

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

|   |   |                          |
|---|---|--------------------------|
| NAVY SEAL 1, <i>et al.</i> , for themselves | ) |                          |
| and all others similarly situated,          | ) |                          |
|   | ) |                          |
| Plaintiffs,                                 | ) |                          |
| v.  | ) | No. 8:21-cv-2429-SDM-TGW |
|   | ) |                          |
| JOSEPH R. BIDEN, in his official            | ) |                          |
| capacity as President of the United         | ) |                          |
| States, <i>et al.</i> ,                     | ) |                          |
|   | ) |                          |
| Defendants.                                 | ) |                          |

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**PLAINTIFFS' EMERGENCY MOTION  
FOR TEMPORARY RESTRAINING ORDER PENDING  
DECISION ON MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, pursuant to Fed. R. Civ. P. 65(b)(1) and the Court's Order of October 18, 2021 (Doc. 9), move the Court for an emergency temporary restraining order (TRO) to preserve the status quo ante for two class members pending the Court's decision on Plaintiffs Motion for Preliminary Injunction (Doc. 2) and Supplemental Memorandum and Renewed Motion for Preliminary Injunction. (Doc. 51). In support thereof, Plaintiffs show unto the Court as follows:

**INTRODUCTION**

In its first Order in this case, the Court invited Plaintiffs to "move on behalf of any individual member of the alleged class" who "imminently will suffer serious and irreparable injury before a preliminary injunction, if any, issues[]; whose interests are otherwise not adequately protected by the hearing on November 15, 2021; and whose circumstances are for some singular reason markedly more acute than other members

of the putative class.” (Doc. 9 at 4.) As demonstrated below and in the attached exhibits, two such class members—one named Plaintiff and one proposed new named Plaintiff—who are United States Armed Forces servicemembers, face immediate and irreparable harm to their free exercise rights and military careers absent immediate injunctive relief from this Court. Emergency, interim injunctive relief is necessary pending determination of Plaintiffs’ preliminary injunction motion.

### **ARGUMENT**

In addition to the argument below, Plaintiffs incorporate by reference the legal argument contained in their Motion for Preliminary Injunction (Doc. 2), Reply in Support (Doc. 30), and Supplemental Memorandum and Renewed Motion for Preliminary Injunction. (Doc. 51). As set forth therein, Defendants’ refusal to consider or grant Plaintiffs’ requests for religious exemption and accommodation while granting thousands of similarly situated nonreligious exemptions violates the First Amendment and the Religious Freedom Restoration Act.

#### **I. A TRO IS NEEDED TO PRESERVE THE STATUS QUO AND PREVENT IRREPARABLE INJURY PENDING THE COURT’S DECISION ON PLAINTIFFS’ PRELIMINARY INJUNCTION MOTION.**

“A Rule 65 TRO often functions to preserve the status quo until a court can enter a decision on a preliminary injunction application.” *United States v. DBB, Inc.*, 1282 n.5 (1999); *see also Grasso v. Dudek*, No. 6:130cv01536-Orl-28GK, 2014 WL 12621193, at \*2 (M.D. Fla. Jan. 6, 2014) (“In the Eleventh Circuit, TRO’s are intended to protect against irreparable harm and to preserve the status quo until a decision on the merits can be made.”); *Talib v. SkyWay Comms. Holding Corp.*, No. 8:05-cv-282-T-

17TBM, 2005 WL 8160176, at \*5 (M.D. Fla. Apr. 5, 2005) (same). Here, a TRO pending preliminary injunction is necessary to preserve the status quo and prevent immediate and irreparable harm that will occur **beginning February 2 and February 3.**

**A. Plaintiffs and Other Class Members Face Immediate and Irreparable Deprivation of Free Exercise Rights in the Form of Involuntary Separation and Irreparable Career Damage.**

Plaintiffs will suffer immediate and irreparable injury absent a TRO pending decision on their preliminary injunction motion because they will suffer the irretrievable sacrifice of cherished First Amendment liberties. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (“There can be no question that the challenged restrictions, if enforced, will cause irreparable harm. ‘The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Indeed, as this Court already held, “[t]he pertinent precedents (and a fair empathy for the conscience of the sincere religious objector) suggest that in a Free Exercise Clause claim the initial episode of denial of free exercise causes irreparable harm . . . .” (Order, Doc. 40, at 30.)

Plaintiff COMMAND SURFACE WARFARE OFFICER, United States Navy (Proposed First Am. V. Class Action Compl., Doc. 49-1, ¶ 38), faces **immediate and irreparable harm beginning February 3**, as he will be removed from command of his ship, irreparably damaging his career, if he remains unvaccinated as of that date. (Decl. Navy Commander Surface Warfare Officer (attached hereto as Exhibit A),

¶¶ 23–25 & Ex. A-1.) The Navy denied COMMAND SURFACE WARFARE OFFICER’s appeal seeking a religious exemption on January 28, 2022, and ordered him to begin a vaccination series within 5 days (by February 2), or else report to a Navy immunization clinic for vaccination on February 3. (Ex. A, ¶¶ 4–5 & Ex. A-1.) Because his request for religious exemption has been finally denied, he has no further rights of appeal and will be removed from his command of a guided missile destroyer.

Plaintiff LIEUTENANT COLONEL 2, United States Marine Corps (Compl., Doc. 1, ¶ 25; Proposed First Am. V. Class Action Compl., Doc. 49-1, ¶ 41), faces **immediate and irreparable harm beginning February 2**, as she will be added to the Officer Disciplinary Notebook, and her command selection will be withdrawn, irreparably damaging her career, if she remains unvaccinated as of that date. (Decl. Marine Lieutenant Colonel 2 (attached hereto as Exhibit B), ¶¶ 12–17 & Ex. B-1.) The Marine Corps denied LIEUTENANT COLONEL 2’s appeal seeking a religious exemption on January 26, 2022 and ordered her to begin a vaccination series within 5 business days (by February 2). (Ex. B, ¶ 12 & Ex. B-1.)

The Plaintiffs named above are only the beginning. Numerous named Plaintiffs and other class members have received final denials of their appeals from their initial denials, and their irreversible vaccinate-or-separate choices are imminent. (*See, e.g.*, Doc. 49-1, ¶¶ 42, 43, 46–48, 50, 54, 55– 57.)



