

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

**ROBERT W. GALEY, et al.,**

Plaintiff,

v.

**JOSEPH R. BIDEN, et al.,**

Defendants.

No. 2:22-cv-6203

**DEFENDANTS' MOTION TO DISMISS**

Defendants respectfully move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). As explained in the accompanying memorandum, at the direction of Congress, the Secretary of Defense rescinded the challenged military readiness requirement that members of the armed forces be vaccinated against COVID-19. The Army subsequently provided the Plaintiff with all of the additional individual relief he seeks. This case should therefore be dismissed as moot.

Dated: July 2, 2024

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General  
Civil Division

ALEXANDER K. HAAS  
Director, Federal Programs Branch

LAUREN A. WETZLER  
Deputy Branch Director  
Federal Programs Branch

/s/Keri L. Berman  
KERI L. BERMAN  
Trial Attorney

United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, N.W.  
Washington, DC 20005  
Tel: (202) 514-2705  
Email: [keri.l.berman@usdoj.gov](mailto:keri.l.berman@usdoj.gov)

*Attorneys for Defendants*

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**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS AS MOOT**

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## INTRODUCTION

On December 23, 2022, the President signed into law the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (“NDAA”). *See* Pub. L. No. 117-263, § 525, 136 Stat. 2395, 2571-72 (Dec. 23, 2022). Section 525 of the NDAA directed the Secretary of Defense, within 30 days, to rescind the August 2021 memorandum requiring vaccination of service members for COVID-19. On January 10, 2023, the Secretary rescinded the mandate as directed. *See* Sec’y of Def. Mem., ECF No. 5-1 (“DoD Rescission Memo”). The rescission memorandum prohibited separations based solely on refusal of the COVID-19 vaccine by service members who sought an exemption from the mandate and directed the Services to “remove any adverse actions solely associated with denials of such requests.” *Id.* at 1. The memorandum also halted the processing of religious accommodation requests (“RARs”) for an exemption to the now-defunct mandate.

On February 24, 2023, the Secretary of the Army published further guidance implementing the Department of Defense’s (“DoD”) rescission, which, *inter alia*, directed Army components to immediately withdraw all adverse actions for current members of the military who made RARs. *See* Sec’y of the Army Mem., ECF No. 5-2 (“Army Rescission Memo”). On March 1, 2023, Plaintiff Galey was informed that his General Officer Memorandum of Reprimand (“GOMOR”) had been rescinded and that the service flags on his record had been favorably resolved. Exhibit 1, Developmental Counseling Form, Robert Galey, March 1, 2023; Exhibit 2, Declaration of Capt. Julissa Meyers. Plaintiff’s challenges to DoD’s August 24, 2021, COVID-19 vaccination policy memorandum and the Army’s September 14, 2021, COVID-19 vaccination policy memorandum are therefore moot in their entirety, and the case should be dismissed.

## **BACKGROUND**

### **A. The COVID-19 Vaccination Mandate.**

On August 24, 2021, the Secretary of Defense directed the Secretaries of the Military Departments to ensure that all members of the Armed Forces were fully vaccinated against COVID-19. Sec’y of Def. Mem. (Aug. 24, 2021), <https://perma.cc/N759-S758>. The Army implemented the August 2021 vaccine requirement, and consistent with DoD requirements and existing Army policies, permitted service members to seek medical, religious, or administrative exemptions based on their individual circumstances.

### **B. Rescission of the COVID-19 Vaccination Mandate**

On December 23, 2022, the President signed the NDAA into law. Section 525 directed the Secretary, within 30 days, to rescind the August 2021 memorandum requiring vaccination of service members against COVID-19. An explanatory statement in the Congressional Record notes that DoD “has mechanisms to correct a servicemember’s military record for discharge due to failure to receive the COVID-19 vaccine” and that “the military departments have the ability to consider applications for reinstatement of servicemembers who were previously separated for refusing the vaccine.” *See* 168 Cong. Rec. H9441 (Dec. 8, 2022).

On January 10, 2023, the Secretary of Defense rescinded the mandate as directed. DoD Rescission Memo. The rescission memorandum directed that currently serving service members who sought an exemption may not be “separated solely on the basis of their refusal to receive the COVID-19 vaccination” and directed the Services to “update the records of such individuals to remove any adverse actions solely associated with denials of such requests.” *Id.* at 1. It further directed that decisionmakers should “cease any ongoing reviews” of requests for accommodation

from the COVID-19 vaccination requirement. *Id.* Other policies regarding immunizations remained in effect, including “the ability of [C]ommanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions.” *Id.* at 2.

On February 24, 2023, the Deputy Secretary of Defense issued further guidance clarifying that when the Secretary of Defense rescinded the COVID-19 vaccination requirement, he “thereby also rendered all DoD Component policies, directives, and guidance implementing those vaccination mandates as no longer in effect as of January 10, 2023,” including but “not limited to, any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.” Deputy Secretary of Defense Mem. (Feb. 24, 2023) (“Deputy SECDEF Memo”), <https://perma.cc/3MXS-2CNR>. Subsequently, COVID-19 vaccination was only required when it was “required for travel to, or entry into, a foreign nation.” *Id.* at 2.

In short, other than complying with entry requirements into a foreign country, “commanders will not require a Service member or group of Service members to be vaccinated against COVID-19, nor consider a Service member’s COVID-19 immunization status in making deployment, assignment, and other operational decisions.” *Id.*

Also on February 24, 2023, the Secretary of the Army issued a memorandum broadly “re-scind[ing] all Department of the Army policies specifically associated with the implementation of the COVID-19 vaccination mandate.” Army Recission Memo ¶ 2. Among other things, the Secretary of the Army directed (1) the immediate rescission of all pending separation actions pursuant to the vaccination requirement, *id.* ¶ 5.a.(1); (2) the immediate and favorable closing of flags for

soldiers who failed to comply with an order to be vaccinated, *id.* ¶ 5.a.(2); (3) the immediate removal of General Officer Memoranda of Reprimand (“GOMORs”) for soldiers who failed to comply with an order to be vaccinated, *id.* ¶ 5.a.(3); (4) the immediate removal of all bars to continued service for soldiers who failed to comply with an order to be vaccinated, *id.* ¶ 5.a.(4); and (5) the potential modification of evaluation reports based on a failure to comply with an order to be vaccinated “to achieve the most advantageous outcome for the Soldier,” *id.* ¶ 5.a.(5)(a). The Army’s memorandum permits former soldiers to petition the Army Discharge Review Board and the Army Board for the Correction of Military Records to request corrections to their records, “including records regarding the characterization of their discharge.” *Id.* ¶ 6. On March 7, 2023, the Army issued instructions for carrying out these actions. Exhibit 3, Army EXORD 174-23.

### **C. Plaintiff Galey’s Lawsuit**

Plaintiff, Army Sergeant Robert Galey, filed suit on December 19, 2023, challenging the Department of the Defense and Department of Army’s COVID-19 vaccination policies. Plaintiff Galey alleges that he submitted a properly supported RAR seeking an exemption from COVID-19 vaccination on religious grounds and that his RAR was denied, subjecting him to adverse actions and the threat of imminent separation from the Army. Compl. ¶¶ 11-14, 21, 76. A GOMOR and an accompanying record flag were issued to Plaintiff Galey on December 15, 2022. *Id.* ¶19. Plaintiff’s Complaint seeks to preliminarily and permanently enjoin and declare unlawful the DoD and Army COVID-19 vaccination policies.

At the time the suit was filed, Congress had already indicated that the NDAA would include language directing the Department of Defense to rescind the COVID-19 vaccination policies. *See* Compl. ECF No. 1 at 1-2. Plaintiff served his complaint on the United States Attorney’s office on

January 4, 2023, after the passage into law of the NDAA, including the directive to the Secretary of Defense to rescind the vaccine policies. *See supra*.

On January 10, 2023, the Secretary of Defense issued the DoD Rescission Memo rescinding DoD's COVID-19 vaccination mandate. On February 24, 2023, the parties filed a Consent Motion to Stay all proceedings pending publication of further Army guidance implementing the Secretary of Defense's rescission memorandum. ECF No. 3. On February 28, 2023, the Court granted the parties' motion staying all deadlines. Order, ECF No. 4. On March 10, 2023, the parties filed a Joint Status Report informing the Court that the Army had published the anticipated guidance and that disputes remained between the parties concerning mootness. ECF No. 5. On May 21, 2024, the Court ordered the parties to file an updated status report addressing whether any controversies remain in this suit, ECF No. 7, and the parties filed that status report on May 28, 2024, ECF No. 8 ("JSR"). On May 29, 2024, the Court ordered the parties to confer and propose a briefing schedule for Defendants' motion to dismiss as moot, ECF No. 9, the parties proposed a schedule on June 4, 2024, ECF No. 10, and the Court adopted that schedule on June 6, 2024, ECF No. 11.

Since the publication of the DoD Rescission Memo on January 10, 2023, and the Army Rescission Memo on February 24, 2023, Plaintiff is no longer subject to DoD's August 2021 vaccination mandate or any of Army's directives implementing or enforcing that mandate. *See* DoD Rescission Memo at 1; Army Rescission Memo ¶2. Plaintiff was never subject to the commencement of any separation procedures related to the denial of his COVID-19 RAR. Additionally, on March 1, 2023, pursuant to the requirements of the Army Rescission Memo, the adverse action on Plaintiff's record, a GOMOR dated December 15, 2022, was rescinded, and the Adverse Action Flag on Plaintiff's record was favorably removed. *See* Galey Counseling Form; Meyers Decl. ¶¶

4-6. On March 7, 2023, Plaintiff acknowledged that he was advised of the updated Army Policy and that the December 15, 2022 GOMOR had been rescinded. Galey Counseling Form.

### **LEGAL STANDARD**

A “Rule 12(b)(1) motion...permits factual challenges to a federal court’s jurisdiction.” *Kling v. Hebert*, 60 F.4th 281, 284 (5th Cir. 2023). A “factual attack on the court’s subject matter jurisdiction may be based on ‘(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.’” *Id.* (quoting *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001)). “When a defendant makes a factual attack, the plaintiff ‘has the burden of proving by a preponderance of the evidence that the trial court does have subject matter jurisdiction.’” *Id.* (quoting *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981)). Whether a case has become moot is a question of subject matter jurisdiction because the jurisdiction of federal courts is limited to actual cases and controversies. *Payne v. Progressive Fin. Servs.*, 748 F.3d 605, 607 (5th Cir. 2014).

### **ARGUMENT**

Plaintiff’s claims must be dismissed as moot because there is no remaining controversy between the parties, the Court cannot grant any effectual relief to the Plaintiff, and no exceptions to mootness apply.

#### **1. No Live Controversy Remains Between the Parties.**

The rescission of the challenged COVID-19 vaccine policies by the NDAA, the DoD Rescission Memo, and the Army Rescission Memo, extinguishes any live controversy between the parties. Moreover, the removal of all adverse actions in Plaintiff’s record obviates any alleged remaining personal stake he might have had in the outcome of the suit.

“Parties seeking to invoke federal-court jurisdiction [must] demonstrate that they have a ‘legally cognizable interest’ or ‘personal stake’ in the outcome of the case,” and a “live controversy must exist at every stage of the litigation.” *Payne*, 748 F.3d at 607 (internal citations omitted). “If an intervening circumstance deprives a plaintiff of a personal stake in the outcome of the action or makes it ‘impossible for the court to grant any effectual relief whatever to the prevailing party,’ the case must be dismissed as moot.” *Id.* (quoting *Chafin v. Chafin*, 568 U.S. 165, 166 (2013)); *see also, e.g., Fontenot v. McGraw*, 777 F.3d 741, 747 (5th Cir. 2015) (“A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” (quoting *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 726-27 (2013))).

“Generally, any set of circumstances that eliminates actual controversy after the commencement of a lawsuit renders that action moot.” *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006). The Fifth Circuit and other circuits have repeatedly confirmed that the repeal of a rule or its substitution by intervening legislation moots any challenge against it. *See, e.g., McCorvey v. Hill*, 385 F.3d 846, 849 (5th Cir. 2004) (“Suits regarding the constitutionality of statutes become moot once the statute is repealed.”); *Johnson v. State*, 586 F.2d 387, 388 (5th Cir. 1978) (“[T]he enactment of a superseding statute which satisfies all the principles sought in an attack on the prior statute simply moots the case.”); *see also, e.g., Keister v. Bell*, 29 F.4th 1239, 1250 (11th Cir. 2022) (“[W]hen a government fully repeals a challenged law, a case challenging that law is almost surely moot.”); *Bd. of Trustees of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1198 (9th Cir. 2019) (“[T]he repeal, amendment, or expiration of challenged legislation is generally enough to render a case moot and appropriate for dismissal.”); *Am. Bar Ass’n v. Fed. Trade Comm’n*, 636 F.3d 641, 643 (D.C. Cir. 2011) (“It is

well established that a case must be dismissed as moot if new legislation addressing the matter in dispute is enacted while the case is still pending.”).

“No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (citation omitted). Thus, when a statute or regulation is amended or repealed after plaintiffs bring a lawsuit challenging it, mootness is “the default.” *Freedom From Religion Found., Inc. v. Abbott (FFRF)*, 58 F.4th 824, 832 (5th Cir. 2023); *see also, e.g., Houston Chron. Publ’g. Co. v. League City*, 488 F.3d 613, 619 (5th Cir. 2007) (“It goes without saying that disputes concerning repealed legislation are generally moot.”); *Fantasy Ranch Inc. v. City of Arlington*, 459 F.3d 546, 564 (5th Cir. 2006) (overruled in part on other grounds) (“[S]tatutory changes that discontinue a challenged practice are usually enough to render a case moot, even if the legislature possesses the power to reenact the statute after the lawsuit is dismissed.” (citation omitted)); *Chambers*, 941 F.3d at 1199. A case “usually becomes moot if the challenged law has expired or been repealed . . . [o]nce the law is off the books, there is nothing injuring the plaintiff and, consequently, nothing for the court to do.” *Spell v. Edwards*, 962 F.3d 175, 179 (5th Cir. 2020); *see also, e.g., N.Y. State Rifle & Pistol Ass’n (NYSRPA) v. City of New York*, 140 S. Ct. 1525, 1526 (2020) (holding that a claim for injunctive relief against a law was moot when the law was amended to give “the precise relief that [the plaintiffs] requested.”); *Amawi v. Paxton*, 956 F.3d 816, 819, 821 (5th Cir. 2020) (dismissing an appeal as moot because a statutory amendment “provided the plaintiffs the very relief their lawsuit sought”).

