

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

STATE OF OKLAHOMA, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States, *et al.*,

Defendants.

Case No: 5:21-cv-01136-F

Declaration of Riddhi Dasgupta

I am Riddhi Dasgupta. I am a Senior Counsel at Schaerr | Jaffe LLP, which serves as counsel for Plaintiffs in this matter.

1. Each of the exhibits attached hereto is a true and accurate copy of the described document.
2. Exec. Order No. 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, 86 Fed. Reg. 50989 (Sept. 9, 2021) (“EO 14043”), applies to each of the plaintiffs. At least one of the plaintiffs—Oklahoma Air National Guard Member 13—is also a General Schedule employee of the United States Department of Defense.
3. Each of the anonymous plaintiffs wants to be a plaintiff in this suit. In order to protect their privacy and to protect them from retaliation, the Complaint in this matter has anonymized them.
4. EO 14043 and related federal government actions compel the members of the Oklahoma National Guard (“Guard”) to vaccinate against COVID-19. The deadline for receiving this vaccination regimen as a Guard member was December 2, 2021. The deadline for receiving this vaccination regimen as a General Schedule employee was November 22, 2021.

5. I have spoken with each of the anonymous plaintiffs, who have not received and do not want to receive the COVID-19 vaccination.
6. Many of them do not want to take the COVID-19 vaccination because of religious reasons and others for secular reasons—or both. Being forced to receive the COVID-19 vaccination, they have told me, would run contrary to their beliefs, individual autonomy, bodily integrity, and personal liberty.
7. Oklahoma Air National Guard Members 1-16 are of the understanding that due solely to their refusal to vaccinate, the United States Government, acting under EO 14043, very likely will terminate their employment as a Guard member or their General Schedule employment in the near future.
8. Exhibit 1 is the United States Secretary of the Air Force, Frank Kendall's Memorandum dated December 7, 2021, and titled *Supplemental Coronavirus Disease 2019 Vaccination Policy*. Pursuant to this Memorandum, Guard members would be classified by December 31, 2021, as having declined to be vaccinated. Those Guard members, this Memorandum asserted, "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 reassigned to the Individual Ready Reserve (IRR)"
9. Once Guard members are classified as having declined to be vaccinated, they most likely will be discharged from the Guard.
10. Exhibit 2 is the United States Secretary of Defense, Lloyd Austin's Memorandum to Senior Pentagon Leadership, Commanders of the Combatant Command, Defense Agency and Department of Defense Field Activity Directors, dated Aug. 24, 2021. This Memorandum mandates National Guard to immediately enforce full vaccination for Guard members.
11. Exhibit 3 is the United States Secretary of Defense, Lloyd Austin's Memorandum to the Secretaries of the Military Services, Chairman of the Joint Chiefs of Staff, Under Secretary of Defense for Personnel and Readiness, and Chief of the National Guard Bureau, dated November 30, 2021. This Memorandum is titled *Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve*. Through this Memorandum, Secretary Austin directed its recipients to establish "policies and implementation guidance" to achieve the following objectives:
 - "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.”

12. Exhibit 4 is the Staff Sgt. Elora J. McCutcheon’s announcement on behalf of the Secretary of the Air Force’s Office of Public Affairs, dated November 3, 2021. The announcement is titled *Department of the Air Force nears 97% vaccination rate*. It states that “Air National Guard and Air Force Reserve members in a Reserve component status must be vaccinated by Dec. 2. COVID-19 screening testing will be required at least weekly for all individuals entering a [Department of Defense] facility who are not fully vaccinated, including those who have an exemption request under review, or who are exempted from COVID-19 vaccination. Units will be responsible for running self-test programs and can reach out to either the Defense Logistics Agency Contact Center or their servicing [Military Treatment Facilities] for assistance with ordering and purchasing the self-test kits.”
13. Exhibit 5 is a press briefing by John J. Kirby, Pentagon Press Secretary on November 29, 2021. Mr. Kirby stated that National Guard members who do not vaccinate and lack an exemption “wouldn’t be allowed to train. They wouldn’t be allowed to drill. They wouldn’t be allowed to contribute to operations under Title 10 or Title 32. That could lead to potential decertification of their skill sets, whatever that is. And, of course, that would then – could lead to no longer being able to serve in the National Guard.”
14. Exhibit 6 is an article published today (December 15, 2021) in *Politico* pointing out that, this week, “the Air Force discharged more than two-dozen airmen for refusing the shot” and that the other military services are proceeding along the same lines. See Paul McCleary & Quint Forgey, *Navy starts kicking out sailors for refusing Covid vaccine as Republicans rage over mandate: The move comes as the Air Force begins discharging service members for not taking the shot*, *Politico* (Dec. 15, 2021, 12:40 PM), <https://www.politico.com/news/2021/12/15/navy-kicks-out-sailors-vaccine-524693>. The article also states: “The Air Force was the first service to start the process of removing service members, separating 27 active-duty airmen this