**B. Only a TRO Pending Decision on Plaintiffs' Motion for Preliminary Injunction Can Preserve the Status Quo.**

In entering a TRO, “the court’s task . . . is generally to restore, and preserve, the *status quo ante*, *i.e.*, the situation that existed between the parties immediately prior to the events that precipitated the dispute.” *FHR TB, LLC v. TB Isle Resort, LP*, 865 F. Supp. 2d 1172, 1193 (S.D. Fla. 2011) (cleaned up). Indeed, where—as here—“an irretrievably deteriorating condition threatens to thwart the Court’s ability to render a proper final judgment on the merits later, the Court must act to preserve or restore the vanishing status quo ante.” *Schrank v. Bliss*, 412 F. Supp. 28, 34 (M.D. Fla. 1976).

Here, only an immediate TRO pending decision on Plaintiffs’ preliminary injunction motion (Docs. 2, 51) can preserve the status quo ante. Absent immediate injunctive relief, Plaintiffs will suffer irreparable deprivation of their free exercise rights and irreparable damage to their military careers.

**II. THE COURT SHOULD ISSUE THE TRO WITHOUT WAITING FOR A RESPONSE FROM DEFENDANTS.**

Pursuant to Rule 65(b)(1), the Court may issue the TRO if specific sworn facts “clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition,” and “the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1). This motion satisfies the requirements for issuance of a TRO without waiting for a response from Defendants.

On January 27, 2022, Plaintiffs’ counsel asked Defendants’ counsel whether Defendants would pause all separation proceedings for servicemembers to

accommodate an extended briefing schedule on Plaintiffs' preliminary injunction motion. (Doc. 58 at 2 & Ex. A.) Defendants' counsel indicated such agreement was unlikely (Doc. 58 at 2 & Ex. A), and confirmed that Defendants would not agree by filing Defendants' Motion to Set a Briefing Schedule (Doc. 56).

Prior to filing this motion, and in accordance with the Court's October 18, 2021 Order (Doc. 9), the undersigned Plaintiffs' counsel conferred by e-mail with counsel for Defendants, seeking Defendants' agreement to pause the imminent adverse action against Plaintiffs COMMAND SURFACE WARFARE OFFICER, United States Navy, and LIEUTENANT COLONEL 2, United States Marine Corps, pending the Court's decision on Plaintiffs' preliminary injunction motion. Plaintiffs' counsel provided these Plaintiffs' identities to Defendants' counsel under an agreement to be bound by the terms of the proposed Interim Protective Order (Doc. 59-1) negotiated by the parties. As of the filing of this motion, Defendants' counsel was unable to provide any such agreement, but indicated that Defendants oppose the relief requested herein. Given the imminent and irreparable adverse action facing Plaintiffs COMMAND SURFACE WARFARE OFFICER, United States Navy, and LIEUTENANT COLONEL 2, United States Marine Corps, as shown above and supported by the attached declarations (Exs. A, B), the Court should not request or wait for any further response from Defendants before entering the requested TRO.

**CONCLUSION AND RULE 65(b)(1)(B) CERTIFICATION**

By signing below, and in accordance with the Court's October 18, 2021 Order (Doc. 9) and Rule 65(b)(1)(B), the undersigned Plaintiffs' counsel certifies the

foregoing efforts made to confer with Defendants' counsel regarding the relief requested herein, and the foregoing reasons why the Court should issue the TRO immediately without waiting for any response from Defendants prior to issuing the TRO.

/s/ Roger K. Gannam

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\*\*Application for special admission  
pending

*Attorneys for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this February 1, 2022, I caused a true and correct copy of the foregoing to be electronically filed with the Court. Service will be effectuated on all counsel of record via the Court's ECF/electronic notification system.

/s/ Roger K. Gannam

Roger K. Gannam

**UNITED STATES DISTRICT COURT  
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|   | ) |                          |
| Defendants.                                 | ) |                          |

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**DECLARATION OF  
NAVY COMMANDER SURFACE WARFARE OFFICER**

I, Navy Commander Surface Warfare Officer, do hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this Declaration, and if called upon to testify to them, I would and could do so competently.
  
2. I am a Commander and a Surface Warfare Officer in the United States Navy. I am the Commanding Officer of a guided missile destroyer.
  
3. I joined the Navy after completing university in 2004. I pursued a commission because I wanted to serve our country. I took an oath to uphold the constitution. I am proud to defend freedom and our republican form of government.
  
4. I have now honorably served over 17.5 years in the Navy.
  
5. Over the course of my service, I have deployed multiple times across the globe in support of our nation's interests (Western Pacific, Persian Gulf, Red Sea, Mediterranean Sea, Black Sea, Atlantic, Caribbean, Eastern Pacific, etc.).

**EXHIBIT A**

6. I never thought I would be placed in the position of conflict between my faith and a military order, and have to decide whether to remain true to what God wants me to do, or be kicked out of the service.

7. I love both God and the Navy, and want to be able to remain true to my beliefs, and continue to serve.

8. I submitted my original Religious Accommodation Request (RAR) on 13 September 2021.

9. My request was denied by the Chief of Naval Personnel on 22 October 2021 and presented to me by my direct supervisor on 26 October 2021.

10. I subsequently submitted my appeal on 03 November 2021.

11. When I received an initial denial of my RAR, which I timely appealed, I noted the many inconsistencies and false statements in my commander's non-recommendation of my initial request; as well as those contained in the denial. CNO(N1)'s denial letter of 22 October 2021 and ISIC's disapproval recommendation dated 14 September 2021 failed to consider or acknowledge any viable alternative to achieve the mission and/or accommodate my religious freedoms and practices.

