

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

FAITH N. CROCKER; CHRISTOPHER F.)
 DUFF; WAYNE E. JOHNSON; DAVID J.)
 SCHADWINKEL; IAN R. MCHALEY;)
 MENDELL L. POTIER; BYRON O.)
 STARKS, JR.)
) Civil Action No. 5:22-cv-757
 Plaintiffs,)
)
 v.)
)
 LLOYD J. AUSTIN, III, in his official)
 capacity as United States Secretary of)
 Defense; UNITED STATES)
 DEPARTMENT OF DEFENSE; FRANK)
 KENDALL, III, in his official capacity as)
 United States Secretary of the Air Force;)
 ROBERT I. MILLER, in his official)
 capacity as Surgeon General of the United)
 States Air Force; RICHARD W. SCOBEE,)
 in his official capacity as Commander of)
 Air Force Reserve Command;)

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs, by and through counsel, and for their Amended Complaint against the Defendants, hereby state as follows:

INTRODUCTION

1. Plaintiffs are seven members of the United States Air Force (active duty) or United States Air Force Reserve. They are primarily stationed at Barksdale Air Force Base in Bossier City, Louisiana.

2. Defendants are seeking to force Plaintiffs to submit to a COVID-19 vaccine injection against their sincerely held religious beliefs or face the lifelong stain of an involuntary

administrative discharge from the United States Air Force and the loss of education and retirement benefits.

3. All Plaintiffs have filed for a religious accommodation to be exempted from the Air Force's COVID-19 vaccination requirement. None have had their requests for religious accommodation granted.

4. At the time of this filing, five of the Plaintiffs have had their final appeals denied. It is expected that all Plaintiffs will soon face imminent involuntary separation from the Air Force absent injunctive relief from this Court.

5. Sadly, Plaintiffs are not alone. Defendants have implemented an accommodation request process that is intended to deny all, or virtually all, religious exemptions from the vaccine mandate. As of April 25, over 99% of religious accommodation requests that have been decided have been denied. As is detailed below, more than 5,569 religious accommodation requests have been denied, and only 41 have been granted.

6. This action is based upon Defendants' violation of the First Amendment to the Constitution of the United States and the Religious Freedom Restoration Act ("RFRA"). Plaintiffs have been denied their fundamental right to the free exercise of religion and they seek protection from agency action that is unlawful, contrary to law, and arbitrary and capricious.

7. Defendants committed each and every act alleged herein under the color of law.

8. Plaintiffs challenge the policies and actions detailed below on their face and as applied to them.

9. Defendants' policies and actions have deprived and will continue to deprive Plaintiffs of their rights and guarantees under the Constitution of the United States and federal law.

10. As is explained in full below, Defendants' policies and actions violate RFRA and are unconstitutional under the First Amendment of the Constitution because they are not supported by a compelling government interest and are not the least restrictive means of serving such a purported interest.

11. Not only do Defendants' policies and actions fail to serve a compelling government interest, the involuntary separation of Plaintiffs from the Air Force would be extremely detrimental to the national security interests of the United States. The Air Force has invested significantly in the training of Plaintiffs and others who do not choose to take the vaccine on religious grounds, as explained below. Those motivated and trained service members cannot be easily replaced. Defendants' policies and actions are particularly troubling because they undermine American military strength at a time when the country faces multiple international crises from nuclear adversaries, including the Russian invasion of Ukraine and increasing tension with China over the status of Taiwan.

JURISDICTION AND VENUE

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

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

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

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

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

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

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

19. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because Defendants are officers and employees of the United States and agencies of the United States, and the military workplace and the location in which a substantial part of the events or omissions giving rise to the claims is within this district at Barksdale Air Force Base in Bossier City, Louisiana and/or all Plaintiffs reside in the Western District of Louisiana. The proximity of the Western District of Louisiana to their base, abode, and/or home of record makes that venue the most convenient for Plaintiffs.

PLAINTIFFS

Plaintiff Faith N. Crocker

20. Plaintiff Faith Crocker is a Senior Airman in the United States Air Force Reserve. Senior Airman Crocker is patriotic and hard-working airman who dreamed of spending a career serving her country. The daughter of a Baptist pastor, she holds a sincere religious belief that she must not take the COVID-19 vaccine. Her efforts to vindicate her rights within the military have thus far been systematically and automatically denied and she faces imminent involuntary

administrative separation from the military. Such an outcome would not only cut short her unblemished military career, it would end her dreams of finishing her education: the military threatens to cut off and require repayment of tuition assistance and eliminate her eligibility for the GI Bill with a non-honorable discharge. Despite the cost, she will not violate her religious principles, and seeks recourse to this Court to prevent irreparable harm and vindicate her Constitutional rights.

21. Senior Airman Crocker serves as an Aircraft Ordinance Systems Mechanic with 307 Aircraft Maintenance Squadron at Barksdale Air Force Base.

22. On or about October 17, 2021, Senior Airman Crocker submitted a request for a religious accommodation to be exempted from the Air Force's COVID-19 vaccination requirement. This request was accompanied by a memorandum from her Chaplain after an interview with him. He wrote, "In light of my interview with [Senior Airman] Faith Crocker, and her demonstrated consistency of faithful living, with consideration from my vantage point, I believe her beliefs to be sincerely held, and therefore, I recommend granting the waiver request to the greatest extent possible, as the requirement places a significant burden on the members right to exercise her faith." On information and belief, Senior Airman Crocker's immediate chain of command support her religious accommodation request and believe she is a valuable member of the team even without a COVID-19 vaccine injection.

23. On or about November 29, 2021, her request was disapproved by Defendant Richard W. Scobee, Commander of United States Air Force Reserve Command, who nonetheless wrote that he did not doubt "the sincerity of [her] beliefs." The identical, boilerplate letter was sent to several other Plaintiffs.

24. On or about December 4, 2021, Senior Airman Crocker submitted an appeal to the denial of her religious accommodation request. Senior Airman Crocker explained in detail her sincerely held beliefs that she “should have the right to control [her] own body.” Citing to Scripture that her body is a temple of God and the command in Genesis to be fruitful and multiply, Senior Airman Crocker wrote,

I do not take my religion lightly. I firmly believe that I am the guardian of the temple of God and I am eternally responsible for what I [choose] to put into my body. . . I need to be healthy and consider my body for the future. I may not be able to be fruitful and multiply if the vaccine were to damage my health. . . I am fully aware that I am seen as just an airman who the Air Force is comfortable with losing. My dedication and work ethic is not replaceable. I abide by the rules and have never had any disciplinary issues. I also believe it is right to stand up with what I believe in. That being said, I will not allow anyone to disregard my religion. I am asking for assistance in defending the Constitution that I swore to defend when I raised my right hand.

25. On or about February 25, 2022, Senior Airman Crocker’s religious accommodation request appeal was denied by Defendant Robert I. Miller, Surgeon General of the Air Force.

26. On or about March 8, 2022, Senior Airman Crocker was told via email by her commanding officer, Lieutenant Colonel Victoria M. Dewhirst, USAFR, that she had five calendar days to “1) take the vaccine 2) submit retirement request if eligible 3) refuse vaccine in writing.” March 14, 2022, marked the fifth calendar day.

27. On or about March 14, 2022, Senior Airman Crocker retained counsel and submitted a response to her commander stating: “As of today I will not be getting the Covid-19 vaccination. That being said, I love my country and will not give up on the opportunity to serve but I also love my God and will honor him in all that I do.”

28. Senior Airman Crocker faces imminent involuntary administrative separation.

Plaintiff Christopher F. Duff

29. Plaintiff Christopher F. Duff is a Lieutenant Colonel in the United States Air Force. Lieutenant Colonel Duff has had a highly decorated seventeen-year career in the United States Air Force. He has been trained as a B-52 bomber weapons officer at the cost of many millions of dollars and currently serves as a B-52 Squadron Commander with the 96th Bomb Squadron at Barksdale Air Force Base, a critical unit should nuclear conflict break out. He has led multiple deployments the world over, including during the COVID-19 pandemic. A devout Roman Catholic, Lieutenant Colonel Duff has carefully studied the COVID-19 vaccine and will not take a vaccine that was created with the aid of cell lines derived from aborted fetuses. This leaves him unable to take any of the currently available vaccines. He thus faces imminent involuntary administrative separation and the loss of millions of dollars in retirement benefits if he is unable to serve a minimum of twenty years.

30. On or about August 25, 2021, Lieutenant Colonel Duff filed a request for religious accommodation to be exempted from the Air Force's COVID-19 vaccination requirement. Lieutenant Colonel Duff submitted his request the very next day after the COVID requirement was directed. Lieutenant Colonel Duff followed the directed process for Religious Accommodation and went through the "Religious Review Team" where the team unanimously agreed this was a sincerely held religious belief and recommended approval of the request.

31. On or about March 7, 2022, his request was disapproved by General Anthony J. Cotton, Commander of Air Force Global Strike Command and he was ordered to get the COVID vaccine, appeal, or face administrative discipline.

32. On or about March 14, 2022, Lieutenant Colonel Duff submitted an appeal to the denial of his religious accommodation request. Lieutenant Colonel Duff explained in detail his

sincerely held religious beliefs regarding the scriptural and theological basis for his opposition to abortion, the use of aborted fetal cell lines in the development of the currently available COVID-19 vaccines, the effectiveness of alternative means of addressing concerns of COVID-19 transmission, his willingness to continue practicing those alternative means, and his willingness to continue to serve the Air Force in any capacity that he can. He wrote,

My faith is my foundation to who I am as a person and leader in the Air Force. To take this vaccine would make me sacrifice my fundamental integrity that makes me...me. I would not be the officer the Air Force wants (and needs) me to be if I am willing to sacrifice my values for professional gain. Integrity, once spent, is impossible to fully recoup. I cannot sacrifice my personal integrity and continue to be the officer, father and husband I need to be. I am hoping this appeal has articulated that I can keep my personal integrity intact, hold true to my fundamental religious beliefs and still accomplish the Air Force's mission.