A straightforward application of these principles demonstrates that Plaintiff’s challenge to the rescinded vaccination requirements is moot. The vaccination requirements were rescinded by

the Secretary of Defense at Congress’s direction, *see supra*, which rendered ineffective “all . . . policies, directives, and guidance implementing” the vaccination requirement. Deputy SECDEF Memo at 1. Neither the Plaintiff nor any other currently serving member of the Army is now required to be vaccinated against COVID-19 nor subject to any adverse action due to their COVID-19 vaccination status. Congress “has done the work that Plaintiffs wanted [this Court] to do.” *DeOtte v. State*, 20 F.4th 1055, 1064 (5th Cir. 2021). Accordingly, there is no longer a live controversy behind Plaintiff’s request that the Court declare the repealed COVID-19 vaccination requirement unlawful and enjoin its enforcement. *Id.*; *Spell*, 962 F.3d at 179.

Indeed, since the initiation of this lawsuit the Fifth Circuit has addressed the exact issue in this matter in the context of the Navy’s COVID-19 vaccination mandate and determined that challenges to that policy are moot. *U.S. Navy SEALS I-26 v. Biden*, 72 F. 4th 666, 672 (5th Cir. 2023). That decision controls the Court’s analysis in this case. *See* ECF No. 7 at 1 (“[T]he Fifth Circuit determined in [*SEALS I-26*], that naval servicemembers’ challenge to the COVID-19 vaccine mandate was mooted by the Navy’s rescission of that mandate. That decision is binding on this court.”). The *SEALS I-26* Court determined that the Navy had rescinded its vaccine mandate, revoked the implementing policies, and promulgated new policies providing that no vaccine mandate will be imposed on service members. 72 F.4th at 672-73. The Army took the same actions, *see supra* at 3-4, and “such actions moot a dispute over the lawfulness of military vaccine mandates.” *Id.* at 672; *see also Schelske v. Austin*, No. 6:22-cv-049-H, 2023 U.S. Dist. LEXIS 163101, at \*22 (N.D. Tex. Sept. 14, 2023) (stating in a challenge to the Army vaccine mandate that *SEALS I-26* is “binding precedent-based on facts nearly identical to those in this case-[and] largely dictates the outcome here.”); *Jackson v. Mayorkas*, No. 4:22-cv-0825-P, 2023 U.S. Dist. LEXIS 144078, at \*6-8 (N.D. Tex. Aug. 17, 2023) (following *SEALS I-26* in holding that challenged to the Coast Guard vaccine

mandate are moot); *Crocker v. Austin*, No. CV 22-0757, 2023 U.S. Dist. LEXIS 108509, at \*8 (W.D. La. June 22, 2023) (following *SEALS I-26* in holding that challenges to the Air Force vaccine mandate are moot).

Even if the *SEALS I-26* decision were not binding upon this matter, and it is, the Fifth Circuit is not alone in reaching the conclusion that challenges to the COVID-19 vaccine mandates for current servicemembers are moot. The Ninth Circuit held in *Short v. Berger*, Nos. 22-15755, 22-16607, 2023 U.S. App. LEXIS 4988 (9th Cir. Feb. 24, 2023), and *Dunn v. Austin*, No. 22-15286, 2023 U.S. App. LEXIS 5246 (9th Cir. Feb. 27, 2023), that the rescission of the vaccination requirement mooted the plaintiffs’ preliminary-injunction appeals, vacated the district courts’ orders, and remanded. The Eighth Circuit reached the same conclusion in *Roth v. Austin*, 62 F.4th 1114, 1119 (8th Cir. 2023), holding that “[t]he rescission of the COVID-19 vaccination mandate, as directed by the [NDAA], provides the Airmen all of their requested preliminary injunctive relief and renders this appeal moot.” The Tenth Circuit similarly held appellants claim in *Robert v. Austin*, 72 F.4th 1160, 1164 (10th Cir. 2023), moot because they “cannot be subject to a vaccine requirement that no longer exists.” And the Fourth and D.C. Circuits also dismissed pending appeals seeking injunctions as moot. *Alvarado v. Austin*, No. 23-1419, 2023 U.S. App. LEXIS 28916, at \*1 (4th Cir. Aug. 3, 2023); *Navy SEAL I v. Austin*, Nos. 22-5114, 5135, 2023 U.S. App. LEXIS

5843, at \*2-3 (D.C. Cir. Mar. 10, 2023); *Creaghan v. Austin*, No. 23-5101, 2023 U.S. App. LEXIS 31107, at \*2-3 (Nov. 21, 2023).<sup>1</sup>

In addition to the rescission of the vaccine mandates, which removed any prospective obligation on servicemembers to either become vaccinated or face consequences for refusing to comply with the mandates, Defendants went beyond the requirements imposed by the NDAA and removed all adverse actions from Plaintiff and other servicemembers' records. *See SEALS I-26*, 72 F.4th at 671; *Schelske*, 2023 U.S. Dist. LEXIS 163101, at \*8, 13, 34-36, 63-66. Plaintiff does not contend that any adverse information related to COVID-19 vaccination remains on his military personnel record nor do his records in fact contain such information. *See* Galey Counseling Form; Meyers Decl. at ¶¶ 4-6; Exhibit 4, Declaration of Capt. John A. LaPorte ¶¶ 8-9. Given that the Plaintiff now has neither a past nor a prospective injury premised on Defendants' defunct vaccine mandates, he no longer has any personal stake in the outcome of this litigation and it is consequently moot.

In sum, the purpose of Plaintiff's lawsuit has already been achieved by other means, both in terms of the broader policy and his own alleged ongoing injury. The case is therefore moot and should be dismissed.

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<sup>1</sup> District courts have likewise found that challenges to the COVID-19 vaccination requirement are moot. *Coker v. Austin*, 688 F. Supp. 3d. 1116 (N.D. Fla. 2023); *Colonel Fin. Mgmt. Officer v. Austin*, Nos. 8:21-CV-1275, 2429 (SDM-TGW), 2023 WL 2764767 (or 2023 U.S. Dist. LEXIS 58705, at \*8), at \*3 (M.D. Fla. Apr. 3, 2023) ("The challenged and preliminarily enjoined mandate no longer exists."); *Chancey, v. Biden*, 1:22-cv-110, ECF No. 32 (N.D. Fla. Feb. 14, 2023) (dismissing case challenging military COVID-19 vaccine requirement as moot). Other cases related to the DoD vaccine requirement have been voluntarily dismissed after the rescission. *See Oklahoma v. Biden*, No: 5:21-cv-01136, ECF Nos. 77, 78, 82 (W.D. Okla. Feb. 17, 2023 and March 7, 2023); *Church v. Biden*, No. 1:21-cv-2815, ECF No. 43 (D.D.C. Jan. 23, 2023) (including Marine Corps plaintiffs); *Air Force Major v. Austin*, No. 3:22-cv-00756, ECF No. 25 (N.D. Tex. March 7, 2023).

## 2. No Remaining Relief is Available to Plaintiff.

The Fifth Circuit also explained in *SEALS I-26* that the preliminary injunction at issue “no longer provide[d] Plaintiffs any effectual relief,” because there is no longer any requirement to be vaccinated, any threat of adverse action for refusing vaccination, or any consideration of vaccination status in deployment, training, or assignments. 72 F.4th at 672-73. The Army took the same actions to “definitively restore[]” its unvaccinated servicemembers to “equal footing with their vaccinated counterparts through repeated formal policy changes,” *Id.* at 673, and the declaratory and injunctive relief Galey seeks is thus equally unable to provide him any effectual relief. *See supra* at 3-4; EXORD 174-23 at ¶ 3.D.8.

Defendants can no longer enforce the August 2021 mandate with respect to the Plaintiff nor may Defendants take adverse action against him based on that defunct policy. *See* DoD Rescission Memo; Army Rescission Memo. Thus, there is nothing to enjoin and the requested injunctive relief is no longer available. *See Fontenot*, 777 F.3d at 747 (“Because there remains no live controversy between the parties . . . the injunction they seek would be meaningless.”). The NDAA as implemented through the rescission memoranda gives Plaintiff the relief sought in his complaint. They terminate the challenged vaccination requirement, rendering moot Plaintiff’s request for injunctive relief barring enforcement of that requirement. They confirm that Plaintiff will not be discharged based on his refusal to comply with the vaccination requirement, that any preexisting adverse action issued solely based on refusal to comply with the vaccination requirement will be removed, and that no new adverse actions for declining COVID-19 vaccination will be issued. Plaintiff has no further relief to be gained by pursuing this lawsuit challenging the now-rescinded mandate, and thus “lack[s] a legally cognizable interest in the outcome.” *Id.*

As a consequence of the rescission, the Court also lacks authority to render the declaratory judgments requested by Plaintiff. “A claim for declaratory judgment seeks to define the legal rights and obligations of the parties in anticipation of some future conduct, not to proclaim liability for a past act...[i]t therefore can be mooted by subsequent developments.” *Haggard v. Bank of the Ozarks, Inc.*, 547 F. App’x 616, 620 (5th Cir. 2013); *see also Harris v. City of Houston*, 151 F.3d 186, 190–91 n.5 (5th Cir. 1998) (“Requests for declaratory relief may sustain a suit only when the claims “challenge . . . some ongoing underlying policy” rather than “merely attacking an isolated . . . action.” (quoting *City of Houston v. Dep’t of Hous. & Urban Dev.*, 24 F.3d 1421, 1429 (D.C. Cir. 1994))). Because there is no longer an enforceable vaccine mandate, the question of whether that prior defunct policy violated RFRA or the First Amendment is moot and any decision would be an impermissible advisory opinion. *See St. Pierre v. United States*, 319 U.S. 41, 42 (1943) (“A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it.”); *see also, e.g., Golden v. Zwickler*, 394 U.S. 103, 108-09 (1969) (dismissing declaratory judgment action because there was no case or controversy of “sufficient immediacy and reality”); *C & H Nationwide v. Norwest Bank Tex. N.A.*, 208 F.3d 490, 493 (5th Cir. 2000) (“The ‘case or controversy’ requirement of Article III of the United States Constitution prohibits federal courts from considering questions ‘that cannot affect the rights of litigants in the case before them.’” (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971))).

For the same reasons, the Court lacks jurisdiction to grant any relief under the APA. In the APA context, “[w]hen a challenged rule is replaced with a new rule, the case is moot so long as the change gives ‘the precise relief that petitioners requested.’” *Franciscan All., Inc. v. Bercerra*, 47 F.4th 368, 374 (5th Cir. 2022) (quoting *NYSRPA*, 140 S. Ct. at 1526). Plaintiff asks for the

policies to be vacated as unlawful under one or more of the categories established by APA section 706(2). *See* Compl. ¶¶ 132-56. The Rescission Memoranda provided precisely that relief by rescinding the vaccination policies. Plaintiff’s complaint “sought nothing more...[n]or could it have...[v]acatur is the only statutorily prescribed remedy for a successful APA challenge to a regulation.” *Franciscan All.*, 47 F. 4th at 374-75. Thus, nothing remains of Plaintiff’s APA claim.

In the parties’ May 28, 2024 joint status report (JSR) Plaintiff asserted that his claims are nevertheless live because the Court can still grant effectual relief in two areas: 1) addressing alleged ongoing harms created by the military’s “broader religious accommodation policies that systematically undermine his and other soldiers’ rights;” and 2) addressing alleged “continued collateral consequences and harm” arising from Plaintiff’s military personnel records. JSR at 1-2. Neither of these alleged issues can salvage Plaintiff’s moot claims.

First, Plaintiff’s Complaint challenges only Defendants’ COVID-19 vaccine policies and not the military religious accommodation process more generally. *See generally* Compl. ¶¶ 86-156, Causes of Action 1-3; *id.* at 31-32, Prayer for Relief. At least one court has already rejected the same attempt to keep a vaccine case alive. *See Bongiovanni v. Austin*, No. 3:22-cv-580, 2023 U.S. Dist. LEXIS 115143, at \*25 (M.D. Fla. July 5, 2023) (“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.”). More importantly, any amendment to Plaintiff’s Complaint would be futile because Plaintiff lacks standing to make a general challenge to the system of military religious accommodation requests. To have Article III standing, “a plaintiff must (1) have suffered an injury in fact, (2) that is fairly traceable to the challenged action of the defendant, and (3) that will likely be redressed by a favorable decision.” *Speech First, Inc. v. Fenves*,

979 F.3d 319, 330 (5th Cir. 2020). An injury confers standing only if it is “concrete and particularized,” and “actual or imminent, not conjectural or hypothetical.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citation omitted). “Plaintiffs always have the burden to establish standing.” *Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017). Plaintiff exclusively seeks prospective and declaratory relief, so he “must demonstrate . . . a real and immediate threat of repeated injury in the future.” *James v. Hegar*, 86 F.4th 1076, 1081 (5th Cir. 2023) (citation omitted). In other words, he must show that any alleged future injury is “certainly impending,” or that there is a “substantial risk” that such injury “will occur.” *Susan B. Anthony List*, 573 U.S. at 158 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013)).

Plaintiff obviously cannot make such a showing as to the “military religious accommodation process” writ large. Plaintiff has only alleged that he interacted with that process as it concerns his request for an accommodation for COVID-19 vaccination, which is moot for a variety of reasons, *see supra*. He does not and cannot allege that he has any other actual or imminent future contact with that process, or that, if he did once again make a religious accommodation request it would be denied, delayed, or create any other “discrimination [or] coercion,” JSR at 1. Plaintiff relies for his argument on the mootness decision in *U.S. Navy SEALs I-26 v. Austin*, No. 4:21-cv-01236-O, ECF No. 262, but that opinion is factually distinguishable, improperly assumes standing, and is wrongly decided. Plaintiff has not even alleged that the Army’s religious accommodation process is relevantly similar to the Navy’s. He also has never established standing to bring this case and cannot now do so in light of the rescinded mandate. Finally, even if Plaintiff had established standing to bring his original (now moot) claim, that would be insufficient to extend his standing to explicitly hypothetical future interactions with an optional Army process.

Second, Plaintiff's allegation of continuing collateral consequences from his refusal to become vaccinated cannot salvage his moot claims. Specifically, despite appearing to concede that there is no adverse COVID-19 related information in his personnel record, Plaintiff alleges that "a record related to vaccine refusal on Master Sergeant Galey's Soldier Record Brief (SRB), although partially redacted, continues to affect his military career...[w]hile the [GOMOR] record itself was removed, the fact that there was a such a flag in his SRB remains visible to follow on promotion boards." JSR at 2. This contention is simply factually incorrect for several reasons. First Plaintiff's GOMOR was never placed in his permanent personnel record in the first instance. Meyers Decl. ¶ 4; LaPorte Decl. ¶ 9; Exhibit 5, Declaration of Nathan May ¶ 10. Second, there is no adverse covid-related information or partially or fully redacted information in Plaintiff's current personnel record. LaPorte Decl. ¶ 9; May Decl. ¶ 10. Assuming, therefore, that Plaintiff's argument is based solely on his "Enlisted Record Brief," (ERB), that is a legacy document that is no longer in use by the Army. May Decl. ¶¶ 11, 15-17. Moreover, even when ERBs were in use, certain information such as flags and assignment considerations were always redacted prior to selection board consideration. *Id.* ¶¶ 13, 18. Additionally, during the period of the Army's switch over from the legacy system to the current system, ERB's were only used by certain boards. There is no evidence that Plaintiff's ERB was viewed by any selection or promotion board and it cannot be viewed by any future board. *Id.* ¶¶ 19-20.