12. From the first confirmed case of COVID-19 virus in the United States on 20 January 2020, to the 11 December 2020 emergency use authorization for a COVID-19 vaccine, I/my command completed the following military operations/requirements:

a. From January 2020 to August 2020, my ship deployed to FIFTH and SIXTH FLEET areas of operation in support of OPERATION SENTINEL.

b. In September 2020, my command conducted a weapons offload at a Naval Weapons Station.

c. From October 2020 to November 2020, my command conducted national tasking for SECOND FLEET in the western Atlantic in support of out of area deployers.

d. From January 2021 to March 2021, my command executed a 60-day surge deployment to FOURTH FLEET in support of counter-illicit trafficking operations. This period is the first where we had positive cases of COVID-19. The first was a member of my command. Prior to leaving Norfolk, everyone took a COVID test. The result came back positive after we departed; however, we were able to isolate the individual and transport him off in Florida with no impact to mission. Additionally, as part of this mission, we took on several detainees that had to be turned over to their parent government. At least one detainee was COVID positive, yet we still provided care as necessary without impacting our mission.

13. From January 2020 to March 2021, my ship was underway for 300+ days over a 15-month time period. Throughout this time, my command successfully executed health protection protocols to limit COVID-19 exposure as follows:

a. Mask wear both on and off the ship.

- b. Sanitization of the ship's spaces, passageways, door handles, etc., three times per day.
- c. Enforced social distancing protocols as best as practicable (minimized gatherings/meetings).
- d. Utilized Restriction of Movement (ROM) protocols for personnel travelling out of area (with travel risk assessments).
- e. Utilized ROM protocols for personnel experiencing COVID-like symptoms, in addition to COVID testing as required per Navy policy.
- f. Conducted a ship-wide ROM with a confirmed negative COVID test prior to surge deployment.
- g. Developed and executed a quarantine/isolation protocol for underway operations.

14. For almost a year, my command continued to execute mission requirements during the height of the COVID-19 pandemic without the benefit of a vaccine. The force health protection protocols we executed have proven successful and are a less restrictive means of furthering the government's compelling interest without infringing upon any service member's religious freedoms.

15. In addition, since the introduction of Emergency Use Authorization COVID-19 vaccines to the U.S. market, 294 Sailors at my command have been vaccinated, leaving about twenty-four (24) Sailors, including myself, unvaccinated. To the extent any COVID-19 vaccine reduces the risk of infection and spread, the fact that 93% of command is vaccinated further reduces the risks of COVID-19 infection and

spread throughout the command, thereby ensuring military readiness and health and safety requirements for units and individuals. The COVID-19 virus currently has a mortality rate of approximately 1.6% in the United States, which predominantly affects individuals age 65 years and older and individuals with comorbidities such as obesity, smoking, heart conditions, diabetes and kidney disease. The majority of my command, to include myself, does not fall within the scope of those individuals most likely to die from COVID-19 which further highlights the low risk to health and safety, non-battle injury, and/or military readiness if one does not receive a COVID-19 vaccine.

16. Seventeen (17) Sailors in my command submitted religious accommodation requests, including myself. Sixteen (16) have been disapproved; of those, six (6) have decided to submit appeals to the Chief of Naval Operations (CNO) for final adjudication.

17. The denial of religious accommodation letter I received is identical to the denial letters received by all sixteen Sailors in my command that submitted similar requests.

18. Each of us submitted distinct, personal accounts of our religious practices and the method by which receipt of the COVID-19 vaccine would violate those tenets. The form-like denial letter by the Chief of Naval Personnel demonstrates a blanket denial of religious accommodations regardless of factors articulated in our initial requests. Blanket denial of religious accommodations violates military service member



religious liberties and the right to case-by-case consideration and review as specified in DOD Instruction 1300.17.

19. Additionally, not all of the information considered on an individual's religious accommodation adjudication has been included when returned to the command. Each of the disapprovals has contained a reference to a letter from BUMED on each individual whose case was considered. This information should be provided and returned with the disapproval as part of the Privacy Act, so the member can use it as part of the basis for appeal should he or she choose to do so.

20. Unit cohesion and good order and discipline are not affected by one's vaccination status at my command. The medical status of individuals is a private matter that is not disclosed to the command at large. All military members may wear a mask for personal protection even if fully vaccinated in light of personal health protection.

21. It is well-established that even individuals who have been fully vaccinated against COVID-19 may still contract and spread the virus. Individuals who chose to receive a COVID-19 vaccination did so to protect themselves and have put their confidence in the efficacy and effectiveness of the vaccine to protect them from contracting the virus or reducing the effects of the virus if contracted. The vaccination status of co-workers is not an issue within our command.

22. Despite the fact that I (as the Commanding Officer of my unit) positively endorsed 16 of the 17 religious accommodation requests at my command, all were disapproved by Navy. Even though I specifically stated that I could accommodate the

requests of these sixteen (16) Sailors, my endorsement was deemed insufficient by the Navy in its rejections.

23. The Navy denied my appeal from the original denial of my religious accommodation on 28 January 2022, and ordered me to begin a vaccination series within five (5) calendar days (by 2 February 2022), or else report to a Navy immunization clinic for vaccination on 3 February 2022. A true and correct copy of the final denial and order are attached hereto as Exhibit A-1.

24. If I do not present for vaccination on 3 February 2022, I will be in violation of the order, because my faith prohibits me from getting the COVID-19 shot.

25. I have been ordered to meet with my Squadron commander the evening of 3 February 2022, and fully expect to be relieved as commander of my ship, due to a “loss of confidence” in my ability to lead, simply because I have remained true to my faith.

I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Executed this February 1, 2022.

/s/ Navy Commander Surface Warfare Officer  
Navy Commander Surface Warfare Officer  
(Original Signature retained by Counsel)

**"Commander Surface Warfare Officer, United States Navy"**

**DEPARTMENT OF THE NAVY**  
 CHIEF OF NAVAL OPERATIONS  
 2000 NAVY PENTAGON  
 WASHINGTON DC 20350-2000

1730  
 N00  
 23 Jan 22

From: Chief of Naval Operations  
 To: CDR [REDACTED]  
 Via: Commander, Destroyer Squadron [REDACTED]

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION  
 REQUIREMENT

Ref: (a) DCNO (N1) ltr 1730 Ser N1/114357 of 22 Oct 21  
 (b) DoD Instruction 1300.17 of 1 Sep 2020  
 (c) SECNAVINST 1730.8B  
 (d) ASN (M&RA) memo of 6 Jun 13  
 (e) BUPERSINST 1730.11A  
 (f) CHBUMED 6320 Ser M44/21UM40540 of 13 Oct 21  
 (g) NAVADMIN 190/21

1. Your appeal of reference (a) is disapproved. I am disapproving your appeal due to the Navy's compelling governmental interest in preventing spread of diseases to support mission accomplishment, including military readiness, unit cohesion, good order and discipline, and health and safety, at the individual, unit, and organizational levels. A waiver of immunizations would have a predictable and detrimental effect on the readiness of you and the Sailors who serve alongside you. Granting your request will have a direct and foreseeable negative impact on the compelling governmental interest in military readiness and health of the force. I further find that there are no less restrictive means to achieve the Navy's compelling governmental interest.