week. Those 27 were part of the roughly 3,200 airmen across active duty, National Guard and Reserve to have refused the vaccine, while another 10,500 have sought religious exemptions. No religious exemptions have been granted in any service to date.”

15. It is my understanding that each of the Plaintiffs (as well as others similarly situated) would suffer irreparable harm if enforcement of this vaccine mandate were not preliminarily enjoined. Should the individual Plaintiffs (as well as others similarly situated) be forced to be vaccinated against their will, that would irreparably undermine their bodily integrity, individual autonomy, personal liberty, and/or religious and moral beliefs. The risks and adverse side-effects of the vaccine could end their medical certifications necessary for their careers—this is particularly true of the pilots in the Guard. Should the individual Plaintiffs (as well as others similarly situated) decline to take the vaccine, then they would almost certainly be fired from the Guard. This would inflict on them a loss of the Guard community in which they have invested—and no amount of money could compensate them for that loss. Furthermore, many of them would have a difficult time finding alternative employment and the reliance they had placed on their Guard employment in structuring their family situations would disappear overnight. In addition, the State of Oklahoma would suffer irreparable harm in the absence of a preliminary injunction because its very sovereignty and right to govern itself in a manner guaranteed by the Constitution and laws of the United States and of the State of Oklahoma would be rendered a nullity. As the Acting Adjutant General, Brigadier General Thomas H. Mancino’s declaration filed today makes clear, Oklahoma’s resources—its National Guard—are its own under Title 32 unless, under Title 10, they are mobilized by the President of the United States. Treating them as federal chattel degrades Oklahoma’s sovereignty. Moreover, the State of Oklahoma would also suffer irreparable harm from this vaccine mandate, which prevents Oklahoma from legislating on the subject of vaccinations, which is one of its police powers. *See, e.g., Zucht v. King*, 260 U.S. 174, 176 (1922) (“it is within the *police power of a state* to provide for [or to decline to require] compulsory vaccination”) (emphasis added).

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on December 15, 2021.

December 15, 2021

Date

A handwritten signature in black ink, appearing to read "Riddhi Dasgupta", written over a horizontal line.

RIDDHI DASGUPTA

EXHIBIT 1

Presidential Documents

Executive Order 14043 of September 9, 2021

Requiring Coronavirus Disease 2019 Vaccination for Federal Employees

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301, 3302, and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration to halt the spread of coronavirus disease 2019 (COVID-19), including the B.1.617.2 (Delta) variant, by relying on the best available data and science-based public health measures. The Delta variant, currently the predominant variant of the virus in the United States, is highly contagious and has led to a rapid rise in cases and hospitalizations. The nationwide public health emergency, first declared by the Secretary of Health and Human Services on January 31, 2020, remains in effect, as does the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) declared pursuant to the National Emergencies Act in Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak). The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services has determined that the best way to slow the spread of COVID-19 and to prevent infection by the Delta variant or other variants is to be vaccinated.

COVID-19 vaccines are widely available in the United States. They protect people from getting infected and severely ill, and they significantly reduce the likelihood of hospitalization and death. As of the date of this order, one of the COVID-19 vaccines, the Pfizer-BioNTech COVID-19 Vaccine, also known as Comirnaty, has received approval from the Food and Drug Administration (FDA), and two others, the Moderna COVID-19 Vaccine and the Janssen COVID-19 Vaccine, have been authorized by the FDA for emergency use. The FDA has determined that all three vaccines meet its rigorous standards for safety, effectiveness, and manufacturing quality.