Thus, it is not possible that any alleged remnant of adverse information on Plaintiff's ERB will "raise questions" with future promotion boards. JSR at 2. But even if that were a possibility, a court in the Northern District of Texas considered and rejected exactly this argument about ERBs in *Schelske*, finding that "plaintiffs' claim that black-box redaction will prompt [Army] selection boards to inquire regarding the redacted information is speculative." 2023 U.S.

Dist. LEXIS 163101, at \*66. Consequently, the court would not “require the Army - in defiance of its established procedure - to scrub the plaintiffs’ [personnel records] so as to disguise that they were ever altered because such would not remedy an ascertainable injury.” *Id.*; *see also id.* at 64-66 (finding no injury where the Army established that ERBs were no longer in use and flags and assignment restrictions are always redacted for boards.)

### **3. No Exception to Mootness Applies**

Plaintiffs may contend that one or more exception to mootness applies, however no exception is applicable to the rescission of the military’s COVID-19 policies.

#### **a. The Voluntary Cessation Exception Does Not Apply**

Under the voluntary cessation exception to the mootness doctrine, “[a] case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 325 (5th Cir. 2009) (quoting *Friends of the Earth, Inc., v. Laidlaw Env’tl. Servs., Inc.*, 528 U.S. 167, 189 (2000)), *aff’d sub nom. Sossamon v. Texas*, 563 U.S. 277 (2011). However, the analysis is “somewhat different with respect to a government defendant,” because government entities “bear a lighter burden...in proving that the challenged conduct will not recur once the suit is dismissed as moot.” *SEALS 1-26*, 72 F.4th at 673 (quoting *FFRF*, 58 F.4th at 833). Courts must “presume that state actors, as public representatives, act in good faith....[and a]ccordingly without evidence to the contrary [] assume that formally announced changes to official government policy are not mere litigation posturing.” *Id.* at 674 (citations omitted).

The Fifth Circuit concluded in *SEALS 1-26* that the voluntary cessation exception did not apply to the Navy’s vaccine mandate rescission and that there was no evidence to contradict the presumption of good faith policy change. *See id.* at 674-75. The *Schelske* court applied that holding

to the Army’s mandate rescission and concluded that “no live controversy remains” because “re-scission of the mandate and its implementing guidance was largely involuntary and, to the extent it was voluntary, it is accorded a presumption of good faith.” 2023 U.S. Dist. LEXIS 163101, at \*31-32. “[C]onduct is only voluntary ‘when taken free from compulsion’ of an enforcement action or a legally binding order.” *Id.* at \*32 (quoting *Fontenot*, 777 F.3d at 747 n.9). “[D]efendants’ rescission of the COVID-19 vaccine mandate here was not voluntary... ‘[u]nlike a typical instance of voluntary cessation, [the Secretary of Defense’s] rescission of the COVID-19 vaccination mandate result[ed] not from the Secretary’s unilateral decision but from a higher authority Congress....” *Id.* at \*33-34 (quoting *Colonel Fin. Mgmt. Officer*, 2023 U.S. Dist. LEXIS 58705, at \*8). “[T]he Secretary of Defense had no choice but to rescind the vaccine mandate or defy a clear congressional directive.” *Id.* at \*34.

Defendants “most assuredly did not alter [their own course] in order to avoid litigation.” *Am. Bar Ass’n*, 636 F.3d at 648. Rather, intervening legislation—in the form of the NDAA—required DoD to rescind the vaccination mandate. *See id.* (finding voluntary cessation exception did not apply where “intervening legislation simply nullified the [agency’s challenged] policy statement”). The NDAA “specifically forbids the kind of [action] challenged in this suit” and “[t]he cessation of the [vaccination requirement] therefore was not voluntary.” *Klayman v. Obama*, 759 F. App’x 1, 3 (D.C. Cir. 2019); *see also J. T. v. District of Columbia*, 983 F.3d 516, 523 (D.C. Cir. 2020) (“‘The voluntary-cessation doctrine has no apparent relevance’ where the ‘source of cessation’ . . . lies beyond the unilateral legal authority of any of the named defendants.”) (quoting *Guedes v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 920 F.3d 1, 15 (D.C. Cir. 2019) (per curiam)); *Am. Bar Ass’n*, 636 F.3d at 645-46 (“The ABA’s claims were thus rendered moot by the intervening legislation”); *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1309 (D.C. Cir.

2004) (“Where Congress enacts intervening legislation that definitively resolves the issues a litigant seeks to put before us, the claims are moot and we are precluded from deciding them.”).

Plaintiff can provide no basis to suggest that the rescission of the vaccine requirement is pretextual and cannot overcome the presumption in favor of the Defendants. There is nothing to suggest that this change in policy was mere litigation posturing. Before Congress directed the Secretary of Defense to rescind the vaccination requirement, the Department of Defense and the various military departments actively defended the legality of the vaccination requirement in dozens of lawsuits around the country. *See supra; Schelske, 2023 U.S. Dist. LEXIS 16310* at \*36 (“The fact that the defendants rescinded the mandate, along with its implementing guidance, despite their unwavering commitment to enforcing it until that point further reveals a lack of voluntariness.”). Nor is there any reason to suspect that the same or a substantially similar requirement will recur. On the contrary, Defendants have gone beyond what was required by Congress in the NDAA, for example, requiring the records of current service members who sought an exemption to be updated. *See DoD Rescission Memo, Army Rescission Memo ¶ 5(a)*. There is no evidence that the challenged vaccine requirement will be reinstated, that Plaintiff will once again be subject to that requirement, or that any accommodation he seeks regarding a substantially similar new requirement would be denied. *See FFRF, 58 F.4th* at 833 (“[T]he government’s ability to reimplement the statute or regulation at issue is insufficient to prove the voluntary-cessation exception.”); *id.* at 834 (holding that the exception did not apply where the challenged action “has been formally repealed, with no indication that the [government defendant] intends to reconsider that decision”). Without direct evidence to the contrary:

[I]t is remote, and indeed unrealistically speculative, that these defendants will ever again expose the plaintiffs to the claimed injury that prompted this lawsuit. The very process of the enactment of [the new law] by the state legislature and governor, combined with the

presumption of good faith that we afford government actors, overcomes concerns of voluntary cessation.

*Amawi*, 956 F.3d at 821. For these reasons, Plaintiff cannot overcome the presumption that the NDAA and rescission memorandum moot this case.

**b. The Capable of Repetition But Evading Review Exception Does Not Apply**

A specific and narrow category of cases falls into the “capable of repetition but . . . evading review” exception to mootness. *Empower Texans, Inc. v. Geren*, 977 F.3d 367, 370 (5th Cir. 2020). Litigation premised on the rescission of the military vaccine mandates does not fall into that narrow category. Under that exception, cases that would otherwise be moot are saved from mootness “if ‘(1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.’” *Id.* (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016)). This exception applies “only in exceptional situations.” *Id.* (quoting *Kingdomware*, 579 U.S. at 170). Plaintiffs—as the party seeking to assert the exception—bear the burden of showing that it applies. *See id.*

The relevant inquiry under the evading-review prong of the exception is “whether ‘the challenged activity is *by its very nature short in duration*, so that it could not, or probably would not, be able to be adjudicated while fully live.’” *Pharmachemie B.V. v. Barr Lab’ys, Inc.*, 276 F.3d 627, 633 (D.C. Cir. 2002) (quoting *LaRouche v. Fowler*, 152 F.3d 974, 978 (D.C. Cir. 1998)); *see also, e.g., Bayou Liberty Ass’n v. U.S. Army Corps of Eng’rs*, 217 F.3d 393, 399 (5th Cir. 2000) (considering whether the type of action challenged was “*inherently* capable of evading review” (emphasis added)). The “Fifth Circuit and Supreme Court have identified challenges to time-limited punishments, such as a term of suspension or imprisonment, and challenges to a law’s application during a pre-specified, limited period of time, such as an election cycle or a term of

pregnancy, as conduct likely to evade judicial review.” *Schelske*, 2023 U.S. Dist. LEXIS 163101, at \*47 (collecting cases); *see also, e.g., Moore v. Hosemann*, 591 F.3d 741, 744 (5th Cir. 2009) (“Election controversies are paradigmatic examples of cases that cannot be fully litigated before the particular controversy expires.”). The vaccine requirement is markedly different from these examples. “The Army’s vaccine mandate lacked an expiration date, which indicates it was meant to operate indefinitely.” *Schelske*, 2023 U.S. Dist. LEXIS 163101, at \*47. “Enforcement of the mandate...was not time-limited by the mandate’s own terms so as to prevent complete judicial review...[i]t was therefore this congressional directive, and not the mandate’s own nature, that precluded review.” *Id.* at 48. Thus, the vaccination requirement is not the kind of action that is “in its duration too short to be fully litigated prior to cessation or expiration.” *Geren*, 977 F.3d at 370 (citation omitted).

On the capable of repetition prong, “plaintiff[] likewise fail[s] to establish ‘a demonstrated probability’ or ‘reasonable expectation,’ not merely a ‘theoretical possibility,’ that [he] will be subject to the same government action,” a renewed COVID-19 vaccine mandate. *Schelske*, 2023 U.S. Dist. LEXIS 163101, at \*50 (quoting *Lopez v. City of Houston*, 617 F.3d 336, 340 (5th Cir. 2010)). “A ‘mere physical or theoretical possibility’ is not sufficient to satisfy this prong of the exception.” *Libertarian Party v. Dardenne*, 595 F.3d 215, 217 (5th Cir. 2010) (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1982)); *see also Am. Bar Ass’n*, 636 F.3d at 647 (“It does not matter that the [agency] might hereafter . . . promulgate *new* rules” because “[t]hese are merely hypothetical possibilities,” and “*possibilities* regarding regulations and enforcement policies that do not presently exist” are “not enough to give rise to a live dispute.”). As explained above, the rescission of the COVID-19 vaccination requirement relieves Plaintiff of any obligation to be vaccinated. Any conjecture that he will be subject to such a requirement in the future would be purely speculative. The

Fifth Circuit has already explained that “no one knows what the future of COVID-19 holds” and it is thus “speculative, at best, that the [government] might reimpose [a particular COVID-19] restriction or a similar one.” *Spell*, 962 F.3d at 180; *id.* (holding moot a challenge to Louisiana’s rescinded stay-at-home orders, especially given that “[t]he trend in Louisiana has been to reopen the state, not to close it down”); *see also Long v. Jayton-Girard Indep. Sch. Dist.*, No. 5:21-CV-111-H, 2021 WL 7906835, at \*4 (N.D. Tex. Sept. 3, 2021) (holding moot a challenge to school district’s rescinded mask mandate because “the mere possibility of COVID-19 worsening or COVID-19 policies being re-imposed is insufficient to satisfy the ‘reasonable expectation’ requirement of the second prong”). In the case of military vaccine mandates there is currently no “reasonable expectation that the defendants will reimpose a vaccine mandate and enforce it in the same manner in the future,” particularly because of the “widespread loosening of COVID-19 restrictions across society.” *Schelske*, 2023 U.S. Dist. LEXIS 163101, at \*53. But moreover “even if the defendants in theory could reimpose the same mandate, it is not reasonably probable because such would defy Congress’s objective in enacting the NDAA.” *Id.* at \*56.

Therefore “the threat that the defendants will resort to the same challenged conduct upon dismissal of this case remains ‘remote and implausible,’” and the Plaintiff “fail[s] to satisfy either prong of the capable-of-repetition-yet-evading-review exception to mootness.” *Id.* at \*56 (quoting *Colonel Fin. Mgmt. Officer*, 2023 U.S. Dist. LEXIS 58705, at \*2).

### **CONCLUSION**

For the foregoing reasons, the Court should dismiss Plaintiff’s complaint as moot.

Dated: July 2, 2024

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General  
Civil Division

ALEXANDER K. HAAS  
Director, Federal Programs Branch

LAUREN A. WETZLER  
Deputy Branch Director  
Federal Programs Branch

/s/Keri L. Berman  
KERI L. BERMAN  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, N.W.  
Washington, DC 20005  
Tel: (202) 514-2705  
Email: keri.l.berman@usdoj.gov

*Attorneys for Defendants*

# **Exhibit 1**

Galey Developmental Counseling Form  
March 1, 2023

**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)	GALEY, ROBERT W. JR	Rank/Grade	MSG/E8	Date of Counseling	01 March 2023
Organization	HHC, JRTC Operations Group, Fort Polk, LA 7149		Name and Title of Counselor CPT Julissa J. Myers/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.)

--EVENT-ORIENTED COUNSELING--

**PART III - SUMMARY OF COUNSELING**

Complete this section during or immediately subsequent to counseling.

**Key Points of Discussion:**

On 28 February 2023, the Fort Polk OSJA received guidance regarding FLAGS and GOMORs IAW the Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission [dated 24 February 2023].

On 01 March 2023, the Chain of Command was provided a copy of your [MSG Galey] GOMOR rescission memorandum, signed 03 March 2023; effectively rescinding your General Officer Memorandum of Record [dated 15 December 2022].

MSG Galey, effective 01 March 2023, your Adverse Action (AA) FLAG has been removed, "final action favorable" code c.

**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)

1. Service-member acknowledges receipt of the GOMOR rescission memorandum JJ (SM's initials)
2. Service-member acknowledges receipt of the Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission [dated 24 February 2023] JJ (SM's initials).

**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: 3/7/23

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

The Chain of Command will provide an updated Soldier Talent Brief within 72hrs depicting the removed flag code.

Signature of Counselor: MYERS.JULISSA JASMINE 1118957195

Digitally signed by MYERS JULISSA JASMINE 1118957195  
Date: 2023.03.01 16:44:14 -0500

Date: 20230301

#### 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**

Declaration of Capt. Julissa J. Meyers

**DECLARATION OF CAPTAIN JULISSA J. MYERS**

I, Captain Julissa J. Myers, hereby state and declare as follows:

1. I am currently employed by the U.S. Army as the Commander of Headquarters and Headquarters Company (“HHC”) Joint Readiness Training Center (“JRTC”) Operations Group, located in Fort Polk, Louisiana. I have held this position since 05 November 2021. I have served as a commissioned Army officer in the Adjutant General branch for more than 8 years. My current responsibilities include commanding an active-duty unit comprised of 650 Soldiers.

2. I am the company commander for Master Sergeant (“MSG”) Robert Galey and I have reviewed the Complaint in the matter of *Robert W. Galey, Jr. v. Joseph R. Biden, Jr., et al.*, Case No. 22-cv-6203 (W.D. La.). This declaration is based on my personal knowledge, as well as information made available to me during the routine execution of my official duties.

3. On February 24, 2023, the Secretary of the Army rescinded the Army’s policies that had implemented the Department of Defense’s COVID-19 vaccination requirement. As of the date of this declaration, MSG Galey is not facing, and will not, face any adverse action relating to his COVID-19 vaccination status.