33. On or about May 2, 2022, Lieutenant Colonel Duff was notified of the cancellation of his assignment to attend Senior Development Education (SDE) at Air War College, Maxwell AFB, AL. This school is a requirement to be eligible for promotion to the next rank of Colonel. Without it, Lieutenant Colonel Duff's chance of promoting to the next rank are effectively ended.

34. On or about May 5, 2022 (three days after his assignment cancelation), he was notified that his religious accommodation appeal was denied and given the order to get vaccinated by May 16, 2022 or face administrative discipline which would end any chance of promotion to the next rank.

35. Lieutenant Colonel Duff faces imminent involuntary administrative separation from the Air Force and the loss of benefits accrued through seventeen years of faithful military service.

Plaintiff Wayne E. Johnson

36. Plaintiff Wayne Johnson is a Lieutenant Colonel in the United States Air Force Reserve. He has served a distinguished seventeen-year career in numerous military billets beginning as a Financial Management Officer but transitioning to becoming a Combat Systems Operator. He currently serves as a Formal Training Unit Instructor with the 93rd Bomb Squadron at Barksdale Air Force Base training other aircrew to operate B-52 bombers. He will lose all of his retirement benefits if he is unable to complete twenty years in the military.

37. On or about October 15, 2021, Lieutenant Colonel Johnson submitted a request for a religious accommodation to be exempted from the Air Force's COVID-19 vaccination requirement. In that request, Lieutenant Colonel Johnson wrote of heartbreaking challenges in his life including the loss of a child in 2010 that led him to turn to a renewed Christian faith. This experience animated his work in the church and for pro-life causes:

[M]y family and I support the causes that we believe are good. We deliberately seek ways we can use our money, time, and energy to promote goodness, truth, and pro-life causes. I am an elder at my church and actively teach Bible classes to help people love God and each other (see letter from Pastor Matthew Montgomery). Also, my wife and I use our money to support missionaries that bring the life changing good news of Jesus worldwide. We support pro-life missions by spending our time and money to further pro-life causes both here in Louisiana (see letter from LA Right to Life) and throughout the United States (see Live Action email) along with supporting our local pregnancy center (see letter from CARE) and providing donations of goods to local Heart of Hope maternity home.

Lieutenant Colonel Johnson became aware of the use of aborted fetal cell lines in the testing or production of all of the currently available vaccines and wrote, "As a Christian, I must demand better of science, and I cannot demand better if I continue to fund the use of aborted children in any capacity. There is no 'greater good' when unwanted children are killed and exploited."

Lieutenant Colonel Johnson's request was accompanied by multiple letters attesting to his genuine faith and his demonstrated commitment to pro-life causes.

38. On or about November 29, 2021, his request was disapproved by Defendant Richard W. Scobee, Commander of United States Air Force Reserve Command, who nonetheless wrote that he did not doubt "the sincerity of [his] beliefs." This identical letter was sent to several of the Plaintiffs.

39. On or about December 13, 2021, Lieutenant Colonel Johnson submitted an appeal to the denial of his religious accommodation request. Lieutenant Colonel Johnson underscored his sincerely held religious beliefs as well as that he had previously contracted and recovered from COVID-19 in July 2021, thus limiting the danger he posed to any other Airman.

40. On or about April 19, 2022, Lieutenant Colonel Johnson's religious accommodation request appeal was denied by Defendant Robert I. Miller, Surgeon General of the Air Force.

41. On or about May 6, 2022, Lieutenant Colonel Johnson received correspondence from his commanding officer, Lieutenant Colonel Aaron A. Bohl, USAFR, that he had five calendar days to "1) take the vaccine 2) submit retirement request if eligible 3) refuse vaccine in writing." May 12, 2022, marked the fifth calendar day.

42. Lieutenant Colonel Johnson faces imminent involuntary administrative separation from the Air Force and the loss of benefits accrued through seventeen years of faithful military service.

Plaintiff David J. Schadwinkel

43. Plaintiff David Schadwinkel is a Major in the United States Air Force Reserve. He serves as an Evaluator Weapon System Officer in the 307 Operations Group at Barksdale Air Force Base.

44. On or about October 7, 2021, Major Schadwinkel filed a request for a medical accommodation to the COVID-19 vaccine. Major Schadwinkel noted that he previously had and recovered from COVID-19 in August 2021 and that the Air Force Instruction allowed medical exemptions for a showing of “[e]vidence of immunity based serologic tests, documented infection, or similar circumstances.”

45. On or about October 7, 2021, Major Schadwinkel filed a request for religious accommodation to the requirement to take a COVID-19 vaccine injection. In it, he stated that “there is no safety data beyond 1 year [for the current FDA approved vaccine]. To mandate this vaccine is to force members to accept it on faith, not science, that the CDC, FDA, and NIH are correct that the vaccines are safe beyond the scope of 1 year. My faith is my own and I do not accept that my faith must be placed in the governing bodies listed above.” On or about October 16, 2021, Chaplain Chase A. Cantrell, Captain, United States Air Force, found in his professional opinion that the “member’s request is an individual expression of his sincerely held beliefs founded on a matter of conscience and moral principle. In light of this assessment, Wing Chaplain Jonathan Farquhar, Major, United States Air Force recommended “approval of a vaccination waiver, provided no compelling government interest exists to deny.”

46. On or about October 16, 2021, Major Schadwinkel’s request for a medical exemption was denied.

47. On or about October 15, 2021,¹ Maj Schadwinkel was ordered to receive a COVID-19 vaccine injection by October 17, 2021.

48. On or about November 29, 2021, his request for a religious accommodation was disapproved by Defendant Richard W. Scobee, Commander of United States Air Force Reserve Command, who nonetheless wrote that he did not doubt “the sincerity of [his] beliefs.” This is an identical, boilerplate denial letter to the letter that was sent to other Plaintiffs.

49. On or about December 6, 2021, Major Schadwinkel appealed the disapproval of his religious accommodation request. In his appeal, he explained cogently the lack of a compelling government interest in mandating COVID-19 vaccine injections to a servicemember who previously had COVID-19 and developed antibodies. Major Schadwinkel also pointed out the lack of care, concern, and treatment he received from the Air Force when he actually contracted COVID-19 – undermining any argument that the vaccination effort is about heartfelt concern for the wellbeing of Airmen.

50. On or about May 6, 2022, Major Schadwinkel received correspondence from his commanding officer, Colonel David R. Anderson, USAF, that he had five days to take the vaccine injection or face penalties. May 11, 2022, marked the fifth calendar day.

51. Major Schadwinkel faces imminent involuntary administrative separation from the Air Force and the loss of benefits accrued through faithful military service since his commissioning in 2005.

Plaintiff Ian R. McHaley

52. Plaintiff Ian R. McHaley is a Master Sergeant in the United States Air Force. He serves as an Assistant First Sergeant, Accessories Flight Chief, and Hydraulic Master Sergeant in 2nd Maintenance Squadron at Barksdale Air Force Base. Master Sergeant McHaley has received

¹ The order is dated October 15, 2021, while the medical request denial is dated October 16, 2021.

recognition for his exemplary military career through numerous awards, including 2021 2nd Maintenance Squadron Maintenance SNCO of the 4th Quarter; 2021 Graduate, Air Force Global Strike, Striker Titan Program (with only seven selected in the entire command); 2020 2nd Maintenance Group Team of the 4th Quarter; 2019 2nd Maintenance Group Airman of the Year; and 2019 2nd Maintenance Squadron Maintenance Professional of the Year, to name a few. He also aserves his community through participation as the Chairman of the Barksdale Development Council and set up a “Dads 101” program which encourages and mentors new fathers.

53. On or about September 16, 2021, Master Sergeant McHaley submitted a request for a religious accommodation to be exempted from the Air Force’s COVID-19 vaccination requirement. As a committed member of the Church of Jesus Christ of Latter-Day Saints, Master Sergeant McHaley wrote:

It is my sincere personal, spiritual, and religious belief that I am created in the image of my Heavenly Father. I believe we are all his children and he loves us without reservation. I live all aspects of my life (spiritual, personal, religious, and professional) with integrity, strength, discipline, and abiding faith. These virtues are in line with the beliefs that are instilled in me from my relationship with my Heavenly Father. These principles have also shaped me as an Airman in The United States Air Force. They have guided and encouraged me as a military leader in many capacities. They are also the traits that I practice in my marriage and as a father to my four sons.

Through his practice of seeking counsel and revelation, Master Sergeant McHaley believes that mRNA spike protein vaccines that alter cellular structure such as the vaccine currently approved by the FDA, “would be in direct conflict with my moral, spiritual, and religious convictions.”

54. Master Sergeant McHaley’s commanding officer, Major Travis M. Mongeon, USAF, concurred with his request for a religious exemption and wrote of him:

Ian is the epitom[e] of a selfless, servant leader. I fully believe his practice of his sincerely held belief as a Christian allows him to lead as a SNCO and Airman more so than others. As his commander, I have employed Ian outside of his normal duties allowing him to step in for the 2[nd Bomb Wing’s] lead 1st

Sergeant in the largest maintenance squadron in AFGSC. He effortlessly stepped up and performed in the capacity many could not. Due to his dedication to the Air Force and Airmen as a whole, he was selected to become an official 1st Sergeant. I, undoubtedly, know that MSgt McHaley can perform his current duty as a Section Chief and mentor as a future 1st Sergeant fully unvaccinated against COVID-19. To give any negative administrative action to MSgt McHaley would be considered a loss to the force.

55. On or about December 22, 2021, Master Sergeant McHaley was notified he had been selected to be promoted to First Sergeant and was scheduled to attend the First Sergeant Academy beginning on June 6, 2022.