2. References (b) through (e) designate me as the final appeal authority for requests for religious accommodation.

3. I considered your original request, your appeal, and the endorsements on your correspondence. In reviewing your appeal, I evaluated the request under the assumption that your religious beliefs are sincere and would be substantially burdened. Your status as a Surface Warfare Officer commanding an operational warship was taken into account in making my determination. As explained in reference (f), while no vaccine is 100 percent effective, vaccines with lower effectiveness still reduce disease incidence in the population, reduce an individual's risk of contracting the disease, and generally reduce the severity of disease for those who do contract the illness. In addition, the current coronavirus disease 2019 (COVID-19) pandemic further highlights the importance of vaccination in both individual and unit force health protection.

4. Vaccination of Navy personnel can impact both individual and unit mission accomplishment. It reduces the risk to the individual for disease-related performance impairment, and it reduces the risk to the unit for disease outbreaks of contagious diseases such as COVID-19. While non-

**Final Denial of Religious Accommodation Request**  
**"Commander Surface Warfare Officer, United States Navy"**

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION  
REQUIREMENT

pharmacologic measures such as personal hygiene, mask wearing, and social distancing can also reduce the risk of disease outbreaks, they too are not 100 percent effective and must be implemented in conjunction with immunization to reduce the risk of mission failure. As explained in reference (f), these measures are not as effective as vaccination in maintaining military readiness and the health of the force.

5. You must now become fully vaccinated against COVID-19 in accordance with reference (g). You are free to choose which authorized COVID-19 vaccine to take, but you must receive a vaccine within five calendar days upon receipt of this letter. If you choose a COVID-19 vaccine that requires two doses, you must complete the series as prescribed.

6. The Navy welcomes people of all faiths and no faith to join our ranks in patriotic service. Our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.

  
M. M. GILDAY

Copy to:  
ASN (M&RA)  
OPNAV (N131)  
BUMED



**Final Denial of Religious Accommodation Request**  
**"Commander Surface Warfare Officer, United States Navy"**

|  |                         |   |  |
|--|-------------------------|---|--|
| ADMINISTRATIVE REMARKS   |                         |   |  |
| NAVPERS 1070/613 (REV. 08-2012)  |                         | PREVIOUS EDITIONS ARE OBSOLETE  | SUPPORTING DIRECTIVE MILPERSMAN 1070-320 |
| SHIP OR STATION:<br>[REDACTED]   |                         |   |  |
| SUBJECT:<br>USFPC COVID-19 Vaccine Lawful General Order  |                         | <input type="checkbox"/> PERMANENT <input checked="" type="checkbox"/> TEMPORARY<br>AUTHORITY (IF PERMANENT): |  |
| <p>1. On 24 August 2021, the Secretary of Defense directed that all members of the U.S. Armed Forces under DoD authority be vaccinated against COVID-19. ALNAV 062/21 and NAVADMIN 190/21 implemented SECDEF's mandate for the Department of the Navy (DON) and the Navy, respectively, and directed that active duty Navy service members become fully vaccinated by 28 November 2021. Navy 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 COVID-19 vaccine.</p> <p>2. In addition to the order to achieve full vaccination against COVID-19 by 28 November 2021, Commander, U.S. Fleet Forces Command (USFPC) issued a lawful general order that all unvaccinated personnel assigned to USFPC and subordinate commands complete their initial vaccine dose by 30 September 2021, absent an approved or pending administrative or medical exemption.</p> <p>3. At the time of its implementation, you were outside the scope of USFPC lawful general order and were required to obtain the COVID-19 vaccination by the dates prescribed above because you submitted a Religious Accommodation (RA) Request and a subsequent appeal to the denial of your RA request. You are now in receipt of the Chief of Naval Operations' denial of your RA appeal. You do not have any additional right of appeal for a RA exempting you from requirement to receive the COVID-19 vaccine.</p> <p>4. Within five (5) calendar days, you are hereby directed to commence COVID-19 vaccination series in accordance with NAVADMIN 190/21 and the USFPC order. <i>ALL INFO FROM MY ORIGINAL REQUEST WAS NOT PROVIDED WHEN I SUBMITTED MY APPEAL. IT WAS PROVIDED 24 JANUARY 2022 TO SUPPORT THAT REQUEST.</i></p> <p>5. Failure to take the directed corrective action will constitute a further failure to obey a lawful order and is punishable under the Uniform Code of Military Justice and/or may result in administrative action.</p> <p>6. If you have not started a COVID-19 vaccination series prior to 3 February 2022, your appointed place of duty at 1000 on 3 February 2022 will be the Naval Medical Center Portsmouth Immunizations clinic.</p> <p>7. Upon completion of your appointment, report to the Destroyer Squadron TWO SIX office in LF-18 on Naval Station Norfolk with your COVID-19 Vaccination Record Card.</p> <p>8. You must initial the following, as applicable.</p> <p><input checked="" type="checkbox"/> I acknowledge the above counseling/warning and understand its contents.</p> <p><input checked="" type="checkbox"/> I acknowledge that I may submit a statement in response to this counseling/warning (initial one below).</p> <p><input checked="" type="checkbox"/> I intend to submit a statement (to be submitted separately and not on this issuance)</p> <p><input type="checkbox"/> I do not intend to submit a statement.</p> <p>Member's Signature/Date: [REDACTED] <i>28 JAN 2022</i></p> <p>Superior Officer's Signature/Date: <i>[Signature]</i> <i>28 JAN 22</i></p> |                         |   |  |
| ENTERED AND VERIFIED IN ELECTRONIC SERVICE RECORD:   |                         |   |  |
| VERIFYING OFFICIAL RANK OR GRADE/TITLE:  | DATE:                   | SIGNATURE OF VERIFYING OFFICIAL:  |  |
|  |                         |   |  |
| NAME (LAST, FIRST, MIDDLE):  | SOCIAL SECURITY NUMBER: | BRANCH AND CLASS:   |  |
| [REDACTED]   | N/A                     | USN   |  |

