signed by Congress in December of 2022.

However, that SRB showing that I was flagged is still in my permanent file. Every time my promotion board file goes before the centralized promotion board, the board members can see this SRB.

5. I know that I was denied a career enhancing assignment as punishment for my religious beliefs. I believe that I have been denied promotion twice, due to following my faith. I also believe that this will happen again to me, or to future generations of Soldiers, if the Army is not held to account for violating the law regarding its Soldiers freedom of religion. New vaccines are being produced and not all of them are created in an ethical way. There is no genuine process to consider religious accommodation on a case by case basis, and there has been no incentive for the Army to change its practice of blanket denial.

6. I thank the Court for taking the time to listen to and consider my case. This is the only place that will be heard. This ordeal has put me, along with my wife and three children, through intense emotional stress, yet I regret nothing. I would make the same decision again today, even knowing what is at stake. I will never betray my faith in God nor my principles.

****

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 23, 2024, in Lafayette, Louisiana.

/s/ *Robert W. Galey, Jr.*
Robert W. Galey, Jr.

Exhibit 3

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

AUG 24 2021

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members

To defend this Nation, we need a healthy and ready force. After careful consultation with medical experts and military leadership, and with the support of the President, I have determined that mandatory vaccination against coronavirus disease 2019 (COVID-19) is necessary to protect the Force and defend the American people.

Mandatory vaccinations are familiar to all of our Service members, and mission-critical inoculation is almost as old as the U.S. military itself. Our administration of safe, effective COVID-19 vaccines has produced admirable results to date, and I know the Department of Defense will come together to finish the job, with urgency, professionalism, and compassion.

I therefore direct the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.

Service members are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Those with previous COVID-19 infection are not considered fully vaccinated.

Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance. Service members voluntarily immunized with a COVID-19 vaccine under FDA Emergency Use Authorization or World Health Organization Emergency Use Listing in accordance with applicable dose requirements prior to, or after, the establishment of this policy are considered fully vaccinated. Service members who are actively participating in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

Mandatory vaccination requirements will be implemented consistent with DoD Instruction 6205.02, "DoD Immunization Program," July 23, 2019. The Military Departments should use existing policies and procedures to manage mandatory vaccination of Service members to the extent practicable. Mandatory vaccination of Service members will be subject to any identified contraindications and any administrative or other exemptions established in Military Department policy. The Military Departments may promulgate appropriate guidance to carry out the requirements set out above. The Under Secretary of Defense for Personnel and

Readiness may provide additional guidance to implement and comply with FDA requirements or Centers for Disease Control and Prevention recommendations.

The Secretaries of the Military Departments should impose ambitious timelines for implementation. Military Departments will report regularly on vaccination completion using established systems for other mandatory vaccine reporting.

Our vaccination of the Force will save lives. Thank you for your focus on this critical mission.

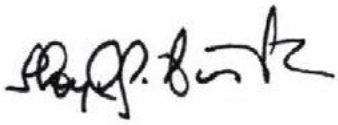

Exhibit 4

UNCLASSIFIED

FRAGO 5 TO HQDA EXORD 225-21 COVID-19 STEADY STATE OPERATIONS

ATTACHMENT:
[ADD] ANNEX J - PUBLIC AFFAIRS GUIDANCE. (TBD)
[ADD] ANNEX GG – MEDICAL MATERIAL QUALITY CONTROL MESSAGE, MMQC-21-1463, PFIZER LICENSE AND SHELF LIFE EXTENSION, 24 AUGUST 2021.
[ADD] ANNEX HH - MEDICAL MATERIAL QUALITY CONTROL MESSAGE, MMQC-21-1425, UPDATED COVID-19 VACCINE ORDERING GUIDELINES, 09 AUGUST 2021.
[ADD] ANNEX II - MMQC 21 1454 ADDITIONAL DOSE OF COVID 19 VACCINE FOR IMMUNOCOMPROMISED PERSONS,13 AUGUST 2021.
[ADD] ANNEX JJ – UPDATED PFIZER FACT SHEET FOR HEALTHCARE PROVIDERS, 24 AUGUST 2021.
[ADD] ANNEX KK – UPDATED PFIZER FACT SHEETS FOR PATIENTS AND CAREGIVERS, 24 AUGUST 2021.
[ADD] ANNEX LL – TBD
[ADD] ANNEX MM – TBD
[ADD] ANNEX NN – SAMPLE DA FORM 4856 FOR ENLISTED VACCINE REFUSALS.
[ADD] ANNEX OO – SAMPLE DA FORM 4856 FOR OFFICER VACCINE REFUSALS.

Originator: DA WASHINGTON DC

DTG: **XXXXXXXXXX** Precedence: P DAC: Gener
To: ARLINGTON NATIONAL CEMETERY ARLINGTON VA, ARNG NGB COMOPS ARLINGTON VA, ARNG NGB J3 JOC WASHINGTON DC, ARNGRC ARLINGTON VA, ARNGRC WATCH ARLINGTON VA, CDR 5 ARMY NORTH AOC FT SAM HOUSTON TX, CDR ARMY FUTURES COMMAND AUSTIN TX, CDR ATEC ABERDEEN PROVING GROUND MD, CDR FORSCOM DCS G3 CENTRAL TASKING DIV FT BRAGG NC, CDR FORSCOM DCS G3 CURRENT OPS FT BRAGG NC, CDR FORSCOM DCS G3 CURRENT OPS FT BRAGG NC, CDR FORSCOM DCS G3 WATCH OFFICER FT BRAGG NC, CDR FORSCOM DCS G3 WATCH OFFICER FT BRAGG NC, CDR MDW J3 FT MCNAIR DC, CDR MDW JFHQ-NCR FT MCNAIR DC, CDR NETCOM 9THSC FT HUACHUCA AZ, CDR TRADOC CG FT EUSTIS VA, CDR TRADOC DCS G-3-5-7 OPNS CTR FT EUSTIS VA, CDR USAR NORTH FT SAM HOUSTON TX, CDR USARCENT SHAW AFB SC, CDR USAREUR WIESBADEN GE, CDR USASOC COMMAND CENTER FT BRAGG NC, CDR USASOC FT BRAGG NC, CDR USASOC MESSAGE CENTER FT BRAGG NC, CDR3RD ARMY USARCENT WATCH OFFICER SHAW AFB SC, CDRAMC REDSTONE ARSENAL AL, CDRFORSCOM FT BRAGG NC, CDRHRC G3 DCSOPS FT KNOX KY, CDRINSCOM FT BELVOIR VA, CDRINSCOMIOC FT BELVOIR VA, CDRMDW WASHINGTON DC, CDRUSACE WASHINGTON DC, CDRUSACIDC FT BELVOIR VA, CDRUSACYBER FT BELVOIR VA, CDRUSACYBER G3 FT BELVOIR VA, CDRUSACYBER G33 FT BELVOIR VA, CDRUSAEIGHT G3 CUROPS SEOUL KOR, CDRUSAEIGHT SEOUL KOR, CDRUSAFRICA VICENZA IT, CDRUSAMEDCOM FT SAM HOUSTON TX, CDRUSARC G33 READ FT BRAGG NC, CDRUSARCYBER WATCH OFFICER FT BELVOIR VA, CDRUSARPAC CG FT SHAFTER HI, CDRUSARPAC FT SHAFTER HI, COMDT USAWC CARLISLE BARRACKS PA, HQ IMCOM FT SAM HOUSTON TX, HQ INSCOM IOC FT BELVOIR VA, HQ SDDC CMD GROUP SCOTT AFB IL, HQ SDDC OPS MSG CNTR SCOTT AFB IL, HQ USARSO FT SAM HOUSTON TX, HQ USARSO G3 FT SAM HOUSTON TX, HQDA ARMY STAFF WASHINGTON DC, HQDA CSA WASHINGTON DC, HQDA EXEC OFFICE WASHINGTON DC, HQDA IMCOM OPS DIV WASHINGTON DC, HQDA SEC ARMY WASHINGTON DC, HQDA SECRETARIAT WASHINGTON DC, HQDA SURG GEN WASHINGTON DC, MEDCOM HQ EOC FT SAM HOUSTON TX, NETCOM G3 CURRENT OPS FT HUACHUCA AZ, NGB WASHINGTON DC, SMDC ARSTRAT CG ARLINGTON VA, SMDC ARSTRAT G3 ARLINGTON VA, SUPERINTENDENT USMA WEST POINT NY, SURGEON GEN FALLS CHURCH VA, USAR AROC FT BRAGG NC, USAR CMD GRP FT BRAGG NC, USAR DCS G33 OPERATIONS FT BRAGG NC, USARCENT G3 FWD, USARPAC COMMAND CENTER FT SHAFTER HI

CC: HQDA AOC DAMO ODO OPS AND CONT PLANS WASHINGTON DC, HQDA AOC G3 DAMO CAT OPSWATCH WASHINGTON DC, HQDA AOC G3 DAMO OD DIR OPS READ AND MOB WASHINGTON DC

CUI//
CONTROLLED BY: HQDA DCS, G-3/5/7
CONTROLLED BY: DAMO-OD
CUI CATEGORY: OPSEC
LIMITED DISSEMINATION CONTROL: FEDCON
POC: LTC NYKEBA L. ANTHONY 703-614-4281

SUBJECT: (U) FRAGO 4 TO HQDA EXORD 225-21 COVID-19 STEADY STATE OPERATIONS//

(U) REFERENCES.

REF//A/ THROUGH REF/FF/ NO CHANGE.
REF//GG/ [ADD] FRAGO 4 TO HQDA EXORD 225-21 COVID-19 STEADY STATE OPERATIONS, DTG 251500Z AUGZ 21 //

1. (U) SITUATION.

1.A. THROUGH 1.F. NO CHANGE.

1.G. (U) THIS ORDER ADDRESSES DEPARTMENT OF THE ARMY IMPLEMENTATION OF ANNEX FF, MANDATORY CORONAVIRUS DISEASE 2019 VACCINATION OF DEPARTMENT OF DEFENSE SERVICE MEMBERS, 24 AUGUST 2021. IT DOES NOT ADDRESS FEDERAL CIVILIANS OR CONTRACTOR EMPLOYEES.

2. (U) MISSION. NO CHANGE.

3. (U) EXECUTION.

3.A. (U) NO CHANGE.

3.B. (U) CONCEPT OF THE OPERATION.

3.B.1 (U) NO CHANGE.

3.B.2. (U) NO CHANGE.

3.B.3. (U) [CHANGE TO READ] THE SECRETARY OF DEFENSE DIRECTED ALL MEMBERS OF THE ARMED FORCES UNDER THE DEPARTMENT OF DEFENSE BE FULLY VACCINATED AGAINST COVID-19 WITH THE FDA APPROVED VACCINE, IAW ANNEX FF. THE ARMY WILL ACHIEVE A MINIMUM OF 90% OF ACTIVE DUTY SOLDIERS VACCINATED NLT 01 DECEMBER 2021. ARMY NATIONAL GUARD AND ARMY RESERVE FORMATIONS WILL REACH A MINIMUM OF 90% VACCINATED NLT 1 APRIL 2022. SEE PARAGRAPH 3.D.8. FOR COORDINATING INSTRUCTIONS.

3.B.3.A. (U) [ADD] HQDA HAS FACILITATED DISTRIBUTION OF DOSES TO MEET 75% OR MORE OF THE COMMAND REPORTED SERVICE MEMBER VACCINE DEMAND WITH AN ARRIVAL DATE O/A 01 SEPTEMBER 2021. INSTALLATION MTFS WILL THEN CONTINUE TO PLACE ORDERS, WITHIN A CONTROLLED SUPPLY RATE, FOR COVID-19 VACCINE THROUGH UNITED STATES ARMY MEDICAL MATERIEL AGENCY-DISTRIBUTION OPERATIONS CENTER (USAMMA-DOC) TO SATISFY REMAINING INSTALLATION DEMAND.

3.C. (U) TASKS TO ARMY STAFF AND SUBORDINATE COMMANDS.

3.C.1. NO CHANGE.

3.C.2. (U) THE DIRECTOR OF THE ARMY NATIONAL GUARD (USARNG).

3.C.2.A. THROUGH 3.C.2.D. NO CHANGE.

3.C.2.E. (U) [ADD] CONDUCT COVID-19 VACCINATION OPERATIONS OF ALL ARNG SERVICE MEMBERS. ESTABLISH A TIMELINE TO REACH 90% VACCINATED NLT 1 JUNE 2022.

3.C.3. (U) THE CHIEF OF ARMY RESERVE (OCAR)/COMMANDING GENERAL UNITED STATES ARMY RESERVE COMMAND (USARC).

3.C.3.A. THROUGH 3.C.3.D. NO CHANGE.

3.C.3.E. (U) [ADD] CONDUCT COVID-19 VACCINATION OPERATIONS OF ALL USAR SERVICE MEMBERS. ESTBLISH A TIMELINE TO REACH A MINIMUM OF 90% VACCINATED NLT 1 MARCH 2022.

3.C.3.F (U) [ADD] AUTHORIZED TO COORDINATE WITH LOCAL INSTALLATION MTFS OR OTHER DOD FACILITIES TO EXPEDITE MANDATORY VACCINATION OPERATIONS.

3.C.4. THROUGH 3.C.15. NO CHANGE.

3.C.16. (U) COMMANDER, U.S. ARMY MEDICAL COMMAND (USAMEDCOM).

3.C.16.A. (U) [RESTATED] (U) MANAGE THE COLD CHAIN DISTRIBUTION AND STORAGE OF VACCINES AND REDISTRIBUTE VACCINATION WITHIN REGIONAL HEALTH COMMANDS AND THEIR ALIGNED INSTALLATIONS. ENSURE THE GAINING MTF IS READY TO RECEIVE, STORE, AND ADMINISTER THE DESIGNATED COVID-19 VACCINE.

3.C.16.A.1. NO CHANGE

3.C.16.A.2. [ADD] AUTHORIZED TO SUPPORT VACCINATION EFFORTS OF USAR SERVICE MEMBERS THROUGH INSTALLATION MTFS, TO INCLUDE OPERATIONS AFTER NORMAL BUSINESS DAY HOURS AND ON WEEKENDS. DIRLAUTH WITH USAR UNITS IS AUTHORIZED.

3.C.16.A.3. [ADD] BPT SUPPORT THE CO-ADMINISTRATION OF THE COVID-19 VACCINES WITH INFLUENZA VACCINE.

3.C.17. THROUGH 3.C.30. NO CHANGE.

3.D. (U) COORDINATING INSTRUCTIONS.

3.D.1. THROUGH 3.D.7. NO CHANGE.

3.D.8. (U) [CHANGE TO READ] IAW ANNEX FF, CONDUCT MANDATORY COVID-19 VACCINATION OPERATIONS OF UNVACCINATED SERVICE MEMBERS WITH THE FDA-APPROVED PFIZER / COMIRNATY COVID-19 VACCINE, OR CONTINUE VOLUNTARY VACCINATION WITH MODERNA OR J&J'S JANSSEN VACCINE. SERVICE MEMBERS ARE CONSIDERED FULLY VACCINATED TWO WEEKS POST COMPLETION OF A TWO-DOSE SERIES VACCINE OR TWO WEEKS POST COMPLETION OF A SINGLE DOSE VACCINE.

3.D.8.A. (U) [CHANGE TO READ] WHILE THE ONLY MANDATORY COVID-19 VACCINE IS THE FDA-APPROVED PFIZER / COMIRNATY COVID-19 VACCINE, SERVICE MEMBERS MAY CHOOSE TO RECEIVE ANY EUA AUTHORIZED VACCINE TO SATISFY THE SECRETARY OF DEFENSE COVID-19 VACCINATION REQUIREMENT. SERVICE MEMBERS WHO HAVE COMPLETED AN EUA AUTHORIZED SERIES ARE NOT REQUIRED TO START THE SERIES AGAIN WITH THE FDA APPROVED VACCINE.

3.D.8.A.1 (U) [ADD] SERVICE MEMBERS WHO HAVE STARTED BUT HAVE NOT COMPLETED THE MODERNA SERIES, MAY CHOOSE TO COMPLETE THE SERIES WITH THE SAME VACCINE PRODUCT, OR WILL COMPLETE THE SERIES WITH THE FDA APPROVED PFIZER / COMIRNATY COVID-19 VACCINE, AS THIS IS NOT IN VIOLATION OF SAFETY OR EFFECTIVNESS OF THE VACCINE.