56. On or about April 15, 2022, Master Sergeant McHaley was notified that his assignment to become a First Sergeant had been cancelled due to his vaccination status.

57. Master Sergeant McHaley is expecting a disapproval of his religious accommodation request any day now.

58. Master Sergeant McHaley faces imminent involuntary administrative separation from the Air Force and the loss of benefits accrued through over thirteen years of faithful military service.

Plaintiff Mendell L. Potier

59. Plaintiff Mendell L. Potier is a Staff Sergeant in the United States Air Force Reserve. During his time in service, Staff Sergeant Potier deployed to Operation Iraqi Freedom, acquired two overseas achievement medals, and has become a leading expert in his career field. He currently serves as an HVAC Craftsman with 307th Bomb Wing at Barksdale Air Force Base.

60. On or about October 16, 2021, Staff Sergeant Potier submitted a request for a religious accommodation to be exempted from the Air Force's COVID-19 vaccination requirement. In that request, Staff Sergeant Potier wrote of his commitment to his faith and his opposition to the use of vaccines that might alter his DNA.

61. On or about April 4, 2022, his request was disapproved by Defendant Richard W. Scobee, Commander of United States Air Force Reserve Command.

62. On or about April 9, 2022, Staff Sergeant Potier submitted an appeal to the denial of his religious accommodation request. Staff Sergeant Potier again underscored his sincerely held religious beliefs as well as that he had previously contracted and recovered from COVID-19 with “very mild symptoms,” thus limiting the danger he posed to any other Airman.

63. Staff Sergeant Potier is expecting a denial of his appeal any day now.

64. Staff Sergeant Potier faces imminent involuntary administrative separation from the Air Force and the loss of benefits accrued through over nine years of faithful military service.

Plaintiff Byron O. Starks, Jr.

65. Plaintiff Byron O. Starks, Jr. is an Airman First Class in the United States Air Force. Airman Starks has just begun his career in the Air Force and has completed basic airmen training but has been held in a separate unit for over 250 days at Lackland Air Force Base and not been sent to follow-on engineering training because of a sincerely-held religious belief not to take the COVID-19 vaccine.

66. Airman Starks grew up in a devoutly religious Black American family in Lafayette, Louisiana. He attended Christian school from kindergarten through high school. His family does not imbibe alcohol or narcotics and his parents have sought to raise him “in the adoration of the Lord.”

67. On or about October 20, 2020, Airman Starks enlisted in the Air Force with the understanding that there would be no mandatory COVID-19 vaccine injection requirement.

68. On or about September 24, 2021, he submitted a request for a religious accommodation to be exempted from the Air Force’s COVID-19 vaccination requirement. In

that request, Airman Starks wrote of his commitment to his faith and opposition to the use of vaccines that might alter his DNA and natural God-given immune responses.

69. On or about March 23, 2022, Airman Starks' request was disapproved by Air Education and Training Command.

70. On or about April 4, 2022, Airman Starks submitted an appeal to the denial of his religious accommodation request. Airman Starks emphasized his sincerely held religious beliefs opposing a vaccine with the potential to alter his DNA and noted that he had previously contracted and recovered from COVID-19 in January 2021, thus limiting the danger he posed to any other Airman. He has also served on a detail at the COVID Infective Facility (CIF) on base where he has attended to the needs of quarantined, COVID-positive Airman. Airman Starks wrote:

I have answered my nations call to uphold and defend the US constitution. This constitution includes the First Amendment right to freedom of religion. It is appalling to think that the US government would disregard what our founding fathers fought to establish and deny me the chance to practice that right, while serving this great nation that was first established for the very reason of choosing to worship the God of our choice, instead of being forced to follow a government established religion.

71. On or about May 3, 2022, Airman Starks' religious accommodation request appeal was denied by Defendant Robert I. Miller, Surgeon General of the Air Force.

72. On or about May 9, 2022, Airman Starks received correspondence that he had five calendar days to 1) take the vaccine 2) submit a request to retire or separate or 3) refuse to comply with this order. May 14, 2022 marked the fifth calendar day.

73. Airman Starks faces imminent involuntary administrative separation from the Air Force and the loss of the opportunity to serve his nation in uniform.

DEFENDANTS

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

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

76. Defendant Frank Kendall, III, is the United States Secretary of the Air Force. Secretary Kendall is being sued in his official capacity.

77. Defendant Robert I. Miller is the Surgeon General of the United States Air Force. He is the Air Force official who is ultimately responsible for determining the outcome of religious accommodation appeals with respect to COVID-19 vaccinations. Lieutenant General Miller is being sued in his official capacity.

78. Defendant Richard W. Scobee is the Commander of Air Force Reserve Command. He is the senior officer responsible for implementing policies governing the United States Air Force Reserve. Lieutenant General Scobee is being sued in his official capacity.

FACTUAL BACKGROUND

Defendants’ Vaccine Mandate

79. On or about July 29, 2021, President Joseph Biden directed the DoD to add the COVID-19 vaccine to its list of required immunizations for all service members. *See* The White House, “FACT SHEET: President Biden to Announce New Actions to Get More Americans Vaccinated and Slow the Spread of the Delta Variant” (July 29, 2021),

<http://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/> (“Today, the President will announce that he is directing the Department of Defense to look into how and when they will add COVID-19 vaccination to the list of required vaccinations for members of the military.”); Meghann Meyers & Howard Altman, *Pentagon, Reacting to Biden Order, Working on Plan for Mandatory COVID-19 Vaccinations*, MILITARY TIMES (Oct. 21, 2021), <http://www.militarytimes.com/news/your-military/2021/07/29/biden-orders-pentagon-to-consider-mandatory-covid-19-vaccination/>.

80. On August 24, 2021, Defendant Austin issued a memorandum entitled “Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members” (“the DoD Vaccine Mandate”). A true and correct copy of the DoD Vaccine Mandate is attached as Exhibit A to this Amended Complaint.

81. The DoD Vaccine Mandate directs DoD to vaccinate all active duty and reserve service members against COVID-19.

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

83. The DoD Vaccine Mandate provides that DoD will only use or administer COVID-19 vaccines that are fully licensed by the United States Food and Drug Administration (“FDA”) in accordance with FDA-approved labeling and guidance.

84. The DoD Vaccine Mandate provides that service members who previously received a vaccination against COVID-19 under FDA Emergency Use Authorization or World Health Organization Emergency Use Listing are considered fully vaccinated.

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

86. The DoD Vaccine Mandate states that the Department of Defense will implement the DoD Vaccine Mandate consistent with DoD Instruction 205.02, “DoD Immunization Program,” dated July 23, 2019.

87. The DoD Vaccine Mandate further states, “Those with previous COVID-19 infections are not considered fully vaccinated.”

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

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

90. Defendants issued subsequent guidance stating that service members who are not fully vaccinated by established deadlines will immediately suffer adverse consequences as directed by their service components. The adverse consequences may include: court-martial (criminal) prosecution, involuntary separation, relief for cause from leadership position, removal from promotion lists, inability to attend certain military training and education schools, loss of special pay, placement in a non-deployable status, recoupment of money spent training the service member, and loss of leave and travel privileges for both official and unofficial purposes.

91. On September 3, 2021, Secretary Kendall issued a memorandum entitled “Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military

Members” (the “Air Force Vaccine Mandate”) (collectively, the DoD Vaccine Mandate and the Air Force Vaccine Mandate are the “Vaccine Mandates”). A true and correct copy of the Air Force Vaccine Mandate is attached as Exhibit B to this Amended Complaint.

92. The Air Force Vaccine Mandate directs all Air Force active-duty personnel to become fully vaccinated by November 2, 2021, and all United States Air Force Reserve personnel and Air National Guard personnel to become fully vaccinated by December 2, 2021, unless exempted.

93. The Air Force Vaccine Mandate states that “[o]nly COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA) will be utilized for mandatory vaccinations unless a military member volunteers to receive a vaccine that has obtained U.S. Food and Drug Administration Emergency Use Authorization or is included in the World Health Organization’s Emergency Use Listing.”

94. Although vaccines that received FDA emergency use authorization were widely available by November 2, 2021, no vaccine that had received full licensure from the FDA was widely available by November 2, 2021.

95. The Air Force Vaccine Mandate states: “Individuals with previous COVID-19 infections or positive serology are not considered fully vaccinated and are not exempt.”

96. On December 7, 2021, Secretary Kendall issued a memorandum entitled “Supplemental Coronavirus Disease 2019 Vaccination Policy” (“Air Force Supplemental Policy”). A copy of the memorandum is attached as Exhibit C to this Amended Complaint.

97. The Air Force Supplemental Policy states that failure to comply with the DoD Vaccine Mandate will result in immediate adverse consequences for regular members of the Air

Force, to wit, “Refusal to comply with the vaccine mandate without an exemption will result in the member being subject to initiation of administrative discharge proceedings.”

98. The Air Force Supplemental Policy states: “Service members separated due to refusal of the COVID-19 vaccine will not be eligible for involuntary separation pay and will be subject to recoupment of any unearned special or incentive pays.”

99. The Air Force Supplemental Policy (in Attachment 1 of the Policy) states that Traditional Reserve members who fail to comply with the Vaccine Mandate and have not submitted an accommodation request “will be placed in a no pay/no points status and involuntarily reassigned to the Individual Ready Reserve (IRR). Active Guard and Reserve (AGR) members who fail to comply and have not submitted an accommodation request “will have their AGR tour curtailed and [sic] involuntarily reassigned to the IRR.” They will be subject to “recoupment for any unearned special, incentive pays or certain training.”