The health and safety of the Federal workforce, and the health and safety of members of the public with whom they interact, are foundational to the efficiency of the civil service. I have determined that ensuring the health and safety of the Federal workforce and the efficiency of the civil service requires immediate action to protect the Federal workforce and individuals interacting with the Federal workforce. It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public. The CDC has found that the best way to do so is to be vaccinated.

The Safer Federal Workforce Task Force (Task Force), established by Executive Order 13991 of January 20, 2021 (Protecting the Federal Workforce and Requiring Mask-Wearing), has issued important guidance to protect the Federal workforce and individuals interacting with the Federal workforce. Agencies have also taken important actions, including in some cases requiring COVID-19 vaccination for members of their workforce.

Accordingly, building on these actions, and in light of the public health guidance regarding the most effective and necessary defenses against COVID-19, I have determined that to promote the health and safety of the Federal workforce and the efficiency of the civil service, it is necessary to require COVID-19 vaccination for all Federal employees, subject to such exceptions as required by law.

Sec. 2. Mandatory Coronavirus Disease 2019 Vaccination for Federal Employees. Each agency shall implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law. The Task Force shall issue guidance within 7 days of the date of this order on agency implementation of this requirement for all agencies covered by this order.

Sec. 3. Definitions. For the purposes of this order:

(a) The term “agency” means an Executive agency as defined in 5 U.S.C. 105 (excluding the Government Accountability Office).

(b) The term “employee” means an employee as defined in 5 U.S.C. 2105 (including an employee paid from nonappropriated funds as referenced in 5 U.S.C. 2105(c)).

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.



THE WHITE HOUSE,
September 9, 2021.

EXHIBIT 2



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



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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.

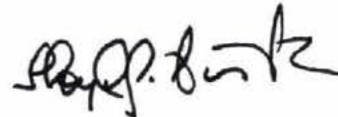
A handwritten signature in black ink, appearing to read "Robert P. Bunker". The signature is stylized with a large, looped 'R' and a distinct 'B'.

EXHIBIT 3



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, appearing to read "Mark A. Taper", is located in the bottom right corner of the page.

EXHIBIT 4



PHOTO DETAILS / DOWNLOAD HI-RES

Senior Airman Rendall Powell, 412th Test Wing, receives a COVID-19 vaccination shot from Lt. Col. Yvonne Storey, 412th Medical Group, at the Airman and Family Readiness Center on Edwards Air Force Base, Calif., Aug. 25, 2021. (U.S. Air Force photo by Katherine Franco)

Department of the Air Force nears 97% AD vaccination rate



Published Nov. 3, 2021

By Staff Sgt. Elora J. McCutcheon
Secretary of the Air Force Public Affairs

WASHINGTON (AFNS) -- Yesterday marked the Department of the Air Force's **deadline** for active duty component Airmen and **Guardians** to receive the **COVID-19** vaccine. As of publication, nearly 97% of Airmen and Guardians on active duty have received at least one dose of the COVID-19 vaccine.

"Our Airmen need to be prepared to operate anytime, anywhere in the world," said Air Force Chief of Staff **Gen. CQ Brown, Jr.** "Getting vaccinated ensures we are a ready force to meet our commitments to the nation while protecting the health of our team and families."

Since the Secretary of Defense's **mandate** Aug. 24, the Department of the Air Force set the most aggressive timelines amongst the military services to ensure members are vaccinated.

"I am incredibly proud of our Airmen for coming together and getting vaccinated," said Chief Master Sgt. of the Air Force **JoAnne S. Bass**. "This is about readiness and ensuring our Air Force can continue to defend the homeland. It's also about understanding that we are not in the clear yet. Continuing safe practices to protect ourselves and others should always be in our cross-check."

The majority of the active component was vaccinated prior to the Aug. 24 mandate. After the mandate, installation Military Treatment Facilities rapidly scaled up vaccination efforts in order to meet the Nov. 2 deadline for the remainder of the force. Many MTFs stood up mass vaccination procedures capable of administering thousands of shots a day.

"Thank you to our active-duty Guardians and Airmen for moving out quickly to meet the Department's vaccine timeline," said Chief of Space Operations **Gen. John W. "Jay" Raymond**. "Although we are encouraged by the falling number of cases, COVID-19 is still a very real threat. We need each and every one of you to be healthy and ready; we need you and your loved ones to be protected so our team can continue to protect and defend the nation."