3.D.8.A.2. (U) [ADD] SERVICE MEMBERS WHO ARE ACTIVELY PARTICIPATING IN COVID-19 CLININCAL TRIALS ARE EXEMPTED FROM MANDATORY VACCINATION AGAINST COVID-19 UNTIL THE TRIAL IS COMPLETE.

3.D.8.B. (U) [CHANGE TO READ] COMMANDERS WILL READ AND COMPLY WITH AR 600-20 (ARMY COMMAND POLICY), PARAGRAPH 5-4G, FOR COMMAND AUTHORITY FOR IMMUNIZATIONS.

3.D.8.B.1. (U) [ADD] IF A SOLDIER DECLINES TO BE IMMUNIZED, THE COMMANDER WILL ENSURE THE SOLDIER UNDERSTANDS THE PURPOSE OF THE VACCINE; ENSURE THAT THE SOLDIER HAS BEEN ADVISED OF THE POSSIBILITY THAT THE DISEASE MAY BE PRESENT IN A POSSIBLE AREA OF OPERATION; AND ENSURE THAT THE SOLDIER IS EDUCATED ABOUT THE VACCINE AND HAS BEEN ABLE TO DISCUSS ANY CONCERNS ABOUT RECEIVING THE VACCINE WITH MEDICAL AUTHORITIES.

3.D.8.B.2. (U) [ADD] IF THE SOLDIER CONTINUES TO REFUSE TO BE IMMUNIZED, COUNSEL THE SOLDIER IN WRITING THAT HE OR SHE IS LEGALLY REQUIRED TO BE IMMUNIZED, THAT IF THE SOLDIER CONTINUES TO REFUSE TO BE IMMUNIZED THAT HE OR SHE WILL BE LEGALLY ORDERED TO DO SO AND THAT FAILURE TO OBEY THE ORDER MAY RESULT IN ADVERSE ADMINISTRATIVE OR PUNITIVE ACTION AS DEEMED APPROPRIATE BY THE COMMANDER. ORDER THE SOLDIER TO RECEIVE THE IMMUNIZATION. REFERENCE ANNEX NN AND ANNEX OO FOR TEMPLATE COUNSELING STATEMENTS.

3.D.8.B.4. (U) [ADD] THERE WILL BE NO INVOLUNTARY (FORCIBLE) IMMUNIZATIONS.

3.D.8.B.5 (U) [ADD] THE TWO TYPES OF EXEMPTIONS FROM IMMUNIZATION ARE MEDICAL AND ADMINISTRATIVE. ADMINISTRATIVE EXEMPTIONS INCLUDE RELIGIOUS ACCOMMODATIONS, AS WELL AS OTHERS ENUMERATED IN AR 40-562 (IMMUNIZATIONS AND CHEMOPROPHYLAXIS FOR THE PREVENTION OF INFECTIOUS DISEASES). COMMANDERS WILL REFER TO AR 40-562, PARAGRAPH 2-6, AND AR 600-20, APPENDIX P-2, FOR GUIDANCE ON PROCESSING IMMUNIZATION EXEMPTION REQUESTS.

3.D.8.B.5.A. (U) [ADD] HEALTH CARE PROVIDERS WILL DETERMINE A MEDICAL EXEMPTION BASED ON THE HEALTH OF THE VACCINE CANDIDATE AND THE NATURE OF THE IMMUNIZATION UNDER CONSIDERATION. MEDICAL EXEMPTIONS MAY BE

TEMPORARY (UP TO 365 DAYS) OR PERMANENT. APPROVAL AUTHORITY FOR PERMANENT MEDICAL EXEMPTIONS IS TSG. SOLDIERS WHO BELIEVE THEY REQUIRE A MEDICAL EXEMPTION SHOULD CONSULT WITH A HEALTH CARE PROVIDER.

3.D.8.B.5.A.1. (U) [ADD] ALL REQUESTS FOR PERMANENT MEDICAL EXEMPTIONS MUST BE STAFFED TO THE OFFICE OF THE SURGEON GENERAL. THE SURGEON GENERAL (TSG) MAY DELEGATE APPROVAL AUTHORITY FOR PERMANENT MEDICAL EXEMPTIONS. NO FURTHER DELEGATIONS BELOW TSG'S DESIGNEE ARE PERMITTED.

3.D.8.B.5.B. (U) [ADD] PURSUANT TO AR 600-20, APPENDIX P-2B, SOLDIERS WITH RELIGIOUS PRACTICES IN CONFLICT WITH IMMUNIZATION REQUIREMENTS MAY REQUEST AN EXEMPTION THROUGH COMMAND CHANNELS. TSG IS THE ONLY APPROVAL OR DISAPPROVAL AUTHORITY FOR IMMUNIZATION ACCOMMODATION REQUESTS. THE ASA (M&RA) IS THE APPELLATE AUTHORITY. ANY RELIGIOUS ACCOMMODATION REQUEST FOR AN IMMUNIZATION EXEMPTION MUST COMPLY WITH THE REQUIREMENTS DESCRIBED IN AR 600-20, APPENDIX P-2B, AND DODI 1300.17, "RELIGIOUS LIBERTY IN THE MILITARY SERVICES," SEPTEMBER 1, 2020.

3.D.8.B.5.B.1 (U) [ADD] IAW AR 600-20, APPENDIX P-2B, COMMANDERS WILL ARRANGE FOR AN IN-PERSON OR TELEPHONIC INTERVIEW BETWEEN A SOLDIER REQUESTING A RELIGIOUS ACCOMMODATION AND THE UNIT OR OTHER ASSIGNED CHAPLAIN. THE COMMANDER MUST COUNSEL THE SOLDIER THAT NONCOMPLIANCE WITH IMMUNIZATION REQUIREMENTS MAY ADVERSELY IMPACT DEPLOYABILITY, ASSIGNMENT, OR INTERNATIONAL TRAVEL, AND THAT THE EXEMPTION MAY BE REVOKED UNDER IMMINENT RISK CONDITIONS. A LICENSED HEALTH CARE PROVIDER WILL COUNSEL THE APPLICANT TO ENSURE THE APPLICANT IS MAKING AN INFORMED DECISION IAW AR 600-20, APPENDIX P-2B(3).

3.D.8.B.5.B.2. (U) [ADD] THE IMMEDIATE COMMANDER THROUGH THE GCMCA MUST REVIEW THE REQUEST AND RECOMMEND APPROVAL OR DENIAL TO TSG. CHAIN-OF-COMMAND RECOMMENDATIONS WILL ADDRESS THE FACTORS OF MILITARY NECESSITY DESCRIBED IN AR 600-20, PARAGRAPH 5-6A. A LEGAL REVIEW MUST BE CONDUCTED AT THE GCMCA LEVEL PRIOR TO FORWARDING THE REQUEST. UPON COMPLETION, THE GCMCA WILL UPLOAD THE REQUEST INTO TMT FOR STAFFING TO TSG.

3.D.8.B.5.B.3. (U) [ADD] SOLDIERS WITH PENDING ACTIVE REQUESTS FOR AN IMMUNIZATION EXEMPTION SUBMITTED IAW AR 40-562 ARE TEMPORARILY DEFERRED FROM IMMUNIZATION, PENDING THE OUTCOME OF THEIR REQUEST OR ANY APPEAL OF A DENIED REQUEST.

3.D.8.B.5.C. (U) [ADD] COMMANDERS WILL NOT TAKE ADVERSE ADMINISTRATIVE ACTION, JUDICIAL OR NON-JUDICIAL PUNISHMENT BASED SOLELY ON A SOLDIER'S REFUSAL TO RECEIVE THE VACCINE UNTIL FURTHER NOTICE. COMMANDERS AND LEADERS WILL CONTINUE TO TREAT ALL SOLDIERS WITH DIGNITY AND RESPECT.

3.D.8.B.5.C.1. (U) [ADD] COMMANDERS WITH SOLDIERS WHO HAVE SUBMITTED AND ARE PENDING A DECISION ON A MEDICAL OR ADMINISTRATIVE EXEMPTION, OR WHO HAVE SOLDIERS WHO HAVE DECLINED THE VACCINE AFTER RECEIVING THE REQUIRED COUNSELING AND ANY FOLLOW-ON DIRECT ORDER, WILL ENSURE SUCH

SOLDIERS COMPLY WITH EXISTING DOD AND ARMY GUIDANCE FOR FORCE HEALTH PROTECTION MEASURES APPLICABLE TO UNVACCINATED PERSONNEL.

3.D.8.B.6. (U) [ADD] THE ARMY NATIONAL GUARD/ARMY NATIONAL GUARD OF THE UNITED STATES AND THE U.S. ARMY RESERVE WILL APPLY AR 600-20, AR 40-562 AND THIS ORDER WHEN PROCESSING IMMUNIZATION EXEMPTION REQUESTS. FOR RELIGIOUS ACCOMMODATION REQUESTS FOR IMMUNIZATION EXEMPTIONS, NATIONAL GUARD PACKETS MUST INCLUDE THE SOLDIER'S REQUEST, CHAIN-OF-COMMAND RECOMMENDATIONS ON THE REQUEST, AN INTERVIEW FROM THE STATE'S CHAPLAIN, AND LEGAL REVIEW AT THE DIVISION OR STATE LEVEL. PRIOR TO FORWARDING, A LEGAL REVIEW FROM THE STATE'S STAFF JUDGE ADVOCATE IS REQUIRED.

3.D.8.B.7. (U) [ADD] COMMANDERS WILL CONSULT WITH THEIR SERVICING JUDGE ADVOCATE/LEGAL ADVISOR AND APPROPRIATE MEDICAL PROFESSIONALS WHEN IMPLEMENTING THIS ORDER.

3.D.8.C. NO CHANGE.

3.D.8.D. (U) [CHANGE TO READ] INSTALLATION MTFS, IN COORDINATION WITH THEIR INSTALLATION COMMANDS, WILL PLACE COVID-19 VACCINE ORDERS THROUGH USAMMA-DOC TO SATISFY LOCAL DEMAND IAW ESTABLISHED CONTROL SUPPLY RATES BELOW. SEE ANNEX HH, MMQC-21-1425, FOR FURTHER DETAILS ON THE ORDERING PROCESS.

3.D.8.D.1 (U) [ADD] MEDCOM HAS DELEGATED AUTHORITY TO APPROVE ORDERS ABOVE THE CONTROLLED SUPPLY RATE FOR COVID-19 VACCINE. HQDA G-3/5/7 WILL ADJUDICATE ANY MEDCOM RECCOMMENDED DISAPPROVALS.

3.D.8.D.2 (U) [ADD] MTFS AUTHORIZED TO STORE AND ADMINISTER PFIZER MAY ORDER UP TO 3,510 DOSES OR THREE TRAYS PER WEEK.

3.D.8.D.3 (U) [ADD] MTFS AUTHORIZED TO STORE AND ADMINISTER MODERNA MAY ORDER UP TO 2,000 DOSES.

3.D.8.D.4 (U) [ADD] MTFS AUTHORIZED TO STORE AND ADMINISTER J&J MAY ORDER UP TO 1,000 DOSES.

3.D.8.E. THROUGH 3.D.8.J. NO CHANGE.

3.D.8.K. (U) [ADD] (U) IAW ANNEX II, CDC RECOMMENDS INDIVIDUALS, AT LEAST 12 YEARS OLD, WITH MODERATELY TO SEVERELY COMPROMISED IMMUNE SYSTEMS RECEIVE A THIRD DOSE OF MRNA COVID-19 VACCINE AT LEAST 28 DAYS FOLLOWING THE INITIAL TWO DOSES.

3.D.8.L. (U) [ADD] (U) IAW ANNEX GG, PFIZER COVID-19 VACCINE RECEIVED A 90 DAY SHELF LIFE EXTENSION FOR DOSES MAINTAINED AT ULTRA COLD STORAGE (-90C TO –60C) WITH EXPIRATION DATES IN AUGUST 2021 THROUGH FEBRUARY 2022.

3.D.8.M. (U) [ADD] THE UPDATED PFIZER COVID-19 VACCINE FACT SHEETS FOR HEALTHCARE PROVIDERS, AND RECIPIENTS AND CAREGIVERS ARE AT ANNEX JJ AND ANNEX KK.

3.D.M.1. (U) [ADD] MANUFACTURE COLD CHAIN MANAGEMENT FOR PFIZER VACCINE CAN BE FOUND IN ANNEX JJ. IAW THE MANUFACTURE GUIDLINES, PFIZER CAN BE STORED AT REFRIGERATED TEMPERTURES FOR UP TO 30 DAYS. THIS SUPPORTS DISTRIBIUTION TO SITES THAT DO NOT HAVE COLD AND ULTRA-COLD STORAGE CAPABILITY.

3.D.9. (U) [CHANGE TO READ] OFFICE OF PUBLIC AFFAIRS GUIDANCE IS PUBLISHED IN ANNEX J.

3.D.10. THROUGH 3.D.13. NO CHANGE.

4. (U) SUSTAINMENT. NOT USED.

5. (U) COMMAND AND SIGNAL.

5.A. (U) COMMAND. NOT USED.

5.B. (U) SIGNAL.

5.B.1. (U) HEADQUARTERS DEPARTMENT OF THE ARMY COVID-19 POINTS OF CONTACT (POC). HQDA COVID-19 OPT AT USARMY.PENTAGON.HQDA-DCS-G-3-5-7.MBX.COVID-OPT@MAIL.MIL;

5.B.1.A. (U) G-1 POC IS COL MICHAEL A. ZWEIFEL, MICHAEL.A.ZWEIFEL.MIL@MAIL.MIL, (703) 697-8469.

5.B.1.B. (U) G-2 POC IS COL MANUEL F. RAMIREZ, MANUEL.F.RAMIREZ.MIL@MAIL.MIL, (703)697-5484.

5.B.1.C. (U) G-4 POC IS G4 ALOC USARMY.PENTAGON.HQDA.MBX.AALOCATC@MAIL.MIL, (703) 614-2149.

5.B.1.D. (U) LABORATORY RESPONSE NETWORK POC IS DR. WILLIAM NAUSCHUETZ, LABORATORY BIOPREPAREDNESS COORDINATOR USAMEDCOM, WILLIAM.F.NAUSCHUETZ.CIV@MAIL.MIL, (210) 295-7269 OR (210) 386-1480.

5.B.1.E. (U) USAMEDCOM PUBLIC HEALTH POC IS COL RICK CHAVEZ, RODRIGO.CHAVEZ5.MIL@MAIL.MIL, (703) 681-9510 OR COL MICHELE A. SOLTIS, MICHELE.A.SOLTIS.MIL@MAIL.MIL, (703) 681- 6043.

5.B.1.F. (U) ARMY PUBLIC HEALTH CENTER POC IS DR. STEVEN CERSOVSKY, STEVEN.B.CERSOVSKY.CIV@MAIL.MIL, (410) 436-4311.

5.B.1.G. (U) ARMY PUBLIC AFFAIRS POC IS LTC MARY RICKS, MARY.A.RICKS.MIL@MAIL.MIL, (703) 695-0378; OR MR. TERRANCE MANN, TERRANCE.F.MANN.CIV@MAIL.MIL, (202) 802-3484.

5.B.1.H. (U) OFFICE OF THE JUDGE ADVOCATE GENERAL POC LTC JAMES MCINERNEY, JAMES.A.MCINERNEY.MIL@MAIL.MIL, (703) 614-4630,

5.B.1.I. (U) ARMY NATIONAL GUARD POC IS MAJ TIMOTHY MCCORMIC, TIMOTHY.A.MCCORMIC.MIL@MAIL.MIL, (703) 601-7620.

5.B.1.J. (U) UNITED STATES ARMY RESERVES POC IS LTC RAYMOND D. HARPER, RAYMOND.D.HARPER4.MIL@MAIL.MIL, 703.614-5271.

5.B.1.K. (U) OFFICE OF THE SURGEON GENERAL POC IS LTC KENNETH LUTZ, KENNETH.C.LUTZ.MIL@MAIL.MIL, (703) 681-8197.

5.B.1.L. (U) ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT AND COMPTROLLER) POC IS COL PERNELL A. ROBINSON, PERNELL.A.ROBINSON.MIL@MAIL.MIL, (703) 614-1618.

5.B.1.M. (U) HEADQUARTERS DEPARTMENT OF THE ARMY WATCH: NIPR EMAIL USARMY.PENTAGON.HQDA.MBX.ARMYWATCH@MAIL.MIL, SIPR EMAIL USARMY.PENTAGON.HQDA.MBX.ARMYWATCH@MAIL.SMIL.MIL.