100. Other consequences for failure to comply with the Vaccine Mandate, which have been threatened or already imposed upon one or more Plaintiffs, include: involuntary separation, relief for cause from leadership position, removal from promotion lists, inability to attend certain military training and education schools, loss of leadership positions, loss of special pay, placement in a non-deployable status, recoupment of money spent training the service members, and loss of leave and travel privileges for both official and unofficial purposes.

101. Defendants have discretion in granting religious accommodations. *See, e.g.*, Department of Defense Instruction (“DODI”) 1300.17, Religious Liberty in the Military Services, dated September 1, 2020.

102. Defendants have discretion in granting medical and administrative accommodations.

103. On November 30, 2021, Defendant Austin issued a memorandum entitled “Coronavirus Disease 2019 Vaccination for Members of the National Guard and Ready Reserve” (“National Guard and Reserve Mandate”). A true and correct copy of the National Guard and Reserve Mandate is attached as Exhibit D to this Amended Complaint.

104. The National Guard and Reserve Mandate states that unless exempted, members of the National Guard must be vaccinated “to participate in drills, training and other duty.”

105. The National Guard and Reserve Mandate states: “No Department of Defense funding may be allocated for payment of duties performed under title 32 for members of the National Guard who do not comply with Department of Defense COVID-19 vaccination requirements.”

106. The National Guard and Reserve Mandate states: “No credit or excused absence shall be afforded to members who do not participate in drills, training, or other duty due to failure to be fully vaccinated against COVID-19.”

107. As reported by the Air Force as of April 25, 2022, the Air Force had granted 1,013 medical exemptions and 1,273 administrative exemptions from the DoD Vaccine Mandate. *See* DAF COVID-19 Statistics – Apr. 26, 2022, Secretary of the Air Force Public Affairs, available at <https://www.af.mil/News/Article-Display/Article/2989918/daf-covid-19-statistics-apr-26-2022/>.

108. As reported by the Air Force as of April 25, 2022, the Air Force had denied 7,596 religious accommodation requests regarding the DoD Vaccine Mandate (5,569 initial requests denied and 2,027 appeals denied). The Air Force had granted only 46 religious accommodation requests. *See id.*

109. Defendants have denied over 99% of religious accommodation requests. *See id.*

110. On information and belief, those cases in which requests were granted were ones in which the service member was already imminently approaching retirement or other voluntary separation from the service. Therefore, those grants of accommodation were of little significance and possibly done to create the illusion of a process that is virtually certain to result in denial.

111. As reported by the Air Force on April 25, 2022, 96.8 % of all Air Force personnel (including active duty, reserves, and national guard) have been fully vaccinated against COVID-19. *Id.*

112. Plaintiffs have spent years in training and service, at great personal cost and sacrifice, to attain the status they have achieved to serve their country.

113. The United States Air Force has spent an extraordinary amount of money to provide highly specialized training to Plaintiffs, particularly the aircrew Plaintiffs. According to a Rand study commissioned by the United States Air Force, the cost of training an Air Force pilot of a B-52 Bomber is approximately \$9.7 million for each pilot. *See* Michael G. Mattock, Beth J Asch, James Hosek & Michael Boito, *The Relative Cost-Effectiveness of Retaining Versus Accessing Air Force Pilots*, Rand Corporation (2019), https://www.rand.org/content/dam/rand/pubs/research_reports/RR2400/RR2415/RAND_RR2415.pdf. In Lieutenant Colonel Duff's case, for example, the training classes the USAF has spent over seventeen years on him are extensive and include multi-million dollar trainings such as, Undergraduate Navigator Training, USAF Combat Survival Training, B-52 Initial Qualification Training, Radar Navigator Upgrade training, Combat Flight Instructor Course, USAF Weapons School, AFGSC Internship Program, Squadron Officer School, College of Naval Command and Staff, Maritime Advanced Warfare School, Leadership Development Course, AFGSC Squadron

Commanders, Nuclear 200 & 300 courses offered at Kirtland AFB and the multiple security background checks required.

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

According to GAO’s analysis of Defense Manpower Data Center data, 3,664 servicemembers were separated under DOD’s homosexual conduct policy from fiscal years 2004 through 2009. . . Using available DOD cost data, GAO calculated that it cost DOD about \$193.3 million (\$52,800 per separation) in constant fiscal year 2009 dollars to separate and replace the 3,664 servicemembers separated under the homosexual conduct policy. This \$193.3 million comprises \$185.6 million in replacement costs and \$7.7 million in administrative costs. The cost to recruit and train replacements amounted to about \$185.6 million.

Government Accountability Office, *Military Personnel: Personnel and Cost Data Associated with Implementing DoD’s Homosexual Conduct Policy* (Jan. 2011), <https://www.gao.gov/assets/gao-11-170.pdf>. The numbers being reported for religious service members unwilling to receive the vaccine are many multiples greater than those lost to this prior policy and will ultimately cost far more.

115. Plaintiffs are in excellent physical condition. They are statistically unlikely to suffer significant consequences or hospitalization from contracting COVID-19.

116. All Plaintiffs have already had or believe they have already had, and recovered from, COVID-19. None were hospitalized. Those Plaintiffs possess powerful natural immunity as a result, as described more fully below.

117. During the course of the pandemic, Plaintiffs have practiced social distancing, frequent handwashing, masking, regular COVID-19 testing, and/or working remotely as directed by their commanding officers.

118. Plaintiffs have and can continue to perform their work at the highest level while practicing a combination of social distancing, frequent handwashing, masking, regular COVID-19 testing, and/or working remotely, depending on their duties.

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

Plaintiffs' Sincerely Held Religious Objections to COVID-19 Vaccinations

120. Plaintiffs each object to receiving a COVID-19 vaccination based on their sincerely held religious beliefs.

121. Plaintiffs are members of various traditions of faith and conscience.

122. Plaintiffs' sincerely held religious beliefs forbid them from receiving the COVID-19 vaccine for a variety of reasons based upon their faith as revealed through scripture and prayerful discernment. By way of example, a true and correct copy of Plaintiff Crocker's Religious Accommodation Requests and Appeals are attached hereto as Exhibit E to this Amended Complaint.

123. Multiple Plaintiffs, such as Senior Airman Crocker, hold to the sincere religious belief that the human body is God's temple which is fearfully and wonderfully made by God, and that they must not put anything into their body that God has forbidden or that would alter

the functions of their bodies such as by inducing the production of a spike protein in a manner not designed by God or altering their DNA.

124. The COVID-19 vaccines use mRNA technology, which causes human cells to produce a spike protein they would not normally produce. *See* Center for Disease Control, “Understanding mRNA COVID-19 Vaccines,” <http://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mrna.html> (Mar. 4, 2021).

125. Despite repeated denials by the Centers for Disease Control that the COVID-19 vaccines could alter a person’s DNA, a recently published, peer-reviewed study out of Sweden “showed that SARS-CoV-2 RNA can be reverse-transcribed and integrated into the genome of human cells.” Markus Alden *et al.*, *Intracellular Reverse Transcription of Pfizer BioNTech COVID-19 mRNA Vaccine BNT162b2 in vitro in Human Liver Cell Line*, *Current Issues in Molecular Biology* 2022, 44(3), 1115-1126, (Feb. 25, 2022), available at <https://doi.org/10.3390/cimb44030073>.

126. Multiple Plaintiffs hold that they are stewards of their body’s health. The COVID-19 vaccine has resulted in a statistically significant number of serious adverse reactions, including myocarditis, a potentially fatal inflammation of the heart muscles, and pericarditis, a potentially fatal inflammation of the heart tissue. *See* Patricia Kime, *DoD Confirms: Rare Heart Inflammation Cases Linked to COVID-19 Vaccines*, *Military.com* (June 30, 2021), <https://www.military.com/daily-news/2021/06/30/dod-confirms-rare-heart-inflammation-cases-linked-covid-19-vaccines.html>.

127. On January 24, 2022, a United States Senate subcommittee held a roundtable on the efficacy, safety, and overall response to COVID-19. At that roundtable, an attorney representing three Department of Defense whistleblowers, Thomas Renz, “revealed

disturbing information regarding dramatic increases in medical diagnoses among military personnel.” Letter from Senator Ron Johnson to Secretary of Defense Lloyd Austin (Feb. 1, 2022) available at <https://www.ronjohnson.senate.gov/services/files/FB6DDD42-4755-4FDC-BEE9-50E402911E02>. Military whistleblowers alleged that based on data from the Defense Medical Epidemiology Database (DMED), there has been “a significant increase in registered diagnoses . . . for miscarriages, cancer, and many other medical conditions in 2021 compared to a five-year average from 2016-2020,” including a 472% increase in “female infertility” and a 437% increase in “ovarian dysfunction.” *Id.*

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

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

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

130. LTC Long does not hold an isolated opinion. For example, in a sworn declaration, Dr. Jayanta Bhattacharya and Dr. Martin Kulldoff – professors of medicine at Stanford University and Harvard Medical School, respectively – expressed similar conclusions. *Zywicki v. Washington*, 1:21-cv-00894-AJT-MSN (E.D. Va., filed Aug. 3, 2021). Dr. Hooman Noorchashm, M.D., Ph.D.—who is well-published in the medical field and has held multiple

prestigious faculty appointments—reached a similar conclusion in his own sworn declaration. He concluded that “[a] series of epidemiological studies have demonstrated to a reasonable degree of medical certainty that natural immunity following infection and recovery from the SARS-CoV-2 virus provides robust and durable protection against reinfection, at levels equal to or better than the most effective vaccines currently available.” *Zywicki v. Washington*, 1:21-cv-00894-AJT-MSN (E.D. Va., filed Aug. 3, 2021).

131. Multiple Plaintiffs hold the sincere religious belief that all life is sacred, from conception to natural death, and that abortion is the impermissible taking of an innocent life in the womb.

132. As a result of their sincerely held religious beliefs regarding life and abortion, multiple Plaintiffs are unable to receive any of the currently available COVID-19 vaccines due to what they believe and understand is a connection between these vaccines and their testing, development, or production using aborted fetal cell lines.