Chief Master Sgt. of the Space Force **Roger A. Towberman** echoed DAF senior leadership appreciation for all those who got vaccinated, as well as those who made it possible – to include DAF medical personnel who worked tirelessly to vaccinate nearly 100,000 Airmen and Guardians in just over two months.

"This took leadership and teamwork at all levels," Towberman said. "I'm proud of our Guardians for their commitment to our readiness and each other, and thankful for all our Airmen enablers who made this happen."

Over the next 30 days, DAF will review requests for medical exemptions and religious accommodations. DAF civilians have until Nov. 22 to be fully vaccinated, and **Air National Guard** and **Air Force Reserve** members in a Reserve component status must be vaccinated by Dec. 2.

COVID-19 screening testing will be required at least weekly for all individuals entering a DoD facility who are not fully vaccinated, including those who have an exemption request under review, or who are exempted from COVID-19 vaccination.

Units will be responsible for running self-test programs and can reach out to either the **Defense Logistics Agency** Contact Center or their servicing MTF for assistance with ordering and purchasing the self-test kits. Additional guidance will be forthcoming through command channels.

For the most current DAF vaccination statistics, click **here**.



Senior Leader Priorities

[Air Force announces Spark Tank 2022 semifinalists](#)

[Introducing BRAVO: A hackathon series for Air Force, industry](#)

[Department of the Air Force announces 2021 Presidential Rank Award recipients](#)

[CMSAF Bass returns to Ramstein AB](#)

[Update: Airmen interested in learning aviation fundamentals, becoming rated officer can apply for Rated Prep Program until Dec. 31](#)

Innovation



[AFIMSC announces 2022 I-WEPTAC topics, seeks working group volunteers](#)

[Air Force announces Spark Tank 2022 semifinalists](#)

[Introducing BRAVO: A hackathon series for Air Force, industry](#)

[Keesler AFB dental, oncologists innovate radiation therapy tool for cancer patients](#)

[Workshop unites digital-first experts on transformation](#)

MAJCOM News



[AFIMSC announces 2022 I-WEPTAC topics, seeks working group volunteers](#)

[AMC approves 4th KC-46A Pegasus ICR milestone](#)

[Workshop unites digital-first experts on transformation](#)

[PACAF, partner nations deliver critical supplies during 70th annual Operation Christmas Drop](#)

[AFCEC leads beddown efforts for B-21 Raider Stealth Bomber](#)

EXHIBIT 5

(excerpted)

Pentagon Press Secretary John F. Kirby and Dr. Mara Karlin, Performing the Duties of Deputy Under Secretary of Defense for Policy, Hold a Press Briefing

NOV. 29, 2021

Pentagon Press Secretary John F. Kirby; Dr. Mara Karlin, Performing the Duties of Deputy Under Secretary of Defense for Policy

PRESS SECRETARY JOHN F. KIRBY: Good afternoon, everybody. And I hope you all had a good Thanksgiving holiday for those of you who are celebrating. A Happy Hanukkah to you as well. Today I brought Dr. Mara Karlin with me to the podium. Dr. Karlin is performing the duties of the Deputy Undersecretary of Defense for Policy and she will be here to brief you on the Global Posture Review which has just been recently completed. I know you've gotten some background on that already, but Dr. Karlin will be here to take additional questions and give you some context. So, I'm going to turn over the podium to her in a minute. She'll have a brief opening statement, then I'll be moderating the Q&A as we've done before. Please identify yourself and your outlet before you ask me a question. If you could limit the follow ups that will be helpful so we can get as many questions into her as possible.

And then when Dr. Karlin is complete, and we have run through our Q&A on the on the Global Posture Review, I'll come back up to the podium. I have a few other announcements to make and can deal with the news of the day and other issues for the remainder of the time that we're together. So, with that Dr. Karlin.

DR. MARA KARLIN: Alright, thanks very much. And thank you, everyone for joining us today. I'd like to announce that we have concluded the Global Posture Review, or GPR. I'll provide some background on how we conducted the review and highlight some of its key outcomes. On February 4, 2021, President Biden announced that Secretary Austin would lead the Global Posture Review to align our overseas military posture with his national security guidance.