5.B.1.N. (U) HEADQUARTERS DEPARTMENT OF THE ARMY COVID-19 CRISIS ACTION TEAM INFO:

NIPR PORTAL:
HTTPS://G357.ARMY.PENTAGON.MIL/OD/ODO/ARMYOPCENTER/CAWG/CAT/SITEPAGESCORONAVIRUS%20(COVID-19).ASPX

SIPR PORTAL:
HTTPS://G357.ARMY.PENTAGON.SMIL.MIL/OD/ODO/ARMYOPCENTER/CRISISACTIONPAGE/SITEPAGES/HOME.ASPX

DOMS NIPR OMB:
USARMY.PENTAGON.HQDA-DCS-G-3-5-7.MBX.DOMS-OPERATIONS@MAIL.MIL

DOMS SIPR OMB:
USARMY.PENTAGON.HQDA-DCS-G-3-5-7.MBX.AOC-DOMS-TEAM@MAIL.SMIL.MIL

6. (U) THE EXPIRATION DATE OF THIS MESSAGE IS 31 DECEMBER 2026, UNLESS FORMALLY RESCINDED OR SUPERSEDED.

ATTACHMENT:
ANNEX A - ARMY INSTALLATION GATING CRITERIA REPORT.
ANNEX B - SECRETARY OF DEFENSE MEMORANDUM, "UPDATE TO CONDITIONS-BASED APPROACH TO CORONAVIRUS DISEASE 2019 PERSONNEL MOVEMENT AND TRAVEL RESTRICTIONS," 15 MARCH 2021.
ANNEX C - COVID-19 PERSONAL PROTECTIVE EQUIPMENT, LOGSTAT REPORT.
ANNEX D - HQDA COVID-19 POSITIVE CASE AND ROM TRACKER.
ANNEX E - SECRETARY OF THE ARMY MEMORANDUM, "DELEGATION OF AUTHORITY TO APPROVE TRAVEL OF ARMY PERSONNEL-TRANSITION FRAMEWORK," 20 APRIL 2021.

ANNEX F - SECRETARY OF DEFENSE MEMORANDUM, "GUIDANCE FOR COMMANDERS' RISK-BASED RESPONSES AND IMPLEMENTATION OF THE HEALTH PROTECTION CONDITION (HPCON) FRAMEWORK DURING THE CORONAVIRUS DISEASE 2019 PANDEMIC," 29 APRIL 2021.
ANNEX G - FORCE HEALTH PROTECTION SUPPLEMENT 20, DEPARTMENT OF DEFENSE GUIDANCE FOR PERSONNEL TRAVELING DURING THE CORONAVIRUS DISEASE 2019 PANDEMIC, 12 APRIL 2021.
ANNEX H - FORCE HEALTH PROTECTION SUPPLEMENT 16.1, DEPARTMENT OF DEFENSE GUIDANCE DEPLOYMENT AND REDEPLOYMENT OF INDIVIDUALS AND UNITS, 04 MAY 2021.
ANNEX I - FORCE HEALTH PROTECTION SUPPLEMENT 15.2, DEPARTMENT OF DEFENSE GUIDANCE FOR CORONAVIRUS DISEASE 2019 LABORATORY TESTING SERVICES, 02 JULY 2021.
[ADD] ANNEX J - PUBLIC AFFAIRS GUIDANCE. (TBD)
ANNEX K - TIER 4 TESTING CONCEPT AND APPROVAL AUTHORITY.
ANNEX L - DOD COVID TASK FORCE, COVID-19 TESTING PROTOCOLS, 08 MARCH 2021.
ANNEX M - CLMS FORM 1D, CLINICAL LABORATORY IMPROVEMENT PROGRAM WAIVED COMPLEXITY REGISTRATION/RENEWAL FORM.
ANNEX N - DEPUTY SECRETARY OF DEFENSE MEMORANDUM, "METHODS TO ENABLE AND ENCOURAGE VACCINATION AGAINST CORONAVIRUS DISEASE 2019," 20 MAY 2021.
ANNEX O - SECRETARY OF DEFENSE MEMORANDUM, "CO-ADMINISTRATION OF CORONAVIRUS DISEASE 2019 VACCINES WITH OTHER VACCINES," 03 JUNE 2021.
ANNEX P - DEPUTY SECRETARY OF DEFENSE MEMORANDUM, "CORONAVIRUS DISEASE 19 VACCINE GUIDANCE," 07 DECEMBER 2020.
ANNEX Q - UNDER SECRETARY OF DEFENSE MEMORANDUM SUPPLEMENTAL GUIDANCE FOR PROVIDING DOD CORONAVIRUS DISEASE 2019 VACCINE TO DOD CONTRACTOR EMPLOYEES AND SELECT FOREIGN NATIONALS, 31 DECEMBER 2020.
ANNEX R - SECRETARY OF DEFENSE MEMORANDUM, SECRETARIAL DESIGNEE STATUS FOR SELECT DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEE AND CONTRACTOR EMPLOYEE DEPENDENTS OUTSIDE THE UNITED STATES FOR THE LIMITED PURPOSE OF RECEIVING CORONAVIRUS DISEASE 2019 VACCINATIONS, 03 JUNE 2021.
ANNEX S - SECRETARY OF DEFENSE MEMORANDUM, USE OF MASKS AND OTHER PUBLIC HEALTH MEASURES, 04 FEBRUARY 2021.
ANNEX T - FORCE HEALTH PROTECTION SUPPLEMENT 17.1, DEPARTMENT OF DEFENSE GUIDANCE FOR THE USE OF MASKS, PPE, AND NPI, 22 JUNE 2021.
ANNEX U - SECRETARY OF ARMY MEMORANDUM, USE OF MASKS AND DELEGATION OF AUTHORITY TO GRANT EXCEPTIONS, 24 FEBRUARY 2021.
ANNEX V - [RESCINDED]
ANNEX W - POOLED TESTING GUIDANCE AND STRATEGY, 02 JUNE 2021.
ANNEX X - UNDER SECRETARY OF DEFENSE MEMORANDUM GUIDANCE FOR PARTICIPATION OF INTERNATIONAL MILITARY STUDENTS AND TRAINEES, 07 MAY 2021.
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ANNEX CC - CDC GUIDANCE FOR IMPLEMENTING COVID-19 PREVENTION STRATEGIES, 27 JULY 2021.
ANNEX DD - MEDICAL MATERIAL QUALITY CONTROL MESSAGE, MMQC-21-1419, (J&J) JANSSEN COVID-19 VACCINE SHELF-LIFE EXTENSION, 28 JULY 2021.
ANNEX EE - COVID-19 VACCINATION REQUIREMENT REPORT.
ANNEX FF - MANDATORY CORONAVIRUS DISEASE 2019 VACCINATION OF DEPARTMENT OF DEFENSE SERVICE MEMBERS, 24 AUGUST 2021.
[ADD] ANNEX GG - MEDICAL MATERIAL QUALITY CONTROL MESSAGE, MMQC-21-1463, PFIZER LICENSE AND SHELF LIFE EXTENSION, 24 AUGUST 2021.
[ADD] ANNEX HH - MEDICAL MATERIAL QUALITY CONTROL MESSAGE, MMQC-21-1425, UPDATED COVID-19 VACCINE ORDERING GUIDELINES, 09 AUGUST 2021.
[ADD] ANNEX II - MMQC 21 1454 ADDITIONAL DOSE OF COVID 19 VACCINE FOR IMMUNOCOMPROMISED PERSONS,13 AUGUST 2021.
[ADD] ANNEX JJ - UPDATED PFIZER FACT SHEET FOR HEALTHCARE PROVIDERS, 24 AUGUST 2021.
[ADD] ANNEX KK - UPDATED PFIZER FACT SHEETS FOR PATIENTS AND CAREGIVERS,. 24 AUGUST 2021.
[ADD] ANNEX LL - TBD
[ADD] ANNEX MM - TBD
[ADD] ANNEX NN - SAMPLE DA FORM 4856 FOR ENLISTED VACCINE REFUSALS.
[ADD] ANNEX OO - SAMPLE DA FORM 4856 FOR OFFICER VACCINE REFUSALS.

Exhibit 5

SECRETARY OF THE ARMY
WASHINGTON

16 NOV 2021

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Flagging and Bars to Continued Service of Soldiers Who Refuse the COVID-19 Vaccination Order

1. Purpose. This memorandum provides policy and procedures for flagging Soldiers who refuse the COVID-19 vaccination order and are not pending an exemption request.

2. Background. On 14 September 2021, FRAGO 5 to HQDA EXORD 225-21 (COVID-19 Steady State Operations) was published. This order directed all Soldiers, not otherwise exempt, to become fully vaccinated against COVID-19. FRAGO 5 directs that, during Phase 1, Soldiers refusing the mandatory vaccination order will be flagged IAW Army Regulation (AR) 600-8-2 and Commanders will initiate a General Officer Memorandum of Reprimand, unless the Soldier has received, or is pending a final decision on, a medical or administrative exemption. Administrative exemptions include religious accommodations as well as others enumerated in AR 40-562.

3. Applicability. The provisions of this memorandum apply to the Regular Army, Army National Guard/Army National Guard of the United States, and U.S. Army Reserve.

4. Policy. I have determined all Solders who refuse the mandatory vaccination order, and who have not received, and are not pending final decision on, a medical or administrative exemption, will remain flagged under flag code "A." Soldiers who were previously flagged, and whose flags have since been removed, will be reflagged in accordance with this policy.

a. The effective date of the flag will be the date the Soldier makes a final declination of immunization, following a meeting with a medical professional and second order to receive the vaccine from an immediate commander, as instructed in FRAGO 5 to HQDA EXORD 225-21, paragraph 3.D.8.B.5.A.

b. The flag will remain in place beyond completion of any ensuing non-punitive memorandum of reprimand. The Soldier will remain flagged until they are fully vaccinated, receive an approved medical or administrative exemption, or are separated from the Army.

c. Soldiers flagged under this policy are still eligible for Disability Evaluation System processing. Additional personnel actions, to include retirement, unqualified resignation, and separation upon expiration of term of service, will be processed in accordance with applicable policy and regulation.

SUBJECT: Flagging and Bars to Continued Service of Soldiers Who Refuse the COVID-19 Vaccination Order

d. Favorable personnel actions are suspended for flagged Soldiers in accordance with AR 600-8-2, paragraph 3-1, including, but not limited to, reenlistment, reassignment, promotion, appearance before a semi-centralized promotion board, issuance of awards and decorations, attendance at military or civilian schools, application for or use of tuition assistance, payment of enlistment bonus or selective reenlistment bonus, or assumption of command.

5. In conjunction with this policy, I authorize commanders to impose bars to continued service, under the provisions of AR 601-280, for all Soldiers who refuse the mandatory vaccination order without an approved exemption or a pending exemption request.

6. Proponent. The DCS, G-1 is the proponent for this policy guidance.

7. Duration. This memorandum is rescinded on publication of superseding guidance.

Christine E. Wormuth

DISTRIBUTION:
Principal Officials of Headquarters, Department of the Army
Commander
U.S. Army Forces Command
U.S. Army Training and Doctrine Command
U.S. Army Materiel Command
U.S. Army Futures Command
U.S. Army Pacific
U.S. Army Europe
U.S. Army Central
U.S. Army North
U.S. Army South
U.S. Army Africa/Southern European Task Force
U.S. Army Special Operations Command
Military Surface Deployment and Distribution Command
U.S. Army Space and Missile Defense Command/Army Strategic Command
U.S. Army Cyber Command
U.S. Army Medical Command
U.S. Army Intelligence and Security Command
U.S. Army Criminal Investigation Command
U.S. Army Corps of Engineers

SUBJECT: Flagging and Bars to Continued Service of Soldiers Who Refuse the COVID-19 Vaccination Order

U.S. Army Military District of Washington
U.S. Army Test and Evaluation Command
U.S. Army Human Resources Command
Superintendent, U.S. Military Academy
Director, U.S. Army Acquisition Support Center
Superintendent, Arlington National Cemetery
Commandant, U.S. Army War College
Director, U.S. Army Civilian Human Resources Agency

CF:
Director of Business Transformation
Eighth U.S. Army

Exhibit 6

SECRETARY OF THE ARMY
WASHINGTON

31 JAN 2022

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2022-02 (Personnel Actions for Active Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals)

1. References. See references enclosed.

2. Purpose. This directive establishes personnel policies and procedures for unvaccinated individuals seeking accession into the Army and Soldiers who refuse the novel Coronavirus 2019 (COVID-19) vaccination order.

3. Applicability. This Directive applies to all Soldiers of the Regular Army and Soldiers of the Army National Guard/Army National Guard of the United States and the U.S. Army Reserve when serving on active duty for more than 30 days, pursuant to Title 10, U.S. Code, and Cadets at the United States Military Academy (USMA) and Senior Reserve Officers' Training Corps (SROTC).

4. Policy. Individuals seeking accession into the Army and those Soldiers currently serving must be fully vaccinated against COVID-19.

a. The following definitions apply for the purposes of this policy.

(1) "fully vaccinated"—defined by the Department of Defense (DoD) in reference 1b

(2) "Soldier refusing the vaccine order"—a Soldier in the Regular Army; Soldier in a Reserve component when serving on active duty for more than 30 days pursuant to Title 10, U.S. Code; a cadet at the United States Military Academy (USMA); a cadet candidate at the United States Military Academy Preparatory School (USMAPS); or a Senior Reserve Officers' Training Corps (SROTC) cadet who meets all of the following:

(a) has received a lawful order to be fully vaccinated against COVID-19

(b) has been provided a reasonable opportunity to receive the COVID-19 vaccination

(c) has made a final declination of immunization as instructed in reference 1l

(d) does not have a pending or approved medical or administrative exemption (to include religious accommodation)

SUBJECT: Army Directive 2022-02 (Personnel Actions for Active Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals)

b. COVID-19 Vaccine Exemptions. Soldiers may submit requests for medical or administrative exemption from mandatory immunization as enumerated in reference 1c. If a Soldier has a pending exemption request, and final action is taken to deny the exemption, to include any request for appeal, the Soldier will be ordered to receive the COVID-19 vaccination and counseled regarding this directive. If the Soldier refuses the COVID-19 vaccination order, the Soldier will be subject to action as listed in this directive.

c. Involuntary Separation Policy.

(1) Effective immediately, commanders will initiate involuntary administrative separation proceedings for Soldiers who have refused the lawful order to be vaccinated against COVID-19 and who do not have a pending or approved exemption request. Commands will process these separation actions, from initiation to a Soldier's potential discharge, as expeditiously as possible.

(2) Exception. Soldiers who will final out-process for separation/retirement on or before 1 July 2022 or who will separate/retire after 1 July 2022, but will begin transition leave on or before 1 July 2022, will be permitted to execute their separation or retirement without the additional separation processing described elsewhere in this paragraph.

d. Involuntary Separation Procedures. Consistent with reference 1a, all Soldiers, including those in an entry-level status, who are separated for refusing to become vaccinated will be issued either an Honorable or General (under honorable conditions) characterization of service unless additional misconduct warrants separation with an Other than Honorable characterization of service. Unless otherwise noted in this directive, these requests will be processed in accordance with current policy and regulations.

(1) Enlisted Personnel.

(a) Commanders will follow current policy for initiating administrative separation proceedings pursuant to reference 1k. The basis for separation will be for "Commission of a Serious Offense," under paragraph 14–12c of reference 1k. This applies to all enlisted Soldiers, regardless of whether the Soldier is in an entry-level status.

(b) If an enlisted Soldier is subject to an administrative separation action on the basis of refusing the COVID-19 vaccination order, is recommended for retention by an administrative separation board or approved for retention by the separation authority, and remains unvaccinated, the separation authority will reinitiate an action for the exercise of Secretarial Plenary Authority under paragraph 15–2 of reference 1k.

(c) Qualitative Management Program (QMP). If a Regular Army enlisted Soldier is identified for potential denial of continued active duty service under the QMP based solely on adverse information from refusing the COVID-19 vaccination order, the Soldier will not be processed through the QMP. The Soldier's command will initiate involuntary separation for misconduct pursuant to this directive.

(d) Expiration Term of Service (ETS). Commanders are not required to initiate involuntary administrative separation for enlisted personnel who have an ETS date on or before 1 July 2022 when the sole basis for involuntary separation is refusing the COVID-19 vaccination order. Soldiers with an ETS date on or before 1 July 2022 will be allowed to separate in accordance with chapter 4, reference 1k, unless separation on other grounds is warranted.

(2) Commissioned and Warrant Officers.