133. Multiple Plaintiffs believe that receiving a COVID-19 vaccine that was tested, developed, or produced using aborted fetal cell lines would force them to violate their sincerely held religious beliefs by causing them to participate in the abortion enterprise, which they believe to be immoral and repugnant to God. *See, e.g.,* Annette B. Vogel et al., *BNT162b Vaccines Protect Rhesus Macaques from SARS-Cov-2*, NATURE (Feb. 1, 2021), <https://www.nature.com/articles/s41586021-03275-y> (explaining that the BNT162b vaccines (the Pfizer/BioNTech vaccine also known as Comirnaty) were tested using HEK293T aborted fetal cells); Meeting of the Vaccines and Related Biological Products Advisory Committee, U.S. Food and Drug Administration (May 2016, 2001) (Statement of Dr. Alex van der Eb, emeritus professor at the University of Leiden) (“The fetus [from whom the HEK 293 cell lines were

acquired], as far as I can remember was completely normal. Nothing was wrong. The reasons for the abortion were unknown to me. I probably knew it at the time, but it got lost, all this information.”).

134. Plaintiffs, prior to learning about the production or testing of the COVID-19 vaccines using aborted fetal cell lines, were unaware that such cell lines were used in the production or testing of any medications or vaccines. Plaintiffs, having learned that other medications may be tested or produced using aborted fetal cell lines, have since committed to refuse to take any medication that is thus developed or tested.

135. Plaintiffs have contracted and recovered from COVID-19, and therefore have antibodies tests showing that they have acquired natural immunity.

136. Multiple Plaintiffs hold the sincere religious belief that, upon seeking guidance from God through prayer as to whether to receive a COVID-19 vaccine, God directed them not to do so. Senior Airman Crocker is a religion student at Liberty University and holds the sincere religious belief that, upon seeking guidance from God through prayer as to whether to receive a COVID-19 vaccine, God directed her not to do so.

137. Fidelity to their religious beliefs is more important to Plaintiffs than their military careers, but the Constitution of the United States prohibits Defendants from forcing them to choose between their beliefs and their military service to our country.

138. The DoD Vaccine Mandate has lowered Plaintiffs’ morale as service members because they have been forced to choose between their sincerely held religious beliefs and their military careers. The DoD Vaccine Mandate has lowered the morale of other service members for the same reasons.

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

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

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

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

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

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

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

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

Defendants’ Refusal to Grant Religious Exemptions

144. Plaintiffs are requesting religious accommodations or exemptions from Defendants’ Vaccine Mandates that set forth Plaintiffs’ sincerely held religious beliefs regarding the COVID-19 vaccines.

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

146. On information and belief, Defendants’ communications with service members rejecting their religious accommodation requests have used identical, pre-written, “boilerplate” language to deny their requests. Air Force Reserve personnel have received virtually identical letters from Lt. Gen. Richard W. Scobee, Commander of the Air Force Reserve Command, denying their initial requests. The letters did not mention or reflect the consideration of any of the specific circumstances of individual service members. The letters did not include any explanation of why the individual circumstances of each service member warranted rejection.

147. The virtually identical rejection letters from Lt. Gen. Scobee state: “After carefully considering the specific facts and circumstances of your request, the recommendation of your chain of command and the MAJCOM Religious Resolution Team, I disapprove your

request for religious exemption.” The virtually identical rejection letters from Defendant Lt. Gen. Scobee also state: “I do not doubt the sincerity of your beliefs. However, when evaluating your request for religious exemption, I also had to consider the risk to our mission.” On information and belief, Air Force Reserve service members have not received an individualized explanation of why their initial religious accommodation requests were specifically rejected.

148. On information and belief, active-duty Air Force personnel have received similar rejection letters from Gen. Michael A. Minihan, Commander of the Air Mobility Command. Those letters include identical, pre-written “boilerplate” language. Similar to the Air Force Reserve letters, they all state: “After careful consideration of the specific facts and circumstances, I disapprove your request for accommodation. Regardless of whether you have a sincerely held religious belief, the Air Force has compelling government interests in ensuring mission accomplishment, of which health and safety are necessary elements, and the prevention of COVID-19.”

149. The rejection letters that active-duty Air Force personnel have received from Gen. Minihan also include identically-structured fill-in-the blank sections, which state the following: “I have disapproved your request for accommodation from the aforementioned immunization requirement based on the following: First, due to the nature of your duties and your position as a [insert position], the Air Force has a compelling government interest in ensuring the health and continued mission accomplishment of [insert description of unit]. Second, your duties, which include [insert duties, using the words ‘hands-on’ and ‘team’] making teleworking not realistically possible.”

150. Plaintiffs’ appeals have been denied. As a result, their involuntary separation from the Air Force Reserve is imminent, absent rapid injunctive relief from this Court.

151. Other Plaintiffs expect their requests and appeals to be denied within days or weeks of this filing. Their involuntary separation from the Air Force will follow quickly thereafter, absent injunctive relief from this Court.

152. Plaintiffs believe that their requests have been rejected without any consideration of the specific information included in their religious accommodation requests.

153. All of the rejection letters received by service members rely on the falsified assumption that receiving a vaccination prevents a person from acquiring or spreading COVID-19. The assumption that receiving a vaccination prevents a person from acquiring or spreading COVID-19 has been proven false. This was publicly acknowledged by the Director of the Centers for Disease Control and Prevention (“CDC”) in January 2022. *See* Eric Sykes, “CDC Director: COVID Vaccines Can’t Prevent Transmission Anymore,” MSN (Jan. 10, 2022), available at <https://www.msn.com/en-us/health/medical/cdc-director-covid-vaccines-cant-prevent-transmission-anymore/ar-AASDndg>.

Defendants’ Punishment of Plaintiffs for Merely Filing Religious Accommodation Requests

154. According to the accommodation request form created by Defendants, merely making a request for a religious accommodation “may have an adverse impact on [the requesting service member’s] deployability, assignment, and/or international travel.”

155. The uncertainty about their future, constant questions from peers, and denials of training, travel, leadership, and deployment opportunities have already been detrimental to Plaintiffs’ careers.

156. This adverse workplace treatment for merely requesting a religious exemption amounts to punishment for asserting one’s religious beliefs. Like the termination that Plaintiffs

face, it is also a punishment that violates both RFRA and the Free Exercise Clause of the First Amendment.

FIRST CAUSE OF ACTION

Violation of Plaintiffs' Rights under the

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

157. Plaintiffs repeat and re-allege each of the allegations contained in the foregoing paragraphs of this Amended Complaint.

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

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

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

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

162. The Supreme Court of the United States has held that no state official may second-guess whether a person’s sincerely held religious beliefs are correct, reasonable, or sufficiently based in relevant scripture. Doing so impermissibly entangles the state official with religion, in violation of the Establishment Clause of the First Amendment of the Constitution of

the United States. *See Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378, 396, (1990).

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

Application of Strict Scrutiny

164. Defendants’ Vaccine Mandate fails strict scrutiny.

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

166. Plaintiffs have sincerely held religious beliefs that they cannot receive the mandated COVID-19 vaccine.

167. Defendants’ Vaccine Mandates substantially burdens Plaintiffs’ sincerely held religious beliefs by requiring them to take an action – injecting a COVID-19 vaccine into their bodies – that would violate those religious beliefs or suffer adverse employment action, financial harm, and potential physical harm.

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

169. The DoD Vaccine Mandate imposes on Plaintiffs the choice between violating their religious beliefs and ending their military careers and livelihood.

170. The adverse actions to which Plaintiffs are subject may include: involuntary discharge, court-martial (criminal) prosecution, involuntary separation, relief for cause from

leadership position, removal from promotion lists, inability to attend certain military training and education schools, loss of special pay, placement in a non-deployable status, recoupment of money spent training the service member, and loss of leave and travel privileges for both official and unofficial purposes.

171. Plaintiffs have already suffered and continue to suffer adverse employment actions merely for requesting relief that is protected by RFRA.

172. Defendants do not have a compelling government interest in refusing to grant religious exemptions and requiring Plaintiffs to violate their sincerely held religious beliefs by taking a COVID-19 vaccine.

173. Defendants do not have a compelling government interest in refusing to grant religious exceptions to the DoD Vaccine Mandate when they have granted thousands of medical and administrative exemptions to the DoD Vaccine Mandate.

174. Allowance of thousands of accommodations for reasons other than religious ones demonstrates that Defendants can tolerate the risk posed by some service members remaining unvaccinated—and that Defendants are treating religious members of the military differently, inconsistent with RFRA and the First Amendment.

175. Defendants' delay in imposing the DoD Vaccine Mandate for more than a year after vaccines were widely available also belies any claim that their interest in enforcing the Mandate is compelling.

176. Defendants do not have a compelling government interest in refusing to offer religious exemptions to the COVID-19 vaccine mandate when the government itself has admitted through the CDC that vaccinated individuals can still spread COVID-19.

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

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

179. The letters denying Reserve personnel their religious accommodation requests are conclusory and cite only generalized interests in maximizing the vaccination of Air Force personnel, stating, “the Department of Defense and the Department of the Air Force have a compelling government interest in maintaining a healthy and ready military force through vaccination.” On information and belief, the equivalent letters to other service members similarly cite only generalized interests.

180. Defendants’ Vaccine Mandates are also not the least restrictive means of accomplishing the government’s purported interest because the DoD has operated for approximately two years during the COVID-19 pandemic with a ready and healthy force that had not been fully vaccinated.

181. Defendants possess multiple less restrictive methods of mitigating the spread of COVID-19, including masking, remote teleworking, physical distancing, and regular COVID-19 testing. These methods are already being used to facilitate Plaintiffs’ performance of their duties now. Defendants could also accept positive tests for COVID-19 antibodies (indicating the presence of natural immunity) as a substitute for a COVID-19 vaccination. All of these approaches constitute less restrictive means.