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 PRIVACY SENSITIVE

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

|   |   |                          |
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| NAVY SEAL 1, <i>et al.</i> , for themselves | ) |                          |
| and all others similarly situated,          | ) |                          |
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| v.  | ) | No. 8:21-cv-2429-SDM-TGW |
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| capacity as President of the United         | ) |                          |
| States, <i>et al.</i> ,                     | ) |                          |
|   | ) |                          |
| Defendants.                                 | ) |                          |

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**DECLARATION OF  
MARINE LIEUTENANT COLONEL 2**

I, Marine Lieutenant Colonel 2, do hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this Declaration, and if called upon to testify to them, I would and could do so competently.
2. I am a logistics officer in the United States Marine Corps currently serving at Marine Forces Special Operations Command ("MARSOC") at Camp Lejeune, NC. I was selected for battalion command and slated to accept command in Summer/Fall 2022 for a Combat Logistics Battalion.
3. I enlisted in the Marine Corps in June of 1997 and served as an Administrative Clerk after completing the Unit Diary Clerks Course in the top ten percent of the class. I served in the reserves and volunteered for active duty following the attacks on September 11th.

**EXHIBIT B**

4. In 2003, I wanted to be a role model for other women and completed Officer Candidate School where I received my commission as a Second Lieutenant in the Marine Corps.

5. As a Company Grade Officer, I served in several leadership roles including duties as a Platoon Commander in garrison and during Operation Iraqi Freedom. I served as a Series Commander at Marine Corps Recruit Training, Parris Island, and in staff jobs at several O5 level commands. I also deployed as a staff officer in support of Operation Enduring Freedom (Afghanistan).

6. As a Field Grade Officer, I was selected and served as a Department of Defense Fellow and helped conduct research to integrate women into ground combat arms jobs. Later, I was selected for Command and Staff College where I earned my master's degree through the Advanced Studies Program. As a field grade officer, I held billets as a Company Commander, Battalion Executive Officer, and Operations Officer. As a black female, I also served as my unit's Diversity and Inclusion Officer.

7. Since recruit training, I have now served honorably for 24 years, and I will continue to do so God willing. Throughout my career, I deployed to Iraq, Afghanistan, and participated in numerous humanitarian assistance/disaster relief efforts in Asia.

8. I submitted a Religious Accommodation (RA) request in response to the COVID shot mandate.

9. After I submitted my RA, my Permanent Change of Station (PCS) orders to NAVCENT, Bahrain were first placed on hold and then ultimately cancelled,

although I was administratively and medically cleared to execute my orders. There is significant preparation for an overseas move that includes packing, preparing important documents, and coordination of accommodations upon arrival. Accordingly, each month since September 2021, I have had to go through this process because the Marine Corps has changed my PCS orders at least three times. Furthermore, my replacement has already arrived, leaving me with no assignment and constant tasking with minor jobs because I am considered an overstaff.

10. I received back an initial denial from the Deputy Commandant, Manpower & Reserve Affairs (DC, M&RA) on October 20, 2021 (dated October 13, 2021). The denial contained many inaccurate statements which I thoroughly addressed in my appeal.

11. I timely appealed the initial denial on November 3, 2021.

12. I received a final denial of my appeal dated January 26, 2022, with orders to get the first COVID shot within five business days. The fifth day is February 2, 2022. True and correct copies of the appeal denial and vaccination order, the first denial, and my appeal submission are attached hereto as Exhibit B-1.

13. If I do not get the COVID shot by February 2, 2022, the process will immediately begin to place me on the Officer Disciplinary Notebook (ODN). Placement on the ODN makes me ineligible for command, ineligible for Permanent Change of Station orders, ineligible for promotion boards, ineligible for Professional Military Education boards, ineligible for career level schools, ineligible for



deployments, and ineligible for all other normal career progressions, including retirement.

14. In addition, being placed on the ODN will initiate the Board of Inquiry Process, where I will be required to go before an administrative hearing to determine whether I should be stripped of my commission and removed from the military for “misconduct.” For me and all others unable to get the COVID shot because of our religious beliefs, this allegation of “misconduct” **will be** “substantiated” absent injunctive relief, because they have given us a “lawful order,” and denied our religious accommodation request.

15. Every COVID refusal within my personal knowledge has been recommended for separation. At the time of separation, the BOI will determine at what grade I will be retired. Typically for “misconduct,” the officer is retired at the grade last “honorably” served, meaning I face reduction to “Major” for retirement purposes.

16. An officer will not simply be removed from the ODN, absent the allegation of misconduct being formally found “unsubstantiated,” and the BOI and ultimate separation process will not stop without injunctive relief.

17. Even though I have been previously selected for a command position, that prestigious selection will be stripped from me beginning February 2, absent injunctive relief. My career is almost over now, because of the stigma of this entire process; but it will certainly be over when I am placed on the ODN.

18. I have had an exemplary career. However, like many others, my faith journey has several blemishes that I do not typically discuss unless I am moved by the Holy Spirit to share personal aspects of my life story to help someone in need. One of the concerns that contributes to my decision not to receive the COVID 19 shot is because of my strong opposition to abortion and how God forgave and healed me from my own abortion. Specifically, in 1995, I became pregnant after being raped. The anger and humiliation of the sexual assault led me to have an abortion which made me even more ashamed. In fact, after my abortion, I felt like a murderer, and punished myself because I felt unworthy. This behavior only stopped after my husband caught me punishing myself, and helped me realize that God had truly forgiven me for the abortion. The COVID shot mandate, given the use of aborted fetal cell lines in testing and development, places me in the position of either reliving my rape and subsequent abortion, by being forcibly injected with a product tested on or made with aborted fetal cells, or being dismissed from the service I love.