Following several months of analysis and close coordination across the U.S. government, President Biden recently approved Secretary Austin's findings and recommendations resulting from the Global Posture Review. It was a robust interagency effort. The Department of Defense led the GPR with participation and guidance from the National Security Council, the U.S. State Department, the U.S. Agency for International Development, and the Office of the Director of National Intelligence.

into the incident were in fact implemented effectively. Whether accountability measures would be appropriate, and finally, whether authorities procedures or processes should be altered.

And again, that report is supposed to be due in 90 days from now. With that we'll take questions. Bob.

Q: Thank you. Secretary Austin has replied to the Oklahoma Governor, denying his request that they exempt -- be exempt from the vaccine mandate. Which he says that if they fail to comply, they would jeopardize their status in the National Guard. Wondering what if you could elaborate on what that means how that would work? And also, secondly, have you got any other requests from other governors for this?

MR. KIRBY: There's been no other requests from other governors. No similar concerns expressed by any other governor similar to that of the Oklahoma Governor. I would point you to the National Guard for more specifics about how they manage these processes, Bob. But in general, by not taking the vaccine, therefore not meeting a mandatory readiness requirement. An individual in the National Guard could put in jeopardy their ability to continue to serve in the National Guard.

National Guard, as you know, even under Title 32 is funded by the federal government. So, training operations that come under Title 32, much less Title 10 come into the Secretary's purview. So, one could elect not to take the vaccine, of course, but then you would be putting at jeopardy your ability to stay in the National Guard.

Which, as you know, is also a component of the Reserve component in the in the total force. But as to the specifics of how that would play out, I'd refer you, in this case, specifically to the Oklahoma National Guard to speak to.

Q: So, in other words they get denied training opportunities?

MR. KIRBY: They wouldn't be allowed to train. They wouldn't be allowed to drill. They wouldn't be allowed to contribute to operations under Title 10 or Title 32. That could lead to potential decertification of their skill sets, whatever that is. And, of course, that would then -- could lead to no longer being able to serve in the National Guard.

Q: Thank you,

MR. KIRBY: Yes. Janne.

Q: Yes, follow up to Secretary Austin's travel to the South Korea. What will be the main agenda for this meeting SCM?

MR. KIRBY: There's a lot to talk about. As you know, this is a yearly, this is annual, basically a Defense Ministerial. The Secretary is very much looking forward to it. And there'll be a wide range of things to talk about, I suspect. They will certainly talk about the continued challenges in the north, and the Alliance's posture writ large. I think you can -- I would expect them to have discussions about China and the pacing challenge that China continues to pose in the region.

I absolutely expect that OPCON the Operational Control will be discussed. And as I said in you know at the outset, we look forward to them being able to reach agreement on finding commonality on the final operational capability of the of OPCON. An assessment of that next year. So, there's a lot to talk about.

Q: On the OPCON...

MR. KIRBY: I would also add, there's also opportunities. And I think the Secretary will take advantage of them to talk about trilateral cooperation between the United States, Japan and South Korea as well.

Q: On the transfer of OPCON to South Korea would be based on condition. You said that, when do you expect the full conditions to be met?

MR. KIRBY: Yes, I don't have a date certain to speak to Janne. As you know, OPCON transition remains conditions based, as you noted, consistent with the bilaterally agreed upon conditions that were articulated in the transition plan itself. So, we're committed to continue to work closely with the Republic of Korea to ensure that all those conditions for OPCON are met. And our alliance remains as interoperable and as capable as possible.

Any discussions or decisions about OPCON itself will be made inside the rubric of the Alliance. I don't have anything to announce specifically today.

Q: The United States evaluate that South Korea has the necessarily capability to respond to the North Korean nuclear and missile threat? Is that can be also conditions for the...

MR. KIRBY: I think all the conditions are laid down in the transition plan. I'd point you to that we've made progress toward OPCON. There's no question about that. But we believe there's more work to do.

Q: Thank you. There's some amid the rising tensions between two fronts, you're having the Indo Pacific and then also the eastern flank of Europe. Some people are suggesting that there's concerns about the industrial -- defense industrial supply base.

That whether it would be able to support conflicts over especially if they were over multiple days, longer period of time, especially intense conflicts in any one particular area or another. Do you have any comment about that?

MR. KIRBY: Well, obviously, we're not immune to the supply chain issues that the rest of the country indeed the world is experiencing right now. But we also, as you well know, in military logistics, redundancy is everything. And so, we're factoring that into our planning as best we can. The Secretary remains comfortable that we'll be able to defend the nation as needed around the world. I haven't gotten anybody on the phone here. Jennifer Steinhauer New York Times.