182. Indeed, if Defendants are concerned about COVID-19 affecting their personnel, it would need to implement these other mitigation protocols *even if* service members receive the

vaccine because, as is well known by now, vaccinated personnel can also carry, transmit, and become sick with COVID-19. Centers for Disease Control and Prevention, “Science Brief: COVID-19 Vaccines and Vaccination” (last updated September 15, 2021), <http://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html>.

183. Defendants’ denials of Plaintiffs’ religious accommodation requests fail to provide any explanation of why they cannot continue to fulfill their duties in the manner they have done since the COVID-19 pandemic began through masking, remote teleworking, physical distancing, and regular testing.

184. Requiring the vaccination of a service member who possesses natural immunity, as Plaintiffs believe they do, does nothing to reduce the risk of COVID-19 infection to other service members.

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

186. Defendants’ policies and actions have been challenged in multiple federal district courts which have ruled in favor of service members and taken a dim view of the government’s claims.

187. The Northern District of Texas granted a request for a preliminary injunction in a COVID-19 vaccine mandate challenge by religious Navy SEALs, noting that adverse actions against those servicemembers substantially burdened their religious beliefs and that the military’s purported compelling interest clearly failed to overcome this substantial burden. In granting a preliminary injunction, the Court noted,

Our nation asks the men and women in our military to serve, suffer, and sacrifice. But we do not ask them to lay aside their citizenry and give up the very rights they have sworn to protect . . . [the service members] in this case seek to vindicate the very freedoms they have sacrificed so much to protect. The COVID-19

pandemic provides the government no license to abrogate those freedoms. There is no COVID-19 exception to the First Amendment. There is no military exclusion from our Constitution.

U.S. Navy Seals 1–26, et al v. Biden, Civil Action No. 4:21-cv-01236-O, 2022 U.S. Dist. LEXIS 2268, at *2-3 (N.D. Tex. Jan. 3, 2022) (internal citations omitted).

188. The Middle District of Florida granted a preliminary injunction in favor of two servicemembers threatened with separation, noting in its Order,

The record in this action establishes that the two service members are very likely to prevail on their claim that their respective branch of the military has wrongfully denied a religious exemption from COVID-19 vaccination. The record creates a strong inference that the services are discriminatorily and systematically denying religious exemptions without a meaningful and fair hearing and without the showing required under RFRA (while simultaneously granting medical exemptions and permitting unvaccinated persons to continue in service without adverse consequence). One struggles to imagine a wholesome and lawful explanation for the results evidenced in this record. The military is well aware of the frailty of their arguments in defense of their practices.

Navy Seal 1 v. Biden, No. 8:21-cv-2429-SDM-TGW, 2022 U.S. Dist. LEXIS 29716, at *15 (M.D. Fla. Feb. 2, 2022).

189. Similarly in this case, Defendants' Vaccine Mandates violates Plaintiffs' Constitutional and statutorily protected rights.

190. Because of Defendants' policy and actions, Plaintiffs have suffered, and will continue to suffer, irreparable harm. Plaintiffs are entitled to equitable relief.

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

SECOND CAUSE OF ACTION

Violation of Plaintiffs' First Amendment Right to the Free Exercise of Religion

192. Plaintiffs repeat and re-allege each of the allegations contained in the foregoing paragraphs of this Amended Complaint.

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

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

195. Plaintiffs have sincerely held religious beliefs that prohibit their receipt of presently-available COVID-19 vaccines.

196. Defendants' Vaccine Mandates substantially burden Plaintiffs' sincerely held religious beliefs by requiring them to take an action (receiving a COVID-19 vaccine injection) that would violate those religious beliefs or suffer adverse employment action and financial harm.

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

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

199. Defendants' Vaccine Mandates fail strict scrutiny.

200. Defendants do not have a compelling government interest in requiring Plaintiffs to violate their sincerely held religious beliefs by taking a COVID-19 vaccine.

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

202. Furthermore, the well-reported drop in the COVID-19 case count further undermines the government's claims of a compelling need.

203. Moreover, Defendants possess multiple lesser restrictive methods of mitigating the spread of COVID-19, including masking, remote teleworking, physical distancing, and regular testing.

204. Indeed, Defendants will need to implement these other mitigation protocols even if service members receive the vaccine, because vaccinated personnel can also carry, transmit, and become sick with COVID-19. Centers for Disease Control and Prevention, "Science Brief: COVID-19 Vaccines and Vaccination" (last updated September 15, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html>.

205. Accordingly, Defendants' Vaccine Mandates violate Plaintiffs' rights to the free exercise of religion under the First Amendment.

206. Because of Defendants' policy and actions, Plaintiffs have suffered and continue to suffer irreparable harm. They are entitled to equitable relief.

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

THIRD CAUSE OF ACTION

Violation of Plaintiffs' Rights Under the Administrative Procedure Act

208. Plaintiffs repeat and re-allege each of the allegations contained in the foregoing paragraphs of this Amended Complaint.

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

210. The APA prohibits agency actions that are "not in accordance with law." 5 U.S.C. § 706(2)(A). The Vaccine Mandates, as applied to Plaintiffs, are not in accordance with law.

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

212. DODI 1300.17 and SECNAVINST 1730.8B explicitly recognize RFRA protections for Department of Defense and Department of the Air Force Service members.

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

214. The APA prohibits agency actions that are “contrary to constitutional right.” 5 U.S.C. § 706(2)(B). The Vaccine Mandates, as applied to Plaintiffs, are contrary to their constitutional rights under the Free Exercise Clause of the First Amendment.

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

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

217. BUMEDINST 6230.15B, Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases, dated October 7, 2013, establishes DoD-wide policy and quality standards for immunization and chemoprophylaxis.

218. BUMEDINST 6230.15B, Paragraph 2-6 provides for two types of exemptions from DoD immunization requirements: medical and administrative.

219. Among the numerous medical exemptions available to service members, “evidence of immunity based on serologic tests, documented infection, or similar circumstances” provide a basis for medical exemption.

220. BUPERSINST 1730.11A provides that “[e]ach request for religious accommodation must be reviewed on a case-by-case basis, giving consideration to the full range

of facts and circumstances relevant to the specific request. Requests to accommodate religious practices should not be approved or denied simply because similar requests were approved or denied.”

221. Defendants’ Vaccine Mandates substantially burden Plaintiffs’ sincerely held religious beliefs by requiring them to take an action (receiving a COVID-19 vaccine injection) that would violate those religious beliefs or suffer adverse employment action and financial harm.

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

223. Defendants do not have a compelling government interest in requiring Plaintiffs to violate their sincerely held religious beliefs by taking a COVID-19 vaccine.

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

225. Moreover, Defendants possess multiple lesser restrictive methods of mitigating the spread of COVID-19, including masking, remote teleworking, physical distancing, and regular testing.

226. For the reasons discussed above, the Vaccine Mandates are not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A) as they violate Plaintiffs’ rights under RFRA.

227. For the reasons discussed above, the Vaccine Mandates exceed statutory authority within the meaning of 5 U.S.C. § 706(2)(C) as they violate Plaintiffs' rights under the First Amendment.

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

229. Plaintiffs have no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

230. Plaintiffs have no adequate remedy at law.

231. Absent injunctive and declaratory relief against the Vaccine Mandates, Plaintiffs will have been and continue to be harmed.

232. The Court should declare the Vaccine Mandates and each of the Defendants' decisions invalid and set them aside.

PRAYER FOR RELIEF

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

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

- (B) A declaratory judgment that Defendants' vaccination policies challenged in this Amended Complaint violate Plaintiffs' rights under the Administrative Procedure Act;
- (D) A preliminary and permanent injunction prohibiting the Defendants, their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing the vaccination policies challenged in this Amended Complaint;
- (E) An order declaring unlawful and setting aside Defendants' vaccination policies;
- (F) Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- (G) All other further relief to which Plaintiffs may be entitled.

Respectfully submitted this 30th day of May 2022.

/s/ *James Baehr*

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

Exhibit A



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

AUG 24 2021

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

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

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

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

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

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

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

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



OSD007764-21/CMD010116-21

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

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

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

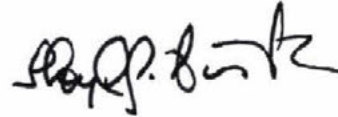
A handwritten signature in black ink, appearing to read "Robert P. Bunker". The signature is stylized with a large, looped 'R' and a distinct 'B'.

Exhibit B



SECRETARY OF THE AIR FORCE
WASHINGTON

3 September 2021

MEMORANDUM FOR DEPARTMENT OF THE AIR FORCE COMMANDERS

SUBJECT: Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force
Military Members

On 24 August 2021, the Secretary of Defense issued a mandate for all members of the Armed Forces under Department of Defense authority on active duty or in the Ready Reserve, including the National Guard, to immediately begin full vaccination against COVID-19.

Effective immediately, commanders in the Department of the Air Force shall take all steps necessary to ensure all uniformed Airmen and Guardians receive the COVID-19 vaccine, which includes issuing unit-wide and individual orders to their military members. Commanders must take action systematically and as expeditiously as possible to ensure prompt and full vaccination of Service members. Unless exempted, Active Duty Airmen and Guardians will be fully vaccinated by 2 November 2021. Unless exempted, Ready Reserve, to include National Guard, Airmen and Guardians will be fully vaccinated by 2 December 2021. To aid in the process, there are additional resources available in the COVID-19 Commander's Toolkit, available at <https://usaf.dps.mil/teams/COVID-19/SitePages/Home.aspx>.