(a) Commanders will initiate an elimination action under reference 1g. The basis for separation will be for "Misconduct, Moral or Professional Dereliction," under paragraph 4–2b of reference 1g.

(b) Probationary Officers. Involuntary separation for probationary officers will be processed under notification procedures, and the separation authority will be the Deputy Assistant Secretary of the Army (Review Boards) (DASA (RB)). Although the show cause authority (SCA) may provide recommendations on retention or separation, all actions will be processed to the DASA (RB) for final decision.

(c) Non-Probationary Officers. The SCA will close the case, and no further separation-related action is required, if a non-probationary officer has been subject to an elimination action for refusing the COVID-19 vaccination order and a board of inquiry (BOI) determines that the officer should be retained on active duty. If the BOI determines that the officer should be separated, the SCA may provide recommendations on retention or separation, but the case will be processed to the DASA (RB) for final decision.

(d) Unqualified Resignation (UQR). Officers refusing the COVID-19 vaccination order may submit a request for UQR. If submitted within 30 days of the date of this directive, and the request includes a final separation date on or before 1 July 2022, commanders will not initiate involuntary separation on the sole basis of refusing the COVID-19 vaccination order unless the UQR is denied. Qualifying UQRs submitted under this directive may be approved by the Commanding General, U.S. Army Human Resources Command, or other designee, despite the officer being flagged solely for refusing the COVID-19 vaccination order. If an officer has an exemption request that is

subsequently denied, the officer will have the later of 14 days from final action or 30 days from the date of this directive to submit a UQR. If the UQR is not submitted within 14 days, involuntary separation will be initiated. Once a UQR is submitted, it may not be withdrawn absent a showing of good cause.

e. Retirement.

(1) All officer and enlisted personnel eligible to retire on or before 1 July 2022 will be permitted to retire as soon as practicable through expedited processes in lieu of involuntary separation. Requests for retirement must be submitted no later than 30 days from the date of this directive and include a final separation date no later than 1 July 2022.

(2) Soldiers eligible to retire on or before 1 July 2022, who have a pending exemption request as of the date of this directive, and that exemption request is subsequently denied, will have the later of 14 days from final action or 30 days from the date of this directive to submit a request for retirement. The retirement request must include a final separation date that is on or before the later of either 1 July 2022 or 120 days from final action date on the exemption request.

f. Disability Evaluation System (DES). Officers and enlisted personnel currently being processed through the Medical Evaluation Board/Physical Evaluation Board system pursuant to AR 635–40 will be processed in accordance with current policy and regulations.

g. Compensation, Entitlements and Recoupment.

(1) Soldiers separated will not be eligible for involuntary separation pay and may be subject to termination and recoupment of any unearned special or incentive pays. The effective date of the termination will be the date the commander initiates an involuntary administrative separation for any Soldier who has refused the COVID-19 vaccination order. The Soldier may be required to repay the unearned portion of the pay or benefit in accordance with current policy and regulations.

(2) Unless otherwise prohibited by law or DoD policy, the Secretary of the Army may render a case-by-case determination that the Soldier’s repayment of, or the Army’s full payment of an unpaid portion of, a pay or benefit is appropriate.

(3) Recoupment against Soldiers and cadets who are disenrolled or separated prior to the completion of their term of service will be processed in accordance with existing policy and regulations.

h. Evaluation Reports. When a Soldier refuses the order to be vaccinated against COVID-19 during a rating period, without a pending or approved medical or administrative exemption (to include religious accommodation), rating officials will document the refusal in the Soldier's evaluation report consistent with implementing instructions published by the Deputy Chief of Staff, G-1.

i. Permanent Change of Station (PCS). Unvaccinated Soldiers who are pending a medical or administrative exemption (to include religious accommodation) will not PCS. Exceptions may only be approved by the Under Secretary of the Army. These requests will be submitted to the Under Secretary of the Army through the Vice Director of the Army Staff. Further, unvaccinated Soldiers who do not have a pending medical or administrative exemption (to include religious accommodation) remain flagged, and are therefore ineligible to PCS under current Army policies and in accordance with reference 1m.

j. Accessions.

(1) Enlistment into the Army. An enlisted applicant must have an approved pre-accession medical or administrative exemption (to include religious accommodation) or must agree to receive the COVID-19 vaccination on entrance to active duty or active duty for training.

(2) Applicants for a Commissioning Program. Individuals seeking to enter into a cadet contract through the Reserve Officers' Training Corps (ROTC), gain admission as a cadet to USMA, or commission as an officer in the Army must be fully vaccinated against COVID-19 prior to entering into a cadet contract, signing the USMA Form 5–50, or being tendered an appointment as a commissioned officer unless they have an approved pre-accession medical or administrative exemption (to include religious accommodation).

(3) Pre-Commissioning Cadets. Current cadets who refuse the COVID-19 vaccination order, and who do not have a pending or approved medical or administrative exemption (to include religious accommodation), will be processed for disenrollment and separation.

(a) USMA Cadets/USMAPS Cadet Candidates. USMA will follow current policy for initiating administrative separation and disenrollment proceedings for cadets and cadet candidates pursuant to reference 1e, as appropriate. The basis for separation will be "Misconduct."

(b) Army SROTC Cadets. The U.S. Army Cadet Command (USACC) will follow current policy for initiating disenrollment proceedings pursuant to reference 1d, as

appropriate. The basis for disenrollment will be “Inaptitude for Military Service” under paragraph 3–43(a)(13) of reference 1d.

(4) Direct appointment. Prior to accession, applicants must have an approved pre-accession medical or administrative exemption (to include religious accommodation) or must agree to receive the COVID-19 vaccination on entrance to active duty or active duty for training.

(5) In-Service Officer Candidates. In-Service Candidates selected to attend the U.S. Army Officer Candidate School (OCS) must be fully vaccinated against COVID-19 prior to beginning OCS unless issued an approved medical or administrative exemption (to include religious accommodation). OCS candidates who refuse the COVID-19 vaccination order will be removed from OCS under the provisions of reference 1f.

k. The Secretary of the Army continues to withhold the authority to impose non-judicial and judicial actions based solely on vaccine refusal.

5. Proponent. The ASA (M&RA) has oversight of this policy and is authorized to grant exceptions to this directive and to amend the definitions contained in paragraph 4a of this directive. This authority may not be delegated. The Deputy Chief of Staff, G-1, in coordination with the ASA (M&RA), will publish implementing instructions as soon as possible.

6. Duration. This directive is effective unless superseded or otherwise rescinded.

Christine E. Wormuth

Encl

DISTRIBUTION: (see next page)

SUBJECT: Army Directive 2022-02 (Personnel Actions for Active Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals)

DISTRIBUTION:
Principal Officials of Headquarters, Department of the Army
Commander
- U.S. Army Forces Command
- U.S. Army Training and Doctrine Command
- U.S. Army Materiel Command
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- U.S. Army Europe and Africa
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Superintendent, U.S. Military Academy
Director, U.S. Army Acquisition Support Center
Superintendent, Arlington National Cemetery
Commandant, U.S. Army War College
Director, U.S. Army Civilian Human Resources Agency

CF:
Director of Business Transformation
Commander, Eighth Army

REFERENCES

a. National Defense Authorization Act for Fiscal Year 2022, 27 December 2022

b. Secretary of Defense memorandum (Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members), 24 August 2021

c. Army Directive 2021-33 (Approval and Appeal Authorities for Military Medical and Administrative Immunization Exemptions), 24 September 2021

d. Army Regulation (AR) 145–1 (Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training), 22 July 1996, with rapid action revision, 6 September 2011

e. AR 150–1 (United States Military Academy Organization, Administration, and Operation), 12 January 2021

f. AR 350–51 (United States Army Officer Candidate School), 11 June 2001

g. AR 600–8–24 (Officer Transfers and Discharges), 8 February 2020

h. AR 600–20 (Army Command Policy), 24 July 2020

i. AR 623–3 (Evaluation Reporting System), 14 June 2019

j. AR 635–40 (Disability Evaluation for Retention, Retirement, or Separation), 19 January 2017

k. AR 635–200 (Active Duty Enlisted Administrative Separations), 28 June 2021

l. Fragmentary Order 5 to Headquarters, Department of the Army Execution Order (EXORD) 225-21 (COVID-19 Steady State Operations), 14 September 2021, paragraph 3.D.8.B.5.A

m. Secretary of the Army memorandum (Flagging and Bars to Continued Service of Soldiers Who Refuse the COVID-19 Vaccination Order), 16 November 2021

Exhibit 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. NAVY SEALs 1–26, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Action No. 4:21-cv-01236-O**
	§	
LLOYD J. AUSTIN, III, *et al.*,	§	
	§	
Defendants.	§	

ORDER

On July 6, 2023, the United States Court of Appeals for the Fifth Circuit issued its decision on the preliminary injunctions previously entered by this Court. *U.S. Navy Seals 1-26 v. Biden*, 72 F. 4th 666 (5th Cir. 2022). In light of that decision, this Court deferred ruling on Defendants' Assertion of Mootness (ECF No. 221) and ordered additional cross-briefing on three subjects: (1) "the continued viability of any arguments previously raised before this Court and explicitly addressed by the Fifth Circuit;" (2) "the continued viability of any arguments previously raised before this Court and *not* explicitly addressed by the Fifth Circuit;" and (3) "any new arguments relating to the issue of mootness which have not heretofore been presented to the Court."[1] Both parties filed the requested briefing (ECF Nos. 253–54) and responses (ECF Nos. 256–57) addressing these subjects. The parties also provided comments on recent authority from the United States Supreme Court (ECF Nos. 260–61).

Having considered the briefing and the applicable law—including recent Supreme Court authority—the Court determines that this case is *not* moot. Accordingly, the Court **GRANTS in part** and **DENIES in part** Defendants' Assertion of Mootness (ECF No. 221). Plaintiffs' claim for injunctive relief prohibiting Defendants from enforcing the Mandate itself is **MOOT** due to

[1] Aug. 14, 2023 Order, ECF No. 248.

rescission of the challenged conduct. However, Plaintiffs' claims arising out of the broader vaccine accommodations policy may proceed. The parties **SHALL** submit a joint report indicating their proposal for how this case should expeditiously proceed to final resolution **no later than February 28, 2024**.

I. BACKGROUND

This case was filed more than two years ago in the middle of the COVID-19 pandemic.[2] As one of the first challenges to the Department of Defense's COVID-19 vaccine mandate (the "Mandate") multiple servicemembers in the Navy ("Plaintiffs" or "Class Members") alleged violations of the First Amendment, the Religious Freedom Restoration Act ("RFRA"), and the Administrative Procedure Act ("APA").[3] This case has already made its way up to the United States Supreme Court for interlocutory review and back down to this Court. At this point, the facts are well-known, and the Court will not repeat them at length here. Most relevant to the mootness issue now before the Court is the procedural history following the initial appeal of the preliminary injunction and the broader landscape of military vaccine cases.

A. Procedural History

After this Court granted a preliminary injunction—which enjoined the Navy from applying the Mandate against Plaintiffs and further prohibited Secretary of Defense Lloyd Austin, the United States Department of Defense, and Secretary of the Navy Carlos Del Toro (collectively, "Defendants" or the "Navy") from taking adverse action against Plaintiffs on account of their requests for religious accommodation[4]—the Navy sought a stay of the preliminary injunction pending the appeal.[5] The Fifth Circuit denied Defendants' request. *U.S. Navy Seals 1-26 v. Biden*,

[2] Pls.' Compl., ECF No. 1.
[3] *Id.* at 36–37; Pls.' Am. Compl. 29–30, ECF No. 84.
[4] Jan. 3, 2022 Order on Prelim. Inj., ECF No. 66.
[5] Defs.' Notice of Appeal, ECF No. 82.

27 F. 4th 336, 353 (5th Cir. 2022) (per curiam). But the Supreme Court ultimately granted in part the requested stay "insofar as it preclude[d] the Navy from considering . . . vaccination status in making deployment, assignment, and other operational decisions." *Austin v. U.S. Navy Seals 1-26*, 142 S. Ct. 1301, 1301 (2022) (mem.). Following the Supreme Court's partial stay of the injunction, this Court granted Plaintiffs' motion to certify a class consisting of "all Navy servicemembers" and extended to that class a second preliminary injunction prohibiting the same policies named in the first injunction.[6] Once again, the Navy appealed both the second injunction and the class certification.[7] The Fifth Circuit consolidated both appeals. *U.S. Navy SEALS 1-26 v. Biden*, No. 22-10077, at *1 (5th Cir. Jun. 7, 2022).

Before the Fifth Circuit could hear oral argument, President Biden signed into law the James M. Inhofe National Defense Authorization ACT ("NDAA") that directed "the Secretary of Defense [to] rescind the mandate that members of the Armed Forces be vaccinated against COVID-19." NDAA, Pub. L. No. 117-263, § 525 (2022). Secretary Austin subsequently rescinded the Mandate. *U.S. Navy SEALs 1-26*, 72 F.4th at 671. And, the next day, Secretary Del Toro likewise rescinded the Navy's policies implementing the Mandate. *Id.* After oral argument, the Navy—as well as the Department of Defense—enacted additional policies that eliminated remaining distinctions based on a servicemember's COVID-19 vaccination status. *Id.*

Due to these events, the Fifth Circuit determined that the consolidated interlocutory appeals were moot. *Id.* at 669. The Fifth Circuit emphasized that its conclusion aligned with other circuit dismissals of similar cases as moot. *Id.* However, in dismissing the interlocutory appeals of the injunctions, the Fifth Circuit remanded the case to this Court for further proceedings consistent with its opinion. *Id.* at 670. In doing so, the majority opinion emphasized that its decision "does

[6] Mar. 28, 2022 Order on Mots. for Class Certification & Class-Wide Prelim. Inj., ECF No. 140.
[7] Defs.' Notice of Appeal, ECF No. 159.

not end the litigation." *Id.* at 676. Instead, "the issues Plaintiffs raise can still be litigated in the district court and appealed after a final judgment, assuming they remain justiciable." *Id.* at 675. Accordingly, the Fifth Circuit left open for this Court to assess in the first instance "whether any of Plaintiffs' claims are justiciable" while "express[ing] no view on that question." *Id.* at 676; *see also id.* at 678 (Ho, J., dissenting) ("[T]he majority appears to leave it open for the district court on remand to conclude that the SEALs should ultimately prevail in this case.").

B. Other Military Vaccine Cases

The Court does not begin its analysis with a blank slate. Although this case was one of the first cases—if not *the* first—to challenge the Mandate, the broader landscape has grown significantly. Courts across the country contemplated similar challenges arising out of the COVID-19 pandemic. Following the rescission of the Mandate, various courts addressed questions of mootness. By the latest count, nine district courts—including five in the Fifth Circuit—have ruled on similar mootness issues.[8] Each of those courts concluded that the cases before them were entirely moot due to rescission of the Mandate.[9] Additionally, various courts of appeals have weighed in, consistently affirming the mootness determinations made by lower courts.[10] The

[8] *E.g.*, *Schelske v. Austin*, No. 6:22-cv-049-H, 2023 WL 5986462 (N.D. Tex. Sept. 14, 2023); *Wilson v. Austin*, No. 4:22-CV-438, 2023 WL 5674114 (E.D. Tex. Sept. 1, 2023); *Coker v. Austin*, 2023 WL 5625486 (N.D. Fla. Aug. 25, 2023); *Jackson v. Mayorkas*, No. 4:22-cv-0825-P, 2023 WL 5311482 (N.D. Tex. Aug. 17, 2023), *appeal docketed*, No. 23-11038 (5th Cir. Oct. 11, 2023); *Bongiovanni v. Austin*, No. 3:22-cv-580-MMH-MCR, 2023 WL 4352445 (M.D. Fla. July 5, 2023); *Crocker v. Austin*, C.A. No. 22-0757, 2023 WL 4143224 (W.D. La. June 22, 2023), *appeal docketed*, No. 23-30497 (5th Cir. Jul. 25, 2023); *Bazzrea v. Mayorkas*, 2023 WL 3958912 (S.D. Tex. June 12, 2023); *Clements v. Austin*, C.A. No. 2:22-2069-RMG, 2023 WL 3479466 (D.S.C. May 16,s 2023); *Colonel Financial Mgmt. Officer v. Austin*, No. 8:22-cv-1275-SDM-TGW, 2023 WL 2764767 (M.D. Fla. Apr. 3, 2023). Other cases were voluntarily dismissed after the Mandate's rescission. *E.g.*, Joint Stipulation of Dismissal, *Air Force Major v. Austin*, No. 3:22-cv-756-E, ECF No. 25 (N.D. Tex. Mar. 7, 2023).