4. Previously, MSG Galey was issued a General Officer Memorandum of Reprimand (“GOMOR”) for refusing an order to become vaccinated, but this GOMOR was rescinded in accordance with Secretary of the Army memorandum dated 24 February 2023, Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Recission. It was never placed in his military personnel records.

5. MSG Galey is not restricted from attending training, conducting official travel, or from conducting a Permanent Change of Station (“PCS”) based on his vaccination status. His personnel file contains no information relating to his vaccination status or his withdrawn GOMOR.

6. As of the date of this declaration, MSG Galey is not flagged. On 01 March, 2023, I favorably closed the flag related to his vaccination status and now rescinded GOMOR.

\*\*\*\*\*

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

Executed on April 17, 2023, in Fort Polk, Louisiana, United States of America.

MYERS.JULISSA Digitally signed by  
A.JASMINE.11 MYERS.JULISSA.JASMIN  
18957195 E.1118957195  
Date: 2023.04.17  
16:33:40 -05'00'  
Julissa J. Myers  
Captain, U.S. Army  
HHC, JRTC Operations Group  
Fort Polk, Louisiana

# **Exhibit 3**

Army EXORD 174-23

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**HQDA EXORD 174-23 (part 1)****Originator:** DA WASHINGTON DC**DTG:** 071257Z Mar 23**Prec:** Priority

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 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 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, CDRINCOMIOC FT BELVOIR VA, CDRMDW WASHINGTON DC, CDRUSACE WASHINGTON DC, CDRUSACYBER FT BELVOIR VA, CDRUSACYBER G3 FT BELVOIR VA, CDRUSACYBER G33 FT BELVOIR VA, CDRUSAEIGHT G3 CUOPS

**To:** SEOUL KOR, CDRUSAEIGHT SEOUL KOR, CDRUSAMEDCOM FT SAM HOUSTON TX, CDRUSARC G33 READ FT BRAGG NC, CDRUSACYBER 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, CDR USAREUR-AF WIESBADEN GE, CDR SETAF-AF VICENZA IT

**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

**Attachments:** HQDA EXORD 174-23 COVID-19 POST-MANDATE RESCISSION OPERATIONS.docx, ANNEX A - Secretary of Defense Memo-COVID Vax Mandate Rescission - 10 JAN 2023.pdf, ANNEX B - Consolidated DOD COVID-19 Force Health Protection Guidance - Revision 4, 30 JAN 2023.pdf

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CUI//

CONTROLLED BY: HQDA DCS, G-3/5/7

CONTROLLED BY: DAMO-OD

CUI CATEGORY: OPSEC

LIMITED DISSEMINATION CONTROL: FEDCON

POC: LTC DANIEL D. HEFFNER 703-692-2804

SUBJECT: (CUI) HQDA EXORD 174-23 COVID-19 POST-MANDATE RESCISSION OPERATIONS//

(U) REFERENCES.

REF//A/ (U) DEPARTMENT OF DEFENSE INSTRUCTION 6200.02, "APPLICATION OF

FOOD AND DRUG ADMINISTRATION RULES TO DEPARTMENT OF DEFENSE FORCE HEALTH PROTECTION PROGRAM," 27 FEB 2008//

REF//B/ (U) DODI 6200.03 "PUBLIC HEALTH MANAGEMENT WITHIN THE DOD," 28

MAR 2019//

REF//C/ (U) ARMY REGULATION 600-20, ARMY COMMAND POLICY, 24 FEB 2020//

REF//D/ (U) ARMY REGULATION 40-562, "IMMUNIZATIONS AND CHEMOPROPHYLAXIS FOR THE PREVENTION OF INFECTIOUS DISEASES," 07 OCT 2013//

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REF//E/ (U) ARMY REGULATION 40-61 MEDICAL LOGISTICS, 26 JAN 2005//  
 REF//F/ (U) ARMY REGULATION 600-77, ADMINISTRATIVE MANAGEMENT OF  
 WOUNDED, ILL, OR INJURED SOLDIERS, 05 MAR 2019//  
 REF//G/ (U) HQDA EXORD 225-21 COVID-19 STEADY STATE OPERATIONS, DTG  
 291631Z JUN 21 AND ALL FRAGOS (HEREBY RESCINDED)//  
 REF//H/ (U) UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF

TEXAS, MEMORANDUM OPINION AND ORDER, FEDS FOR MEDICAL FREEDOM, ET  
 AL.,

PLAINTIFFS, V. JOSEPH R. BIDEN, JR., ET AL., DEFENDANTS, JAN 21,  
 2022//

REF//I/ (U) ALARACT 054/2022 - RETENTION OF TEXT MESSAGES ON  
 GOVERNMENT FURNISHED EQUIPMENT, 09 AUG 2022//

REF//J/ (U) DODI 5015.02 DOD RECORDS MANAGEMENT PROGRAM, 24 FEB  
 2015//

REF//K/ (U) DODI 8170.01 ONLINE INFORMATION MANAGEMENT AND ELECTRONIC

MESSAGING, 02 JAN 2019//

REF//L/ (U) DODI 6205.02 DOD IMMUNIZATION PROGRAM, 23 JUL 2019//

REF//M/ (U) ARMY DIRECTIVE 2021-33 - APPROVAL AND APPEAL AUTHORITIES  
 FOR MILITARY MEDICAL AND ADMINISTRATIVE IMMUNIZATION EXEMPTIONS, 24  
 SEP 2021//

REF//N/ (U) DEPUTY SECRETARY OF DEFENSE MEMORANDUM, "METHODS TO  
 ENABLE

AND ENCOURAGE VACCINATION AGAINST CORONAVIRUS DISEASE 2019," 20 MAY  
 2021//

REF//O/ (U) SECRETARY OF ARMY MEMORANDUM, USE OF MASKS AND DELEGATION

OF AUTHORITY TO GRANT EXCEPTIONS, 24 FEBRUARY 2021//

#### 1. (U) SITUATION.

1.A. (U) THIS ORDER RESCINDS HQDA EXORD 225-21 AND ESTABLISHES A NEW  
 BASELINE FOR ARMY FORCE HEALTH PROTECTION WITH RESPECT TO COVID-19.  
 IT INCLUDES GUIDANCE REGARDING RESCISSION OF THE SERVICEMEMBER  
 VACCINE

MANDATE, CURRENT DOD FORCE HEALTH PROTECTION GUIDANCE, COVID  
 LITIGATION HOLD INSTRUCTIONS, AND COVID-19 OPERATIONAL PLANNING TEAM  
 TRANSITION TASKS. ARMY LEADERSHIP REMAINS COMMITTED TO ENSURING THE  
 SAFETY OF OUR SOLDIERS AND WILL CONTINUE TO PROMOTE AND ENCOURAGE  
 VACCINATIONS FOR ALL SERVICE MEMBERS ALONG WITH CONTINUED USE OF  
 OTHER  
 EFFECTIVE MITIGATION MEASURES.

#### 1.B. (U) PURSUANT TO THE SECRETARY OF DEFENSE'S RESCISSION OF THE DOD

COVID-19 VACCINATION MANDATE (ANNEX A), ON 24 FEBRUARY 2023 THE  
 SECRETARY OF THE ARMY RESCINDED ALL DEPARTMENT OF THE ARMY POLICIES  
 SPECIFICALLY ASSOCIATED WITH IMPLEMENTATION OF THE MANDATE (ANNEX D).

#### 1.C. (U) THE UNDERSECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)) MEMORANDUM, "CONSOLIDATED DEPARTMENT OF DEFENSE CORONAVIRUS

DISEASE 2019 FORCE HEALTH PROTECTION GUIDANCE - REVISION 4 (FHPG REV  
 4)(ANNEX B), IMPLEMENTS CURRENT HEALTH PROTECTION GUIDANCE.

#### 2. (U) MISSION. COMMANDERS, ARMY COMMANDS (ACOM), ARMY SERVICE COMPONENT COMMANDS (ASCC), AND DIRECT REPORTING UNITS (DRU) IMPLEMENT

DOD COVID-19 VACCINE MANDATE RESCISSION GUIDANCE AND CURRENT FORCE  
 HEALTH PROTECTION MEASURES IN ORDER TO TRANSITION TO POST-PANDEMIC

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OPERATIONS.

3. (U) EXECUTION.

3.A. (U) COMMANDER'S INTENT. THE PURPOSE OF THIS ORDER IS TO ESTABLISH POST-PANDEMIC COVID-19 GUIDANCE AND ESTABLISH NEW EXPECTATIONS FOLLOWING COVID-19 VACCINE MANDATE RESCISSION.

3.A.1. (U) KEY TASKS:

3.A.1.A. (U) ASSURE THE FORCE'S PROTECTION AGAINST COVID-19 BY ENCOURAGING VACCINATION AND IMPLEMENTATION OF DOD FORCE HEALTH PROTECTION GUIDANCE.

3.A.1.B. (U) EXECUTE AN ORDERLY AND RESPONSIBLE CLOSURE OF ALL PENDING COVID-19 VACCINE EXEMPTION REQUESTS AS WELL AS ENFORCEMENT ACTIONS.

3.A.1.C. (U) ESTABLISH EXPECTATIONS FOR FORCE HEALTH PROTECTION BEHAVIOR IN THE WORKPLACE FOLLOWING RESCISSION OF THE COVID-19 VACCINATION MANDATE.

3.A.2. (U) END STATE: COVID-19 RESPONSIBILITIES ARE SUCCESSFULLY TRANSITIONED TO APPROPRIATE HQDA STAFF, COMMANDS HAVE IMPLEMENTED POST-MANDATE RESCISSION GUIDANCE AND FORCE HEALTH PROTECTION MEASURES, AND THE ARMY HAS TRANSITIONED TO POST-PANDEMIC OPERATIONS.

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

3.B.1. (U) READ AND COMPLY WITH ANNEX B, CONSOLIDATED DOD COVID-19 FORCE HEALTH PROTECTION GUIDANCE - REVISION 4.

3.B.2. (U) READ AND COMPLY WITH ANNEX C, DOD GUIDANCE FOR IMPLEMENTING RESCISSION OF COVID-19 VACCINATION REQUIREMENTS FOR MEMBERS OF THE ARMED FORCES, 24 FEB 2023.

3.B.3. (U) READ AND COMPLY WITH ANNEX D, SECRETARY OF THE ARMY COVID POLICIES RESCISSION MEMO, 24 FEB 2023. ANNEX D PROVIDES SPECIFIC GUIDANCE RELATED TO THE ARMY'S RESPONSE TO COVID-19 IN THE FOLLOWING AREAS: VACCINATION EXEMPTION REQUESTS, ADVERSE ACTIONS AND PERSONNEL RECORDS OF SOLDIERS WHO SOUGHT EXEMPTIONS, ACCESSIONS, AND TRAVEL.

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

3.C.1. (U) COMMANDERS, ALL ARMY COMMANDS (ACOM), ARMY SERVICE COMPONENT COMMANDS (ASCC), AND DIRECT REPORTING UNITS (DRU).

3.C.1.A. (U) COMMANDS WILL ADJUST THEIR HEALTH PROTECTION CONDITION (HPCON) LEVEL IAW ANNEX B, FHPG REV 4.

3.C.1.A.1. (U) COMMANDS WILL SUBMIT CHANGES IN THEIR HPCON LEVEL TO THE U.S. ARMY WATCH BY CCIR WITHIN 12 HOURS. SUBMIT TO U.S. ARMY WATCH  
AT: USARMY.PENTAGON.HQDA.MBX.ARMYWATCH@ARMY.MIL.

3.C.1.B. (U) WITHIN 7 DAYS OF RECEIPT OF THE NOTICE DESCRIBED IN PARAGRAPH 3.C.16.A. FROM OTSG, ACOM/ASCC/DRUS THROUGH GENERAL COURT MARTIAL CONVENING AUTHORITIES (GCMCA) OR EQUIVALENT AUTHORITIES WILL NOTIFY SOLDIERS WHO SOUGHT AN EXEMPTION (OR APPEALED A DENIED EXEMPTION) SOLELY FOR THE COVID-19 VACCINATION MANDATE THAT NO

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FURTHER  
ACTION WILL BE TAKEN ON THEIR REQUESTS. NOTIFICATION WILL BE MADE IN  
WRITING.

3.C.1.B.1. (U) COMMANDERS WILL REVIEW ANY RESUBMITTED REQUESTS FOR  
EXEMPTION TO OTHER MANDATORY VACCINES FOR COMPLIANCE WITH AR 600-20  
AND PROCESS RELIGIOUS ACCOMMODATION REQUESTS TO OTSG VIA ETMS2 WITHIN

30 DAYS OF RECEIPT. COMMANDERS MUST RESOLVE PACKET DEFICIENCIES  
BEFORE  
RESUBMISSION TO OTSG.

3.C.1.B.2. (U) NLT THE 5TH OF EACH MONTH, FROM APRIL-AUGUST 2023,  
ACOM/ASCC/DRUS WILL REPORT FOR ALL SUBORDINATE UNITS THE NUMBER OF  
SOLDIERS NOTIFIED AND THE PROJECTED NUMBER OF SOLDIERS WHO WILL  
RESUBMIT REQUESTS FOR OTHER MANDATORY VACCINATIONS TO OTSG USING  
ANNEX  
E (TOTAL SOLDIERS NOTIFIED AND RESUBMISSIONS).

3.C.1.B.2.A. (U) ANNEX E WILL BE EMAILED TO USARMY.NCR.HQDA-  
OTSG.MBX.MEDCOM-OPS-COVID-19-TASK-FORCE-MBO@HEALTH.MIL.

3.C.1.C. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT A COVID-19 VACCINE  
EXEMPTION, ACOM/ASCC/DRUS, THROUGH GCMCAS OR EQUIVALENT AUTHORITIES,  
WILL IMMEDIATELY RESCIND ANY GOMORS PENDING FILING DECISION, AND  
WITHDRAW FROM SOLDIER FILES ANY LOCALLY FILED GOMORS ISSUED FOR  
FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19  
VACCINE.

3.C.1.D. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION,  
COMMANDERS WILL RESCIND ALL PENDING INVOLUNTARY SEPARATION ACTIONS  
AND  
FAVORABLY CLOSE THE SOLDIER'S FLAG (FLAG CODE B) FOR FAILURE TO  
COMPLY  
WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE.

3.C.1.E. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION,  
COMMANDERS WILL ENSURE THAT RATING OFFICIALS REMOVE ANY ANNOTATIONS  
IN  
PENDING BUT NOT YET FILED EVALUATION REPORTS THAT ARE BASED ON A  
SOLDIER'S FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE  
COVID-19 VACCINE.

3.C.1.F. (U) DISSEMINATE THE ADMINISTRATIVE ACTIONS VALIDATION REPORT  
RECEIVED FROM HRC (AS DESCRIBED IN PARAGRAPH 3.C.21.C.) TO GCMCAS OR  
EQUIVALENT AUTHORITIES.