Only COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA) will be utilized for mandatory vaccinations unless a military member volunteers to receive a vaccine that has obtained U.S. Food and Drug Administration Emergency Use Authorization or is included in the World Health Organization's Emergency Use Listing. Individuals with previous COVID-19 infection or positive serology are not considered fully vaccinated and are not exempt.

Pursuant to my authority under Article 22 of the Uniform Code of Military Justice and Rules for Courts-Martial 306, 401, and 601, I hereby withhold initial disposition authority from all commanders within the Department of the Air Force who do not possess at least special court-martial convening authority and who are not in the grade of O-6 with respect to any alleged offense that constitutes refusal or failure to obtain the COVID-19 vaccine. Commanders are advised to consult with their servicing staff judge advocate for further guidance.

Together, we will win this fight against COVID-19. *One Team, One Fight.*

A handwritten signature in black ink, appearing to read "Frank Kendall", is positioned above the name.

Frank Kendall

2 Attachments:

1. Secretary of Defense Memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members," 24 August 2021
2. Department of the Air Force COVID-19 Vaccination Implementation Guidance, 2 September 2021

cc:

AF/CC

SF/CSO

Exhibit C



SECRETARY OF THE AIR FORCE
WASHINGTON

07 DEC 2021

MEMORANDUM FOR ALMAJCOM-FLDCOM-FOA-DRU/CC
DISTRIBUTION C

SUBJECT: Supplemental Coronavirus Disease 2019 Vaccination Policy

This memorandum establishes specific policy and provides guidance applicable to regular Air Force and Space Force members, Air Force Reserve and Air National Guard members. This memo includes supplemental guidance concerning those who requested separation or retirement prior to 2 November 2021, those whose requests for medical, religious or administrative exemption from the COVID-19 vaccine are denied, and those who refuse to take the COVID-19 vaccine. Compliance with this memorandum is mandatory.

As the Secretary of the Air Force, it is my responsibility to promote the health, safety and military readiness of all Air Force and Space Force personnel, regardless of duty status, to include Air National Guard performing any duty or training under both Title 10 and Title 32 of the United States Code. COVID-19 poses a direct risk to the health, safety, and readiness of the force. Vaccination against COVID-19 is an essential military readiness requirement for all components of the Air Force and Space Force to ensure we maintain a healthy force that is mission ready.

Commanders will take appropriate administrative and disciplinary actions consistent with federal law and Department of the Air Force (DAF) policy in addressing service members who refuse to obey a lawful order to receive the COVID-19 vaccine and do not have a pending separation or retirement, or medical, religious or administrative exemption. Refusal to comply with the vaccination mandate without an exemption will result in the member being subject to initiation of administrative discharge proceedings. Service characterization will be governed by the applicable Department of the Air Force Instructions.

Pending Separation or Retirement - unvaccinated regular Airmen and Guardians who submitted a request to retire or separate prior to 2 November 2021, with a retirement or separation date on or before 1 April 2022, may be granted an administrative exemption from the COVID-19 vaccination requirement until their retirement or separation date.

Medical, Religious or Administrative Exemption - unvaccinated regular Airmen or Guardians with a request for medical, religious, or administrative exemption will be temporarily exempt from the COVID-19 vaccination requirement while their exemption request is under review. Service members who receive a denial of their medical, religious, or administrative exemption request have five (5) calendar days from that denial to do one of the following: 1) Begin a COVID-19 vaccination regimen. If the service member indicates his or her intent is to begin the vaccination regimen, commanders may use their discretion to adjust the timeline based on local COVID-19 vaccination supplies; 2) Submit an appeal to the Final Appeal Authority or

request a second opinion (medical). If a final appeal or exemption is denied, the service member will have five (5) calendar days from notice of denial to begin the COVID-19 vaccination regimen; 3) If able, based upon the absence of or a limited Military Service Obligation (MSO), and consistent with opportunities afforded service members prior to 2 November 2021, request to separate or retire on or before 1 April 2022, or no later than the first day of the fifth month following initial or final appeal denial.

Regular service members who continue to refuse to obey a lawful order to receive the COVID-19 vaccine after their exemption request or final appeal has been denied or retirement/separation has not been approved will be subject to initiation of administrative discharge. Discharge characterization will be governed by the applicable Department of the Air Force Instructions. Service members separated due to refusal of the COVID-19 vaccine will not be eligible for involuntary separation pay and will be subject to recoupment of any unearned special or incentive pays.

Commanders will ensure all unvaccinated service members comply with COVID-19 screening and testing requirements and applicable safety standards. Leaders should continue to counsel all unvaccinated individuals on the health benefits of receiving the COVID-19 vaccine.

Unique guidance associated with the Air Force Reserve is provided at Attachment 1. Unique guidance associated with the Air National Guard is provided at Attachment 2.

This Memorandum becomes void one-year after date of issuance.

A handwritten signature in black ink, appearing to read 'Frank Kendall', is positioned above the printed name and title.

Frank Kendall
Secretary of the Air Force

Attachments

1. Supplementary Guidance for Members of the Air Force Reserve
2. Supplementary Guidance for Members of the Air National Guard

Attachment 1

Supplementary Guidance for Members of the Air Force Reserve

1. This supplementary addendum establishes specific policy and provides guidance applicable to Air Force Reserve (AFR) members, pursuant to Secretary of Defense and Secretary of the Air Force guidance as well as AFRC/CD's *AFRC Vaccine Guidance* memo, dated 24 September 2021. Compliance with this guidance is mandatory.
2. Effective 2 December 2021, all AFR members were required to fall into one of the following categories to comply with the vaccination mandate:
 - a. Completed a vaccination regimen.
 - b. Have requested or received a medical exemption.
 - c. Have requested or received a Religious Accommodation Request (RAR).
 - d. Have requested or received an administrative exemption.
3. Unvaccinated members who request a medical exemption or RAR will be temporarily exempt from the COVID-19 vaccination requirement while their exemption request is under review. For those members who have declined to be vaccinated, or have not otherwise complied with the guidance above, they are potentially in violation of the Uniform Code of Military Justice (UCMJ) by refusing to obey a lawful order. Commanders should use their discretion as appropriate when initiating disciplinary action.
4. Traditional Reserve (TR) and Individual Mobilization Augmentee (IMA) members who fail to be vaccinated and have not submitted an exemption or accommodation will be placed in a no pay/no points status and involuntarily reassigned to the Individual Ready Reserve (IRR). Active Guard and Reserve (AGR) members who fail to be vaccinated and have not submitted an exemption or accommodation will have their AGR tour curtailed and involuntarily reassigned to the IRR.
5. Members whose medical exemption or RAR is denied have five (5) calendar days from receipt of their denial to do one of the following:
 - a. Begin a COVID-19 vaccination regimen.
 - b. Request a second opinion (medical) or submit an appeal to the final RAR appeal authority (AF/SG). If a final appeal is denied, the member will have five (5) calendar days from notice of denial to begin the COVID-19 vaccination regimen.
 - c. If eligible to retire:
 - i. IMAs and TRs may request to retire with a retirement date on or before 1 June 2022 and will be placed in a no pay/no points status not later than 60 calendar days post RAR/appeal notification.

- ii. AGR members may be able to retire if they begin terminal leave status NLT 60 calendar days from RAR/appeal notification.
- 6. Immediately following notification of final adjudication, AFR members must comply with the vaccination requirement. Any refusal to receive the COVID-19 vaccine, absent an approved exemption, may be punishable under the UCMJ. Continued refusal will result in involuntary reassignment to the IRR.
- 7. Members will be subject to recoupment for any unearned special, incentive pays or certain training.
- 8. Where required, AFR Airmen will complete all out-processing requirements, to include the Transition Assistance Program or Permanent Change of Station actions.

Attachment 2

Supplementary Guidance for Members of the Air National Guard

1. This supplementary addendum establishes specific policy and provides guidance applicable to Air National Guard (ANG) members pursuant to Secretary of Defense and Secretary of the Air Force guidance. Compliance with this guidance is mandatory.
2. IAW 32 U.S.C. 328, the Secretary of the Air Force hereby withdraws consent for members not fully vaccinated to be placed on or to continue on previously issued Title 32 Active Guard and Reserve (AGR) orders.
3. By 31 December 2021, ANG members, regardless of status, will be classified in the following categories:
 - a. Completed or have started a vaccination regimen.
 - b. Have requested or received a medical exemption.
 - c. Have requested or received a Religious Accommodation Request (RAR).
 - d. Have requested or received an administrative exemption.
 - e. Declined to be vaccinated.
4. Unvaccinated members who request a medical exemption or RAR will be temporarily exempt from the COVID-19 vaccination requirement while their exemption request is under review.
5. Excluding members with pending or approved medical, religious, or administrative exemption requests, ANG members that have not initiated a vaccination regimen by 31 December 2021 may not participate in drills, training, or other duty conducted under Title 10 or Title 32 U.S.C., and those with a remaining Military Service Obligation will be involuntarily assigned to the Individual Ready Reserve (IRR) in accordance with 10 U.S.C. §651 and DoDI 1235.13.
6. Members whose medical exemption or RAR is denied have five (5) calendar days from receipt of their denial to do one of the following:
 - a. Begin a COVID-19 vaccination regimen.
 - b. Request a second opinion (medical) or submit an appeal to the final RAR appeal authority (AF/SG). If a final appeal is denied, the member will have five (5) calendar days from notice of denial to begin the COVID-19 vaccination regimen.
 - c. If eligible to retire:
 - i. Title 32 Drill Status Guardsmen, to include Dual Status Technicians, may request to retire with a retirement date on or before 1 April 2022.
 - ii. Active Guard and Reserve (AGR) members may be able to retire if they begin terminal leave status NLT 60 calendar days from the RAR/appeal notification.