19. My vaccination status did not prevent me from continuing to execute the mission of the Marine Corps. During the pandemic, I completed eight temporary duty assignments and traveled across the country for training and other tasks as demonstrated in the Defense Travel System where all travel requests are authorized and subsequently paid via a voucher process.

20. Although all emergency use authorized (EUA) vaccines were available beginning December 2020, the Department of Defense had yet to modify foreign travel restricting movement for unvaccinated personnel as of December 2021.

21. The COVID-19 safety protocols that kept Marines safe for 19 months are less restrictive and more than sufficient to maintain mission readiness.

22. As a Marine, I think of our hymn and the words “to keep our Honor Clean,” and I am reminded how much I love the Marine Corps. I have well and faithfully served this great nation since 1998 and wish to continue to do so.

23. Although I can retire, having recently accepted battalion command I fully intended to serve this nation for many years to come and continue to inspire rising minority leaders.

24. While I am proud to be a U.S. Marine and to defend our service members and our Constitution, I cannot accept anything into my body that is contrary to the Word of God. I pray God’s will regarding our military concerning the COVID-19 shot, many similarly situated service members, and me and my family. Despite the pending administrative and punitive action that may very well end my career, my house and I shall serve the Lord.

I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Executed this February 1, 2022.

/s/ Marine Lieutenant Colonel 2  
Marine Lieutenant Colonel 2  
(Original Signature retained by Counsel)



UNITED STATES MARINE CORPS  
MARINE RAIDER SUPPORT GROUP  
MARINE FORCES SPECIAL OPERATIONS COMMAND  
PSC BOX 20117  
CAMP LEJEUNE NC 28542-0117

1000  
CO  
26 Jan 22

From: Commanding Officer

To: Lieutenant Colonel [REDACTED]

Subj: ORDER TO RECEIVE COVID-19 VACCINATION

Ref (a) SECDEF Memo of 24 Aug 21  
(b) ALNAV 062/21  
(c) MARADMIN 462/21  
(d) MARADMIN 533/21  
(e) MARADMIN 612/21

1. Per the references, all active-duty Marines and Sailors are directed to be fully vaccinated against COVID-19 by 28 November 2021. On 25 January 2022, your religious exemption appeal was formally denied by Assistant Commandant of the Marine Corps. Accordingly, you have (5) business days from the date of this letter to receive your first dose of an authorized DoD COVID-19 vaccine.

2. Acknowledge your receipt of this order and understanding of the corresponding due dates by your endorsement hereon.

  
D. M. O'CONNOR

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RECEIVING ENDORSEMENT

From: Lieutenant Colonel [REDACTED]

To: Commanding Officer

1. I have received and understand this order, to receive an FDA approved vaccine according to SECDEF guidance.  
[REDACTED]



Lieutenant Colonel 2 United States Marine Corps

UNITED STATES MARINE CORPS  
MARINE FORCES SPECIAL OPERATIONS COMMAND  
PSC BOX 20116  
CAMP LEJEUNE NC 28542 0116

IN REPLY REFER TO:  
1000

From: [REDACTED]  
To: Commandant of the Marine Corps  
Subj: RELIGIOUS EXEMPTION DENIAL APPEAL

Ref: (a) Holy Bible  
(b) Constitution of the United States of America  
(c) Religious Freedom Restoration Act  
(d) DODI 1300.17  
(e) DODI 6205.02  
(f) BUMEDINST 6230.15B  
(g) MCO 1730.9  
(h) MARADMIN 462/21  
(i) MARADMIN 533/21  
(j) MARADMIN 612/21  
(k) ALMAR 027/20  
(l) Director, Health Services letter: Marine Corps COVID-19  
Vaccination - Amplifying Guidance Pertaining to Exemption  
Documentation and Approval  
(m) FDA COVID 19 Factsheet

Encl: (1) DC, M&RA Determination Letter w/enclosures  
(2) Senator(s) Michael Lee and Ron Johnson letter dtd 28 June 2021  
(3) Exemptions Email dtd 2 November 2021  
(4) 20200302 Fort Walton Beach, FL Authorization for Temporary  
Additional Duty  
(5) 20200726 Quantico, VA Authorization for Temporary Additional Duty  
(6) 20200926 Twentynine Palms, MCAGCC, CA Authorization for Temporary  
Additional Duty  
(7) 20210110 Twentynine Palms, MCAGCC, CA Authorization for Temporary  
Additional Duty  
(8) 20210221 Ft Bragg, NC Authorization for Temporary Additional Duty  
(9) 20210328 Walter Reed National Military Medical Center, MD  
Authorization for Temporary Additional Duty  
(10) 20210523 Washington, DC Authorization for Temporary Additional  
Duty  
(11) 20210808 Quantico, VA Authorization for Temporary Additional Duty  
(12) HQMC CAT Operations Officer email w/attachment, subject: USMC  
Daily COVID-19 Placemat #113 2020-05-28 dtd 1 October 2020  
(13) MC.CAT.2.FCT email w/attachment, subject: USMC COVID-19 Placemat  
- 17 July  
(14) Marine Corps COVID-19 Testing Prior to International Air Travel  
Fact Sheet  
(15) Excerpt from the CMC Safety Division Bi-Weekly Update dtd 27  
October 2021  
(16) Vaccine Recommendation by AOR from Health.mil dtd 15 October 2021  
(17) January 2021 to June 2021 USMC PFT Completion  
(18) Command Profile Unit Analytics Data

1. According to the U.S. Constitution that all officers swore an oath to support and defend, I respectfully requested a religious accommodation (RA)



Subj: RELIGIOUS EXEMPTION DENIAL APPEAL

o/a 7 September 2021 regarding the unnecessary (and religiously unclean according to my personal faith) SARS-CoV-2 (also known as COVID-19) "vaccines" that contain messenger Ribonucleic acid (mRNA), a molecule like DNA, or any substance containing or connected with the aborted fetal cell lines. In my RA package, I asserted my Constitutionally protected right to religious practices based on the sanctity of Jesus Christ in my life, God's creation of natural immunity, and not being forced to inject anything into my body that has any association with the murder of innocent children.