3.C.1.F.1. (U) ACOM/ASCC/DRUS, THROUGH GCMCAS OR EQUIVALENT  
AUTHORITIES, WILL VALIDATE THAT ALL REQUIRED ACTIONS TO UPDATE  
PERSONNEL RECORDS FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION  
HAVE  
BEEN TAKEN WITHIN 15 DAYS OF RECEIPT OF THE VALIDATION REPORT IN  
PARAGRAPH 3.C.21.C. FROM ACOM/ASCC/DRU G-15.

3.C.1.F.2. (U) COMMANDERS WILL ENSURE THAT CURRENTLY SERVING SOLDIERS  
WHO SOUGHT AN EXEMPTION AND WHO RECEIVED A NEGATIVE EVALUATION REPORT  
BASED SOLELY ON FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE  
THE  
COVID-19 VACCINE BUT WERE NOT CONTACTED BY HRC EVALUATION APPEALS

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TEAM

FOR ASSISTANCE WITH RESOLUTION, WILL CONTACT THE EVALUATIONS BRANCH APPEALS TEAM FOR ASSISTANCE.

3.C.1.F.2.A. (U) POINT OF CONTACT FOR EVALUATIONS APPEALS TEAM:  
USARMY.KNOX.HRC.MBX.TAGD-EVAL-APPEALS@ARMY.MIL.

3.C.1.G. (U) IN COORDINATION WITH HRC, CLOSE FLAGS FOR SOLDIERS WHO ARE CURRENTLY FLAGGED (FLAG CODE A) SOLELY PER THE PROVISIONS OF THE RESCINDED 16 NOV 21 SECRETARY OF THE ARMY PRINCIPAL OFFICIAL GUIDANCE

"FLAGGING AND BARS TO CONTINUED SERVICE OF SOLDIERS WHO REFUSE THE COVID-19 VACCINATION ORDER." FLAGS IMPOSED PURSUANT TO AR 600-8-2 WILL BE REMOVED WHEN APPROPRIATE UNDER SECTION 2-9 OF THAT REGULATION.

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

3.C.2.A. (U) WITHIN 7 DAYS OF RECEIPT OF THE NOTICE DESCRIBED IN PARAGRAPH 3.C.16.A. FROM OTSG, ACOM/ASCC/DRUS, THROUGH GCMCAS OR EQUIVALENT AUTHORITIES, WILL NOTIFY SOLDIERS WHO SOUGHT AN EXEMPTION (OR APPEALED A DENIED EXEMPTION) SOLELY FOR THE COVID-19 VACCINATION MANDATE THAT NO FURTHER ACTION WILL BE TAKEN ON THEIR REQUESTS. NOTIFICATION WILL BE MADE IN WRITING.

3.C.2.A.1. (U) COMMANDERS WILL REVIEW ANY RESUBMITTED REQUESTS FOR EXEMPTION TO OTHER MANDATORY VACCINES FOR COMPLIANCE WITH AR 600-20 AND PROCESS RELIGIOUS ACCOMMODATION REQUESTS TO OTSG VIA ETMS2 WITHIN

30 DAYS OF RECEIPT. COMMANDERS MUST RESOLVE PACKET DEFICIENCIES BEFORE RESUBMISSION TO OTSG.

3.C.2.A.2. (U) NLT THE 5TH OF EACH MONTH, FROM APRIL-AUGUST 2023, REPORT THE NUMBER OF SOLDIERS NOTIFIED AND THE PROJECTED NUMBER OF SOLDIERS WHO WILL RESUBMIT REQUESTS FOR OTHER VACCINATIONS TO OTSG USING ANNEX E (TOTAL SOLDIERS NOTIFIED AND RESUBMISSIONS).

3.C.2.A.3. (U) ANNEX E WILL BE EMAILED TO USARMY.NCR.HQDA-OTSG.MBX.MEDCOM-OPS-COVID-19-TASK-FORCE-MBO@HEALTH.MIL.

3.C.2.B. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT A COVID-19 VACCINE EXEMPTION, ACOM/ASCC/DRUS, THROUGH GCMCAS OR EQUIVALENT AUTHORITIES, WILL IMMEDIATELY RESCIND ANY GOMORS PENDING FILING DECISION, AND WITHDRAW FROM SOLDIER FILES ANY LOCALLY FILED GOMORS ISSUED FOR FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE.

3.C.2.C. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION, COMMANDERS WILL RESCIND ALL PENDING INVOLUNTARY SEPARATION ACTIONS AND FAVORABLY CLOSE THE SOLDIER'S FLAG (FLAG CODE B) FOR FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE.

3.C.2.D. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION, COMMANDERS WILL ENSURE THAT RATING OFFICIALS REMOVE ANY ANNOTATIONS IN PENDING BUT NOT YET FILED EVALUATION REPORTS THAT ARE BASED ON A SOLDIER'S FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE.

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3.C.2.E. (U) DISSEMINATE THE ADMINISTRATIVE ACTIONS VALIDATION REPORT RECEIVED FROM HRC (AS DESCRIBED IN PARAGRAPH 3.C.21.C.) TO GCMCAS OR EQUIVALENT AUTHORITIES.

3.C.2.F. (U) ARNG WILL VALIDATE THAT ALL REQUIRED ACTIONS TO UPDATE PERSONNEL RECORDS FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION HAVE BEEN TAKEN WITHIN 15 DAYS OF RECEIPT OF THE VALIDATION REPORT IN PARAGRAPH 3.C.21.C FROM HRC.

3.C.2.F.1. (U) COMMANDERS WILL ENSURE THAT CURRENTLY SERVING SOLDIERS WHO SOUGHT AN EXEMPTION AND WHO RECEIVED A NEGATIVE EVALUATION REPORT BASED SOLELY ON FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE, BUT WERE NOT CONTACTED BY HRC, EVALUATION APPEALS TEAM FOR ASSISTANCE WITH RESOLUTION, WILL CONTACT THE EVALUATIONS BRANCH APPEALS TEAM FOR ASSISTANCE.

3.C.2.F.1.A. (U) POINT OF CONTACT FOR EVALUATIONS APPEALS TEAM: USARMY.KNOX.HRC.MBX.TAGD-EVAL-APPEALS@ARMY.MIL.

3.C.2.G. (U) IN COORDINATION WITH HRC, CLOSE FLAGS FOR SOLDIERS WHO ARE CURRENTLY FLAGGED (FLAG CODE A) SOLELY PER THE PROVISIONS OF THE RESCINDED 16 NOV 21 SECRETARY OF THE ARMY PRINCIPAL OFFICIAL GUIDANCE

"FLAGGING AND BARS TO CONTINUED SERVICE OF SOLDIERS WHO REFUSE THE COVID-19 VACCINATION ORDER." FLAGS IMPOSED PURSUANT TO AR 600-8-2 WILL BE REMOVED IAW THE REQUIREMENTS OF AR 600-8-2.

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

3.C.3.A. (U) WITHIN 7 DAYS OF RECEIPT OF THE NOTICE DESCRIBED IN PARAGRAPH 3.C.16.A. FROM OTSG, GCMCAS OR EQUIVALENT AUTHORITIES WILL NOTIFY SOLDIERS WHO SOUGHT AN EXEMPTION (OR APPEALED A DENIED EXEMPTION) SOLELY FOR THE COVID-19 VACCINATION MANDATE THAT NO FURTHER ACTION WILL BE TAKEN ON THEIR REQUESTS. NOTIFICATION WILL BE MADE IN WRITING.

3.C.3.A.1. (U) COMMANDERS WILL REVIEW ANY RESUBMITTED REQUESTS FOR EXEMPTION TO OTHER MANDATORY VACCINES FOR COMPLIANCE WITH AR 600-20 AND PROCESS RELIGIOUS ACCOMMODATION REQUESTS TO OTSG VIA ETMS2 WITHIN 30 DAYS OF RECEIPT. COMMANDERS MUST RESOLVE PACKET DEFICIENCIES BEFORE RESUBMISSION TO OTSG.

3.C.3.A.2. (U) NLT THE 5TH OF EACH MONTH, FROM APRIL-AUGUST 2023, REPORT THE NUMBER OF SOLDIERS NOTIFIED AND THE PROJECTED NUMBER OF SOLDIERS WHO WILL RESUBMIT REQUESTS FOR OTHER VACCINATIONS TO OTSG USING ANNEX E (TOTAL SOLDIERS NOTIFIED AND RESUBMISSIONS).

3.C.3.A.3. (U) ANNEX E WILL BE EMAILED TO USARMY.NCR.HQDA-OTSG.MBX.MEDCOM-OPS-COVID-19-TASK-FORCE-MBO@HEALTH.MIL.

3.C.3.B. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT A COVID-19 VACCINE

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EXEMPTION, ACOM/ASCC/DRUS, THROUGH GCMCAS OR EQUIVALENT AUTHORITIES, WILL IMMEDIATELY RESCIND ANY GOMORS PENDING FILING DECISION, AND WITHDRAW FROM SOLDIER FILES ANY LOCALLY FILED GOMORS ISSUED FOR FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE.

3.C.3.C. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION, COMMANDERS WILL RESCIND ALL PENDING INVOLUNTARY SEPARATION ACTIONS AND FAVORABLY CLOSE THE SOLDIER'S FLAG (FLAG CODE B) FOR FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE.

3.C.3.D. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION, COMMANDERS WILL ENSURE THAT RATING OFFICIALS REMOVE ANY ANNOTATIONS IN PENDING BUT NOT YET FILED EVALUATION REPORTS THAT ARE BASED ON A SOLDIER'S FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE.

3.C.3.E. (U) DISSEMINATE THE ADMINISTRATIVE ACTIONS VALIDATION REPORT RECEIVED FROM HRC (AS DESCRIBED IN PARAGRAPH 3.C.21.C.) TO GCMCAS OR EQUIVALENT AUTHORITIES.

3.C.3.F. (U) USAR WILL VALIDATE THAT ALL REQUIRED ACTIONS TO UPDATE PERSONNEL RECORDS FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION HAVE BEEN TAKEN WITHIN 15 DAYS OF RECEIPT OF THE VALIDATION REPORT IN PARAGRAPH 3.C.21.C FROM HRC.

3.C.3.F.1. (U) COMMANDERS WILL ENSURE THAT CURRENTLY SERVING SOLDIERS WHO SOUGHT AN EXEMPTION AND WHO RECEIVED A NEGATIVE EVALUATION REPORT BASED SOLELY ON FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE, BUT WERE NOT CONTACTED BY HRC, EVALUATION APPEALS TEAM FOR ASSISTANCE WITH RESOLUTION, WILL CONTACT THE EVALUATIONS BRANCH APPEALS TEAM FOR ASSISTANCE.

3.C.3.F.1.A. (U) POINT OF CONTACT FOR EVALUATIONS APPEALS TEAM: USARMY.KNOX.HRC.MBX.TAGD-EVAL-APPEALS@ARMY.MIL.

3.C.3.G. (U) IN COORDINATION WITH HRC, CLOSE FLAGS FOR SOLDIERS WHO ARE CURRENTLY FLAGGED (FLAG CODE A) SOLELY PER THE PROVISIONS OF THE RESCINDED 16 NOV 21 SECRETARY OF THE ARMY PRINCIPAL OFFICIAL GUIDANCE

"FLAGGING AND BARS TO CONTINUED SERVICE OF SOLDIERS WHO REFUSE THE COVID-19 VACCINATION ORDER." FLAGS IMPOSED PURSUANT TO AR 600-8-2 WILL BE REMOVED IAW THE REQUIREMENTS OF AR 600-8-2.

3.C.4. (U) COMMANDER, U.S. ARMY FORCES COMMAND (USAFORSCOM). TBD.

3.C.5. (U) COMMANDER, U.S. ARMY TRAINING AND DOCTRINE COMMAND (USATRADOC). TBD.

3.C.6. (U) COMMANDER, U.S. ARMY MATERIEL COMMAND (USAMC). TBD.

3.C.7. (U) COMMANDER, U.S. ARMY FUTURES COMMAND (USAFC). TBD.

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3.C.8. (U) COMMANDER, U.S. ARMY CENTRAL (USARCENT). TBD.

3.C.9. (U) COMMANDER, U.S. ARMY EUROPE AND AFRICA (USAREUR-AF). TBD.

3.C.10. (U) COMMANDER, U.S. ARMY NORTH (USARNORTH). TBD.

3.C.11. (U) COMMANDER, U.S. ARMY PACIFIC (USARPAC). TBD.

3.C.12. (U) COMMANDER, U.S. ARMY SOUTH (USARSOUTH). TBD.

3.C.13. (U) COMMANDER, U.S. ARMY CYBER COMMAND (USARCYBER). TBD.

3.C.14. (U) COMMANDER, U.S. ARMY SPACE AND MISSILE DEFENSE COMMAND (USASMD). TBD.

3.C.15. (U) COMMANDER, MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND (SDDC). TBD.

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

3.C.16.A. (U) NLT 26 MAR 23, OTSG WILL NOTIFY THE GCMCAS (OR EQUIVALENT AUTHORITIES) OF SOLDIERS WHO SOUGHT AN EXEMPTION (OR APPEALED A DENIED EXEMPTION) SOLELY FOR COVID-19 VACCINATION MANDATE THAT NO FURTHER ACTION WILL BE TAKEN ON THE SOLDIERS' REQUESTS.

3.C.16.B. (U) OTSG WILL VALIDATE ANNEX E MONTHLY REPORTS ON THE NUMBER OF SOLDIERS NOTIFIED AND THE PROJECTED NUMBER OF RESUBMISSIONS, AND REPORT CONSOLIDATED DATA TO ASA(M&RA).

3.C.17. (U) COMMANDER, MILITARY DISTRICT OF WASHINGTON (MDW). TBD.

3.C.18. (U) SUPERINTENDENT, U.S. MILITARY ACADEMY (USMA). TBD.

3.C.19. (U) COMMANDER, U.S. ARMY INTELLIGENCE AND SECURITY COMMAND (USINSCOM). TBD.

3.C.20. (U) COMMANDER, U.S. ARMY CRIMINAL INVESTIGATION COMMAND (USACIDC). TBD.

3.C.21. (U) COMMANDER, U.S. ARMY HUMAN RESOURCES COMMAND (USAHRC).

3.C.21.A. (U) EFFECTIVE IMMEDIATELY AND PURSUANT TO ANNEX D, HRC WILL TAKE THE FOLLOWING ACTIONS WITH RESPECT TO CURRENTLY SERVING SOLDIERS:

3.C.21.A.1. (U) IN COORDINATION WITH COMMANDERS, CLOSE FLAGS FOR SOLDIERS WHO ARE CURRENTLY FLAGGED (FLAG CODE A) PER THE PROVISIONS OF THE RESCINDED 16 NOV 21 SECRETARY OF THE ARMY PRINCIPAL OFFICIAL GUIDANCE "FLAGGING AND BARS TO CONTINUED SERVICE OF SOLDIERS WHO REFUSE THE COVID-19 VACCINATION ORDER." THESE FLAGS WILL BE CLOSED FAVORABLY FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION.