- 7. Immediately following notification of final adjudication, ANG members must comply with the vaccination requirement. Those with a remaining Military Service Obligation who continue to refuse vaccination, will be involuntarily assigned to the IRR.**
- 8. Members will be subject to recoupment for any unearned special, incentive pays or certain training.**
- 9. Where required, ANG members will complete all out-processing requirements, to include the Transition Assistance Program or Permanent Change of Station actions.**

Exhibit D



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

NOV 30 2021

MEMORANDUM FOR SECRETARIES OF THE MILITARY SERVICES
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND
READINESS
CHIEF OF THE NATIONAL GUARD BUREAU

SUBJECT: Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve

In my memorandum of August 24, 2021, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members," I directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against coronavirus disease 2019 (COVID-19).

Vaccination is essential to the health and readiness of the Force. Accordingly, the Secretary of the Army and the Secretary of the Air Force, in coordination with the Under Secretary of Defense for Personnel and Readiness and the Chief of the National Guard Bureau, shall establish, as appropriate, policies and implementation guidance to address the failure to maintain this military medical readiness requirement by members of the non-federalized National Guard who remain unvaccinated, including as follows:

- Unless otherwise exempted in accordance with Department policy, all members of the National Guard must be fully vaccinated for COVID-19 by the deadlines established by the Army or Air Force, as appropriate, or must subsequently become vaccinated, in order to participate in drills, training and other duty conducted under title 32, U.S. Code.
- No Department of Defense funding may be allocated for payment of duties performed under title 32 for members of the National Guard who do not comply with Department of Defense COVID-19 vaccination requirements.
- No credit or excused absence shall be afforded to members who do not participate in drills, training, or other duty due to failure to be fully vaccinated against COVID-19.

The Secretaries of the Military Department, in coordination with the Under Secretary of Defense for Personnel and Readiness, shall issue similar guidance and policy for members of the Ready Reserve, in addition to the guidance and policy issued by the Secretaries of the Army and the Air Force, with respect to members of the non-federalized National Guard.

The policies and implementation guidance directed by this memorandum shall be published no later than December 6, 2021. As I've said before, vaccination of the Force will save lives and is essential to our readiness. Thank you for your continued leadership and focus on this critical mission.

A handwritten signature in black ink, likely of Mark A. Taper, is located in the bottom right corner of the page.

Exhibit E



DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND


NOV 29 2021

MEMORANDUM FOR SRA FAITH CROCKER

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

SUBJECT: Request for Immunization Exemption

1. I have reviewed your request for religious exemption from the recently approved COMIRNATY®/Pfizer-BioNTech COVID-19 vaccine, the EUA COVID-19 vaccines that include Johnson's Janssen and the Moderna COVID-19 vaccines. I understand your concerns, which are based on your sincerely held beliefs. After carefully considering the specific facts and circumstances of your request, the recommendation of your chain of command and the MAJCOM Religious Resolution Team, I **disapprove** your request for religious exemption for the COVID-19 vaccine.
2. I do not doubt the sincerity of your beliefs. However, when evaluating your request for religious exemption, I also had to consider the risk to our mission. All immunizations, including those listed above, are an important element of mission accomplishment, as they contribute to the health, safety, and readiness of the force. Given the importance of our mission, the Department of Defense and the Department of the Air Force have a compelling government interest in maintaining a healthy and ready military force through vaccination. Specifically regarding the COVID-19 vaccination, since less restrictive means of protecting our force from COVID-19 are unavailable, all uniformed Airmen must be fully vaccinated against COVID-19 and other infectious diseases. Individual medical readiness is a critical requirement for maintaining a healthy and ready force.
3. If you choose to appeal this decision, please submit your written request to your unit commander within 72 hours of receiving notice of my decision.
4. A copy of this decision memorandum will be placed in your online personnel records. My point of contact is Ch, Lt Col Stacey Hanson, stacey.hanson@us.af.mil, DSN 497-1221.


RICHARD W. SCOBEE
Lieutenant General, USAF
Commander

cc:
10 AF/CC
307 BW/CC
307 AMXS/CC



**DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND
307th BOMB WING
BARKSDALE AIR FORCE BASE LOUISIANA**

04 Dec 2021

MEMORANDUM FOR AFRC/CC

307 AMXS/CC

FROM: SRA FAITH CROCKER

SUBJECT: Appeal the Denial for Religious Accommodation Request for
Immunization

References: (a) DODI 1300.17, Religious Liberty in the Military Services, 1
Sept 20

(b) AFI 1-1, 7 Aug 12, Air Force Standards

(c) AFI 48-110, 16 Feb 18, Immunizations and Chemoprophylaxis for
the Prevention of Infectious Diseases

(d) AFD 52-2, 28 Jul 20, Accommodation of Religious Practices in the Air Force

(e) DAFI 52-201, Religious Freedom in the Department of the Air Force, 32 Jun
21

(f) Christian Holy Bible

(g) The Bill of Rights

(h) Declaration of Independence

1. I, SrA, Crocker Faith, 307 AMXS, 2W151, DOD ID 1551688069 am asking for reconsideration for a religious accommodation waiver for the reasons set out below.

2. As a member of the Christian faith group, I am requesting a religious accommodation for the Covid-19 vaccination. The request will not interfere with my primary duties, which include loading, unloading, and positioning munitions on aircraft, operationally check and electrically test aircraft weapons release systems, remove, disassemble and inspect parts that might be damaged and perform armament systems maintenance functions. My coworkers and supervisors all agree that this should be my decision to not partake in the covid vaccination if I do not believe it is the right thing to do. They also believe it will not interfere with the work that needs to be accomplished to make a substantial difference in the world's greatest Air Force.

3. The authoritative texts or tradition for my beliefs include The Holy Bible, The Bill of Rights, and The Declaration of Independence. Among them include several passages, teachings, or historic examples illustrating that I should have the right to control my own body. They include:

- Corinthians 6:19-20 “ 19 Do you not know that your bodies are temples of the Holy Spirit, Who is in you, whom you have received from God? You are not your own; 20 you were bought at a price. Therefore honor God with your bodies.”
- Romans 12:1-2 “1 Therefore, I urge you, brothers and sisters, in view of God’s mercy, to offer your bodies as a living sacrifice, holy and pleasing to God-this is your true and proper worship. 2 Do not conform to the pattern of this world, but be transformed by the renewing of your mind.
- Genesis 9:7 “And as for you, be fruitful and multiply; Bring forth abundantly in the earth And multiply in it.”2 Then you will be able to test and approve that God’s will is-his good, pleasing and perfect will.” Philippians 1:20 “20 I eagerly expect and hope that I will in no way be ashamed, but will have sufficient courage so that now as always Christ will be exalted in my body, whether by life or by death.”

4. I do not take my religion lightly. I firmly believe that I am the guardian of the temple of God and I am eternally responsible for what I chose to put into my body. The documented side effects for vaccine patients are equally as fatal for some patients. The long term manipulation of a person's MRNA has never been studied but claims of neurological damage and tremors have already been reported and verified among those choosing to be vaccinated. In my opinion, I will not be honoring God and his temple if I were to acquire the Covid-19 vaccination. I need to be healthy and consider my body for the future. I may not be able to be fruitful and multiply if the vaccine were to damage my health. As the guardian of my temple I believe it is my sole responsibility to care for my physical body.

- “...That all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness” “The powers not delegated to the United States by the Constitution, nor prohibited by the States, respectively, or to the people.”
Our foreFathers determined that there is a God and that God gave us unalienable rights among these rights are Life, Liberty, and the pursuit of Happiness. As recorded in our Declaration of Independence. This belief was cotfied into our constitution in the very first amendment.

5. As a citizen of our great country our first amendment guarantees me the right to worship at the dictates of my own free will.

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

By ordering me to comply with taking this vaccine you are infringing on my personally held religious belief. By denying my request for exemption and threatening to discharge me you are violating my right to petition the Government. There is an active court case happening right now that would allow these issues to be resolved. I respectfully request any adverse action to be postponed until the court system has settled this issue.

Further, my oath of office requires me to defend the constitution of the United States. By giving me a direct order that violates the very first Amendment of the United States Constitution I am in fact honoring my oath by refusing such an illegal order.

- The Supreme Court in 2003 decided A superior’s order is presumed to be lawful and is disobeyed at the subordinate's peril. To sustain the presumption, The order must relate to military duty. It must not conflict with the statutory or constitutional right of a person receiving the order. Finally it must be a specific mandate to do or

not to do a specific act. In sum, an order is presumed lawful if it has a valid military purpose and is a clear, precise, narrowly drawn mandate.

6. I was born into a traditional Baptist family where my father is a pastor. I am currently continuing my education at Liberty University in Religion. This is a decision I have come to over a lifetime of training and significant time in prayer. In addition to my firm religious beliefs, I am legitimately concerned with the long term side effects the Covid-19 vaccination could cause.

Although I have only been in the Air force just short of three years I plan on continuing my career here for the rest of my life and eventually becoming an officer. I love my job and making a difference whether it is big or small. My coworkers and supervisors are the best work family I can ask for. They are continually supporting me and teaching me new things for me to become a better maintainer, airman, leader, and woman. I am fully aware that I am seen as just an airman who the Air Force is comfortable with losing. My dedication and work ethic is not replaceable. I abide by the rules and have never had any disciplinary issues. I also believe it is right to stand up with what I believe in. That being said, I will not allow anyone to disregard my religion. I am asking for assistance in defending the Constitution that I swore to defend when I raised my right hand.

7. If you have any questions, please contact SrA Crocker, Faith at [REDACTED] or

[REDACTED]

FAITH N. CROCKER, SrA, USAF
Aircraft Ordnance Systems Mechanic



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

FEB 25 2022

MEMORANDUM FOR SENIOR AIRMAN FAITH N. CROCKER

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

SUBJECT: Decision on Religious Accommodation Appeal

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

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

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

A handwritten signature in black ink that reads "Robert Miller".

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