2. I received notification that the Deputy Commandant, Manpower and Reserve Affairs (DC, M&RA) denied my request for RA from the COVID-19 and flu vaccines due to military readiness and health and safety concerns for the total force at 1601 on 20 October 2021 (as I prepared to secure for the day). On 20 October 2021, I also received a copy of my command endorsements. Both the Commander, Marine Forces Special Operations Command (MARSOC) and Commanding Officer, Marine Raider Support Group (MRSOG) mischaracterized the nature of my request by suggesting that my sincerely held religious belief did not preclude me from receiving other required vaccines and that my religious beliefs did not meet a specific threshold. I believe both commanders' assertions may have negatively and improperly influenced the DC, M&RA decision.

3. While I understand the purpose and necessity of immunizations in general, in this case, neither the commands' endorsement nor DC, M&RA's response proves the government's compelling interest as required per references (d) and (g). Although the burden of proof for denying my request for RA is placed upon the DoD Component, not the individual, I offer the following for further consideration:

a. The MRSOG Commanding Officer does not have authority to determine if my spiritual belief is sincerely held or if it meets a threshold. His comment suggests that he or the U.S government has absolute preeminence, which belongs to God. Contrariwise, the MARSOC Command Chaplain stated, "I believe that this is a sincerely held religious belief" based on my request and frequent personal interaction with him.

b. Similarly, the MARSOC Commander's remarks regarding my supposedly taking "any other vaccines" do not take into consideration that I have not taken any unnecessary vaccines if I demonstrated previous evidence of infection via serological testing pursuant to reference (f) that I clearly provided as evidence in my package at enclosure (1). Additionally, as I mature as a follower of Jesus Christ, I must fully obey the Holy Spirit or suffer the consequences of sin. James 4:17 states "therefore to him that knoweth to do good, and doeth it not, to him it is sin." Based on my individual expression of faith that is given to me by my Lord and Savior Jesus Christ, all COVID-19 vaccine options are immoral and unclean and do not conform to the Word of God.

c. DC, M&RA also did not demonstrate the government's compelling interest asserting that his decision was based on medical risks to other persons; however, both the Food and Drug Administration (FDA) and Centers for Disease Control (CDC) publicly acknowledged via factsheets and other media outlets that the COVID-19 vaccination does not prevent an individual from contracting or transmitting COVID. Therefore, service members are not individually protected from the masses if vaccinated. Protection provided by the vaccine is limited to the individual, where in my case, I have natural

Subj: RELIGIOUS EXEMPTION DENIAL APPEAL

immunity and accepting the COVID-19 vaccination will require me to commit sin.

d. There is no compelling government interest.

(1) Military readiness - According to enclosures (12) and (13), since the onset of COVID-19, the Marine Corps suffered a high rate of infection but zero (0) active-duty deaths from October 2020 to July 2021. This is no different than when a person catches the common cold or any other communicable disease. Enclosure (18) shows that there have been minimal changes to force disposition since the beginning of COVID-19, demonstrating little to no risk to readiness. For example, on 31 December 2019, there were 83,523 deployable Marines; on 31 December 2020, there were 83,523 deployable Marines; and as of 3 November 2021, there were 83,487 deployable Marines, a difference of thirty six (36) deployable Marines. This demonstrates that there has been no appreciable effect on force safety, deployability, or mission accomplishment, and that there is no compelling government interest in denying my RA package.

(2) Individual mission accomplishment - During the height of the COVID-19 pandemic the Marine Corps only loosely restricted required, close proximity, training like the physical fitness test (PFT), where members must be in close contact to complete the crunches and the combat fitness test (CFT) where members carry another individual among several other close proximity events. Many service members completed both events during the pandemic just prior to the Marine Corps providing guidance to cancel; enclosure (17) pertains to the PFT conducted between January 2021 to July 2021, during which period the Marine Corps attained approximately a 92 percent completion rate. The records may also show similar PFT/CFT completion rates the previous year. A 92 percent PFT/CFT completion rate prior to the advent of mandatory vaccines means that 92 percent of the force were exposed to at least one other Marine in close proximity, with no correlated increase in infection rate or fatalities. Again, fatalities amongst active-duty Marines remained at zero at least through July 2021.

(3) Individual mission accomplishment - My vaccination status did not prevent me from continuing to execute the mission. During the pandemic, I completed eight temporary duty assignments and traveled across the country for training and other tasks as demonstrated in enclosures (4-11).

(4) Unit and organizational mission accomplishment - Although all emergency use authorized (EUA) vaccines were available, according to enclosures (14) and (16) there were (are) no domestic or foreign travel restrictions for unvaccinated personnel. According to the fact sheet listed as Enclosure 14, "travelers arriving without a negative COVID-19 test, vaccination, waiver, or proof of recovery from COVID-19, as required by their destination, will be denied travel at the APOE." Similarly, enclosure 16, "Vaccine Recommendations by AOR," dated 15 October 2021, does not list COVID-19 vaccines as a required or recommended vaccine for entry into any of the Geographic Combatant Commands.

(5) Health - There are other contagious, communicable diseases for which unnecessary prophylactic medical treatments have not been mandated. For example, in the case of a much deadlier disease, several service members have contracted the human immunodeficiency virus (HIV), but the Services did not require all members to abstain from sexual intercourse or to take anti



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HIV medications. In contrast to HIV, COVID-19 has over a 99 percent survival rate, particularly for the active-duty military population.