[9] The one slight exception is *Schelske v. Austin*, where the separated servicemember's claim survived the Army's mootness challenge due to a live harm still remediable by court action. 2023 WL 5986462, at *1. Judge Hendrix concluded that the claims of all other servicemembers—who were *not* separated—were moot. *Id.*

[10] Multiple courts of appeals, including the Fifth Circuit, upheld dismissals of challenges to military COVID-19 vaccine mandates on mootness grounds. *E.g.*, *Robert v. Austin*, 72 F.4th 1160, 1165 (10th Cir.

Supreme Court even ordered a vacatur of a preliminary injunction concerning the Mandate in one case due to mootness. *Kendall v. Doster*, No. 23-154, 2023 WL8531840, at *1 (Dec. 11, 2023) (mem.). Given the significant body of case law that has developed, this Court closely studied each of those cases. After doing so, one distinguishing attribute is readily apparent that separates this case from the rest: live harm remains due to allegations regarding the Navy's broader religious accommodations process.

II. LEGAL STANDARD

Article III of the Constitution limits a federal court's jurisdiction to "cases" and "controversies." U.S. CONST. art. III, § 2. A case or controversy must remain throughout a lawsuit's existence. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013). If not, the lawsuit is moot and must be dismissed for lack of subject matter jurisdiction. *Walmart Inc. v. U.S. Dep't of Just.*, 21 F.4th 300, 307 (5th Cir. 2021). This case-or-controversy requirement "ensures that the parties . . . retain a 'personal stake' in the litigation." *Moore v. Harper*, 143 S. Ct. 2065, 2076 (2023) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). A plaintiff must retain a personal stake "at all stages of review, not merely at the time the complaint is filed." *Id.* (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)); *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). "Mootness doctrine 'addresses whether an intervening circumstance has deprived the plaintiff of [that] personal stake in the outcome of the lawsuit.'" *Moore*, 143 S. Ct. at 2077 (quoting *West Virginia v. EPA*, 142 S. Ct. 2587, 2607 (2022)). "A case becomes moot only when it is impossible for a court to grant 'any effectual relief whatever' to the prevailing party." *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567

2023), *cert. denied*, 2024 WL 72062 (U.S. Jan. 8. 2024) (mem.); *Roth v. Austin*, 62 F.4th 1114, 1119 (8th Cir. 2023); *Navy Seal 1 v. Austin*, No. 22-5114, 2023 WL 2482927 (D.C. Cir. Mar. 10, 2023), *cert. denied*, 144 S. Ct. 97 (U.S. Oct. 2, 2023) (mem.); *Dunn v. Austin*, No. 22-15286, 2023 WL 2319316 (9th Cir. Feb. 27, 2023); *Short v. Berger*, Nos. 22-15755, 22-16607, 2023 WL 2258384 (9th Cir. Feb. 24, 2023); *Alvarado v. Austin*, No. 23-1419, 2022 WL 18587373 (4th Cir. Aug. 3, 2023), *petition for cert. filed*, No. 23-717 (U.S. Jan. 3, 2024).

U.S. 298, 307 (2012) (quoting *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000)). Any remaining "concrete interest, however small, in the outcome of the litigation" defeats mootness. *Chafin*, 568 U.S. at 172 (quoting *Knox*, 567 U.S. at 307–08).

Although the "initial burden of establishing the trial court's jurisdiction rests on the party invoking that jurisdiction, once that burden has been met courts are entitled to presume, absent further information, that jurisdiction continues." *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 98 (1993). The burden then shifts to the party asserting mootness, who then "bears the burden to establish that a once-live case has become moot." *West Virginia*, 142 S. Ct. at 2607 (citations omitted). To do so, that party must point to "subsequent events" that "material[ly] change" the circumstances so as to "entirely terminate[]" the controversy. *Cardinal Chem. Co.*, 508 U.S. at 98.

III. ANALYSIS

On remand, Defendants argue that the intervening events after the preliminary injunction moot Plaintiffs' claims.[11] Plaintiffs appear to agree that the Fifth Circuit's "foreclose[s] an argument that there is still a need for injunctive relief against the Mandate, or that the voluntary cessation doctrine prevents mootness on that issue."[12] Recent authority from the Supreme Court confirms that there is no longer a need for relief from the Mandate itself—particularly not in the form of a preliminary injunction.[13] *See Doster*, 2023 WL 8531840, at *1 (granting certiorari to provide "instructions to direct the District Court to vacate as moot its preliminary injunctions" concerning the Mandate). While harms specifically arising out of the Mandate may be moot, Plaintiffs contend that the Fifth Circuit's "decision did not touch all other parts of this case"

[11] Defs.' Supp. Br. 1–2, ECF No. 254.
[12] Pls.' Supp. Br. 2, ECF No. 253.
[13] Defs.' Notice of Supp. Authority 1–2, ECF No. 260.

because "[t]here are several remaining issues."[14] Specifically, Plaintiffs argue there is still "[o]ngoing harm to the Class Members" that demonstrates this case remains live.[15] And even if not, there is real potential for future harm that is "capable of repetition yet evades review."[16] The Court agrees with Plaintiffs that the ongoing harms, arising from the Navy's broader religious accommodations policy itself, show that their claims are not moot as it relates to this broader vaccine policy.[17] Finding no mootness as to this aspect of Plaintiffs' Amended Complaint, the Court need not address at this stage Plaintiffs' alternative mootness-exception argument.[18]

A. Ongoing Harms

Plaintiffs' supplemental briefing satisfies the Court that, "[w]hile the Mandate may be gone, the effects of that Mandate and the discriminatory treatment the Class Members were subject to because of the Mandate still linger."[19] That is because Defendants have announced no changes to its overarching religious accommodations process. According to Plaintiffs, this allegedly "sham" process is what enabled the coercive and discriminatory treatment of the Class Members while their accommodation requests sat unadjudicated.[20] The Mandate simply served as the catalyst that unveiled the problems with this broader process during the pandemic. These problems include: (1) indefinitely sitting on requests for religious accommodation; (2) foregoing the required individualized assessments, citing standardized policy memos (even if outdated) to satisfy the

[14] *Id.*
[15] *Id.*
[16] *Id.* at 2, 5.
[17] Because mootness is a question going to the Court's jurisdiction, any mootness arguments may be reasserted, as appropriate, at future stages of this litigation should additional evidence come to light that reveals Plaintiffs' claims are moot. *See* FED. R. CIV. P. 12(h)(3) (instructing courts to dismiss actions upon determining "at any time that it lacks subject-matter jurisdiction").
[18] To that end, the Court defers ruling on Plaintiff's alternative argument that an exception to mootness applies due to finding live, ongoing harms.
[19] Pls.' Supp. Br. 2, ECF No. 253.
[20] *Id.*

compelling interest requirement, and using boilerplate statements to suffice for demonstrating that the Navy's action is the least restrictive means; (3) permitting discrimination and coercive tactics to pressure servicemembers to forego their religious beliefs; (4) authorizing Navy leadership to dictate denial of all requests without considering the individual circumstances of the requests and current conditions or facts; (5) permitting coercion and retaliation against commanding officers who recommend approval of religious accommodations despite the chain of command's desire that requests be denied; and (6) prohibiting resubmission of denied requests and updates to pending requests due to a change of job, location, or other relevant circumstances.[21]

1. *Prospective Harms*

Plaintiffs argue that the persistence of this broader illegal process has injured, and will prospectively injure, the Class Members because they have sincere religious beliefs that impact issues related to their service.[22] The record bears this out. Without the constitutionally required avenue to seek accommodations for their beliefs, Class Members allege they remain injured. This includes present and future harms due to hesitance to use the accommodations process going forward for any religious accommodation. *Cf. State of Missouri v. Biden*, No. 23-30445, 2023 WL 5821788, at *8 (5th Cir. Sept. 8, 2023) (finding injury to plaintiffs persisted because of self-censorship and their continued use of social media even though social media companies had discontinued their COVID-19 related "misinformation" policies). This also includes facing the Hobson's choice of foregoing their religious beliefs to avoid discrimination or suffering adverse

[21] *Id.* at 2–3. Notably, the broader accommodations process previously allowed requests to resubmit or update requests prior to the Mandate. But this was changed during the Mandate period. It appears that the Navy has not returned to the pre-Mandate policy of allowing requests to resubmit or make updates. And the Navy does not appear to dispute this allegation in its mootness briefing.
[22] *Id.* at 3.

actions from the Navy.[23] Such concrete injuries demonstrate that Plaintiffs retain a personal stake in this litigation. *Moore*, 143 S. Ct. at 2076; *Chafin*, 568 U.S. at 172. And it appears possible for the Court to grant effectual relief to Plaintiffs should they ultimately prevail. *Knox*, 567 U.S. at 307.

The Navy points out that another court has already rejected the argument regarding the broader vaccine policy:

> Plaintiffs next contend that the case is not moot because the same policies and procedures for evaluating [religious accommodation requests ("RARs")] remain in place. . . . But in the Complaint, Plaintiffs do not challenge the RAR process as a whole or assert that the RAR process is defective with regard to other requests for accommodations. Plaintiffs oppose the alleged policy of denying all RARs that sought an exemption from the Vaccine Mandate. . . . Because the Vaccine Mandate no longer exists, there can be no policy of denying all RARs to enforce that mandate.

Bongiovanni, 2023 WL4352445, at *8. But unlike the plaintiffs in *Bongiovanni*, the Class Members actually asserted—prior to rescission of the Mandate—that their underlying harms derive from the lack of a proper religious accommodation process, rather than exclusively from the Mandate itself.[24] For instance, Plaintiffs repeatedly stated in their causes of action that they take issue with "Defendants' policies and practices" rather than just the Mandate.[25] Moreover, while the Mandate was the vehicle for exposing many of these policies and practices, Plaintiffs nonetheless allege in their Amended Complaint that the Mandate was issued pursuant to "existing

[23] *See* Pls.' App'x in Opp. to Defs.' Assertion of Mootness 0087–88, 0091–92, 0095–96, 0103–09, 0119–20, 0125–27, 0132–33, 0136–37, 0140–41, 0144–54, ECF No. 225 (containing declarations of servicemembers explaining how their operational status is causing current harm).
[24] Pls.' Am. Compl. 2, 10–12, 15–18, ECF No. 84. Notably, in addition to various references to the broader policies throughout the Amended Complaint, Plaintiffs devote an entire section just to discussing these broader policies. *See id.* at 10–12 ("DoD and Navy Regulations Recognize Religious and Medical Accommodations for Immunizations under RFRA and the Free Exercise Clause Generally"). Not once in this section are COVID-19 or the Mandate mentioned. *Id.* This is in stark contrast to other sections that specifically refer to the application of these broader policies in the COVID-19 context. Instead, Plaintiffs exclusively detail the many broader accommodations procedures that gave rise to their harms.
[25] *Id.* at 2.

policies and procedures to manage mandatory vaccination to the extent practicable."[26] For instance, one of those procedures—DoD Instruction 6205.02, "DoD Immunization Program"—became effective as of July 23, 2019.[27] And Plaintiffs also point to other policies that pre-date the COVID-19 pandemic.[28]

Furthermore, Plaintiffs allege that, in carrying out the Mandate, the Navy was required to do so "subject to any identified contraindications and any administrative or other exemptions *established* in Military Department policy."[29] According to Plaintiffs, "Defendants' policies acknowledge their legal duty to consider religious accommodations" despite repeatedly failing to do so in practice.[30] This is a duty that predates the COVID-19 pandemic, as indicated by Plaintiff's invocation of a 2008 policy: Secretary of the Navy Instruction (SECNAVINST) 1730.8B, Accommodation of Religious Practices, dated October 2, 2008.[31] Despite these procedures, the Amended Complaint pleads that "'[i]n the past seven years, no religious exemption from vaccination waivers were approved for any other vaccine.'"[32] And "[t]his disdain for religious vaccine accommodations contrasts with Defendants' policies and practices granting certain secular vaccine exemptions."[33] These allegations differentiate the Class Members from plaintiffs in the other cases.

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[26] *Id.* at 7.
[27] *Id.*
[28] *See, e.g.*, *id.* at 9–10 (referencing, for example, Navy Bureau of Medicine Instruction (BUMEDINST) 6230.15B, Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, dated October 7, 2013). The Court recognizes that other policies referenced in the Amended Complaint with effective dates of 2020 or later may be revised versions of pre-Mandate policies.
[29] *Id.* (emphasis added).
[30] *Id.* at 9.
[31] *Id.*
[32] *Id.* at 9.
[33] *Id.*

Although it is true that the Mandate was the vehicle by which Plaintiffs describe certain injuries, this was simply one application of the broader accommodations process. Harms stemming from that broader process appear to linger despite rescission of the Mandate. Consider, for example, that the Amended Complaint alleges "Defendants' policies expressly allow for medical exemptions" and that medical exemptions have been granted with respect to the Mandate.[34] One of those policies predates the COVID-19 pandemic by seven years: Navy Bureau of Medicine Instruction (BUMEDINST) 6230.15B, Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, dated October 7, 2013.[35] This alleged disparity between how the broader accommodations policy treats medical versus religious accommodation requests remains even in a post-Mandate world.

Plaintiffs contend that the Navy has never rectified harms caused by the broader accommodations policy.[36] In response, the Navy appears to double down on that notion by stating that the absence of involuntary separation means there is no adverse action.[37] But this is not the standard. Rather, the Fifth Circuit has recognized that adverse action can take the form of discriminatory treatment. *U.S. Navy SEALs 1-26*, 27 F.4th at 342–44. Discriminatory treatment is not limited just to involuntary separation. As Plaintiffs allege in their Amended Complaint, Defendants' guidance concerning the Mandate identified the following adverse consequences: "court-martial (criminal) prosecution, involuntary separation, relief for cause from leadership positions, removal from promotion lists, inability to attend certain military training and education schools, loss of special pay, placement in a non-deployable status, recoupment of money spent

[34] *Id.*
[35] *Id.* at 9–10.
[36] Pls.' Supp. Resp. Br. 2, 4 ECF No. 257.
[37] Defs.' Supp. Br. 9, 17, ECF No. 254 ("The thirty-five pseudonymous Plaintiffs have not had adverse action taken against them and they have not been subject to involuntary administrative separation.").

training the service member, and loss of leave and travel privileges for both official and unofficial purposes."[38] Involuntary separation is just one of the alleged harms.

Precisely because a servicemember is not separated shows that they retrain a personal stake in relief concerning the broader accommodations policy. The intervening events did not change *this* aspect of the Amended Complaint. The only change was a specific *application* of the broader policy as it relates to the Mandate. As a result, it is also not impossible for the Court to grant effectual relief to any party. This distinguishes the instant case from the decisions reached by other courts. *See, e.g.*, *Jackson*, 2023 WL 5311482, at *2 ("Now that the Mandate 'is off the books, there is nothing injuring the plaintiffs and, consequently, nothing for the court to do.'" (citing *Spell v. Edwards*, 962 F.3d 175, 179 (5th Cir. 2020)); *Coker*, 2023 WL 5625486, at *4 ("[E]ven if any Plaintiff suffered a lingering harm based on refusing to get vaccinated, it would still be unclear how the court can afford effectual relief because there remains no mandate to declare unlawful or enjoin."). But this case is different. There remains a tangible policy—broader than the Mandate but encompassing it—that the Court can still enjoin or declare unlawful to provide a prospective remedy to avoid the very real prospect of future harm facing the Class Members. This remaining concrete interest is enough to keep this case alive.

As the party asserting mootness, the Navy did not "bear[] [its] burden to establish that a once-live case has become moot" once the Plaintiffs made an initial showing of live harm. *West Virginia*, 142 S. Ct. at 2607. Although the Navy points to the subsequent events by Congress and the President that materially changed the Mandate, they did not point to even subsequent event that materially changed the broader policy so as to entirely terminate the controversy.[39] *Id.* (citations omitted); *Cardinal Chem. Co.*, 508 U.S. at 98. Instead, the Navy incorrectly emphasizes

[38] Pls.' Am. Compl. 8, 9, ECF No. 84
[39] Defs.' Supp. Br. 2, 15, ECF No. 254; Defs.' Supp. Resp. Br. 1, ECF No. 256.