Q: Hi, could you just clarify on when Secretary Austin sent that letter to the governor of Oklahoma concerning National Guard vaccines? And also, if they dig in because you talked about what guardsmen choose to do or not do, but it's a state policy at this point. Could they jeopardize their funding that they receive from the federal government that funds most of guard's activities?

MR. KIRBY: So, on the first question, Jennifer that letter was sent today about midday. On your second question, again, I don't want to speculate about outcomes here. Really, this is more the consequences are really going to be more filled on an individual basis. As I was telling Bob, it's an individual's ability to maintain service and participation in the National Guard that will be mostly affected. If you don't mind, I need to keep going on the phone had kind of let that go. Paul from Politico.

Q: Hi, John. Thanks for doing this. Getting back to Ukraine of what steps is the United States taking with you know, on its own or with NATO allies to try to impress upon the Russians that, you know, maybe going into Ukraine would be a bad idea? And are we assisting the Ukrainians with logistics or anything like that moving around their own troops.

MR. KIRBY: We're obviously continue to consult with allies and partners, Secretary Blinken is on his way to Europe, if not already there, and I know he'll be participating in a foreign ministerial while he's over there. So, we continue to talk and consult with allies and partners and specifically with Ukrainian officials, as well. And I can't speak to options or decisions, you know, going forward.

What I would remind is that, you know, we have and continue -- this administration continues what has been a truly bipartisan effort since 2014. To continue to provide security assistance items, both lethal and non-lethal to Ukraine. And so, I don't have anything to announce today. I mean, this administration remains committed to helping Ukrainian military defend itself, defend its territorial integrity, defend its people. Yes.

Q: Do you have any update on the conflict in Ethiopia in terms of U.S. involvement? Is there any information new that you can share with us about what's going on in Ethiopia?

MR. KIRBY: Yes, I don't have anything specific that to speak on what's happening. Obviously on the ground we're watching it very closely. What I can tell you is that there are -- there's no request for U.S. military assistance in any way right now. We don't envision any U.S. military intervention in this conflict. And again, we're watching it, obviously closely and we're in close touch with our State Department colleagues. Go ahead, Court.

Q: On the Oklahoma guard issue is if an individual is not vaccinated is not allowed to train and drill, they don't get paid, right?

MR. KIRBY: Eventually, that that could be the outcome. Yes.

Q: So, it's not withholding funding to the guard?

MR. KIRBY: That's correct.

Q: But that's one repercussion of not being vaccinated, just to be clear is that individual is not getting their federal money?

MR. KIRBY: That is correct. That's what participation in the guard would mean. And that's what I was saying in the previous question is really the repercussions or consequences are largely in the -- for those who continue to refuse would follow on an individual level.

Q: Just wanted to be clear.

MR. KIRBY: Yes, Matt. Yes.

Q: Iran continues to continue with its nuclear of course, program. And then they are of course, close to a point whereas a revocable and at the same time Iran is asking all sanctions to be lifted before returning to the (inaudible). Has a secretary provided and the options and other options, military options to President with respect to Iran?

MR. KIRBY: I won't speak to specific discussions that the Secretary has with the Commander in Chief. Our job is to provide options of course, and as Dr. Karlin briefed a while ago, we have a very robust presence in the region as it is. Tens of thousands of troops all over the region as well as a very significant maritime presence in the Persian Gulf that all will continue.

So, our job here is to make sure that there are options available to the Commander and Chief if he needs them. That said, we continue to very much support the efforts of our State Department colleagues in trying to get a return to the Joint Comprehensive Plan of Action The deal that was struck under the Obama administration with Iran, and as you know, those discussions are ongoing right now. And we're very much in support of that.

We believe that diplomacy is the best path forward here. And as the Secretary has said, many times no problem in the Middle East gets easier to solve with a nuclear armed Iran. So, it's an obviously it's in our interest in the interest of our allies and partners, that outcome doesn't happen. OK, just one more and then I think we can call it a day.

Jeff Schogol?

Q: Thank you. The Marines are expected to announce soon, the number of Marines who are unvaccinated at last count was something like 16,000. There are also roughly 40,000 soldiers who have not yet been vaccinated, and about 8,000 airmen and guardians. Can the Defense Department afford to lose that many service members if all of them are separated?