3.C.21.A.2. (U) REMOVE GOMORS FROM A SOLDIER'S ARMY MILITARY HUMAN RESOURCE RECORD (AMHRR) IF THE GOMOR WAS ISSUED FOR THE FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE AND THE SOLDIER PREVIOUSLY SOUGHT AN EXEMPTION.

3.C.21.A.3. (U) IN COORDINATION WITH COMMANDS, REMOVE BARS TO CONTINUED SERVICE IF THE BAR WAS BASED ON THE SOLDIER'S FAILURE TO

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COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE AND THE SOLDIER PREVIOUSLY SOUGHT AN EXEMPTION.

3.C.21.B. (U) CURRENTLY SERVING SOLDIERS, WHO SOUGHT AN EXEMPTION TO THE COVID-19 VACCINE AND WHO RECEIVED A NEGATIVE EVALUATION REPORT BASED SOLELY ON FAILURE TO COMPLY WITH THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE, WILL BE CONTACTED BY HRC, EVALUATION APPEALS TEAM NLT 26 MARCH 2023 FOR ASSISTANCE WITH RESOLUTION.

3.C.21.B.1. (U) POINT OF CONTACT FOR EVALUATIONS POLICY TEAM: USARMY.KNOX.HRC.MBX.TAGD-EVAL-POLICY@ARMY.MIL.

3.C.21.B.2. (U) POINT OF CONTACT FOR EVALUATIONS APPEALS TEAM: USARMY.KNOX.HRC.MBX.TAGD-EVAL-APPEALS@ARMY.MIL.

3.C.21.C. (U) HRC WILL IMMEDIATELY FACILITATE UPDATE OF PERSONNEL RECORDS TO REMOVE ALL ADVERSE ACTIONS FOR SOLDIERS WHO SOUGHT, BUT WERE DENIED, AN EXEMPTION TO THE COVID-19 VACCINATION REQUIREMENT.

3.C.21.C.1. (U) NLT 10 APR 2023, HRC WILL REPORT ACTIONS TAKEN TO UPDATE PERSONNEL RECORDS FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION TO THE ACOM/ASCC/DRU G-1S FOR DISTRIBUTION AND VALIDATION TO THE APPROPRIATE GCMCA OR EQUIVALENT AUTHORITY.

3.C.21.C.2. (U) HRC WILL CONTINUE TO UPDATE PERSONNEL RECORDS FOR SOLDIERS WHO REQUIRE ADDITIONAL UPDATES AS REPORTED BY ACOM/ASCC/DRUS

AS DESCRIBED IN PARAGRAPHS 3.C.1.F., 3.C.2.E., AND 3.C.3.E.

3.C.21.D. (U) ASSIGNMENT CONSIDERATION (ASCO) CODES. HRC WILL CENTRALLY REMOVE THE ASCO L4 "PENDING COVID-19 VACCINATION ACTION" AND THE ASCO LE "APPROVED COVID-19 VACCINATION EXEMPTION" FOR REGULAR ARMY SOLDIERS FROM THE INTEGRATED PERSONNEL AND PAY SYSTEM - ARMY (IPPS-A).

3.C.22. (U) COMMANDER, U.S. ARMY CORPS OF ENGINEERS (USACE). TBD.

3.C.23. (U) COMMANDER, U.S. ARMY TEST AND EVALUATION COMMAND (USATEC). TBD.

3.C.24. (U) DIRECTOR, U.S. ARMY ACQUISITION SUPPORT CENTER (USAASC). TBD.

3.C.25. (U) COMMANDER, U.S. ARMY SPECIAL OPERATIONS COMMAND (USASOC). TBD.

3.C.26. (U) COMMANDANT, U.S. ARMY WAR COLLEGE (USAWC). TBD.

3.C.27. (U) SUPERINTENDENT, ARLINGTON NATIONAL CEMETERY (ANC). TBD.

3.C.28. (U) DIRECTOR, CIVILIAN HUMAN RESOURCES AGENCY (CHRA). TBD.

3.C.29. (U) ASSISTANT SECRETARY OF THE ARMY, ACQUISITIONS, LOGISTICS AND TECHNOLOGY (ASA(ALT)). TBD.

3.C.30. (U) DEPUTY CHIEFS OF STAFF, HEADQUARTERS DEPARTMENT OF THE

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ARMY (HQDA DCS).

3.C.30.A. (U) HQDA, DEPUTY CHIEF OF STAFF G-1 (DCS G-1).

3.C.30.A.1. (U) DCS G-1, WILL SUPPORT HRC WITH PARAGRAPHS 3.C.21.A.1.  
THROUGH 3.C.21.C.1.

3.C.30.B. (U) HQDA, DEPUTY CHIEF OF STAFF G-4. TBD.

3.C.30.C. (U) HQDA, DEPUTY CHIEF OF STAFF G-6. TBD.

3.C.31. (U) DIRECTOR OF THE ARMY STAFF (DAS). TBD.

3.C.32. (U) ASSISTANT SECRETARY OF THE ARMY FOR MANPOWER AND RESERVE  
AFFAIRS (ASA(M&RA)). TBD.

3.C.33. (U) ASSISTANT SECRETARY OF THE ARMY FOR FINANCIAL MANAGEMENT  
AND COMPTROLLER (ASA(FM&C)). TBD.

3.D. (U) COORDINATING INSTRUCTIONS.

3.D.1. (U) THE SECRETARY OF THE ARMY WITHHOLDS THE AUTHORITY TO  
IMPOSE  
NONJUDICIAL AND JUDICIAL ACTIONS BASED SOLELY ON A SOLDIER'S REFUSAL  
TO RECEIVE THE COVID-19 VACCINE WHILE THE MANDATE WAS IN EFFECT.

3.D.2. (U) FOR SOLDIERS WHO PREVIOUSLY SOUGHT AN EXEMPTION,  
COMMANDERS  
WILL NOT INITIATE NEW ADVERSE ADMINISTRATIVE ACTIONS AND WILL RESCIND

ALL PENDING ADVERSE ACTIONS THAT ARE BASED ON FAILURE TO COMPLY WITH  
THE LAWFUL ORDER TO RECEIVE THE COVID-19 VACCINE WHILE THE MANDATE  
WAS  
IN EFFECT. WHERE A RESCINDED ACTION WAS BASED ON MULTIPLE INSTANCES  
OF  
MISCONDUCT, COMMANDERS MAY INITIATE NEW ADVERSE ACTIONS BASED ON  
OTHER  
MISCONDUCT NOT ASSOCIATED WITH REFUSING THE COVID-19 VACCINATION  
ORDER.

3.D.3. (U) O/A 15 MAR 2023, THE HQDA COVID-19 OPERATIONAL PLANNING  
TEAM (OPT) WILL DISSOLVE AND COVID-19 RELATED STAFF RESPONSIBILITIES  
WILL RETURN TO THE APPROPRIATE HQDA FUNCTIONAL STAFF IAW EXISTING  
POLICY AND REGULATIONS.

3.D.4. (U) IAW ANNEX B, FHPG REV 4, INSTALLATION COMMANDERS MUST  
CHANGE THE HPCON LEVEL NLT 2 WEEKS AFTER THE CDC COMMUNITY LEVEL HAS  
BEEN ELEVATED, UNLESS THE INSTALLATION COMMANDER DOCUMENTS, IN  
WRITING, A COMPELLING RATIONALE TO MAINTAIN CURRENT HPCON LEVEL AFTER  
COORDINATION WITH THE INSTALLATION PUBLIC HEALTH EMERGENCY OFFICER.

3.D.4.A. (U) INSTALLATION COMMANDERS RETAIN AUTHORITY TO DETERMINE  
HPCON LEVELS AND ADJUST FORCE HEALTH PROTECTION MEASURES WITHIN ANY  
HPCON LEVEL BASED ON MISSION, OTHER RISK CONSIDERATIONS, AND IN  
CONSULTATION WITH THEIR PUBLIC HEALTH EMERGENCY OFFICER AND MEDICAL  
TREATMENT FACILITY COMMANDER, IAW ANNEX F, DELEGATION OF AUTHORITY  
FOR  
HPCON IMPLEMENTATION AND OCCUPANCY REQUIREMENTS, 25 MAY 2022.

3.D.5. (U) COMMANDERS CRITICAL INFORMATION REQUIREMENTS (CCIR).

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3.D.5.A. (U) DEATH OF A DA MEMBER (UNIFORMED, DEPENDENT, CIVILIAN, OR CONTRACTOR) THAT IS A RESULT OF PRESUMED OR CONFIRMED COVID-19 INFECTION. PROVIDE AMPLIFYING DETAILS INCLUDING EXTENT OF TREATMENT PRIOR TO DEATH (I.E. MEMBER IN TREATMENT AT LOCAL HOSPITAL, IN VOLUNTARY ISOLATION, ETC.).

3.D.5.B. (U) ANY CHANGE TO HPCON LEVEL MUST BE REPORTED WITHIN 12 HOURS.

3.D.5.C. (U) ANSWERS TO CCIRS WILL BE SENT TO USARMY.PENTAGON.HQDA.MBX.ARMYWATCH@MAIL.MIL.

3.D.6. (U) REQUESTS FOR INFORMATION (RFIS). EFFECTIVE 15 MAR 2023, COVID-19 RFIS WILL BE SENT TO OTSG OPERATIONS AT USARMY.NCR.HQDA-OTSG.MBX.MEDCOM-OPS-COVID-19-TASK-FORCE-MBO@HEALTH.MIL. OTSG WILL CENTRALLY MANAGE AND COORDINATE RESPONSES.

3.D.7. (U) READ AND COMPLY WITH ANNEX H, LITIGATION HOLD CONCERNING MANDATORY COVID-19 VACCINE, AND ANNEX I, COVID RECORDS FREEZE UPDATE.

THESE DOCUMENTS DESCRIBE ARMY-WIDE LITIGATION HOLD AND RECORDS FREEZE REQUIREMENTS DUE TO ONGOING AND POTENTIAL LITIGATION IN FEDERAL COURTS

REGARDING THE RESCINDED COVID-19 MANDATORY VACCINATION ORDER FOR SERVICE MEMBERS AND CIVILIAN EMPLOYEE VACCINE MANDATE. THE CLARIFYING

INSTRUCTIONS IN THIS ORDER SUPERSEDE INSTRUCTIONS AND/OR GUIDANCE IN ANNEX H AND I WHEN THERE IS CONFLICTING INFORMATION.

3.D.7.A. (U) ALL HQDA ORGANIZATIONS WERE PREVIOUSLY DIRECTED TO SEARCH, SEGREGATE, RETAIN, AND PRESERVE ALL RECORDS CREATED OR COMPILED ON OR AFTER 01 JANUARY 2021 THAT ARE POTENTIALLY RELEVANT TO

ONGOING AND FUTURE LITIGATION REGARDING THE COVID-19 VACCINE MANDATES

FOR SERVICE MEMBERS AND CIVILIAN EMPLOYEES.

3.D.7.B. (U) THERE IS NO REQUIREMENT TO SUBMIT ANY LISTS, SPREADSHEETS, OR CATALOGS OF ANY RECORDS IDENTIFIED PURSUANT TO ANNEX

H AND ANNEX I AT THIS TIME. THE US ARMY LEGAL SERVICES AGENCY/LITIGATION DIVISION WILL CONTACT COMMANDS THROUGH COMMAND STAFF

JUDGE ADVOCATES (SJA) IF SUBMISSION OF RESPONSIVE DOCUMENTS IS REQUIRED. ANNEX H, PARAGRAPH 7 (DOCUMENT ALL RECORDS UNCOVERED IN YOUR SEARCHES) IS NOT A REQUIREMENT AT THIS TIME.

3.D.7.C. (U) ALL HQDA ORGANIZATIONS MUST TAKE ALL REQUIRED STEPS TO CEASE THE ROUTINE DESTRUCTION OF RECORDS THAT MAY INCLUDE DOCUMENTS RESPONSIVE TO THIS REQUIREMENT. TAKE STEPS TO PRESERVE ALL HELD RECORDS DURING UPCOMING DATA MIGRATIONS. IAW ALARACT 054/2022, ALL PERSONNEL MUST RETAIN TEXT MESSAGES RELEVANT TO OFFICIAL BUSINESS MADE OR RECEIVED ON GOVERNMENT FURNISHED EQUIPMENT/MOBILE DEVICES. SUBORDINATE COMMANDS AND ORGANIZATIONS WILL PUT INTO PLACE MEASURES TO COLLECT AND RETAIN ANY POTENTIALLY RELEVANT RECORDS FROM PERSONNEL PRIOR TO THEIR PCS, TRANSFER, SEPARATION, OR RETIREMENT.

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3.D.7.D. (U) THESE REQUIREMENTS ALSO APPLY TO CONTRACTING OFFICER REPRESENTATIVES FOR RECORDS PERTAINING TO CONTRACTOR EMPLOYEES. THE REQUIREMENTS ALSO APPLY TO NON-APPROPRIATED FUNDS INSTRUMENTALITIES.

3.D.7.E. (U) THE REQUIREMENT TO SEARCH, SEGREGATE, RETAIN, AND PRESERVE RELEVANT RECORDS IS AN ONGOING OBLIGATION UNTIL RESCINDED.

3.D.8. (U) IAW ANNEX C, OTHER THAN TO COMPLY WITH DOD FOREIGN CLEARANCE GUIDANCE, COMMANDERS WILL NOT REQUIRE A SERVICE MEMBER OR GROUP OF SERVICE MEMBERS TO BE VACCINATED AGAINST COVID-19, NOR CONSIDER A SERVICE MEMBER'S COVID-19 IMMUNIZATION STATUS IN MAKING DEPLOYMENT, ASSIGNMENT, AND OTHER OPERATIONAL DECISIONS, ABSENT ESTABLISHMENT OF A NEW IMMUNIZATION REQUIREMENT.

3.D.9. (U) SEE ANNEX G FOR ADDITIONAL INSTRUCTIONS PERTAINING TO PERSONNEL ACTIONS.

4. (U) SUSTAINMENT. NOT USED.

5. (U) COMMAND AND SIGNAL.

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

5.B. (U) SIGNAL.

5.B.1. (U) PROPONENT FOR THIS EXORD AND SUBSEQUENT FRAGOS IS THE OFFICE OF THE SURGEON GENERAL.

5.B.1.A. (U) REQUESTS FOR INFORMATION (RFIS) - EFFECTIVE 15 MAR 2023,

COVID-19 RFIS WILL BE SENT TO OTSG OPERATIONS AT USARMY.NCR.HQDA-OTSG.MBX.MEDCOM-OPS-COVID-19-TASK-FORCE-MBO@HEALTH.MIL.

5.B.2. (U) COVID-RELATED CCIRS WILL BE SENT TO THE ARMY WATCH AT USARMY.PENTAGON.HQDA.MBX.ARMYWATCH@MAIL.MIL.