Plaintiff's initial burden and spends more time attacking this initial showing rather than making their own showing upon the burden shifting to them. But, at bottom, the Amended Complaint contains actual assertions of harm arising from the broader accommodations policy.[40]

2. *Past Harms*

To be sure, some harms were rectified by rescission of the Mandate and its follow-on policies. But Plaintiffs allege that other past harms remain unresolved. These harms include "missed opportunities to promote, train, and fulfill milestone positions necessary to earn promotions."[41] For example, Plaintiffs contend that Class Members are one to three years behind their peers, which carries increased potential for placement on a separation track for some and potentially impacts pension benefits for others who are close to retirement.[42] Additionally, Plaintiffs argue that there is no post-Mandate policy preventing consideration of vaccination status in promotions and non-operational assignments, which allows for continued discrimination.[43] And, finally, Plaintiffs allege that the Navy has insufficiently implemented a review process to purge negative notations in each Class Member's file, particularly given that there has always been a dispute about what constitutes "adverse action."[44]

The Navy responds that "[p]ast harms do not save this case from mootness because the operative complaint seeks prospective relief."[45] The Court agrees with the Navy. To the extent that any of these harms seek retrospective relief, they will not suffice for any future declaratory relief

[40] For instance, Section E of the Amended Complaint discusses the broader Department of Defense and Navy policies. Pls.' Am. Compl. 10–12, ECF No. 84. Moreover, each cause of action cites to "Defendants' policies and procedures"—rather than the Mandate specifically—as the cause of Plaintiffs' injuries. *Id.* at ¶¶ 83, 103, 119, 133. The Mandate was simply the vehicle for bringing the claims against the broader policies.
[41] Pls.' Supp. Br. 3 ECF No. 253.
[42] *Id.* at 3–4.
[43] *Id.* at 4.
[44] *Id.*
[45] Defs.' Supp. Resp. Br. 4, ECF No. 256.

that may be awarded. *See Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003) (holding that a claim for declaratory relief is moot because the plaintiff alleged only past injuries); *see also Jackson*, 2023 WL 5311482, at *2 ("Plaintiffs allege only past harm—deprivation of their constitution right to free exercise of their religion, missed opportunities for promotion and training, and reputational damage—resulting from the Mandate. Any such harm will not suffice for declaratory relief."). As this case proceeds, only present and future harms will support any declaratory relief sought. Past harms from the Mandate—even those that were not remedied—cannot form the basis of a declaration.

B. Comparison With Other Military Vaccine Cases

The Court recognizes that the determination in this case may appear, on the surface, to diverge from decisions reached by other courts. But unlike *each* of those other cases, not one asserted, as a primary harm *at the time of filing*, that the entire religious accommodation process was flawed. This is a critical distinction. In those other vaccine cases, multiple district courts determined that the military servicemembers' claims were moot because of the focus on the Mandate itself—not the military's entire religious accommodation process. And in the one case that discussed the broader policy, the plaintiffs there were attempting to reformulate their Mandate-specific claims *in order to* survive the mootness challenge. *Bongiovanni*, 2023 WL4352445, at *8.

This case is different. The Class Members take issue with the "continued existence of the Navy's legally flawed process" as a whole, which "persists regardless of the [M]andate's rescission."[46] Indeed, Plaintiffs claim that "[f]or seven years *before* the COVID-19 Vaccination Mandate (and the 50-step SOP), the Navy had not granted *any* requests for religious accommodation related to vaccine requirements."[47] And this is on top of the Navy's alleged failure

[46] Pls.' Supp. Resp. Br. 1, ECF No. 257.
[47] Pls.' Am. Compl. 9, ECF No. 84.

to evaluate religious accommodations requests on an individualized basis. As the Fifth Circuit explained, "[t]he gravamen of the [preliminary injunction]'s reasoning was that the Navy's review process was mere 'theater' with each request ending in a 'rubber-stamp[ed]' denial of a religious accommodation." *U.S. Navy Seals 1-26*, 72 F. 4th at 670. And Plaintiffs contend the problem is more fundamental than the Mandate—it is endemic to the Navy's broader vaccine accommodations policy. It is this issue that remains live.

Recent authority from the Supreme Court is also not dispositive. *See Doster*, 2023 WL 8531840, at *1 (instructing the lower court to vacate as moot the preliminary injunctions against the now-rescinded Mandate). According to Defendants, *Doster* "confirms that this Court should dismiss this case as moot."[48] But *Doster* only supports the notion that injunctive relief concerning the Mandate is moot. Of the two applications of Plaintiffs' claims at issue here—the Mandate and the Navy's broader religious accommodations policy—the Mandate is the lesser and the broader accommodations policy the greater. The Fifth Circuit's decision determined that the appeal of the Mandate—the lesser included policy—is now moot in light of subsequent developments.[49] But the Fifth Circuit's decision does not necessarily bear on the broader accommodations policy—the greater policy. If it did, the Navy's assertion of mootness as to the entire accommodations policy would correctly moot the lesser Mandate. But that is not the situation presented to the Court.

[48] Defs.' Notice of Supp. Authority 2, ECF No. 260.

[49] The Fifth Circuit was clear that its decision "does not end the litigation." *U.S. Navy SEALs 1-26*, 72 F.4th at 676. It left open for this Court to "decide in the first instance whether any of Plaintiffs' claims are justiciable" without expressing any view on that question. *Id.* It also left open the question as to whether the capable-of-repetition-yet-evades review exception applies. *U.S. Navy SEALs 1-26*, 72 F.4th at 675 ("The capable-of-repetition exception is inapplicable in those situations in which the issues underlying the moot appeal are *not* moot in the case remaining before the district court.") (cleaned up)). Because this Court finds ongoing harms that remain justiciable, it need not evaluate at this time whether a mootness exception applies. *Marilyn T., Inc. v. Evans*, 803 F.2d 1383, 1385 (5th Cir. 1986), *abrogated on other grounds by Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190 (1991).

Instead, only the Mandate is moot, leaving the dispute concerning the broader policy intact as a live controversy ripe for adjudication.

While other courts rejected the idea that the capable-of-repetition-yet-evades-review exception applies, they did so based on the higher showing of likely future harm that is required to justify that exception.[50] The bar is not as high with traditional questions of standing. Plaintiffs "retain a 'personal stake' in th[is] litigation" despite the rescission of the Mandate. *Moore*, 143 S. Ct. at 2076 (quoting *Baker*, 369 U.S. at 204). And that personal stake has continued "at all stages of review" and "not merely at the time the complaint [wa]s filed." *Id.* (quoting *Genesis Healthcare Corp.*, 569 U.S. at 71). Although changes to the Navy's treatment of a servicemember's COVID-19 vaccination status constituted "an intervening circumstance" while the preliminary injunction was on appeal, that circumstance did not "deprive[] the [P]laintiff[s] of [their] personal stake in the outcome of the lawsuit." *Id.* (quoting *West Virginia v. EPA*, 142 S. Ct. 2587, 2607 (2022)). In this case, it is still possible for the Court to grant effectual relief to Plaintiffs should they ultimately prevail on their claims that there are ongoing harms stemming from the broader accommodations process. *See Knox*, 567 U.S. at 307 ("A case becomes moot only when it is impossible for a court to grant 'any effectual relief whatever' to the prevailing party.") (quoting *City of Erie*, 529 U.S. at 287)). That is because Plaintiffs retain a "concrete interest . . . in the outcome of th[is] litigation" by taking issue with the Navy's entire religious accommodations process. *Chafin*, 568 U.S. at 172

[50] *See, e.g.*, *Schelske*, 2023 WL 5986462, at *13–*14 (explaining that the future harm from the Mandate is inherently incapable of evading review because it "lacked an expiration date" and was not "time-limited by [its] own terms" or "the temporary nature of any causal or underlying event or condition" so as to prevent judicial review). While the *Schelske* plaintiffs also "attempt[ed] to recharacterize the issue by stating that th[eir] case 'is not about the vaccine mandate' but, rather, about the '[d]efendants' refusal to grant religious accommodations to the mandate via a regulatory process that is still in force,'" this argument was made to show that "the Army's entire religious-exemption process is likely to evade review in general." *Id.* at *14.

(quoting *Knox*, 567 U.S. at 307–08). Unlike other cases, this is sufficient to defeat Defendants' assertion of mootness.

* * * * *

Accordingly, Plaintiffs carried their initial burden establishing the Court's continuing jurisdiction. And the Court is "entitled to presume, absent further information, that jurisdiction continues." *Cardinal Chem. Co.*, 508 U.S. at 98. Upon the shifting of the burden to provide further information "that [this] once-live case has become moot" to Defendants, they were unable to point to "subsequent events" that "material[ly] change[d]" the circumstances so as to "entirely terminate[]" the controversy. *West Virginia*, 142 S. Ct. at 2607 (citations omitted); *Cardinal Chem. Co.*, 508 U.S. at 98. Given that Plaintiffs' claims implicate the Navy's entire religious accommodations process—not just the Mandate—Defendants have not made it clear how claims arising out of the broader accommodations policy are moot. Just because the Navy rescinded one application in the form of the Mandate does not mean that Plaintiffs no longer have live claims. Therefore, this case is not moot.

IV. CONCLUSION

Plaintiffs should have their day in court. They have carried their initial burden to show that certain prospective claims for declaratory relief remain live. The Navy failed to carry its burden to show the opposite. But the Navy has demonstrated that past harms stemming from the Mandate cannot serve as the basis for a declaration alone. And Plaintiffs do not appear to otherwise seek retrospective relief for these past harms.[51] For that reason, the Court **GRANTS in part** and **DENIES in part** Defendants' Assertion of Mootness (ECF No. 221) because a live controversy remains as to certain claims for which it is not impossible for the Court to grant effectual relief.

[51] Pls.' Supp. Resp. Br. 1 n.1, ECF No. 257 (acknowledging that Plaintiffs previously raised the issue of damages in their original suggestion of mootness briefing, but "no longer intend to pursue that argument").

Plaintiffs' claim for preliminary and permanent injunctive relief prohibiting Defendants from enforcing the Mandate is **MOOT** due to rescission of the challenged conduct. However, Plaintiffs' claims for relief arising out of the broader vaccine accommodations policy may proceed. Critically, the Court emphasizes that this is a preliminary conclusion. Questions regarding mootness and standing may be asserted, as appropriate, at any point in the litigation.

In light of this determination, the Court **ORDERS** the parties to submit a joint report with their proposal for how this case should proceed to final resolution on an expedited basis by **no later than February 28, 2024**. Specifically, the joint report should (1) indicate whether any amendment of the active pleadings is warranted given the robust procedural developments in this case and (2) provide new suggested dates for all deadlines stayed by the Court's March 7, 2023 Order (ECF No. 234).

SO ORDERED this **14th day** of **February, 2024**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

Exhibit 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALS 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-cv-01236-O

PLAINTIFFS' UNOPPOSED MOTION TO AMEND THE CLASS DEFINITION FOR SETTLEMENT PURPOSES, TO PRELIMINARILY APPROVE THE CLASS ACTION SETTLEMENT, TO APPROVE THE FORM AND MANNER OF NOTICE, AND TO SET A DATE FOR A FAIRNESS HEARING

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INTRODUCTION

After several years of litigation, and after successfully obtaining preliminary injunctive relief for the Class that prevented the Class Members from being involuntarily separated by the Navy for non-compliance with the Department's COVID-19 vaccination mandate due to their sincerely held religious beliefs, the Named Plaintiffs have now secured a favorable settlement for the Class Members.[1]

As the terms of the Settlement Agreement (Appx.0002-22) show, the Navy has agreed to: (1) correct the personnel records of all Class Members to remove any negative proceedings or adverse information[2] related to non-compliance with the COVID-19 vaccination mandate; (2) correct the personnel records of all current or former Class Members who were discharged solely on the basis of non-compliance with the COVID-19 vaccination mandate to remove any indication that the servicemember was discharged for misconduct; (3) include language in selection board convening orders prohibiting the consideration of COVID-19 vaccination refusal where accommodation was requested; and (4) amend its policy, changed during the mandate period, which prohibited servicemembers from resubmitting requests for religious accommodation if there are changes to their assignment or to relevant policies.

The Navy has also agreed to take steps that, in Plaintiffs' view, will go toward preventing discrimination against religious servicemembers like that alleged in this case from recurring in the

[1] Defendants deny the allegations in the Compliant and the Amended Complaint and deny that the claims alleged are amenable to class-wide treatment. Defendants, however, do not oppose modifying the class definition for settlement purposes, nor do Defendants oppose granting preliminary approval of the settlement for purposes of effectuating the parties' settlement in accordance with the parties' agreement.

[2] Plaintiffs negotiated a broad definition of this term to include administrative separation processing or proceedings, formal counseling, non-judicial punishment and a negative notation in a yearly Evaluation or Fitness Report.

future, including: (1) publicly posting a statement reaffirming the value of religious expression to the Navy, the importance of accommodating sincere beliefs, and stating that religious discrimination conflicts with the Navy's core values; (2) publicly posting information informing servicemembers of their rights related to requesting religious accommodation and the process for doing so; and (3) creating and making available in multiple training databases a PowerPoint presentation informing commanders, supervisors, and other decisionmakers in the religious accommodation process of their obligations in processing those requests in accordance with the law and the Navy's own policies, including the required time limitations for decisions, individual assessment of each request, and individualized justification for granting or denying a request, as well as the importance of accommodating religious beliefs to the Navy and the dignity and respect that must be afforded to all servicemembers, including those with sincere religious beliefs. The Navy has also agreed to pay Class Counsel $1,500,000.00 to cover their attorneys' fees in prosecuting this action, and the Navy has also agreed to provide notice of this proposed settlement to the Class Members.[3]

Having reached this agreement with Defendants for the benefit of the Class, Plaintiffs now respectfully request that the Court preliminarily approve the Proposed Settlement pursuant to Fed. R. Civ. P. 23(e). Specifically, Plaintiffs respectfully request that the Court:

(1) amend the Class Definition for settlement purposes to provide relief to servicemembers who were originally part of the class, but withdrew their requests for religious accommodation and were discharged for misconduct;

(2) preliminarily approve the Proposed Settlement;

[3] Defendants do not concede that notice is necessary here nor that it is their obligation to carry it out but have agreed to do so as part of the Proposed Settlement.

(3) approve the form and manner of the proposed Notice to the Settlement Class; and

(4) set a date for a hearing under Rule 23(e)(2) to precede final approval of the Settlement Agreement and set a deadline for Class Members to submit objections per Rule 23(e)(5).

Plaintiffs and Defendants have agreed to the form of the Preliminary Approval Order, which is Attachment A to the attached Settlement Agreement (Appx.0024-27) and which Plaintiffs will submit to the Court contemporaneously with the filing of this motion.

SUMMARY OF THE LITIGATION

In August 2021, the Department of Defense and the Department of the Navy announced a mandate requiring all active-duty and reserve personnel to receive a vaccination for COVID-19, with the deadline for compliance set as November 28, 2021 for active-duty personnel and December 28, 2021 for reserve personnel. ECF No. 84 at 7-8. Noncompliance with this mandate would result in immediate adverse consequences including court-martial and involuntary separation. ECF No. 84 at 9. On November 9, 2021, individual plaintiffs U.S. Navy SEALs 1-26, U.S. Navy Special Warfare Combatant Craft Crewmen (SWCCs) 1-5, U.S. Navy Explosive Ordnance Disposal Technician (EOD) 1, and U.S. Navy Divers 1-3 sued, asserting claims under the Free Exercise Clause, the Religious Freedom Restoration Act, and other provisions of federal law. ECF No. 1. Plaintiffs moved for a preliminary injunction based on their religious liberty claims on November 24, 2021. The Court held a preliminary injunction hearing on December 20, 2021 and three plaintiffs (Navy SEALs 2 and 3 and EOD 1) testified. ECF No. 61, 101. This Court granted the preliminary injunction on January 3, 2022. ECF No. 66. The order enjoined the Navy from enforcing MANMED § 15-105(4)(n)(9); NAVADMIN 225/2, Trident Order #12; and NAVADMIN 256/21 against plaintiffs. ECF No. 66. The order also enjoined Defendants from taking any "adverse action against Plaintiffs on the basis of Plaintiffs' requests for religious accommodation." ECF No. 66.

On January 21, 2022, Defendants appealed the preliminary injunction order to the Fifth Circuit, ECF No. 82, and Defendants filed a motion for partial stay of the order in this Court on January 24, ECF No. 85. While the motion to stay was pending, Plaintiffs filed a First Amended Class Action Complaint on January 24, 2022 (ECF No. 84), a motion to certify the class on January 25, 2022 (ECF No. 89), a Motion for Order to Show Cause (ECF No. 95), a motion for hearing on the motion for order to show cause (ECF No. 112), and a motion for a classwide preliminary injunction (ECF No. 104). This Court denied the motion to stay the preliminary injunction order on February 13, 2022. ECF No. 116.