MR. KIRBY: Well, Jeff we obviously don't want to see that be the outcome. And that's why the Secretary continues to encourage everybody, active and reserve and in the guard to get vaccinated. That's the best way to protect yourself, your family, your unit, your community.

And as he said, many times a vaccinated force is a more ready force. So, we don't want to see anybody not take the vaccine, except those obviously that you know, medically are precluded from doing it or at their doctor's advice. And we're going to continue to continue to hammer home that message. The Secretary met with all the service secretaries this morning as part of a normal monthly battle rhythm.

And this issue of vaccination was on the agenda and the Secretary reiterated that, you know, that he wants them to keep that press up to get as many people vaccinated as possible.

Q: Thank you. What did they tell him about vaccines?

Q: This may have been answered, but do you guys have any early indications that any service members may have the new variant?

MR. KIRBY: We don't at this time Court no. We don't have any indications that it has manifested itself inside the military ranks, but we'll obviously watch that as closely as we can. OK, thanks, everybody.

Q: Have fun on your trip.

MR. KIRBY: Yes, I'll be leaving...

EXHIBIT 6

POLITICO



DEFENSE

Navy starts kicking out sailors for refusing Covid vaccine as Republicans rage over mandate

The move comes as the Air Force begins discharging service members for not taking the shot.



A syringe is prepared with the Pfizer Covid-19 vaccine. | Matt Rourke/AP Photo

By PAUL MCLEARY and JIMMY FORGEY

BY TAE HEEBART AND JOHN FORD

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The Navy has begun kicking out sailors who refuse to get the Covid-19 vaccine, but it won't slap dishonorable discharges on anyone for their decision to ignore a direct order.

Overall, 5,731 active-duty sailors remain unvaccinated, and at this point Navy officials say they believe most of those will likely continue to refuse the order, weeks after the Nov. 28 deadline for full vaccination.

"If a sailor gets their shot, we will honor that and make every effort to retain them," Rear Adm. James Waters, the Navy's director of military personnel plans and policy, told reporters. "On the other hand, those who continue to refuse the vaccine will be required to leave the Navy."

A total of 336,000 sailors are vaccinated, a massive undertaking that service leaders stressed was necessary to keep ships crewed during deployments, where sailors work in close contact in cramped spaces for months at a time.

The announcement comes the same week the Air Force discharged more than two-dozen airmen for refusing the shot.

Under the Navy's rules, unvaccinated officers and enlisted sailors eligible to retire or leave the service before June 1, 2022, will be allowed to do so with an honorable discharge.

Those not eligible to leave by that date "will be processed for separation on the basis of misconduct for refusing the lawful order to be vaccinated," Waters said, but will still receive an honorable discharge.

That changes for those with more than six years of service, who “will be processed with the least favorable characterization of service, being general, under honorable conditions, barring other misconduct,” he added.

Overall, about 90 percent of the active-duty military are vaccinated, a number that drops to just 75 percent when the National Guard and Reserves are factored in, signaling a tough road ahead for DoD as it moves to get the entire force vaccinated.

The services are all facing the removal of thousands of troops from its rosters for refusing the vaccine, a process that will likely take months and impact each service in different ways. The Marine Corps says about 95 percent of its 186,000-strong force has had at least one shot, which means roughly 10,000 continue to refuse.

Marine Corps Commandant Gen. David Berger was blunt in speaking with reporters during a roundtable at the Reagan National Defense Forum this month, saying “we’re not bluffing” in enforcing the order and removing Marines who refuse their shots.

The vaccine mandate is “a direct order,” Berger said. “It’s not one any of the services made up. If you could rewind the clock and remove all the political football of it a year ago, I’d love to find a way to do that. But we can’t.”

Berger thinks that “most Marines will still get vaccinated. They’re past the deadline, but I think eventually, once they see [someone] get separated, the rest will go, ‘Okay. They’re serious.’”

One DoD official, speaking anonymously to comment on a sensitive issue, said the situation is the same for the Army. “I think it’s fair to say we are probably going to see some people leave the Army as a result of the vaccine mandate, because there are some people who just feel very strongly that they don’t want

to take it.”

The Army is expected to release their way forward for separating vaccine refusers later Wednesday, a DoD official told POLITICO.