5.B.3. (U) G-1 POC IS USARMY.PENTAGON.HQDA.MBX.PCCIMA04@ARMY.MIL, (703) 697-4246.

5.B.4. (U) G-2 POC IS MR. MATTHEW ROGERS, MATTHEW.D.RODGERS5.CIV@ARMY.MIL, (703) 695-1394.

5.B.5. (U) G-4 POC IS LTC RAY JAKLITSCH JR. (MEDLOG TF), RAYMOND.F.JAKLITSCH2.MIL@ARMY.MIL, (703) 693-6704.

5.B.6. (U) LABORATORY RESPONSE NETWORK POC IS COL MICHAEL BUKOVITZ, MRC-E LABORATORY CONSULTANT, MICHAEL.A.BUKOVITZ.MIL@HEALTH.MIL, (314) 590-8178.

5.B.7. (U) USAMEDCOM FORCE HEALTH PROTECTION POC IS COL BENJAMIN PALMER, BENJAMIN.N.PALMER.MIL@HEALTH.MIL, (703) 681-2424.

5.B.8. (U) ARMY PUBLIC AFFAIRS POC IS MR. BRYCE DUBEE, BRYCE.S.DUBEE.CIV@ARMY.MIL, (703) 545-7469.

5.B.9. (U) OFFICE OF THE JUDGE ADVOCATE GENERAL POC MAJ MICHAEL PETRUSIC, MICHAEL.PETRUSIC.MIL@ARMY.MIL, (703) 614-4281.

5.B.10. (U) ARMY NATIONAL GUARD POC IS LTC MATTHEW PAQUIN, MATTHEW.R.PAQUIN.MIL@ARMY.MIL, (703) 607-5581.

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5.B.11. (U) UNITED STATES ARMY RESERVE POCS MAJ CHARLES VINEY, CHARLES.P.VINEY.MIL@ARMY.MIL, (703) 806-7790 OR LTC ROBERT KURTTS, ROBERT.L.KURTTS.MIL@ARMY.MIL, (703) 614-5271.

5.B.12. (U) OFFICE OF THE SURGEON GENERAL POC IS COL JESSE DELGADO, JESSE.DELGADO16.MIL@HEALTH.MIL, (703)681-1518 AND COL KEVIN MAHONEY, KEVIN.J.MAHONEY.MIL@HEALTH.MIL, (703)681-4655.

5.B.13. (U) ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT AND COMPTROLLER) POC IS LTC DALE BERRY, DALE.E.BERRY2.MIL@ARMY.MIL, (703) 614-1680.

5.B.14. (U) ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS), DEPUTY ASSISTANT SECRETARY OF THE ARMY-CIVILIAN PERSONNEL (DASA-CP) POC IS MS. CONSTANCE B. RAY, CONSTANCE.B.RAY2.CIV@ARMY.MIL, (703) 344-8047.

5.B.15. (U) ARMY CONFERENCES PROGRAM, OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY POC: USARMY.BELVOIR.HQDA-OAA.MBX.ARMY-HQDA-CONFERENCES-INBOX@ARMY.MIL.

5.B.16. (U) ASSISTANT SECRETARY OF THE ARMY (ACQUISITION, LOGISTICS AND TECHNOLOGY) POCS: MR. RONALD CREVECOEUR, RONALD.CREVECOEUR.CIV@MAIL.MIL, (703) 614-3062 AND COL ERIC BJORKLUND, ERIC.R.BJORKLUND.MIL@ARMY.MIL, (703) 614-3177.

5.B.17. (U) ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS), DEPUTY ASSISTANT SECRETARY OF THE ARMY-MILITARY PERSONNEL (DASA-MP) POC IS COL CRAIG A. NORTON, CRAIG.A.NORTON.MIL@ARMY.MIL, (703) 697-4665, AND MS. FRANCES RIVERA, FRANCES.A.RIVERA2.CIV@ARMY.MIL, (703) 693-1909.

5.B.18. (U) HEADQUARTERS DEPARTMENT OF THE ARMY WATCH: NIPR EMAIL USARMY.PENTAGON.HQDA.MBX.ARMYWATCH@ARMY.MIL, SIPR EMAIL USARMY.PENTAGON.HQDA.MBX.ARMYWATCH@MAIL.SMIL.MIL.

5.B.19. (U) HEADQUARTERS DEPARTMENT OF THE ARMY COVID-19 OPERATIONAL PLANNING TEAM INFO ON THE BOLTE PORTAL:

NIPR PORTAL:  
(U)  
[HTTPS://G357.ARMY.PENTAGON.MIL/OD/ODO/ARMYOPCENTER/CAWG/CAT/SITEPAGES/CORONAVIRUS%20\(COVID-19\).ASPX](https://G357.ARMY.PENTAGON.MIL/OD/ODO/ARMYOPCENTER/CAWG/CAT/SITEPAGES/CORONAVIRUS%20(COVID-19).ASPX)

SIPR PORTAL:  
(U)  
[HTTPS://G357.ARMY.PENTAGON.SMIL.MIL/OD/ODO/ARMYOPCENTER/CRISISACTIONPAGE/SITEPAGES/HOME.ASPX](https://G357.ARMY.PENTAGON.SMIL.MIL/OD/ODO/ARMYOPCENTER/CRISISACTIONPAGE/SITEPAGES/HOME.ASPX)

DOMS NIPR OMB:  
(U) USARMY.PENTAGON.HQDA-DCS-G-3-5-7.MBX.DOMS-OPERATIONS@ARMY.MIL

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

DEPARTMENT OF DEFENSE - LATEST DOD COVID-19 GUIDANCE:  
(U) [HTTPS://WWW.DEFENSE.GOV/SPOTLIGHTS/CORONAVIRUS-DOD-RESPONSE/LATEST-DOD-GUIDANCE/](https://WWW.DEFENSE.GOV/SPOTLIGHTS/CORONAVIRUS-DOD-RESPONSE/LATEST-DOD-GUIDANCE/)

6. (U) THE EXPIRATION DATE OF THIS MESSAGE IS 31 DECEMBER 2028, UNLESS

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FORMALLY RESCINDED OR SUPERSEDED.

ATTACHMENTS:

ANNEX A - SECRETARY OF DEFENSE MEMO-COVID VAX MANDATE RESCISSION, 10 JAN 2023.

ANNEX B - CONSOLIDATED DEPARTMENT OF DEFENSE CORONAVIRUS DISEASE 2019

FORCE HEALTH PROTECTION GUIDANCE - REVISION 4, 30 JAN 2023.

ANNEX C - DOD GUIDANCE FOR IMPLEMENTING RESCISSION OF AUGUST 24, 2021

AND NOVEMBER 30, 2021 CORONAVIRUS DISEASE 2019 VACCINATION REQUIREMENTS FOR MEMBERS OF THE ARMED FORCES, 24 FEB 2023.

ANNEX D - SECRETARY OF THE ARMY COVID POLICIES RESCISSION MEMO, 24 FEB 2023.

ANNEX E - TOTAL SOLDIERS NOTIFIED AND RESUBMISSIONS.

ANNEX F - DELEGATION OF AUTHORITY FOR HEALTH PROTECTION (HPCON) IMPLEMENTATION AND OCCUPANCY REQUIREMENTS, 25 MAY 2022.

ANNEX G - PERSONNEL ANNEX TO EXORD 174-23 (COVID-19 POST-MANDATE RESCISSION OPERATIONS).

ANNEX H - REMINDER OF LITIGATION HOLD CONCERNING MANDATORY COVID-19 VACCINE FOR SERVICE MEMBERS, CIVILIAN EMPLOYEES, AND CONTRACTORS.

ANNEX I - COVID RECORDS FREEZE UPDATE.

ANNEX J - IMPLEMENTATION OF REQUIRED COVID-19 PROTECTIONS PUBLIC AFFAIRS GUIDANCE WILL BE PUBLISHED AT A LATER DATE.

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# **Exhibit 4**

Declaration of Capt. John A. LaPorte

**DECLARATION OF CAPTAIN JOHN A. LAPORTE**

I, Captain John A. LaPorte, hereby state and declare as follows:

1. I am currently employed by the United States Army as the Trial Counsel for the Office of the Staff Judge Advocate, located in Fort Johnson, Louisiana.

2. I am the Trial Counsel assigned to advise Master Sergeant (MSG) Galey's command. This declaration is based on my personal knowledge, as well as information made available to me during the execution of my official duties.

3. On August 24, 2021, the Department of Defense (DoD) published the Vaccine Mandate directing all active duty and reserve service members to receive the COVID-19 vaccination.

4. On November 16, 2021, the Secretary of the Army issued a memorandum that authorized commanders to initiate a General Officer Memorandum of Reprimand (GOMOR) for any soldier who did not receive the COVID-19 vaccination and do not have a pending or approved exemption.

5. MSG Galey submitted a religious accommodation request in October 2021 which was denied by the Surgeon General of the Army in March 2022. MSG Galey appealed the denial of religious accommodation request to the Assistant Secretary of the Army for Manpower & Reserve Affairs. MSG Galey's appeal was denied in September 2022.

6. In December 2022, MSG Galey's Commanding General flagged MSG Galey and initiated a GOMOR and the respective separation procedures.

7. On February 24, 2023, the Secretary of the Army rescinded the Army's COVID-19 vaccination policies and directed filing authorities to rescind GOMORs issued in accordance with such policies.

8. On March 1, 2023, the flag on MSG Galey's flag and GOMOR were officially rescinded.

9. The final reprimand packet was not uploaded to Military Justice Online for distribution. After reviewing the records made available to me, and in accordance with the aforementioned revocation, it appears the GOMOR MSG Galey received in December 2022 was not placed in the Integrated Personnel and Pay System – Army (IPPS-A) or any other military record. Additionally, there does not appear to be adverse information pertaining to MSG Galey's vaccination status or withdrawn GOMOR in the military record system.

\*\*\*\*\*

Pursuant to U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding.

Executed on 27 June, 2024, in Fort Johnson, Louisiana.

LAPORTE.JOHN.AN  
THONY.140847701  
4  
JOHN A. LAPORTE  
Trial Counsel  
Office of the Staff Judge Advocate

Digitally signed by  
LAPORTE.JOHN.ANTHONY.1408  
477014  
Date: 2024.06.27 16:27:48  
-05'00'

# **Exhibit 5**

Declaration of Nathan L. May

**DECLARATION OF NATHAN L. MAY**

I, Nathan L. May, hereby state and declare as follows:

1. I am currently employed by the U.S. Army as the Branch Chief for the Army Soldier Records Branch, located in Fort Knox, Kentucky. I have held this position since December 2022. As part of my official duties, I establish and publish guidance regarding processes/procedures for the maintenance and archival of the official Army Military Human Resource Record (AMHRR). I serve as the authoritative advisor to the Army's Record Custodian and the Department of the Army (DA) G1's representative on Army Regulation (AR) & DA Pamphlet (PAM) 600-8-104 and AR 640-30 recommending changes to AMHRR and military photograph policies based on changes in laws, Department of Defense (DoD) directives and/or in support of military life cycle management changes. In this capacity, I have knowledge of and experience with Army personnel records and databases, including the interactive Personnel Electronic Records Management System (iPERMS) and the DA Photo Management Information System (DAPMIS).

2. This declaration is based on my personal knowledge, as well as knowledge made available to me during the routine execution of my official duties.

3. I have reviewed the Amended Complaint in the matter of *Robert W. Galey, Jr. v. Joseph R. Biden, Jr., et al.*, Case No. 22-cv-6203 (W.D. La.), which I understand is currently pending in the Western District of Louisiana.

**Army Military Human Resource Records and Army Selection Board System**

4. The Army Military Human Resource Record (AMHRR) is archived in the interactive Personnel Electronic Records Management System (iPERMS) which has been identified as a records management application for the Army. The AMHRR is the historical and authoritative source for authentication of veteran or service-related benefits, entitlements, and services.

5. The AMHRR encompasses human resource records for Soldiers, retirees, veterans, and deceased personnel. The AMHRR contains military service-specific information related to a Soldier's career and includes, but is not limited to, the Official Military Personnel File (OMPF), finance related documents, and non-service related documents deemed necessary to store by the Army. There are various folders within the OMPF which document a Soldier's military career. Not every Soldier's OMPF will have the same number and types of folders. The types and number of folders contained within the OMPF will differ based on career path and status. Army Regulation 600-8-104 outlines which folders are authorized for inclusion within the OMPF. They include the Performance Folder, the Service Folder, the Restricted Folder, the Flight Folder, the Medical Folder, and the State Folder.

6. The OMPF is reflective of a Soldier's permanent record. The purpose of the OMPF is to preserve permanent documents pertaining to enlistment, appointment, duty stations, assignments, training, civilian and military education, qualifications, performance, awards, medals, disciplinary actions, insurance, emergency data, separation, retirement, casualty, and any other personnel actions.

7. Soldiers are required to conduct regular reviews of their personnel records to ensure the data is correct and all key documents are in their AMHRR and correctly uploaded to iPERMS. Commanders, Soldiers, and unit Records Managers must take deliberate steps to ensure the accuracy of Soldier records as they have a significant impact on Army promotion and/or selection boards, assignment opportunities, and financial audit readiness for the Army.

8. General Officer Letters of Reprimand (GOMOR) are uploaded to the AMHRR in iPERMS by the servicing Judge Advocate General office by manual upload or through Military Justice Online which sends the documents to Army Soldier Records Branch personnel who are required by policy to validate such documents before filing in the AMHRR. GOMOR is an OMPF document and, as such, is a permanent document. Once filed in the AMHRR, OMPF documents are retained for 62 years beyond the date of a Soldier's separation from the Army, unless directed for removal by competent

authority in accordance with prescribed laws, regulations, or policy. After 62 years beyond the date of a Soldier's separation from the Army, OMPF documents would be transferred to the National Archives and Records Administration for permanent storage. All functions or actions in iPERMS to include the filing, viewing, exporting, or removal of documents are tracked by audit logs. These audit logs include any documents provided to promotion boards from the AMHRR in iPERMS.

9. The DA Secretariat conducts all centralized Active Component, Reserve Component, Officer and Non-Commissioned Officer selection boards. These include all Officer promotion boards from the grade of Chief Warrant Officer Three through Major General, Centralized Selection List (CSL) boards for Lieutenant Colonel and Colonel command and key billets, and school boards to select eligible Officers to attend Intermediate Level Education and Senior Service College. The DA Secretariat also conducts the Army's Senior NCO promotion boards from Sergeant First Class to Sergeant Major, and the Command Sergeant Major CSL boards. The DA Secretariat utilizes the Army Selection Board System (ASBS) to provide AMHRR documents in iPERMS to promotion board files through system-to-system interface between ASBS and iPERMS.