While the parties briefed Defendants' emergency motion for a partial stay of the preliminary injunction order at the Fifth Circuit and following emergency application for a partial stay at the U.S. Supreme Court, the parties continued briefing the above motions pending in district court. ECF Nos. 117, 120, 129, 131, 133, 136, 138. The Fifth Circuit denied Defendants' emergency motion for a partial stay on February 28, 2022, ECF No. 135, CA5 ECF No. 88,[4] and on March 25, 2022, the Supreme Court (with Justices Alito, and Gorsuch dissenting, and Justice Thomas noting that he would have denied the stay) granted a partial stay of the preliminary injunction order only "insofar as it precludes the Navy from considering respondents vaccination status in making deployment, assignment, and other operational decisions," ECF No. 139.

This Court certified the class and granted the motion for classwide injunction (staying it in part, per the Supreme Court's order) on March 28, 2022. ECF No. 140. The Navy appealed that order on May 27, 2022, and the consolidated interlocutory appeals proceeded in the Fifth Circuit. ECF No. 159, CA5 ECF No. 110-120. Plaintiffs filed a motion for emergency order requiring

[4] "CA5 ECF" refers to docket entries in *U.S. Navy SEALs 1-26 v. Biden*, Nos. 22-1077 and 22-1534 (5th Cir. docketed Jan. 21, 2022).

compliance with the preliminary injunction, which was denied as moot. ECF No. 169, 179. In the meantime, Defendants answered the complaint and discovery proceeded. Plaintiffs deposed the then-Vice Chief of Naval Operations, William Lescher, on June 30, 2022 and supplemented the record on appeal with his deposition transcript. *See* ECF No. 154, 195, CA5 ECF No. 142, 151. The Defendants filed, and the parties briefed, two motions to compel (ECF No. 191, 203). Several Class Members also requested to be released from the class due to their wish to allow the Navy to commence separation proceedings against them. The parties briefed that issue and Class Counsel presented voluminous evidence of the conditions some of these servicemembers were suffering, as well as additional harm being suffered by Class Members despite the injunction. ECF No. 175, 177, 178. The Court granted those requests and clarified that those individuals (and any others like them) are not part of the class per the definition. ECF No. 182.

Meanwhile, the parties filed briefs in the consolidated appeal at the Fifth Circuit. CA5 ECF No. 93, 140, 154, 213. Plaintiffs filed supplemental materials with the Fifth Circuit in September 2022, CA5 ECF No. 196, 215, and in December 2022, CA5 ECF No. 247. In late December 2022, Defendants filed a motion to hold the appeal in abeyance in light of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY 2023 NDAA), which rescinded the Department of Defense COVID-19 vaccination mandate. CA5 ECF No. 251. That motion was carried with the case, CA5 ECF No. 257, and the parties filed supplemental briefs at the Fifth Circuit's request addressing the FY 2023 NDAA and potential mootness. CA5 ECF No. 258, 274, 275. Plaintiffs and Defendants filed supplemental materials with the Fifth Circuit before oral argument, CA5 ECF No. 278, 280, and oral argument was held on February 6, 2023, CA5 ECF No. 282. The parties filed additional authorities and responses to those authorities after oral argument. CA5 ECF No. 284, 286, 288, 290, 292, 294, 296, 298, 302. The Fifth Circuit issued its

opinion on July 6, 2023, which held that the preliminary injunction appeals were moot because the enjoined policies were repealed and remanded the case to this Court. CA5 ECF No. 306.

This Court also ordered briefing to be filed regarding mootness in January 2023. ECF No. 213. The Court extended the time for discovery, appointed U.S. Magistrate Judge Jeffrey Cureton as mediator, and ordered mediation to occur by March 31, 2023. ECF No. 220. Defendants filed a motion to dismiss for lack of jurisdiction based on mootness on February 6, 2023, and the parties briefed the motion, including a surreply filed by Plaintiffs at the Court's request after Defendants filed new information. ECF No. 222, 224, 226, 228, 230, 231, 235. While the Court considered this motion, it granted the parties' motion to stay the proceedings. ECF No. 234.

The first mediation was held on March 23, 2023 with U.S. Magistrate Judge Cureton, but it was unsuccessful. ECF No. 239. In response to the Fifth Circuit's decision in July 2023, the Court ordered additional supplemental briefing. ECF No. 248, 253, 254, 256, 257. On February 14, 2024, the Court granted in part and denied in part the motion to dismiss, finding that Plaintiffs' claim for injunctive relief against enforcement of the mandate is moot, but finding Plaintiffs' other claims could proceed. ECF No. 262. The Court ordered a second mediation with U.S. Magistrate Judge Cureton on April 3, 2024 and stayed the proceedings in this matter pending settlement discussions. ECF No. 268, 269, 273, 275, 277. The parties attended mediation on April 3, 2024, ECF No. 270, and while that session did not result in settlement, the parties continued negotiations during the following weeks, coming to an agreement in principle on terms on April 30, 2024. ECF No. 276.

ARGUMENT

Federal Rule of Civil Procedure 23(e) provides that the "claims . . . of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed,

or compromised only with the court's approval." Approval of a settlement in a class action "necessarily requires the Court to determine if the proposed class is a proper class for settlement purposes." *McNamara v. Bre-X Minerals Ltd*., 214 F.R.D. 424, 426-27 (E.D. Tex. 2002). Approval then follows a two-step process. First, the Court makes a "preliminary fairness evaluation of the proposed terms of settlement submitted by counsel." *Id*. at 426. Second, "if the Court determines that the settlement is fair, the Court directs that notice pursuant to Rule 23(e) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement." *Id.*; *see also* Fed. R. Civ. P. 23(e)(2). While members of a Rule 23(b)(2) class do not have the right to opt out of a settlement, they have the right to be heard and thus may file objections which may be heard at the 23(e)(2) hearing. *Gates v. Cook*, 234 F.3d 221, 229 (5th Cir. 2000); *Kincade v. Gen. Tire & Rubber Co*., 635 F.2d 501, 506 (5th Cir. 1981); Fed. R. Civ. P. 23(e)(2), (5).

I. The Court Should Amend the Class Definition to Provide Settlement Relief for Former Class Members.

A settlement class must meet the requirements for class certification. *Amchem v. Windsor*, 521 U.S. 591, 620 (1997). Here, the Court has already determined that the Rule 23(a) and Rule 23(b)(2) requirements are satisfied, and certified the following class:

> [A]ll members of the United States Navy who are subject to the Navy's COVID-19 Vaccine Mandate and who have submitted a Religious Accommodation request concerning the Navy's COVID-19 Vaccine Mandate.

ECF No. 89; ECF No. 140 at 6-18.[5] The Court noted that the class members "are those who seek to remain in the Navy and refuse to compromise their religious beliefs (i.e., continue to forgo the vaccine)." ECF No. 140 at 15. A few servicemembers who submitted requests for religious

[5] The Court also certified two subclasses in addition to the "Navy Class" defined above, *see* ECF No. 140 at 7, but because the settlement does not distinguish between Class Members or Subclass members, only the "Navy Class" definition is relevant here.

accommodation regarding the COVID-19 vaccination mandate contacted the Court and Class Counsel requesting to be released from the Class so they could be discharged by the Navy because of various negative personal consequences resulting from not being able to execute orders or separate from the Navy, *see* ECF Nos. 162, 163, 180. The Navy was not permitting such servicemembers to separate because of the injunction. *See* ECF No. 177. In response, the Court noted that the servicemembers were no longer Class Members because they did not "seek to remain in the Navy," and that servicemembers "may pursue separation without permission from the Court, because under the existing class certification language, those who 'choose to get vaccinated, withdraw their religious accommodation requests, voluntarily separate, or proceed with retirement plans' are no longer class members." ECF No. 182 at 2 (quoting ECF No. 140 at 15). Thus, former servicemembers like these individuals are not part of the Class. But because they withdrew their requests for religious accommodation or accepted separation, such servicemembers were noted as being separated for "misconduct" and were listed as ineligible to reenlist as a result. The Proposed Settlement here aims to correct that, and for such servicemembers, the Navy has agreed to correct their personnel records to change their reenlistment codes and remove the designation of "misconduct." Appx.0009. To allow these servicemembers to enjoy this benefit, the Class Definition should be modified as below:

> All members of the United States Navy who <u>were</u> subject to the Navy's COVID-19 Vaccine Mandate and who submitted a Religious Accommodation request concerning the Navy's COVID-19 Vaccine Mandate <u>or who submitted a Religious Accommodation request concerning the Navy's COVID-19 Vaccine Mandate and were separated from the Navy, even if the request was withdrawn</u>.[6]

[6] The current Class Definition uses the present tense when referring to the COVID-19 vaccination mandate. As the Court is aware, the mandate was repealed. The Class Definition still meets the requirements of Rule 23 because the class members were ascertainable per the definition at the time of certification because the mandate was still in effect at that time and all Class Members were subject to it. *See Frey v. First Nat'l Bank Sw.*, 602 F. App'x 164, 168 (5th Cir. 2015). But

The Court may alter or amend the order granting class certification before final judgment, including for settlement purposes. *See* Fed. R. Civ. P. 23(c)(1)(C). Courts have "great discretion in certifying and managing a class action." *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999). And as this Court has already recognized, it "has discretion to modify . . . an approved class." ECF No. 140 at 3.

This amended Class Definition still meets the requirements of Rule 23(a). The Class is still sufficiently numerous, as the amended Class Definition would only add Class Members. Fed. R. Civ. P. 23(a)(1); ECF No. 140 at 7-8. There are questions of law or fact common to the Class as now defined, as the individuals who were separated suffered the same type of religious discrimination alleged by the Named Plaintiffs. Fed. R. Civ. P. 23(a)(2); ECF No. 140 at 8-12. The claims of the Named Plaintiffs for religious discrimination are also typical of the claims of the Amended Class for similar reasons. Fed. R. Civ. P. 23(a)(3); ECF No. 140 at 12-14. And the Named Plaintiffs and Class Counsel have already demonstrated that they have fairly and adequately represented the interests of this Class by litigating the case for nearly three years and successfully obtaining injunctive relief and a favorable proposed settlement. Fed. R. Civ. P. 23(a)(4); ECF No. 140 at 14-16. The basis for certification under Rule 23(b)(2) equally applies to the additional proposed Class Members, as they were similarly subject to the mandate despite their

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the Court should grant Plaintiffs' request that the Court modify the Class Definition as per the above for settlement purposes, consistent with the parties' settlement agreement definition, which includes changing "are" to "were." *See* Fed. R. Civ. P. 23(c)(1)(C); *In re Monumental Life Ins.*, 365 F.3d 408, 414 (5th Cir. 2004) ("[H]olding plaintiffs to the plain language of their definition would ignore the ongoing refinement and give-and-take inherent in class action litigation, particularly in the formation of a workable class definition. District courts are permitted to limit or modify class definitions to provide the necessary precision."). In addition to furthering the parties' settlement, switching to past tense will make it more clear to Class Members, who will receive notice of this Proposed Settlement, as to who is in the Class. As noted above, Defendants do not object to modifying the class definition for settlement purposes.

sincere religious beliefs and despite secular exemptions being granted, and were subject to the flawed, "sham" process for evaluation of their requests. ECF No. 140 at 16-17. That the additional proposed Class Members suffered the additional harm of separation does not defeat commonality or typicality. *In re Deepwater Horizon*, 739 F.3d 790, 810–11 (5th Cir. 2014); *James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2001). Furthermore, the additional proposed Class Members are also ascertainable because "Defendants maintain records of those who have submitted religious accommodation requests" and separation is noted in servicemembers' personnel records. ECF No. 140 at 6-7. As Defendants have agreed to provide relief to those proposed Class Members, they do not dispute that they know how to identify those individuals.

Because the proposed amended Class Definition meets the requirements of Rule 23, because the Court has discretion to modify the Definition, and because there is good cause for the modification as it will allow servicemembers originally part of the Class to benefit from this settlement, the Court should modify the Class Definition as set forth above.

II. The Court Should Preliminarily Approve the Proposed Settlement.

Federal Rule of Civil Procedure 23(e)(1)(B) provides that preliminary approval of a proposed settlement should be granted where "the parties show[] that the Court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal."

"The gravamen of an approvable proposed settlement is that it be fair, adequate, and reasonable and is not the product of collusion between the parties." *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004) (citation omitted); *see also Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). In exercising its discretion to approve a settlement, the Court must "ensure that the settlement is in the interests of the class, does not unfairly impinge on the rights and interests of dissenters, and does not merely mantle oppression." *Pettway v. Am. Cast Iron Pipe Co.*, 576

F.2d 1157, 1214 (5th Cir. 1978); *see also Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

Under Rule 23(e)(2), which governs final approval, if a settlement proposal would bind class members, the Court may finally approve it only after finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 649 (N.D. Tex. 2010). In making this determination, Rule 23(e)(2) requires that the Court consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Factors (A) and (B) "identify matters . . . described as procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," while factors (C) and (D) "focus on . . . a substantive review of the terms of the proposed settlement" (i.e., "[t]he relief that the settlement is expected to provide to class members"). Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919). And "[w]hen considering [the] factors, the court should keep in mind the strong presumption in favor of finding a settlement fair." *Purdie v. Ace Cash Express, Inc.*, No. Civ.A. 301CV1754L, 2003 WL 22976611, at *4 (N.D. Tex. Dec. 11, 2003). "Particularly in class action suits, there is an overriding public interest in favor of settlement." *Cotton*, 559 F.2d at 1331. In the context of a class action settlement, "compromise is the essence of a settlement, and the settlement need not accord the plaintiff class every benefit that might have been gained after full trial." *Pettway*, 576 F.2d at 1214 n.69.

These factors are not exclusive, however. The four factors set forth in Rule 23(e)(2) were not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919); *see also Reed*, 703 F.2d 170, 172 (5th Cir. 1983) (establishing Fifth Circuit factors used to evaluate the propriety of a class action settlement).[7] Thus, the traditional Fifth Circuit factors (some of which overlap with Rule 23(e)(2)) are still relevant. *See, e.g., Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. 4:17-CV-3852, 2019 WL 387409, at *3 (S.D. Tex. Jan. 30, 2019) (considering "the criteria set forth in Fed. R. Civ. P. 23 (e)(2) as well as the Fifth Circuit's *Reed* factors"). As discussed below, application of each of the four factors specified in Rule 23(e)(2), and the relevant, non-duplicative *Reed* factors, demonstrates that the Proposed Settlement merits both preliminary and final approval.

A. The Class Representatives and Class Counsel Have Adequately Represented the Class.

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." Here, the Named Plaintiffs and Class Counsel have adequately represented the Class by zealously advocating on their behalf for nearly three years. Three of the Named Plaintiffs testified at the preliminary injunction hearing and attended mediation, and all the Named Plaintiffs responded to written discovery (including document requests and interrogatories), and regularly consulted with Class Counsel as to strategy and case

[7] The *Reed* factors are: "(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members." 703 F.2d at 172.

developments. *See* Appx.0039; *see also Berger v. Compaq Computer Corp*., 257 F.3d 475, 483 (5th Cir. 2001) (adequate class representatives are "informed and can demonstrate they are directing the litigation."); *Buettgen v. Harless*, 2011 WL 1938130, at *5 (N.D. Tex. May 19, 2011) (proposed class representatives adequate because they were informed of the progress of the case; were producing documents; and one of two proposed representatives had been deposed). The Named Plaintiffs' claims are typical of, and coextensive with, the claims of the Class, and they have no antagonistic interests. *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest.")