Asked when the Marine Corps would release its separation policy, spokesperson Capt. Ryan Bruce said Tuesday that because “each case will be handled on a case by case basis, there is no uniform, service-wide timeline associated with completing the administrative separation process.”

“All unvaccinated Marines without a pending or approved administrative exemption, medical exemption, or religious accommodation, or appeal, will be processed for administrative separation,” he said.

The deadline for Air Force members to be vaccinated was Nov. 2, while Navy and Marine Corps members were ordered to get the vaccine by Nov. 28. The cutoff date for Army members is Wednesday, and Army National Guard and Reserve members have until June 30 to receive their shots.

The Air Force was the first service to start the process of removing service members, separating 27 active-duty airmen this week.

Those 27 were part of the roughly 3,200 airmen across active duty, National Guard and Reserve to have refused the vaccine, while another 10,500 have sought religious exemptions. No religious exemptions have been granted in any service to date.

The Navy is still considering about 2,700 religious exemptions, and Waters said any sailor who has their exemption request denied has five days to get their first shot, or the separation process would begin.

Like the Navy, the airmen being processed for removal will receive either

honorable discharges or general discharges under honorable conditions.

Dismissals become a political punching bag

Still, Republican lawmakers have expressed fresh outrage over the Defense Department's Covid-19 vaccine mandate following the Air Force dismissals.

Sen. Roger Wicker (R-Miss.) said President Joe Biden has “little regard for the impact his mandate would have on our military's readiness.”

“The last thing our military needs right now is to be losing servicemen because of an overbearing and unnecessary vaccine mandate that never should have been issued in the first place,” he said in a statement Tuesday.

Sen. Jim Inhofe (R-Okla.) — the top Republican on the Senate Armed Services Committee — reiterated his call for the Pentagon to “suspend the vaccine mandate until the Department of Defense can answer basic questions about the impact the mandate will have on the total force.”

In a statement Tuesday, Inhofe also invoked a federal judge's ruling last week that blocked the Biden administration from enforcing a Covid-19 vaccine mandate for employees of federal contractors.

Following that decision, the Pentagon last week put a temporary halt on enforcement of Biden's executive order, which requires vaccination as a condition for working with the government.

“We're already seeing how the government is backing off enforcement of the mandate for everyone from defense contractors to Amtrak employees — the Department of Defense should likewise hold off on these permanent separations until they at least answer my questions,” Inhofe said.

“In the meantime,” he continued, “I am glad the [National Defense

Authorization Act] prevents service members from being dishonorably discharged because of this mandate, and I'm eager to see this bill signed into law as soon as the Senate votes to send it to the president."

Inhofe was referring to a proposed amendment to the Senate's version of the defense policy bill, which would prohibit the Pentagon from giving service members who refuse the Covid-19 vaccine a dishonorable discharge.

Sen. Roger Marshall (R-Kan.), a former Army doctor who authored the measure, said in a statement Tuesday that service members who decide not to get vaccinated "do not deserve a dishonorable discharge for choosing against the vaccine."

A dishonorable discharge, he argued, “treats our heroes as felons and our American heroes deserve better. I look forward to the NDAA being brought to a vote in the Senate which includes my amendment to provide these [service members] with retroactive protection if they were dishonorably discharged.”

“It’s shameful that President Biden wants to punish members of our military simply because they are uncomfortable taking a vaccine,” Sen. Rick Scott (R-Fla.) added in a statement.

Despite the attacks from Republican lawmakers, Pentagon spokesperson John Kirby suggested Wednesday that no service members would be dishonorably discharged for refusing the Covid-19 vaccine.

Asked about vaccine-related separations across the military, he stressed that “each service is going to handle this their own way.”

“One result could be administrative discharge, like the Air Force is doing,” Kirby told MSNBC. “Now, there’s been a lot of talk about dishonorable discharge. You don’t get that unless you go to court-martial. So we’re talking about administrative discharges that don’t result in some sort of dishonorable discharge or some punitive problem.”

Kirby also noted that this year alone, the service “has administratively separated 1,800 airmen for reasons not related to Covid. So this is not a big number, and it’s not a significant chunk of the Air Force personnel.”

FILED UNDER: NAVY, U.S. NAVY, VACCINATION, CORONAVIRUS

Huddle

A play-by-play preview of the day's congressional news



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