10. A search of MSG Galey's AMHRR in iPERMS and audit logs, from the time of MSG Galey's accession into the Army until present day, to include AMHRR documents provided to ASBS for promotion boards, reveals the following: 1) no record of a General Officer Letter of Reprimand (GOMOR) exists in or was uploaded to MSG Galey's AMHRR in iPERMS; 2) no record of a GOMOR was removed from MSG Galey's AMHRR in iPERMS; 3) no record of a GOMOR was provided to ASBS in the process of a promotion board for MSG Galey.

#### **The Enlisted Record Brief and Selection Board Briefs**

11. A Soldier's Active Duty Record Brief, including the Enlisted Record Brief ("ERB"), was a one page summary of the Soldier's qualifications and career history in data form which was generated by the Electronic Military Personnel Office (eMILPO) system. eMILPO is no longer in use and was subsumed by the Integrated Personnel and Pay System – Army (IPPS-A) during its most

recent software release 3 on 17 Jan 2023. These record briefs are no longer used by the Army for the reasons explained below. The ERB was a living document that was frequently updated and used to supplement document records in iPERMS. Each ERB was a snapshot of the Soldier's career as it was at the time the ERB was produced. The date of the snapshot was listed as the "Brief Date" in the upper lefthand corner of the ERB. A Soldier was able to take a snapshot of his or her military career by downloading his or her ERB on any given day.

12. The ERB included various personal information, for example, information regarding a Soldier's race, religion, marital status. It also included various notations, such as whether the Soldier had an active Suspension of Favorable Personnel Action ("flag") or whether the Soldier had any unique information the Army should consider when choosing the Soldier's next assignment. For example, if the Soldier was married to another Service Member, a notation would be made on the ERB so the Army could better attempt to co-locate the couple.

13. Although ERBs were pulled for previous boards, the board would not see the complete ERB. Instead, the board would see a redacted version of the ERB ("Selection Board Brief"). The Selection Board Brief was limited to the information that would be relevant for the board, with the irrelevant information redacted. The redacted information included information related to a Soldier's race, religion, and marital status, but also information regarding whether a Soldier was flagged or had specific assignment consideration codes.

#### **The Army's Transition to IPPS-A**

14. The Integrated Personnel and Pay System – Army (IPPS-A) was developed to update the Army's legacy personnel records systems and databases, which were stove-piped and mostly did not talk to each other. The transition to IPPS-A began in 2022, and IPPS-A is now live for all Army components and available for Soldiers, their Leaders, and Human Resources personnel to conduct personnel and readiness activities. Every Soldier's pay information will eventually be managed

within IPPS-A. The Army continues to enhance IPPS-A functionality with pay as the next future capability.

15. ERBs were phased out of legacy systems, i.e. eMILPO, for the IPPS-A transition during a period called “brown out cut over.” As a result of this transition, Active Duty Soldiers can no longer update their ERB since eMILPO was taken offline on or about 22 November 2022. The ERB has been replaced by the Soldier Talent Profile (“STP”) within IPPS-A.

16. Prior to the deployment of IPPS-A, and eMILPO being subsumed, the Army created a failsafe against a potential catastrophic loss of data. In a unique, one-time measure, the Army transferred roughly 453,000 ERBs (and other types of record briefs) to iPERMS for all Soldiers who would meet a centralized selection board prior to April 2023 and placed the ERBs in the Service folder of the Soldier’s OMPF (“the legacy Record Brief”). That way, if the Army experienced a catastrophic data loss, the STP could be re-built using the legacy Record Brief stored in the Service Folder of the Soldier’s OMPF. Documents from the Service folder of a Soldier’s OMPF are not provided to Selection Boards. Prior to IPPS-A fielding, ERBs were pulled directly from eMILPO into the board system, not iPERMS.

17. Given the iterative release of IPPS-A, the Army developed a phased approach for Selection Boards since Active Duty ERBs can no longer be updated and while the STP is still being developed. This phased program was originally outlined in MILPER 23-055, and further reiterated in MILPER 23-210, which is attached hereto as Attachment A. The phased program included limited use of the legacy Record Brief for populating the Selection Board Brief for Soldiers with an upcoming Selection Board during the ongoing roll-out of IPPS-A and the STP system.

18. Although the legacy Record Brief information populates the Selection Board Brief for certain boards during Phase 2 of the IPPS-A transition, that information does not include information regarding past flags or assignment considerations, because those items are always redacted and not viewed by the Selection Boards.

19. MSG Galey will not go before any future Boards for which the legacy Record Brief information will be used. MILPER 23-210 outlines which Boards used the legacy Record Brief information. *See* Attachment A at 2-4. Those boards have already convened and adjourned.

20. It is my understanding that MSG Galey expressed a concern with his legacy ERB remaining in his file containing information from the date of the transfer, but there is no evidence from iPERMS system audit logs that suggests his legacy ERB dated 29 November 2022 was viewed by any Army promotion, or selection board.

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

Executed on 28 June, 2024, in Fort Knox, Kentucky.

A handwritten signature in black ink, appearing to read "N. L. May", is positioned above the printed name and title.

Digitally signed by  
MAY.NATHAN.LANSFORD.10  
33162428  
Date: 2024.06.28 13:21:12  
-04'00'

Nathan L. May  
Chief  
Army Soldier Records Branch  
United States Army  
Fort Knox, Kentucky

# **Attachment A**

## **MILPER Number: 23-210**

**Proponent**

**AHRC-E**

**Title**

**\*\*\*REVOKED\*\*\* HQDA Centralized Promotions Board Guidance for Record Briefs during FY23 and IPPS-A Implementation**

**...Issued:[02 Jun 2023]...**

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A. AR 600-8-19 (Enlisted Promotions and Reductions), 16 May 2019

B. AR 600-8-29 (Officer Promotions), 9 September 2020

C. HQDA Policy Notice 600-2 (Policies and Procedures for Active Duty List Officer and Department of the Army Selection Board), 23 November 2021

1. This message will expire no later than (NLT) 22 May 2024.

2. Updating the ORB/SRB is no longer available through historical means. Due to the transition to IPPS-A, data on the Record Brief seen at the board may not accurately reflect information contained in a Soldiers' Army Military Human Resource Record or in IPPS-A. To mitigate the impact on Soldiers' going through a board, all board members in FY23 will receive the following verbal and written guidance:

"Any inconsistencies, errors, or blank data noted on the Record Brief should not be viewed as a failure on the Soldiers' part to update the promotion file and should not reflect negatively on the individual."

3. Board members are provided this guidance in their welcome packet, as well as, briefed prior to the start of the board. Additionally, Record Briefs for the considered populations of selection boards through the end of March were archived on 9 November 2022, the day prior to the system transition.

4. In all phases, Soldiers will see their Record Brief/Soldier Talent Profile, in their MyBoard File, as it will be displayed to the Board. MILPERs for all upcoming boards will discuss procedures for correcting inconsistencies with their records and how to update/correct their MyBoard File. Throughout all phases Soldiers are encouraged to update their files through IPPS-A and to submit a Letter to the Board President if there are major changes that are not properly reflected. (ie, assignment history, duty position, PME, deployments etc.)

5. This will be a four phased approach: (Phase 1: Archived Record Briefs - Ongoing through March 2023, Phase II: Legacy Format with live IPPS-A data – starting April 2023, Phase III: Transition to Soldier Talent Profile v2 – late 2023 with a specific date TBD, Phase IV: New Dashboard Integration – TBD 2024).

a. Phase I: Archived Record Briefs- Ongoing through March 2023

(1) During this phase, Soldiers can verify their board Record Brief by checking and certifying their board files. If there are significant discrepancies, Soldiers are encouraged to submit letters to the board through the process laid out in each respective board MILPER. Active Component and National Guard Record Briefs (ORBs/SRBs) were archived for all considered populations for boards through the end of March 2023 and will be presented to board members as shown in Soldiers' MyBoard File. The U.S. Army Reserves will continue to use the Reserve Career Management System (RCMS) to provide updated Record Briefs for boards through Phase II. Boards are synchronized with iPERMs the morning of a board's convene date to ensure the most updated documents are shown to the board.

The following boards will use an archived Record Brief in the Soldiers' MyBoard File.

Board	Convene Date
RC LTC APL PSB and MAJ APL SELCON	18 JAN 23
RA-USAR AGR SSG Evaluation Board	18 JAN 23
COL Chaplain PSB/SSC	6 FEB 23
RC MAJ Chaplain PSB and CPT Chaplain SELCON	7 FEB 23
BG CH PSB	11 FEB23
RC MAJ APL PSB and CPT APL SELCON	27 FEB 23
LTC Chaplain PSB and MAJ Chaplain SELCON	28 FEB 23
USAR MAJ JAG PSB	28 FEB 23
MAJ AMEDD PSB and CPT AMEDD SELCON	7 MAR 23
RC COL AMEDD PSB, RC LTC AMEDD PSB, and MAJ AMEDD SELCON	7 MAR 23

RC LTC AMEDD PSBs and MAJ AMEDD SELCON	7 MAR 23
CPT AMEDD PSB	14 MAR 23
MAJ Chaplain PSB/ILE and CPT Chaplain SELCON	20 MAR 23
USAR TPU PVB	27 MAR 23
MAJ Army PSB/ILE and CPT SELCON	28 MAR 23

b. Phase II: Legacy Format with live IPPS-A data – starting April 2023:

(1) Starting in April 2023, boards will start seeing the legacy Record Brief with updated IPPS-A data. This version of the Record Brief will be viewable in Soldiers' MyBoard File prior to the convening date. Soldiers can verify their board Record Brief by reviewing and certifying their board files. If there are significant discrepancies, Soldiers are encouraged to submit letters to the board through the process laid out in each respective board MILPER.

The following boards will use live IPPS-A data:

Board	Convene Date
RC MAJ AMEDD PSB and CPT AMEDD SELCON	4 APR 23
RC CPT AMEDD PSBs	4 APR 23
AC CWO 3/4/5 PSBs / 2/3/4 SELCON	10 APR 23
RC USAR CHIEF WARRANT OFFICER 3/4/ PSBs	11 APR 23
RC USAR CHIEF WARRANT OFFICER 5 PSBs	11 APR 23
RA/USAR AGR MSG Evaluation Board	18 APR 23
AC CPT ARMY PSB	25 APR 23
RC CPT APL PSBs	23 APR 23
ROTC PROFESSOR of MILITARY SCIENCE BOARD	8 MAY 23
FY25 COL / LTC OPS CSL BOARD	15 MAY 23
FY25 COL / LTC OS / ID / CSL BOARD	15 MAY 23
FY25 COL / LTC FS CSL BOARD	15 MAY 23
FY24 / 25 COL / LTC SMU CSL BOARD	15 MAY 23

c. Phase III: Legacy Format with live IPPS-A data & Soldier Talent Profile-June 2023 to FY24

(1) In June 2023, boards will continue to use the legacy Record Brief with data fed from IPPS-A. The Soldier Talent Profile (STP) needs to be adjusted for board use, and that effort is ongoing. Record Briefs will be viewable in Soldier's MyBoard File prior to the convening date. Soldiers can validate the Record Brief created for their board by reviewing and certifying their board files. If there are significant discrepancies, Soldiers are encouraged to submit letters to the board through the process laid out in each respective board MILPER. The source of data for each components Record Brief during this phase follows. COMPO 3 units should ensure

IPPS-A data elements are accurate with expectation that the transition to the new system of record is imminent.

The following boards will use live IPPS-A data for Record Brief:

Board	Convene Date
FY25 COL / GS15 ARMY ACQUISTION CORPS CSL BOARD	5 JUN 23
FY25 LTC / GS14 ARMY ACQUISITION CORPS CSL BOARD	5 JUN 23
FY25 COL / LTC AMEDD CSL BOARD	6 JUN 23
USAR AGR REFRAD BOARD	12 JUN 23
USAR SSC BOARD	14 JUN 23
USAR ILE BOARD	14 JUN 23
RC USAR LTC JAG PSB	21 JUN 23
RC USAR COL JAG PSB	21 JUN 23
AC COL JAG PSB	26 JUN 23
AC LTC JAG PSB / MAJ JAG SELCON / SSC - JAG BOARD	10 JUL 23
CY24 USAR LTC CMD ASSIGNMENT BOARD	11 JUL 23
SENIOR SERVICE COLLEGE BOARD – AAC	12 JUL 23
CY24 USAR COL CMD ASSIGNMENT BOARD	1 AUG 23
RA/USAR AGR CSM/SGM Evaluation Board	1 AUG 23
AC MAJ JAG PSB / JAG ILE	7 AUG 23
AMEDD SSC / AMEDD ILE BOARDS	16 AUG 23
RA SPECIAL BAND MUSICIANS PSB	11 SEP 23
CHIEF OF ENGINEERS ADVISORY BOARD	16 SEP 23

d. Phase IV: New Dashboard Integration-TBD FY24

(1) In FY24 the Army plans to transition away from legacy formats of showing Service Member data at selection boards and transition to a more informative, holistic, efficient, and contemporary view of files. A board “dashboard” will provide options to board members to view file information in both quick view and in-depth formats. Much of that information is already contained in a Soldiers’ Army Military Human Resource Records (AMHRR) but Soldiers should continue to work with their G1s/S1s to update all the data fields in IPPS-A, which will feed the data for this upcoming board dashboard.

6. To ensure Soldiers are prepared for future boards we offer the following tips:

- a. Continue to update Soldier data in IPPS-A.
  - b. Continue to monitor and correct your Soldier Talent Profile for accuracy as efforts are ongoing to develop a version for board use.
  - c. Continue to submit documents to iPERMS (it is unaffected by the transition to IPPS-A).
  - d. Continue to monitor and correct Soldier Talent Profile for accuracy as efforts are ongoing to develop a version for board use.
  - e. Review and certify files for upcoming boards to ensure document accuracy.
  - f. Work with your S1/G1 to correct file errors.
  - g. Stay abreast of upcoming boards and follow the information in the MILPER reference the MyBoard File.
  - h. Submit letters to the board IAW the MILPER for your board, if you have concerns reference file discrepancies.
  - i. Ensure annual Record Reviews accurately reflect your record.
7. All COMPOs will utilize Record Briefs populated with IPPS-A data starting in June 2023.
8. The point of contact for this message is the DA Secretariat, Evaluation, Sections, and Promotions Division (ESPD), The Adjutant General Department (TAG-D), HRC at [usarmy.knox.hrc.mbx.tagd-board-ac-officer@army](mailto:usarmy.knox.hrc.mbx.tagd-board-ac-officer@army) mil or at [usarmy.knox.hrc.mbx.tagd-board-ltcapl@army.mil](mailto:usarmy.knox.hrc.mbx.tagd-board-ltcapl@army.mil).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

**ROBERT W. GALEY, et al.,**

Plaintiff,

v.

**JOSEPH R. BIDEN, et al.,**

Defendants.

No. 2:22-cv-6203

**[PROPOSED] ORDER**

Upon consideration of Defendants' motion to dismiss, it is hereby ORDERED that the motion is GRANTED.

It is further ORDERED that this action is DISMISSED.

It is SO ORDERED.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

JAMES D. CAIN, JR.  
United States District Judge