(6) Health - Nondeployable status - as a female Marine, I can become nondeployable due to pregnancy. Nondeployable status due to pregnancy continues a minimum of nine (9) months through post-partum. I am not required to use birth control, obtain a Depo-Provera injection, or insert an intrauterine device (IUD); nor am I required to obtain an abortion under threat of action under the Uniform Code of Military Justice (UCMJ) because of nondeployable pregnancy status. There is no question that nondeployable pregnancy status has a significant impact on unit cohesion and readiness status. This is because pregnancy, or the right to choose to bear or beget a child, is a fundamental right. Yet, I am being ordered to receive an injection of the COVID-19 vaccination, involving mRNA technology and aborted fetal cells, in violation of my sincerely-held religious beliefs under threat of UCMJ action. The free exercise of religion is also a fundamental and Constitutionally protected right. I have recovered from COVID-19 and have serological evidence of natural immunity. If I test positive for COVID in the future, I am deployable after ten (10) days restriction of movement (ROM) and a negative COVID-19 test before travel. If no exposure to COVID-19, then I can travel immediately after a valid negative COVID-19 test. Ten days nondeployable status (as opposed to ten months for pregnancy) has a negligible impact on deployability and readiness. Further, given their use of aborted fetal cell lines in testing, development, or formulation,

The idea of being forced to give up my job as an officer in the Service that I love or accept a COVID-19 vaccine that violates my conscience, is an intolerable injustice.

(7) Safety - More Marines died last year from motor vehicle mishaps than from COVID-19. Motorcycle accidents are a particularly deadly type of motor vehicle accident claiming Marine lives, far more than COVID-19. Enclosure (15) shows 7 motorcycle deaths during fiscal year (FY) 2019, 8 in FY 2020, and 9 in 2021, to date. As a motorcycle rider, I follow all service policies pertaining to safe operation of a motorcycle. The same way that I exercise caution while on the road, I follow all Marine Corps COVID-19 protocols, to include hand-washing, social distancing, face coverings, and self-assessment for symptoms to protect myself and others from COVID-19. Yet the Marine Corps views zero (0) active duty COVID-19 deaths as "far deadlier" than a documented 17 motorcycle fatalities that occurred from FY 2020 to FY 2021, during the COVID-19 pandemic. Although fatal, deaths caused by operating a motorcycle did not cause the Marine Corps to curtail the rights of service members to operate motorcycles, drive cars, or engage in other off duty activities.

4. As previously stated, I demonstrated my God-given, natural immunity based on serological tests performed by two separate laboratories as shown in enclosure (1). I have evidence of antibodies and t-cells. Per reference (f), paragraph 2-6 expressly proclaims "evidence of immunity based on serologic tests, documented infection, or similar circumstances" is grounds for permanent medical exemption consistent with Appendix C of the same. However, reference (1) does not take natural immunity into consideration, and



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most medical staff are purposely ignoring natural immunity and/or exemptions as shown in enclosure (3).

5. Moreover, the COVID-19 vaccination is not safe or effective. In fact, members of Congress have expressed concerns regarding COVID-19 related injuries. In a letter dated 28 June 2021, Senators Michael Lee and Ron Johnson highlighted more than 1,100 adverse events that resulted in nervous system disorders. There are also other well-known sources that show significant increases in thrombosis and myocarditis among vaccinated populations. The potential harm to service members from the COVID-19 vaccine is just as great, if not greater than from COVID-19 itself. Not only with regard to medical fitness or readiness, but also with regard to spiritual fitness for those whose conscience would be violated by accepting the COVID-19 vaccine.

6. In ALMAR 027/20, you stated, "[S]piritual fitness is...critical and specifically addresses my priority.... All Marines and Sailors must tend to their individual character in order to keep the ethos and reputation of our Marine Corps intact." Denying a Marine the full expression of their sincerely held belief (whether religious or a matter of conscience) that does not harm or impose a significant burden on others, or the Service will have severe consequences in talent management, diversity and inclusion, equal opportunity, and more importantly with suicides (DoD has already exceeded previous years).

7. Service members' inalienable rights, especially the free exercise of individual conscience before God, must be preserved and defended. A mild potential for improved protection against a virus which only posed a negligible risk of death before COVID-19 vaccines, presumably further mitigated by over 75% of members having received COVID-19 vaccines, does not constitute a compelling interest sufficient to ignore existing medical exemptions policy, nor to override individual religious rights and liberty protected by our Constitution. The COVID-19 safety protocols that kept Marines safe for the past 19 months are less restrictive and as set forth above, more than sufficient to meet the government's compelling interest, if any under the totality of the circumstances.

8. As a Marine, I think of our hymn and the words "to keep our Honor Clean" and I am reminded how much I love the Marine Corps. I have well and faithfully served this great nation since 1998 and I will continue to do so - I am proud to be a U.S. Marine. I hope that the words in your ALMAR were sincere and that you will make spiritual fitness a priority by your actions in this matter.

9. I can be reached at work: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



DEPARTMENT OF THE NAVY  
HEADQUARTERS, UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

1730  
MRA

From: Deputy Commandant for Manpower and Reserve Affairs  
To: [REDACTED]

Subject: REQUEST FOR RELIGIOUS EXEMPTION

1. I have carefully considered your request for an immunization waiver. Your request is denied.
2. In making this determination, I considered your request dated 7 September 2021, the command endorsements and exhibits attached to it, advice from the Director, Health Services, Headquarters, U.S. Marine Corps, and the recommendation of the Religious Accommodation Review Board. Additionally, I considered your right to observe the tenets of your sincerely held religious beliefs, and the government's compelling interests in mission accomplishment, including military readiness and the health and safety of the Total Force. I also considered whether an exception to the vaccination requirement is the least restrictive means of furthering the government's compelling interest. Finally, I consulted with legal counsel.
3. Per DoDI 1300.17, my decision must be consistent with mission accomplishment, including consideration of potential medical risks to other persons comprising the unit or organization. Immunizations are a critical component of individual and unit readiness. This compelling interest is not unique to the COVID-19 vaccination, and cannot be accomplished with the requested exception. I find that there is no less-restrictive way of accommodating your request that ensures military readiness and the preservation of the health of the force.
4. You have the right to appeal this decision to the Commandant of the Marine Corps. Should you decide to appeal this decision, your appeal should be in naval letter format, from you, addressed to the Commandant of the Marine Corps. Forward your appeal to the point of contact below, for delivery to the Commandant.
5. Point of contact on this matter is Mr. Bill McWaters at (703) 784-9386 or [william.mcwaters@usmc.mil](mailto:william.mcwaters@usmc.mil).

  
For

DAVID A. OTTIGNON

Copy to:  
CG, MARSOC  
CO, MRSG

**ENCLOSURE**