The Named Plaintiffs retained Class Counsel, who is knowledgeable in both class action litigation and constitutional litigation. Before reaching the Proposed Settlement, Class Counsel vigorously prosecuted the Plaintiffs'—and then the Class Members'—claims, spending thousands of hours working on the litigation. Appx.0040. Class Counsel secured preliminary injunctive relief for both individual plaintiffs and then for the Class, defended that injunctive relief through emergency stay proceedings through the Fifth Circuit and the U.S. Supreme Court, and defended that injunctive relief in the Fifth Circuit. At oral argument in the Fifth Circuit and in post-argument briefing, Class Counsel pointed out Navy policies preliminarily enjoined by the Court that were still in effect, which the Navy subsequently repealed. Class Counsel also defeated Defendants' motion to dismiss and motion to dismiss as moot. Class Counsel engaged in discovery on behalf of the Class, deposed the then-Vice Chief of Naval Operations William Lescher, and filed motions seeking relief on behalf of Class Members who alleged that the Navy was not complying with the preliminary injunction. Class Counsel also participated in settlement negotiations with Defendants leading up to and following the first mediation in March 2023, and leading up to and following the

second mediation in April 2024. Those negotiations involved preparing mediation statements, attorneys' fees records, and drafting multiple versions of proposed documents. This case was arguably one of the most successful cases against the military regarding the COVID-19 vaccination mandate, and this case was the only one not dismissed as moot after repeal of the mandate because of the uniquely pleaded claims here. Dkt. 262. The Named Plaintiffs and Class Counsel, therefore, adequately represented the Settlement Class. *See Hays v. Eaton Grp. Attys., LLC*, No. 17-88-JWD-RLB, 2019 WL 427331, at *9 (M.D. La. Feb. 4, 2019) (representation adequate where proposed settlement was "negotiated by experienced, informed counsel . . . with substantial experience in litigating complex class actions" and where lead plaintiff was "familiar with the factual and legal issues").

B. The Proposed Settlement is the Result of Arm's Length Negotiations Between Experienced Counsel and There is No Fraud or Collusion.

Rule 23(e)(2)(B) evaluates whether the proposed settlement "was negotiated at arm's length." Similarly, one of the *Reed* factors examines whether there was "fraud or collusion behind the settlement." *Reed*, 703 F.2d at 172. In conducting this analysis, courts recognize that "[t]he involvement of 'an experienced and well-known' mediator 'is also a strong indicator of procedural fairness.'" *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 WL 1942227, at *4 (N.D. Tex. Apr. 25, 2018) (approving settlement that was "obtained through formal mediation before [an experienced mediator], which strongly suggests the settlement was not the result of improper dealings."). Here, U.S. Magistrate Judge Jeffrey Cureton, an experienced attorney, magistrate judge, and mediator, conducted both mediation sessions and stayed in touch with the parties after those sessions, facilitating further email and telephone discussions. Counsel for both parties also diligently prepared for the mediation sessions and continued research after those sessions to allow

them to make informed decisions about the strength and weaknesses of their respective cases. Appx.0039. "The completeness and intensity of the mediation process, coupled with the quality and reputations of the Mediators, demonstrate a commitment by the Parties to a reasoned process for conflict resolution that took into account the strengths and weaknesses of their respective cases and the inherent vagaries of litigation." *Wilkerson v. Martin Marietta Corp*., 17 F.R.D. 273, 285 (D. Colo. 1997). The Settlement Agreement here is thus the product of mutual, zealous advocacy with the involvement of a reputable mediator. The second factor therefore supports approval.

C. The Relief Provided for the Class is Adequate.

1. The costs, risks, and delay of trial and appeal favor the Proposed Settlement.

Under Rule 23(e)(2)(C), when evaluating the fairness, reasonableness, and adequacy of a settlement, the Court should consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" along with other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). Similarly, the second *Reed* factor instructs the Court to consider "the complexity, expense, and likely duration of the litigation." *Reed*, 703 F.2d at 172. This factor is satisfied where the settlement provides significant immediate relief for the class and where "a trial would be lengthy, burdensome, [] would consume tremendous time and resources of the Parties and the Court [and] any judgment would likely be appealed." *Hays*, 2019 WL 427331, at *10. But "[e]ven where the claims are not particularly complex, approval of settlement is favored where settling avoids the risks and burdens of potentially protracted litigation." *Id*.

To proceed to trial in this case, the parties would have to finish discovery, and some of the discovery that had already been completed would have to be redone due to the significant factual developments in the case and shifting focus of relief since discovery first commenced. It is Class Counsel's understanding that Defendants intended to file a motion for summary judgment, which

would require briefing, and then assuming the summary judgment motion(s) did not resolve the case, the parties would have to proceed through pretrial and trial proceedings. Further, given that Defendants previously sought emergency relief from the U.S. Supreme Court regarding this Court's preliminary injunction, and obtained a partial stay in so far as it "precludes the Navy from considering respondents' vaccination status in making deployment, assignment, and other operational decisions" that continues until disposition of a petition for a writ of certiorari to the Supreme Court. *Austin v. U.S. Navy Seals*, 142 S. Ct. 1301, 1302 (2022). And the Government recently petitioned the Supreme Court for a writ of certiorari in *Doster v. Kendall*, 54 F.4th 398, 437-48 (6th Cir. 2022), *cert. granted, judgment vacated as moot*, 144 S. Ct. 481 (2023). Defendants' counsel stated that it was likely the Government would similarly seek appellate review of any decision which it believes restricts the freedom to make deployment and assignment decisions. Appx.0040. Accordingly, it could be years before the case could be finally resolved and the Class Members could obtain relief. This factor therefore favors approval.

2. The Settlement Agreement provides an effective means of distributing relief to the Class, payment of attorneys' fees does not impact the Class, and there are no other agreements here, including any that are required to be identified under Rule 23(e)(2).

Under Rule 23(e)(2)(C), courts should consider whether the relief provided is adequate in light of (1) "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," (2) "the terms of any proposed award of attorneys' fees, including timing of payment," and (3) "any agreement required to be identified under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). All three factors support approval.

a. Because there is no monetary relief at issue in this case, no specific relief will be "distributed to the class" other than the Navy's correction of personnel files as indicated in paragraphs 17 and 18 of the Settlement Agreement. Appx.0009. The Navy is the only entity that

has access to these files and represents that it can make the corrections needed, so it follows that this delivery of relief will be effective enough to satisfy the Rule. The other Class relief will be more public in nature and does not apply to any specific person, so that relief does not implicate the concerns in Rule 23(e)(2)(C)(ii).

b. The Settlement Agreement provides that Defendants will pay Class Counsel $1.5 million in attorneys' fees. Unlike other class actions, where Class Counsel's fees are often a percentage of the overall monetary recovery for the Class, the attorneys' fees here do not reduce any relief the Class is entitled to. Moreover, the agreed-upon amount of fees is reasonable. The Defendants recently agreed to pay $1.8 million to counsel representing the Marine Corps class in similar litigation in the Middle District of Florida after the case was dismissed as moot.[8] And given that Class Counsel collectively spent nearly 3,400 hours on this litigation, that payment is more than reasonable. Appx.0040. The Settlement Agreement provides that Defendants will make this fee payment to Class Counsel with 60 days of the effectiveness of the agreement, which does not impact the Class. Appx.0016.

c. Rule 23(e)(3) requires that "parties seeking approval [of a class settlement] must file a statement identifying any agreement made in connection with the proposal." The parties here have no other agreements other than the Settlement Agreement, Appx.0040, so this factor also does not impact the Class.

D. All Class Members are Treated Equitably.

Rule 23(e)(2)(D) requires courts to evaluate whether settlement treats class members equitably relative to one another. Fed. R. Civ. P. 23(e)(2)(D). The Proposed Settlement seeks to

[8] *See* Meghann Myers, *DoD settles COVID vaccine mandate lawsuits for $1.8 million*, Military Times (Oct. 9, 2023), https://www.militarytimes.com/news/your-military/2023/10/09/dod-settles-covid-vaccine-mandate-lawsuits-for-18-million.

provide general benefits to every Class Member through the policy change and public notice provisions, and the provisions addressing corrections to personnel files are aimed at rectifying harm that some, but not all, Class Members suffered. The Settlement Agreement does not give preferential treatment or any award to any particular Class Members, including the Named Plaintiffs.

E. The Remaining *Reed* Factors Warrant Preliminary Approval.

1. The stage of the proceedings and the amount of discovery completed support approval.

The third *Reed* factor is "the stage of the proceedings and the amount of discovery completed." *Reed*, 703 F.2d at 172. Under this factor, the inquiry is whether the plaintiff has a sufficient understanding of the case to gauge the strengths and weaknesses of the claims and the adequacy of the settlement. *Cotton*, 559 F.2d at 1332. As discussed above, Class Counsel engaged in substantial litigation, obtained Navy documents through discovery and a whistleblower, and deposed the second-highest ranking uniformed officer in the Navy. Thus, by the time settlement discussions proved fruitful, the Named Plaintiffs and Class Counsel had a "full understanding of the legal and factual issues surrounding this case." *Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996). Even in cases where "very little formal discovery was conducted" and where "there is no voluminous record in the case," the Fifth Circuit has held that "the lack of such does not compel the conclusion that insufficient discovery was conducted." *Id.*; *see also Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 (5th Cir. 2012) (affirming approval of class action settlement where there had been no "formal discovery" but the settlement compared favorable to similar settlements, and the parties were "well informed about the merits of their respective positions").

2. The probability of Plaintiffs' success on the merits and the range of possible recovery.

"A district court faced with a proposed settlement must compare its terms with the likely rewards the class would have received following a successful trial of the case." *Reed*, 703 F.2d at 172. Courts also consider the range of possible recovery in the action. *Id*. "In ascertaining whether a settlement falls within the range of possible approval, courts will compare the settlement amount to the relief the class could expect to recover at trial, i.e., the strength of the plaintiff's case." *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-CV-1152-M, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018). But courts should avoid essentially trying cases in evaluating the propriety of a settlement because "the very purpose of the compromise is to avoid the delay and expense of such a trial." *Reed*, 703 F.2d at 172. And "the trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained." *Cotton*, 559 F.2d at 1330.

Plaintiffs believe that they would be successful if this case were litigated through trial to final judgment and on appeal. Plaintiffs also believe that they could have obtained relief from the Court which would be at least similar to, and perhaps stronger than, what the Navy agreed to do in the Proposed Settlement. But that would have come at a significant cost—not only a litigation cost borne by Class Counsel, but also a cost to the Class because of the lengthy delay in receiving relief. If personnel records and selection board convening orders were not corrected for years, Class Members would suffer continued lost employment and promotion opportunities in the meantime. Even if Plaintiffs could have ultimately obtained stronger relief if the litigation continued, the Proposed Settlement provides substantial relief for the Class without the cost of continued harm while waiting for final judgment, so it warrants approval.

3. The opinions of Class Counsel, Named Plaintiffs, and absent class members support approval.

Finally, courts consider "the opinions of the class counsel, class representatives, and absent class members" in determining the propriety of a settlement. *Reed*, 703 F.2d at 172. "[W]here the parties have conducted an extensive investigation, engaged in significant fact-finding and Class Counsel is experienced in class-action litigation, courts typically defer to the judgment of experienced trial counsel who has evaluated the strength of his case." *Schwartz v. TCU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *21 (N.D. Tex. Nov. 8, 2005).

Here, Class Counsel are experienced, are well-informed of the strengths and weaknesses of the case, and believe the Proposed Settlement merits approval. See Appx.0040. The Named Plaintiffs and the Individual Plaintiffs also support the Proposed Settlement. Accordingly, this factor favors approval.

* * *

For all the foregoing reasons, the Proposed Settlement is "fair, reasonable, and adequate" and warrants this Court's approval under Rule 23(e)(1) and (2).

III. The Court Should Approve the Proposed Notices.

Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement] proposal." Subject to the requirements of due process, notice under Rule 23(e)(1) gives the Court discretion over the form and manner of notice. *See Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1059 (5th Cir. 1979). "[A] simple summary of the proposed settlement is particularly appropriate in a rule 23(b)(2) case such as this. . . . '[T]he form of notice settlement of a Rule . . . 23(b)(2) class action need only be such as to bring the proposed settlement to the attention of representative class members who may alert the court to inadequacies in representation, or conflicts of interest among subclasses, which might bear upon

the fairness of the settlement." *DeHoyos v. Allstate Corp*., 240 F.R.D. 269, 301–02 (W.D. Tex. 2007) (quoting *Walsh v. Great Atl. & Pac. Tea Co*., 726 F.2d 956, 963 (3d Cir. 1983)). This is because "the interests in a rule 23(b)(2) class action for declaratory and injunctive relief, are related primarily, if not exclusively, to adequacy of representation, since a judgment in the action would establish the obligations of defendant . . . to the entire class." *Id*. (citation omitted). Thus, notice is sufficient if it contains "sufficient information to allow individuals to determine whether or not they are class members and to evaluate the benefits of the settlement." *Id.* at 298. Further, the purpose of notice for a 23(b)(2) class is not so that class members can choose to opt-out, it is to ensure that class members may object to the proposed settlement and be heard at a fairness hearing.

Here, the parties propose that Defendants give notice to Class Members via the Notice of Proposed Class Action Settlement and Hearing to Approve Proposed Settlement attached to the Settlement Agreement as Attachment B. The notice will also include a full copy of the Settlement Agreement and the date of the fairness hearing. Appx.0014, 0031.

As for the method of notice, the parties propose that Defendants send the notice by email to the Class Members' navy.mil email addresses, or if the Class Member is no longer part of the Navy, to their last known mailing address. Appx.0014, 0025. In large Rule 23(b)(2) classes, courts have permitted notice by publication, as "[r]eceipt of actual notice by all class members is required neither by Rule 23 nor the Constitution," *Id.* at 296; *see also id.* at 297 (citing cases). But "sending notice by mail is preferred when all or most of the class members can be identified." *Id.* at 296. Because Defendants can identify all Class Members, and also possess those Class Members' email and mailing addresses, this method of notice is likely to reach all, if not most, of the Class

Members. That more than satisfies notice requirements here.[9]

IV. The Court Should Set a Date for the Rule 23(e)(2) Hearing.

Under Rule 23(e)(2), the Court may finally approve a class action settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate." Thus, the Court should set a hearing on a date which allows sufficient time for the required notices to be sent and received by the Class, and for any Class Member objections to be submitted. If the Court is inclined to grant the motion to preliminarily approve the settlement, the parties propose the following schedule:

July 1, 2024	Defendants send notice of the preliminarily approved settlement to all Class Members
August 13, 2024	Deadline for submission of objections by Class Members
August 27, 2024	Rule 23(e)(2) Hearing

If that is not possible, the parties request that the Court set a date for the Rule 23(e)(2) hearing that is no sooner than 60 days after preliminary approval, if it is granted.

[9] Defendants' position is that notice under the Class Action Fairness Act, 28 U.S.C. § 1715(d), does not apply in cases where the federal government is the sole defendant. *See* 28 U.S.C § 1715(f) ("Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials."); *see also* Preliminary Approval Order, *In re Dep't of Veterans Affs. Data Theft Litig.*, No. 06-0506, 2007, WL 7621261 (D.D.C. Feb. 11, 2009), ECF No. 54, ¶ 7 ("In light of the purposes of the Act, the Court finds that notification to state officials is unnecessary."); Order Denying Mtn. to Intervene, Finally Approving Settlement of Class Action, and Directing Entry of Final Judgment, *Martinez v. Astrue*, No. 08-4735, 2014 WL 5408412 (N.D. Cal. Sept. 24, 2009), ECF No. 183, ¶ 6 ("[T]he notice provisions in § 1715(b) do not apply to the defendant in this case because the Defendant is a Federal official,"); Preliminary Approval of Settlement, *Cobell v. Salazar*, No. 96-CV-1285 (D.D.C. Dec. 10, 2010) Doc. No. 3660 at 36-37. Defendants' counsel states that the relevant federal officials have been notified already.

CONCLUSION

For the foregoing reasons, this Court should grant the Motion, amend the Class Definition, preliminarily approve the Proposed Settlement, approve the proposed Notice, and set a date for the Rule 23(e)(2) hearing.

Respectfully submitted this 31st day of May, 2024.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER
Texas Bar No. 24103325
ANDREW B. STEPHENS
Texas Bar No. 24079396
HACKER STEPHENS LLP
108 Wild Basin Road South, Suite 250
Austin, Texas 78746
Tel.: (512) 399-3022
heather@hackerstephens.com
andrew@hackerstephens.com

Attorneys for Plaintiffs

KELLY J. SHACKELFORD
Texas Bar No. 18070950
JEFFREY C. MATEER
Texas Bar No. 13185320
HIRAM S. SASSER, III
Texas Bar No. 24039157
DAVID J. HACKER
Texas Bar No. 24103323
DANIELLE A. RUNYAN
Texas Bar No: 24134548
HOLLY M. RANDALL
Texas Bar No. 24128002
FIRST LIBERTY INSTITUTE
2001 W. Plano Pkwy., Ste. 1600
Plano, Texas 75075
Tel: (972) 941-4444
jmateer@firstliberty.org
hsasser@firstliberty.org
dhacker@firstliberty.org
drunyan@firstliberty.org
hrandall@firstliberty.org

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2024, I electronically filed the foregoing document through the Court's ECF system and will serve a copy on each of the Defendants according to the Federal Rules of Civil Procedure.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER