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ATTORNEY GENERAL OF TEXAS

**CHRISTOPHER D. HILTON**  
Assistant Attorney General  
General Litigation Division

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February 7, 2022

***Via CM/ECF***

David A. O'Toole  
Clerk of the Court  
William M. Steger Federal Building and United States Courthouse  
211 West Ferguson Street Room 106  
Tyler, Texas 75702

Re: Civil Action No. 6:22-cv-3; *Governor Greg Abbott, in his official capacity as Governor of the State of Texas, et al v. Joseph R. Biden, in his official capacity as President of the United States, et al*; In the United States District Court for the Eastern District of Texas, Tyler Division

Dear Mr. O'Toole:

Please file the attached exhibits and link them to *Governor Abbott's Motion for Preliminary Injunction* [ECF 24]. If you have any questions, I can be reached at [laura.kiick@oag.texas.gov](mailto:laura.kiick@oag.texas.gov) or (512) 463-4109.

Sincerely,

*Laura Kiick*

Legal Assistant to  
CHRISTOPHER D. HILTON  
Deputy Division Chief  
General Litigation Division

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
capacity as Governor of the State of  
Texas,  
*Plaintiff,*

and

GOVERNOR MIKE DUNLEAVY, in his official  
capacity as Governor of the State of  
Alaska,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States;  
DEPARTMENT OF DEFENSE; LLOYD AUSTIN,  
in his official capacity as Secretary of the  
Defense; DEPARTMENT OF THE AIR FORCE;  
FRANK KENDALL III, in his official capacity  
as Secretary of the Air Force; DEPARTMENT  
OF THE ARMY; and CHRISTINE WORMUTH,  
in her official capacity as Secretary of the  
Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

# EXHIBIT 1

Memorandum from Secretary Austin Dated August 24, 2021



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

AUG 24 2021

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

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

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

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

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

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

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

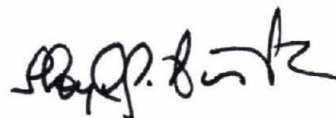
Mandatory vaccination requirements will be implemented consistent with DoD Instruction 6205.02, "DoD Immunization Program," July 23, 2019. The Military Departments should use existing policies and procedures to manage mandatory vaccination of Service members to the extent practicable. Mandatory vaccination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



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

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

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

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'.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
capacity as Governor of the State of  
Texas,  
*Plaintiff,*

and

GOVERNOR MIKE DUNLEAVY, in his official  
capacity as Governor of the State of  
Alaska,

v.

JOSEPH R. BIDEN, in his official capacity as  
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DEPARTMENT OF DEFENSE; LLOYD AUSTIN,  
in his official capacity as Secretary of the  
Defense; DEPARTMENT OF THE AIR FORCE;  
FRANK KENDALL III, in his official capacity  
as Secretary of the Air Force; DEPARTMENT  
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in her official capacity as Secretary of the  
Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 2

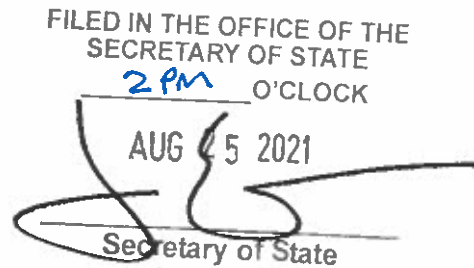
Executive Order No. GA-39



GOVERNOR GREG ABBOTT

August 25, 2021

Mr. Joe A. Esparza  
Deputy Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701



Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-39 relating to prohibiting vaccine mandates and vaccine passports subject to legislative action.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

  
Gregory S. Davidson  
Executive Clerk to the Governor

GSD/gsd

Attachment



# Executive Order

BY THE  
GOVERNOR OF THE STATE OF TEXAS

Executive Department  
Austin, Texas  
August 25, 2021

## EXECUTIVE ORDER GA 39

*Relating to prohibiting vaccine mandates and vaccine passports  
subject to legislative action.*

---

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, I have issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health; and

WHEREAS, COVID-19 vaccines are strongly encouraged for those eligible to receive one, but have always been voluntary for Texans; and

WHEREAS, I issued Executive Orders GA-35 and GA-38, addressing COVID-19 vaccines administered under an “emergency use authorization” by prohibiting vaccine mandates from governmental entities and by prohibiting “vaccine passports” from governmental entities and certain others; and

WHEREAS, subsequently, on August 23, 2021, while the legislature was already convened in a special session, the U.S. Food and Drug Administration (FDA) approved one of the COVID-19 vaccines for certain age groups, such that this vaccine is no longer administered under an emergency use authorization for those age groups; and

WHEREAS, while this COVID-19 vaccine is now FDA-approved for certain age groups, others are not yet approved and still are administered under an emergency use authorization; and

WHEREAS, through Chapter 161 of the Texas Health and Safety Code, as well as other laws including Chapters 38 and 51 of the Texas Education Code, the legislature has established its primary role over immunizations, and all immunization laws and regulations in Texas stem from the laws established by the legislature; and

WHEREAS, in other contexts where the legislature has imposed immunization requirements, it has also taken care to provide exemptions that allow people to opt out of being forced to take a vaccine; and

WHEREAS, given the legislature’s primacy and the need to avoid a patchwork of regulations with respect to vaccinations, it is appropriate to maintain the status quo of

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
2pm O'CLOCK

AUG 25 2021

**Governor Greg Abbott**  
August 25, 2021

**Executive Order GA-39**  
Page 2

prohibiting vaccine mandates through executive order while allowing the legislature to consider this issue while in session; and

WHEREAS, in this instance, given the legislature's prior actions, maintaining the status quo of prohibiting vaccine mandates and ensuring uniformity pending the legislature's consideration means extending the voluntariness of COVID-19 vaccinations to all COVID-19 vaccinations, regardless of regulatory status; and

WHEREAS, I am also adding this issue to the agenda for the Second Called Session of the legislature that is currently convened so that the legislature has the opportunity to consider this issue through legislation; and

WHEREAS, I will rescind this executive order upon the effective date of such legislation;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. No governmental entity can compel any individual to receive a COVID-19 vaccine. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine.
2. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
3. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine. No consumer may be denied entry to a facility financed in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine.
4. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
5. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any

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SECRETARY OF STATE  
2PM O'CLOCK

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**Governor Greg Abbott**  
August 25, 2021

**Executive Order GA-39**  
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other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.

This executive order supersedes only paragraph No. 2 of Executive Order GA-38, and does not supersede or otherwise affect the remaining paragraphs of Executive Order GA-38. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 25th  
day of August, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT  
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".  
\_\_\_\_\_  
JOE A. ESPARZA  
Deputy Secretary of State

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
2PM O'CLOCK

AUG 25 2021

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
capacity as Governor of the State of  
Texas,  
*Plaintiff,*

and

GOVERNOR MIKE DUNLEAVY, in his official  
capacity as Governor of the State of  
Alaska,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States;  
DEPARTMENT OF DEFENSE; LLOYD AUSTIN,  
in his official capacity as Secretary of the  
Defense; DEPARTMENT OF THE AIR FORCE;  
FRANK KENDALL III, in his official capacity  
as Secretary of the Air Force; DEPARTMENT  
OF THE ARMY; and CHRISTINE WORMUTH,  
in her official capacity as Secretary of the  
Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 3

Governor Abbott's Letter to Major General Tracy R. Norris Dated October 4, 2021



GOVERNOR GREG ABBOTT

October 4, 2021

Major General Tracy R. Norris  
Adjutant General  
Texas Military Department  
P.O. Box 5218  
Austin, Texas 78703

Dear General Norris:

As you know, I issued Executive Order GA-39, which commands that "[n]o governmental entity can compel any individual to receive a COVID-19 vaccine." That includes the Texas National Guard and Texas State Guard.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott", is written over the typed name and title.

Greg Abbott  
Governor

IN THE UNITED STATES DISTRICT COURT  
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Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 4

Memorandum from Secretary Austin Dated November 30, 2021



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.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
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*Plaintiff,*

and

GOVERNOR MIKE DUNLEAVY, in his official  
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Alaska,

v.

JOSEPH R. BIDEN, in his official capacity as  
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DEPARTMENT OF DEFENSE; LLOYD AUSTIN,  
in his official capacity as Secretary of the  
Defense; DEPARTMENT OF THE AIR FORCE;  
FRANK KENDALL III, in his official capacity  
as Secretary of the Air Force; DEPARTMENT  
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in her official capacity as Secretary of the  
Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 5

Memorandum from Secretary Kendall Dated December 7, 2021





SECRETARY OF THE AIR FORCE  
WASHINGTON

07 DEC 2021

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

SUBJECT: Supplemental Coronavirus Disease 2019 Vaccination Policy

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

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

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

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

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

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

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

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

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

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

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

Frank Kendall  
Secretary of the Air Force

**Attachments**

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

## **Attachment 1**

### **Supplementary Guidance for Members of the Air Force Reserve**

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

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

## **Attachment 2**

### **Supplementary Guidance for Members of the Air National Guard**

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

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



IN THE UNITED STATES DISTRICT COURT  
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GOVERNOR GREG ABBOTT, in his official  
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No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 6

Declaration of Freeman Martin

IN THE UNITED STATES DISTRICT COURT  
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as Governor of the State of  
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*Defendants.*

**DECLARATION OF FREEMAN MARTIN**

My name is Freeman Martin, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

1. I am the Deputy Director/Lt. Colonel of Homeland Security Operations of the Texas Department of Public Safety ("DPS") and have been in my current position since August 1, 2018. In this capacity, I manage day-to-day operations of the agency, assist in identifying and managing strategic risks, provide counsel and advice to the executive director regarding agency operations, provide legislative testimony and ensure the agency adheres to agency goals, objectives, and strategies.

2. Among other functions, DPS works collaboratively with other agencies to enhance security of the Texas-Mexico border and deter, detect, and interdict border-related crime. DPS works with the Texas Military Department (“TMD”) to accomplish this goal. TMD includes the Texas Army National Guard, Air National Guard, Texas State Guard, and the Domestic Operations Command.

3. Crime along the 1,254-mile-long Texas-Mexico border poses a major threat to the security of Texas and the entire United States. On a daily basis, networks of Mexican cartels, affiliated smuggling and trafficking organizations, and gangs engage in dangerous criminal activity with far-reaching effects. These transnational criminal networks control drug smuggling, human smuggling, and human trafficking routes and operations. The Rio Grande Valley in Texas has become the center of this criminal activity. These criminal networks routinely prey upon illegal migrants, and they move enormous quantities of dangerous drugs, most notably fentanyl, into Texas. From March through December 2021, DPS seized the equivalent of over 200 million lethal doses of fentanyl.

4. To combat the rampant crime along the Texas-Mexico border, DPS initiated Operation Lone Star (“OLS”) at the direction of Governor Abbott in March 2021. OLS is a law enforcement surge operation that includes state and local law enforcement agencies, as well supporting agencies. OLS is also conducted in close coordination with federal partners.

5. TMD has been involved in OLS from the beginning of the operation on March 6, 2021 and has since expanded its support at the direction of the Governor. In OLS, TMD forces operate on State Active Duty Status (under command of the Governor) and work under the operational control of DPS, which is responsible for establishing operational priorities and

assigning key tasks in coordination with TMD leadership. TMD maintains responsibility for administrative and logistical support of deployed forces. Although TMD has also provided extensive support for previous state-level border security operations, OLS is the largest ever in terms of manpower and geographic scope. Prior to the significant expansion of TMD's involvement in OLS from initial levels, DPS and its partner agencies were quickly stretched thin due to the vast size and complexity of the terrain in the Texas-Mexico border region. As a result, distances between security posts and patrolling assets were sometimes too great to ensure detection of cross-border crime, response times to detections of illegal activity were too long in some areas, and major surges of law enforcement personnel and equipment (e.g. in response to the Haitian migrant caravan near Del Rio in September 2021) could only be conducted by significantly reducing capabilities in other areas.

6. TMD's manpower and equipment have provided an essential force multiplier for OLS. TMD currently has approximately 6,500 personnel activated as part of the operation, with a goal of 10,000 based on operational needs. These personnel, organized into operational, engineering, and support task forces. They conduct a variety of tasks, including but not limited to: (1) manning security posts in the Rio Grande Valley and West Texas to assist with deterrence and early detection of criminal activity and enhance law enforcement awareness of potential threats; (2) conducting integrated air operations to detect and support interdiction of criminal activity; (3) conducting integrated operations with DPS to enforce criminal trespassing laws; (4) installing fencing where possible on private property; (5) supporting data analysis to help focus limited operational assets on the highest-threat areas; and (6) providing a capability to rapidly

surge large amounts of manpower and equipment to specific areas when needed—for example, in response to the arrival of migrant caravans at the border.

7. OLS has been and remains an effective response to the clear and present danger of transnational crime in the Texas-Mexico border region, and this effectiveness depends in large part of the contributions of TMD. Any reduction in TMD's available manpower would undermine OLS's goal to protect Texas and the United States from the impacts of this criminal activity, including the tragedies of human trafficking and fentanyl-related deaths. From a law enforcement operational perspective, reducing the number of TMD personnel creates an unnecessary risk of harm and is ill-advised.

8. All the facts and information contained within this declaration are within my personal knowledge and are true and correct.

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

Executed on this 13th day, January 2022, in Austin, Texas.

  
FREEMAN MARTIN

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
capacity as Governor of the State of  
Texas,  
*Plaintiff,*

and

GOVERNOR MIKE DUNLEAVY, in his official  
capacity as Governor of the State of  
Alaska,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States;  
DEPARTMENT OF DEFENSE; LLOYD AUSTIN,  
in his official capacity as Secretary of the  
Defense; DEPARTMENT OF THE AIR FORCE;  
FRANK KENDALL III, in his official capacity  
as Secretary of the Air Force; DEPARTMENT  
OF THE ARMY; and CHRISTINE WORMUTH,  
in her official capacity as Secretary of the  
Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 7

Declaration of the Adjutant General, Major General Tracy Norris



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**GOVERNOR GREG ABBOTT, in his official  
capacity as Governor of the State of Texas,  
*et al.*,  
Plaintiffs,**

**v.**

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

**No. 6:22-cv-3**

**DECLARATION OF THE ADJUTANT GENERAL,  
MAJOR GENERAL TRACY NORRIS**

1. I am Major General Tracy R. Norris, and I currently serve as the 52nd Adjutant General of the Texas National Guard. I have held this position since January 1, 2019. Prior to holding that position, I served as Assistant Adjutant General–Army from January 2016 to December 2019. I have also served as the Chief of Staff of the 36th Infantry Division, Chief of Staff of Division South, United States Forces-Iraq, Commander of the 176th Engineer Brigade, and various other key command and staff assignments to include 5 years at National Guard Bureau (NGB). I have a Bachelor of Science in Anthropology and a Master of Science in Urban and Regional Planning from Florida State University, a Master of Strategic Studies from the United States Army War College, a Master of Business Administration from The University of Texas at Austin, and various other professional certifications. I have extensive experience in Recruiting and Retention, having served as the Texas Army National Guard (TXARNG) Recruiting and Retention Battalion Executive Officer (second in command) and Battalion Commander for over three years during the height of the Iraq Campaign Surge.<sup>1</sup>

2. **Description of the Texas National Guard (TXNG).** The TXNG serves both State and Federal missions. TXNG members are citizen Soldiers and Airmen that live and work in the communities they serve; Texans proudly serving Texans. The TXNG is the United States’ largest state military force with just under 23,000 Soldiers and Airmen. Since 2001, over 35,000 TXNG Soldiers and Airmen have served in overseas contingency operations and, on average, there are approximately 1,000 Soldiers and Airmen deployed overseas at any given time. Attachments 1 and

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<sup>1</sup> The United States Army faced major recruiting problems during the 2005 Surge in Iraq.

2 illustrate the TXNG's capabilities. As such, in this era of strategic competition with the People's Republic of China, and grey zone warfare with Russia, Iran, and North Korea, the TXNG is the United States' best trained, most experienced, and most productive reserve component element. This is best illustrated by the Department of Defense selecting the TXNG to lead three international State Partnership Program (SPP) exchanges with Egypt, the Czech Republic, and Chile. The strategic importance of establishing security in Europe, the Middle East and South America is entrusted to the TXNG because Texas is capable of supporting the Combatant Commands in advancing the United States' national interests and improving security for Allies and partners.

3. TXNG members may serve in three different statuses. Those statuses include federal active duty (also known as Title 10), Title 32 Drill Status Guardsmen (DSG), and State Active Duty (SAD) (also known as State status). TXNG members may only serve in one status at any given time. While in State status, TXNG members are under the command and control of the Governor of Texas, and any military justice actions are under the authority of the Texas Code of Military Justice (TCMJ). While Title 32 status is a federally funded status, TXNG members are under the command and control of the Governor of Texas while in this status, and military justice actions are under the authority of the TCMJ. While operating in a Title 10 federally funded status, TXNG are under the command and control of the President of the United States, and military justice actions are under the authority of the Uniform Code of Military Justice (UCMJ).

4. There are both full-time and part-time Title 32 positions in the TXNG. Active Guard Reserve (AGR) service members are full-time and prepare and maintain their units to accept federal missions under 32 U.S.C. § 502(f). Title 32 Technicians are federally funded full-time employees that, as a condition of employment, must maintain military affiliation with the TXNG. Drill Status Guardsmen (DSG) are the part-time force working one weekend per month and an additional two weeks per year. Both full-time and part-time TXNG are under the command and control of the Governor of Texas.

5. On March 13, 2020, Governor Greg Abbott issued a statewide disaster declaration related to the novel coronavirus (COVID-19) pandemic and, on March 17, 2020, activated the TXNG to assist communities throughout the state. Since that time, thousands of TXNG have served in support of the State's COVID-19 mitigation and response missions. These missions include innovative production of personal protective equipment with industry partners, establishing mobile testing teams (over 580,000 tested in 2020), nursing home disinfection teams, food bank support, and vaccination support sites.

6. In June 2020, the TXNG provided civil disturbance support to the Texas Department of Public Safety (DPS) due to nationwide protests and riots surrounding the death of Mr. George Floyd that occurred in Minneapolis, Minnesota. The TXNG deployed 4,400 members across Texas supporting 86 different locations, securing 5 historical sites, and protecting 42 public

events. Thanks to the efforts of the TX DPS and the TXNG, all protests remained peaceful in Texas.

7. In January 2021, the TXNG, working in support of the Texas Division of Emergency Management, helped stand up the State of Texas Mobile Vaccination Team Program. The TXNG partnered with first responders and medical professionals across the State to support initiatives like “Save Our Seniors” ensuring the State’s most vulnerable were vaccinated first. As part of Joint Task Force-Texas, the TXNG vaccinated or assisted with vaccinating over 2.3 million Texans.

8. On January 6, 2021, TXNG responded to events and sent 120 TXNG members to the Texas State Capitol in support of Texas DPS until the end of May 2021. In addition, the TXNG responded to events at the United States National Capitol where 1,345 TXNG supported the District of Columbia National Guard through the inauguration for approximately 2 weeks.

9. In February 2021, the TXNG responded to Winter Storm Uri deploying 1,546 TXNG members for 96 days manning shelters, assisting Texas DPS with stranded motorists and aiding almost 36,000 Texans in danger. TXNG distributed 119,000 cases of bottled water and approximately 7,000 cases of meals to Texans in need. The TXARNG aviators logged 300 total rotary wing hours (Chinook CH-47 and Blackhawk UH-60). The TXANG pilots logged 99.9 total fixed wing hours (C-17 and C-130).

10. On March 4, 2021, the Governor activated the TXNG to provide additional support to the Texas DPS to stand up Operation Lone Star to assist with border operations and to help deter transnational criminal networks along the Texas-Mexico border. The TXNG has supported Texas DPS and the United States Customs and Border Patrol in various missions spanning 2 decades.

11. During August-September 2021, the TXNG responded to Hurricanes Nicholas and Ida. The TXNG mobilized 170 members to support 31 ground missions that assisted 24,599 families, 6,340 evacuations, distributed 18,287 cases of water, and distributed 12,974 meals ready to eat (MREs).

12. **COVID -19 Mandate.** On August 24, 2021, the Secretary of Defense mandated that all members of the armed forces, to include all state National Guards, immediately obtain COVID-19 vaccinations. On November 30, 2021, the Secretary of Defense issued an additional memorandum prohibiting unvaccinated Guardsmen from participating in a Title 32 paid status. It also directed the service secretaries to issue more specific guidance by December 6, 2021. The deadline for the Texas Air National Guard (TXANG) to achieve vaccination compliance was December 2, 2021. The deadline for the Texas Army National Guard (TXARNG) is July 1, 2022.

13. On October 4, 2021, the Governor notified me that his Executive Order No. GA-39, prohibiting COVID-19 vaccine mandates by governmental entities in Texas, was applicable to the TXNG.

14. For the TXANG, on December 7, 2021, the Secretary of the Air Force withdrew consent from state governors to continue to place AGRs on orders if not fully vaccinated or pending an accommodation/exemption beginning December 31, 2021, in accordance with 32 U.S.C. § 328. Beginning December 31, 2021, DSGs not vaccinated or pending an accommodation/exemption request were prohibited from participating in Title 32 duty. Prohibiting Title 32 duty prevents members from receiving pay, benefits, and retirement points and will ultimately lead to those members' administrative discharge.

15. On December 7, 2021, the Secretary of the Air Force memorandum also directed commanders, including state commanders, to immediately initiate administrative curtailment for AGRs not vaccinated by the December 31, 2021, deadline. Commanders are directed to use Air National Guard Instruction 36-101, *Air National Guard Active Guard Reserve (AGR) Program*, paragraph 8.5, Involuntary Tour Curtailment. Any curtailment under this regulation effectively ends the AGR member's full-time employment reverting them to DSG status, where they are also prohibited from participating in Title 32 duty. Prohibiting Title 32 duty prevents members from receiving pay, benefits, and retirement points and will ultimately lead to those members' administrative discharge.

16. The December 7, 2021, memorandum also directs discharge of DSG who remain unvaccinated and have not filed an accommodation/exemption request. The guidance provided from National Guard Bureau is that discharge is appropriate under Air Force Instruction 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*.

17. For the TXARNG, on September 14, 2021, the Department of the Army ordered all Army members to become vaccinated. Those refusing and without an accommodation/exemption request are subject to removal from key leadership officer/enlisted positions, prohibited from appointment to key leadership positions (if pending appointment), subject to adverse administrative action to include General Officer Letter of Reprimand and administrative discharge. The deadline imposed for 100% completion is June 30, 2022.

18. On November 16, 2021, the Secretary of the Army published a memorandum directing "flagging" actions for all members that remain unvaccinated and not pending a request for accommodation/exemption. Flagging actions are used to suspend favorable personnel actions such as reenlistments, reassignments, promotions, appearances at promotion boards, issuance of awards, attendance at military or civilian schools, application or use of tuition assistance, payment of bonuses, or assumptions of command.

19. On December 14, 2021, the Department of the Army issued a follow-on order directing that no Title 32 pay was authorized for AGRs or DSGs not vaccinated or without an approved accommodation/exemption request beginning July 1, 2022. In addition, the order directs no credits or excused absences are authorized. Prohibiting Title 32 duty prevents members from receiving pay, benefits, and retirement points and will ultimately lead to those members' administrative discharge.

20. On December 16, 2021, the Governor notified the Secretary of Defense of the Governor's lawful order prohibiting COVID-19 vaccine mandates on the TXNG, and that under the Governor's authority as commander in chief, no TXNG commander would punish Guardsmen for choosing not to receive the vaccine. On January 4, 2022, the Governor formalized the order to me that no TXNG commander would punish any Guardsmen for choosing not to receive the vaccine.

21. On January 27, 2022, the Secretary of Defense responded to the Governor, citing Presidential authority, and reaffirmed their position that the TXNG is subject to the Secretaries of the Air Force and Army's mandatory vaccination orders. The Secretary of Defense did not recognize the Governor's authority as commander in chief of the TXNG and provided no additional guidance.

22. **Impact to the Texas National Guard.** The Department of Defense (DOD) is challenged to recruit and retain members who want to serve in the military. Less than 1% of the nation's population serves in the military. In 2019, during testimony at the House Armed Services Committee, the Honorable James N. Stewart, who was performing the duties of the Under Secretary of Defense for Personnel and Readiness, testified that "just 29% of America's youth are eligible to serve without a waiver for things like drug use or minor criminal infractions...and, just 2% are eligible and have a propensity to serve."<sup>2</sup>

23. Other reasons for ineligibility are obesity, mental health issues, or lack of a high school diploma. The DOD estimates that 2% out of the 20.6 million 17- to 21-year-olds eligible to serve in the United States military have the desired combination of strong academic credentials, adequate physical fitness, and an interest in serving.<sup>3</sup> All service branches compete for this small population of potential recruits. I predict that the current COVID-19 vaccination mandate will further reduce that population. This limited ability to recruit will pose a higher risk to State and national security.

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<sup>2</sup> U.S. House Armed Services Committee, Subcommittee on Military Personnel: Military Personnel Management – How are the Military Services Adapting to Recruit, Retain, and Manage High Quality Talent to Meet the Needs of a Modern Military, March 16, 2019.

<sup>3</sup> Joint Advertising Market Research Studies (JAMRS), Defense Advisory Committee on Women in the Military, The Target Population for Military Recruitment: Youth Eligible to Enlist Without Waiver, September 2016; JAMR, Office of People Analytics, Fall Propensity Update 2020.

24. The substantial impact to the TXNG in losing trained and experienced members can only be characterized as severe. The TXNG neither anticipated nor is in a position to mitigate the devastating loss of personnel, experience, and capability that this vaccination mandate has forced upon us.

25. **Texas Air National Guard**. The TXANG is a leader among the Air National Guard (ANG) recruiting community and has succeeded in filling the ranks with talented men and women that reflect the core of our communities and our TXNG values. This past year, the endstrength of the TXANG was 103.1%. In the first quarter of fiscal year 2022, the TXANG has already lost approximately 90 Airmen due to the COVID-19 mandate, which translates to a reduction of 2.6% from our endstrength.

26. These Airmen found it easier to separate than bother with requesting an accommodation/exemption. There are currently 83 Airmen who have declined the vaccination and must be administratively discharged as directed by the Air Force guidance. This would further reduce our endstrength by an additional 2.4% placing us well below the authorized strength level.

27. There are 161 Airmen who have submitted accommodation/exemption requests. Based on the active-duty disapproval rate, I expect the NGB to deny almost all of these requests. Through indirect channels, I understand that the Air Force will adjudicate claims for religious COVID-19 accommodations/exemptions based on the member's and their family's consistency in claiming accommodation/exemption for other longstanding vaccine mandates. If this is the case, most all requests for accommodation/exemption will be denied.

28. I cannot speculate on who in that category will or will not take the vaccine, but if we assume all refuse, effects on our endstrength would result in a total reduction of 7.2% of the force. The potential and unplanned loss of 244 Airmen equates to 2500 combined service years of experience and capability that cannot be immediately replaced by merely hiring young Airmen.<sup>4</sup> The TXANG loses an average of 356 Airmen per year, while recruiting an average 437 Airmen per year. Although the number recruited is higher than the number of losses, it barely maintains the status quo. Factoring in the 90 already lost, an additional 244 losses (7.2% of the force), and the normal losses of 356 in one year, the total loss to the TXNG force of 20.5% is staggering and will take at least 11 years to recover in both manpower and experience.

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<sup>4</sup> One service year equals one year of service in the military. For example, an Airman with 11 years of service equals 11 service years of experience and capability. The total service years for the 244 Airmen equals 2,500. The computation is taken from members' records indicating years of satisfactory service.



<b>CLASSIFICATION: UNCLASSIFIED</b>	<b># Airmen</b>	<b>Total Loss per category</b>	<b>Reason for loss</b>
<b>% of Force</b>			
2.4	83		Refused vaccination
4.8	161		Religious Exemption submitted
7.2		<b>244</b>	Total unvaccinated
	356		Average annual losses
17.8		<b>600</b>	Total Anticipated Losses FY22
2.6	90		Est losses 1st Quarter FY 22
20.5		<b>690</b>	Total Impact Real/Expected Losses

29. The economic impact of losing 244 Airmen equates to a net loss of \$45 million in pay and allowances already spent to train these members. This number was reached by taking a cross section of 80 Air Force Specialty Codes (AFSCs) impacted. These figures do not include the indirect costs such as benefits, incentives, security clearances, and recruiting costs which would raise this expense significantly.

30. The operations, maintenance, and communications career fields have the highest concentration of losses. These career fields make up 49.5% of the 244 losses. A substantial loss in these areas will severely impact the State's ability to support national security objectives and State operations. The costs to train new personnel is \$1.6 million, taken together with the loss of 614 service years, will take the TXANG a decade to reach its current level of readiness.

31. Operations groups will sustain 42 significant losses. Among these losses, notably, is 13 pilots (included in the 244 losses). The overall cost for these pilots results in a loss of \$35 million that the American taxpayer has already spent to train these individuals. Pilots, on average, take 1.5 years to become basic flight qualified in their assigned airframe. Losing these pilots would result in a loss of 123 service years of leadership, experience, and capability.

32. Communications will suffer 41 personnel losses (included in the 244 losses). It takes, on average, 18 months to train communications personnel at a cost of \$1.6 million. Loss of these Airmen equates to a loss of 443 service years of leadership, experience, and capability.

33. Maintenance groups will lose 38 personnel (included in the 244 losses). It can take up to 3 years to become fully qualified and deployable at a cost of \$1.5 million. Loss of these Airmen equates to a loss of 592 service years of leadership, experience, and capability.

34. The Air Force, ANG, and Wings maintain a list of AFSCs that are critically manned and authorized recruiting incentives. These AFSCs are chosen due to their high demand/low density deployment needs, retention rates, and length of training. From the 244 losses, 49 Airmen

are from 20 different critical AFSCs. The net loss of direct training dollars that the American taxpayer has already spent on these members is \$20.7 million. Seventeen percent (17%) of the 136th Airlift Wing pilots fall into this category with \$15 million spent on their training and a loss of 98 years of combined leadership, experience, and capability.

35. Another high impact loss is of 5 Airmen from the 147th Air Support Operations Squadron (ASOS), which is 20% of their capability. These Airmen have a collective experience of 57 years at a training cost of \$250,000 already spent by the American taxpayer. ASOS members have a high deployment rate. In the last three years, the ASOS has deployed in support of 5 named operations with approximately 3,090 deployment days executed. Losing these critically manned Airmen is detrimental TXANG's ability to support national security objectives.

36. The chart reflects the overall impact (career field loss, years of experience lost, and costs) for the 49 TXANG critically manned AFSCs.

Career Field	% Loss Within that Career Field	Total Years Experience Lost	Total Costs of Training Lost
Security Forces (SF)	5%	128	\$180,000
Munitions (MUN)	4%	37	\$80,000
Tactical Air Control Party (TACP)	20%	57	\$650,000
Mobility Pilots	17%	98	\$15,000,000

37. **Texas Army National Guard.** TXARNG is one of the top recruiting and retention leaders in the nation averaging 2,400 new Soldiers per year. This supports the ability to routinely increase force structure and maintain an assigned strength that exceeds the goal of 100%. The current COVID-19 mandate and reduced funding pose a situation that TXARNG recruiting and retention cannot overcome.

38. Despite a history of recruiting success, the negative impacts of the COVID-19 vaccination mandate cannot be rapidly absorbed by our current recruiting capacity, even if funding resources are maximized. According to reports from DOD, only 29% of the Nation's youth (17-24 years old) are fully qualified to serve with only 2% having the propensity to serve.<sup>5</sup> This slice of the available population is further reduced by the DOD COVID-19 vaccination mandate for enlistment taking into consideration the civilian population vaccination rate of 61.4% in Texas as of January 8, 2022. This is compounded by losses in funding resources for recruiting and retention. The TXARNG recruiting and retention budget for fiscal year 2022 has been reduced by 18% from

<sup>5</sup> Joint Advertising Market Research Studies (JAMRS), Defense Advisory Committee on Women in the Military, The Target Population for Military Recruitment: Youth Eligible to Enlist Without Waiver, September 2016. JAMR, Office of People Analytics, Fall Propensity Update 2020.

the previous year. The reduction affects TXARNG's ability to hire additional recruiters and offer enlistment incentives. The potential loss of recruits due to the federal COVID-19 mandate will create additional challenges to an already strained recruiting and retention system.

39. The ability to recruit significantly higher numbers of new Soldiers requires a dramatic increase in recruiting infrastructure that currently does not exist. If the TXARNG loses the Guardsmen who are currently unvaccinated, the TXARNG will not be able to recover end strength without doubling recruitment goals and recruiting up to 5,000 per year for 4 years. To double recruiting goals, the TXARNG recruiting and retention budget would require an increase from \$48 million to \$99.2 million for a four-year period. The TXARNG would also need to recruit, hire, and train qualified recruiters, from an already reduced population of available Soldiers. Any increase in budget does not guarantee the recruiting goals will be met due to lack of recruiting infrastructure, available recruiters, and all branches of DOD recruiting from the same limited recruiting population.

40. If the current TXARNG COVID-19 vaccination level of 45% remains unchanged by the Department of the Army suspense date of June 30, 2022, the TXARNG will lose 10,756 Soldiers or 55% of the TXARNG. After June 30, 2022, TXARNG are prohibited from participating in Title 32 duty and will not receive pay and allowances, incentives, benefits, and retirement points. Loss of 55% of the TXARNG equates to a loss of 79,055 service years of leadership, experience, and capability. A minimum \$1.3 billion is necessary to recruit, onboard, and train new members to begin filling the void. It will take decades to recover the loss of leadership and experience.

41. Loss of leadership at higher ranks will be significant. Of the 79,055 service years and experience lost, leadership will suffer a 28% loss. If we consider only a 20% loss rate (what the TXANG will potentially suffer), by the June 30, 2022, deadline, the TXARNG will lose approximately 4,000 Soldiers (this 20% loss is larger than the Army and Air Guards of 12 other states). Included in this number, the TXARNG would lose 1,089 TXARNG senior officers and enlisted members. Service years lost overall total 33,790. Experience and rank grow and mature over a period of years. It cannot be recruited. The loss of experience and rank results in a gaping hole between mid-level and higher-level ranks.

42. These potential losses are a self-inflicted wound and would reduce readiness and deterrence. In this era of strategic competition with the People's Republic of China, disruptive powers such as Russia, and agitators such as Iran, North Korea, Cuba, and Venezuela, the avoidable loss of experienced Soldiers and Airmen will be in the thousands. It signals to competitors that the United States is entering a fragile readiness period suggesting events-based strategies of our foes should be actioned in the South China Sea with Taiwan, in the Ukraine, or on the Horn of Africa. The TXNG is the bellwether of the United States National Guard's readiness and lethality. The loss of 20 percent of our Soldiers and Airmen, and their cumulative 80,000

service years of combat and humanitarian assistance and disaster relief experience is, simply put, avoidable.

43. **Medical Vaccination Process for TXANG and TXARNG.** For the TXARNG and the TXANG, vaccinations are given per the schedules in Army Regulation (AR) 40-562, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Disease* and Air Force Instruction (AFI) 48-110, of the same name, and is a constant and ongoing process. Some vaccinations are annual and some require boosters at various times. For TXANG, members keep track of their immunization status in their personal Individual Medical Requirements (IMR) and are notified by their unit health monitors and the Medical Group of times of vaccinations and when the member nears or is not in compliance. Once a member receives a vaccination or provides proof from a civilian provider, their records are updated in Aeromedical Services Information Management System (ASIMS) and in their IMR. The process is the same for the TXARNG except that the readiness non-commissioned officer notifies the member, and the system of records is known as Medical Data Processing System (MEDPROS).

44. For the TXANG and the TXARNG, administrative and military justice actions are considered on a case-by-case basis by State Title 32 unit commanders. State Title 32 unit commanders manage their formations and their units' medical readiness. In my 36 years of experience, commanding at all levels, I have never witnessed the Department of the Army or the Department of the Air Force interfere with State Title 32 units' chain of command discipline programs. These actions serve to usurp State Title 32 units commanders' command authority by directing adverse administrative actions/punishments on State Title 32 unit military members.

45. **Soldier and Airmen Narratives.** Every officer and enlisted Service member of the TXNG swears allegiance to the Constitution of the United States and the State of Texas. Likewise, each officer is sworn to follow the orders of both the President of the United States and the Governor of Texas when in either respective duty status. These allegiances are demonstrated year after year when TXARNG and TXANG Soldiers and Airmen deploy in support of national security objectives throughout the world or at home during emergencies and disasters. The following are examples of TXANG and TXARNG careers that will demonstrate the caliber of individuals that raise their hand and take the oaths to serve in TXNG. I am familiar with each of these Guardsmen's background, but I do not identify them by name so that they are not subjected to retaliation or negative consequences for their views.

46. The TXANG will lose a young First Lieutenant and pilot. The Lieutenant enlisted and joined the 136th Airlift Wing in August 2007, shortly after graduating from Liberty Christian High School in Argyle, Texas. The Lieutenant's initial assignment was as a loadmaster assigned to the 181st Airlift Squadron where the member deployed twice to Afghanistan and twice to Kuwait. Each of these missions, the Lieutenant flew sorties that resupplied United States' and NATO's International Stabilization Assistance Forces (ISAF), evacuated critically injured and

deceased service members, and transported dignitaries from all levels of government. Another noteworthy mission was supporting Presidential and Vice Presidential travel. Based in Delaware, the Lieutenant flew, then, Vice President Joe Biden's secret service detail throughout the United States. Upon completion of the Lieutenant's Bachelor's degree, the Lieutenant was selected to commission as a pilot in the unit. Prior to graduation from the C-130H flying program, the unit was notified that it would convert from the C-130H to the C-130J aircraft. The Lieutenant was redirected and selected to become the first C-130J pilot of the 181st Airlift Squadron. The Lieutenant is currently serving as the flight scheduler for the squadron, ensuring that all pilots and loadmasters build and maintain currencies in the newly assigned aircraft. Aside from being a great American and Texan, the Lieutenant holds a firm belief that the COVID-19 vaccination is against the member's firmly held religious beliefs. The Lieutenant's entire family shares these views. The Lieutenant has one brother who is also pilot serving the 138th Fighter Wing in Tulsa, Oklahoma, and another brother who serves as an F-16 Crew Chief. The Lieutenant met the member's spouse through the church where they were both previously baptized. The Lieutenant has requested a religious accommodation/exemption.

47. The TXANG will lose a Chaplain. The Chaplain is a 1996 graduate of the United States Air Force Academy who initially served on active duty as an Aircraft Maintenance Officer. Upon completion of the mandatory service obligation, the Chaplain attended seminary school. In 2008, the Chaplain joined the TXANG to serve as a Chaplain. The Chaplain provides spiritual support to Wing members flying combat lines daily via unmanned aerial vehicles. These Airmen are subjected to frontline combat by dropping live ordinance on targets in the United States Central Command Area of Responsibility. They experience the rigors of combat firsthand through the guise of the sensors they operate. The needs of this Wing are unparalleled by the other wings in the state, and it takes a special Chaplain to minister to them. On the civilian side, the Chaplain is employed as an engineer with National Aeronautics and Space Administration (NASA) assigned to the space station project. The Chaplain is married with three children. All are very active in their local church community. The Chaplain has requested a religious accommodation/exemption with both the Chaplain's military and government civilian jobs. The Chaplain plans to resign if the request is denied. It is clear that the Chaplain will not take the mandated vaccination. The Air Force has invested well over \$500,000 in the Chaplain's education and experience. Unfortunately, that investment that has already been realized will simply go to waste along with the ministry that the Chaplain affords the Wing community.

48. The TXANG will lose a critical Munitions career field member. The member has requested a religious accommodation/exemption. The member is an AGR who has served for 11 years in the TXANG. The member has deployed numerous times to Europe and Asia. The member is assigned to a historically undermanned position. Of the members in this section, 24% have requested religious accommodations/exemptions. All four of these members are also full-time support for the Wing's federal flying training mission. The member is a first generation American, and the member was raised to strive and realize the American dream. The member is a devout

Catholic, and due to the member's sincere religious beliefs, the member will not take the vaccination. In anticipation of a denied request, the member has prepared for involuntary separation by selling the member's home.

49. The TXANG will lose a valuable member of the Maintenance Group. The member has requested a religious accommodation/exemption. The member has served for 32 years in the Delaware and Texas Air National Guards. The member transferred to the TXANG in 2018. The member's spouse is a flight nurse with the Delaware Air National Guard. The member is also a 20-year Title 32 Technician and works as a flight engineer. The member voluntarily demoted from a Chief Master Sergeant to Senior Master Sergeant to join the TXANG. Due to the Wing's transition from the C-130H model aircraft to C-130J model, flight engineers were no longer needed. The member was forced to retrain to a former maintenance AFSC. This member is a devout Catholic who is married with five children. This member believes that the Presidential mandate violates his religious and constitutional rights. The uncertainty of the religious accommodation/exemption approval has caused stress on the member and the member's family. The member's spouse also shares these beliefs and has also requested a religious accommodation/exemption. The COVID-19 vaccination was developed using fetal cell research. This member believes the government has misled the member on other vaccinations. The member acknowledges not fully researching the other required military vaccinations (Hepatitis A, and Rubella), which were also developed using human cell testing. Had the member known, the member would have sought an accommodation/exemption from those vaccinations as well.

50. The TXARNG will lose a future strategic leader. This Special Forces-branched Officer is currently a Battalion Commander with 35 years of experience in the National Guard. This member enlisted in January of 1987 and rose to the rank of Staff Sergeant before commissioning in 1999 through Officer Candidate School where the member was a Distinguished Honor Graduate. While enlisted, the member served as a Cobra then Apache weapons system repairer, a communications/wire installer, then as a flight medic/night vision goggle flight instructor. The member is a graduate of 23 different military development courses and has received 30 separate federal and state decorations, including five campaign medals, four joint awards, and both the Humanitarian and the Military Outstanding Volunteer Service Medals. The member has earned 12 badges, including eight foreign militaries' parachutist badges. This officer has led Soldiers in 13 Outside the Continental United States (OCONUS) missions, including four combat mobilizations in Iraq, Afghanistan, and the Horn of Africa. The member is trusted with a Top Secret/SCI security clearance. As a civilian, the member is the President/CEO of a small business. The member is the epitome of the successful, traditional, National Guardsman. This officer has submitted a request for a medical waiver from the COVID-19 vaccination requirement. This member is a survivor of a COVID-19 Delta variant infection. The member objects to the vaccine based on a lack of medical need as the member sincerely believes the vaccine is designed to help strengthen the human body's ability to fight the virus—and the member's body has proven it has the ability to do it. The member has contracted or suffered various service-connected maladies



including heat stroke and malaria and knows first-hand the challenges in managing long-term ramifications of service-connected issues through the Veteran's Administration. The member is concerned about adding outside influencers to the member's immune system given the history of effectively combatting the virus and the lack of research on the long-term effects of the vaccine.

51. The TXARNG will lose an aviator who is a senior instructor pilot with 30 years of total service. The member is also a full-time Title 32 Technician with 23 years of service and has plans to continue to serve an additional 7 years to achieve both a technician and traditional retirement. The member serves as the State Aviation Safety Officer in the State Army Aviation Office (SAO) and the State Aviation Standardization Officer (SASO). For the member's wealth of knowledge and experience, the member is designated as Pilot in Command and Air Mission Commander in the UH-60M helicopter. The member has deployed to Bosnia in 2003-2004, Operation Iraqi Freedom in 2007, and Operation Spartan Shield in 2011-2012. The member has also participated in several major training events including one National Training Center (NTC) rotation, three Joint Readiness Training Center (JRTC) rotations, Brigade Command Post Exercises, and a War Fighter Exercise. The member's skills and qualifications include: Warrant Officer Candidate Course, Warrant Officer Basic Course (Flight School), Warrant Officer Advanced Course, Warrant Officer Intermediate Level Education, Warrant Officer Senior Staff Course, OH-58 A/C Qualification (included in flight school), UH-60 A/L Qualification Course and Instructor Pilot Course, UH-60M Qualification Course and Instructor Pilot Course, UH-72 Qualification Course and Instructor Pilot Course, Fixed Wing C12 Qualification Course, C23 Qualification Course, Aviation Life Support Equipment Course, Aviation Safety Officer Course, Instrument Preparation Course and Examiner Course and the Aviation Master Gunner Course. This Army aviator has conducted numerous State Active Duty missions including the Columbia Shuttle Disaster recovery in 2003, Hurricane Katrina in 2005, Hurricane Ike in 2008, the Bastrop fire in 2015, Hurricane Harvey in 2017, and the recent Texas winter storm in 2021. The member is one of the original crew members that began working with Texas Task Force One in 2002 and assisted with developing that training program. The member will act as the lead trainer in developing the UH-60M Hoist training program this summer after the Air Worthiness Release is published to train with the new hoists on the UH-60M helicopters. Texas will have the first UH-60M aircraft in the Army fleet to have hoist. The member has over 6300 flying hours with 1,000 hours in fixed wing aircraft and over 5,300 hours in various rotary wing aircraft. Approximately 1,100 of those hours include night vision goggle time. The member's flight hours equate to an estimated \$23.6 million (\$2.4 million in fixed wing, \$21.2 million in rotary wing). The member plans to submit an accommodation/exemption based on having natural immunities and expected medical complications.

52. The TXARNG will lose a Chaplain with 30 years of total ministry experience and 9 years of military service. The Chaplain is currently assigned as the 71st Expeditionary Military Intelligence Brigade Chaplain. The Chaplain previously served as Brigade Chaplain to the 176th Engineer Brigade, Chaplain to the 136 Military Police Battalion, 386 Engineer Battalion, and the

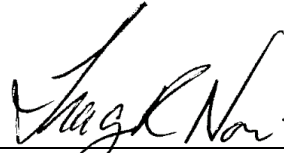
3-141 Infantry Regiment. The Chaplain has deployed/mobilized to/for NS Guantanamo Bay, Cuba in 2019-2020, COVID19 response in 2020, and Task Force COVAX (COVID-19 vaccination response) in 2021. The member also participated in a War Fighter Exercises (III Corps) at Fort Hood in February 2015, with the 176 Engineer Brigade. The Chaplain's training, skills and qualifications include the Chaplain Basic Officer Leader Course and the Chaplain Captain Career Course. The Chaplain is certified to teach and has led several Army Strong Bonds Single Soldier events. As an Army Chaplain, the member is also trained and qualified to address the Sexual Harassment/Assault Response and Prevention Program (SHARP) and suicide intervention issues. The Chaplain's sound advice to commanders has resulted in expedited promotion to Major. The Chaplain has provided numerous hours and hundreds of confidential counseling sessions while in Texas. The Chaplain has also conducted over a thousand chapels in both the armory and field settings. The TXARNG Chaplaincy is at 60% endstrength, and it is difficult to find qualified candidates. The Chaplain has submitted religious and medical accommodation/exemption requests. The Chaplain's civilian medical provider has warned the Chaplain of increased risk of becoming vaccine-injured due to his already proven COVID-19 antibodies.

53. The TXARNG will lose a 35L Counter Intelligence Agent. The member has requested an accommodation/exemption request. Counterintelligence (CI) professionals are difficult to produce in the TXARNG. The wait times for training prospective Agents takes two to three years per Soldier due to extremely limited school capacity. This wait time is due to a long application process that takes multiple interviews and background checks. The background check costs approximately \$20,000 and up to one year to complete. The school has a 66% dropout rate and requires four months to complete. Before the CI agent is qualified, they must complete a two-year CI probationary program (CIPP) as a DSG or a one-year probationary period on active duty. This member recently completed the CIPP. A 35L CI Agent with this experience takes approximately four to six years to train. The demand for qualified CI Agents is extremely high. The TXARNG has only 12 qualified agents.

54. Another area that will be significantly impacted is our enduring continental United States (CONUS) Processing, Exploitation & Dissemination (PED) mission. Due to Mobilization Force Generation Installation medical procedures, Intelligence Soldiers preparing for a mobilization must be either COVID-19 vaccination complete or arrive at the mobilization site with an approved exemption. A TXARNG member volunteered for the March, 2022 mission; however, the member's accommodation/exemption request is pending a decision. Due to the requirement to have either the vaccination or an approved accommodation, the member cannot participate in the mission. A PED Soldier has a multi-step process to become fully mission ready. Prior to selection, they must become fully qualified in their individual military intelligence military occupational skill (MOS), including a top-secret security clearance which requires a lengthy one-year investigation and a series of schools that, dependent on the military occupational specialty (MOS), will take between eight months to two years to complete. Once MOS qualified, selection for the PED mission requires either volunteering or meeting all qualifications for selection by their

leadership. Upon selection, they complete a two-week course provided by Forces Command G-2 instructors to become full motion video qualified. After passing soldier readiness processing for administrative and medical readiness, they must complete a five-week live environment training to ensure they can meet mission standards. After training, they must certify adherence to the standard in the two-week joint qualification skills process. Upon completion of all steps, then the PED Soldiers can support Combatant Commands with Intelligence Support from home station. In the instant case, the federal vaccine mandate has disqualified this otherwise qualified Soldier from participating in this mission or any other short-notice deployments.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on February 3, 2022, in Austin, Texas.

A handwritten signature in black ink, appearing to read "Tracy R. Norris", is written over a horizontal line.

Tracy R. Norris  
Adjutant General of Texas

## ATTACHMENT 1

## TXANG WINGS



### AIR NATIONAL GUARD EQUIPMENT

EQUIPMENT	QTY.	DESCRIPTION
<i>C-130J Super Hercules</i>	4	<i>Transport Aircraft</i>
<i>F-16C/D Fighting Falcon</i>	28	<i>Multirole Fighter Aircraft</i>
<i>MQ-9 Reaper</i>	4	<i>Unmanned Aerial Vehicle</i>
<i>RC-26B "Metroliner"</i>	1	<i>Communication Aircraft</i>

**136<sup>th</sup> AIRLIFT WING:**

The 136th Airlift Wing (136AW), based in Fort Worth, Texas, flies the C-130J Super Hercules, providing dedicated airlift and airdrop capabilities. The 136AW is the only C-130 unit located on the Gulf Coast. As part of Air Mobility Command's global reach, this airframe provides the ability to deploy armed forces anywhere in the world and ensures a continuous supply chain that airdrops supplies and troops into contested environments. In support of domestic operations in response to a natural or man-made disaster, the wing is tasked to provide humanitarian relief to those impacted. This airlift capability is used to transport cargo into affected areas and evacuate people, and due to its size is able to allow patients and associated medical personnel to have continued medical care during transport if needed.

**147<sup>th</sup> ATTACK WING:**

The 147th Attack Wing (147ATKW), based in Houston, Texas, flies the remotely piloted MQ-9 Reaper airframe. The wing transitioned in 2020 from flying the MQ-1 Predator to the MQ-9 Reaper. The arrival of the more advanced MQ-9, with its increased speed, outstanding loiter time, and low operational costs, gives the 147ATKW the potential to be a huge asset in providing full motion video to state or national leaders in support of natural or manmade disasters.

**149<sup>th</sup> FIGHTER WING:**

The 149th Fighter Wing, based in San Antonio, Texas, operates the F-16 Fighting Falcon and provides combat fighter pilot training. The wing's graduates serve in the U.S. Air Force, U.S. Air Force Reserve, and U.S. Air National Guard. The 149th Fighter Wing is comprised of our nation's most experienced instructor pilots and uses state-of-the-art simulator technology to ensure its students receive the most advanced training in the world.

## ATTACHMENT 2



## ARMY NATIONAL GUARD EQUIPMENT

EQUIPMENT	QTY.	DESCRIPTION
AH-64D Apache	12	Attack Helicopter
UH-72A Lakota	6	Light Lift Helicopter
UH-60 Blackhawk	26	Medium Lift Helicopter
CH-47 Chinook	6	Heavy Lift Helicopter
C12 Huron	1	Light Passenger Airplane
RQ-7 Shadow	8	Unmanned Aerial Vehicle
HMMWV	2,127	Armored Tactical Vehicle
D7/DS Dozer	17	Tracked Bulldozer
FMTV	1,142	Medium Tactical Vehicle
MRAP M-ATV	38	Mine Resistant Vehicle
M777A2 Howitzer	36	155mm Towed Artillery
HIMARS	16	Mounted Artillery Rocket
Buffalo	10	Mine Detecting Vehicle
Husky	20	Mine Detecting Vehicle

## TEXAS ARMY NATIONAL GUARD: MAJOR COMMANDS



### 36<sup>th</sup> INFANTRY DIVISION

The historic 36th Infantry Division (36th ID) is one of 18 Army Divisions in the U.S. Army. 36th ID was organized at Camp Bowie (Fort Worth), Texas, in 1917, from units of the Texas and Oklahoma National Guard. 36th ID fought on the western front during World War I and returned back to Camp Bowie and was released from active duty. 36th ID was mobilized on active duty for World War II, at Camp Bowie, which had since relocated to Brownwood, Texas. During WWII the 36th ID was the vanguard division of Operation Avalanche, the invasion of Italy at Paestum in the Gulf of Salerno. The 36th ID was the first American combat division to land on the continent of Europe and spent 400 days in combat. It returned Texas in December 1945.

Today, the 36th ID is based in Austin, Texas, is comprised of six brigades totaling over 15,000 Soldiers geographically disbursed across Texas. These Soldiers fill flexible, integrated units that can deploy individually or in a variety of configurations to accomplish an assigned mission. This easily allows tailored and fluid responses to meet the needs of the Governor and President. The brigades assigned to the division include two Infantry Brigade Combat Teams, an Engineer Brigade, a Sustainment Brigade, a Combat Aviation Brigade, and a Maneuver Enhancement Brigade.



### 71<sup>st</sup> TROOP COMMAND

The 71st Troop Command (71st TC) is based in Austin, Texas, and is made up of more than 1,500 Soldiers. The 71st TC provides administrative, training, and logistical support to specialized or smaller TXARNG units that are not part of other major deployable units. The command includes military intelligence, support personnel, public affairs, special operations detachment and cyber and information operations.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
capacity as Governor of the State of  
Texas,  
*Plaintiff,*

and

GOVERNOR MIKE DUNLEAVY, in his official  
capacity as Governor of the State of  
Alaska,

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States;  
DEPARTMENT OF DEFENSE; LLOYD AUSTIN,  
in his official capacity as Secretary of the  
Defense; DEPARTMENT OF THE AIR FORCE;  
FRANK KENDALL III, in his official capacity  
as Secretary of the Air Force; DEPARTMENT  
OF THE ARMY; and CHRISTINE WORMUTH,  
in her official capacity as Secretary of the  
Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 8

Declaration of W. Nim Kidd



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his  
official capacity as Governor of the  
State of Texas,  
*Plaintiff,*

v.

No. 6:22-cv-3

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

**DECLARATION OF W. NIM KIDD  
SUPPORTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

1. My name is W. Nim Kidd. I am over the age of 18 and am in all ways competent to make this declaration. The facts within this declaration are true, correct, and within my personal knowledge.

2. I have served as the Chief of the Texas Division of Emergency Management since July 2010. I also chair FEMA's National Advisory Council and serve as Vice Chancellor for Disaster and Emergency Services for the Texas A&M University System. I began my professional firefighting, emergency services, and emergency management career in 1993 with the San Antonio Fire Department. I began as a firefighter and through the Civil Service promotion system, promoted to Lieutenant in charge of the Technical Rescue Team, Captain of the Hazardous Materials Response Team, and District Fire Chief - City Emergency Manager.

3. TDEM operates the Texas State Emergency Operations Center (SOC). During a disaster, the SOC is activated to process requests for resources and standardize, manage, and coordinate TDEM's response. This typically involves facilitating the flow of resources and services to affected areas. As part of an activation, representatives from the Texas Emergency Management Council (TEMC) that support TDEM and whose services may be required are present at SOC to liaise with TEMC agencies as part of TDEM's operations. There are 39 agencies that make up the TEMC as outlined in Texas Executive Order GA-05.

4. The SOC has activated its increased-operations capabilities to respond to disaster 87 times in my tenure as Chief. The majority of these activations have been to respond to weather-created disasters, but they have also included actual and potential

civil unrest; assistance with law-enforcement operations; major events requiring additional security; fires; and public-health disasters. I cannot recall a time when a representative of the Texas Military Department has not been present for an activation. No matter the nature of the emergency, I believe that help from the Texas Air and Army National Guard is appropriate and may be required.

5. The National Guard keeps at the ready more than 70 plans, which we call “Mission Ready Packages,” to deploy resources in support of emergency services, almost all within 24–48 hours of notice. Most of these packages directly support the operations of TDEM, other support agencies, and other government and private agencies in their efforts. TDEM has found particularly crucial the National Guard’s talents in logistics, rescue operations, communications, transportation, and security and law-enforcement support, many of which can be replicated only with great difficulty, and some of which cannot be replicated at all.

6. For example, during major public events such as the Super Bowl, a papal visit, or a Formula One competition, the Army National Guard’s 6th Civil Support Team is available to screen for the potential presence of chemical or biological agents and, in the event that such an agent is deployed, to furnish emergency containment and decontamination. I am unaware of any other entity in Texas with that capacity.

7. Another example is the Air National Guard’s Aircraft Coordination Center and airlift capability, both for cargo and personnel. That capability makes it possible for TDEM and partner agencies to safely deploy food, water, and other supplies to persons who may be stranded during a disaster with no other access to lifesaving supplies. It also makes it possible for TDEM and partner agencies to insert response personnel, such as medics, civil-engineering teams, and search-and-rescue personnel, to otherwise inaccessible areas. Hoist helicopters make it possible to insert vehicles and other large-scale supply deliveries to further supplement those capabilities. The Air Coordination Center fosters safe and expeditious communication between military and civilian aircraft operating in a disaster environment. No other organization in Texas can furnish this support on the needed scale.

8. The Army National Guard’s ground transportation enables similar capabilities. The Army Guard’s high-profile vehicles can traverse floodwaters, washed-out roads, and debris that would otherwise be unpassable, enabling personnel to reach otherwise inaccessible areas. No other organization in Texas can furnish this support on the needed scale.

9. TDEM also relies on the National Guard’s communications capabilities. The Guard is able to deploy communications equipment that enables personnel to communicate with each other and coordinate operations in locations where landline and cellular telephone communications are unavailable. This assistance is occasionally

available from other sources, but they do not have the number of systems, devices or the deployment capability of the Guard.

10. No agency in Texas can match the scale of the logistics capabilities of the Texas National Guard. The Guard is able to use its expertise in logistics to rapidly set up and operate points of distribution for temporary shelter, food, water, and ice, with larger points serving tens of thousands of people a day. The Guard is able to do this both in remote areas that require complete set-up of delivery, storage, and distribution areas and, in larger areas, to stage these operations in its own warehouses and armories, greatly reducing the amount of time needed to bring the operations up to speed and shortening the response time to any disaster.

11. These logistics capabilities have been on display in the Guard's response to the COVID-19 pandemic. As soon as states were allowed to begin conducting COVID-19 tests, the National Guard began building, sourcing, and operating testing sites across the state, particularly in locations where no appropriate facilities would otherwise have been available. This would not have been possible without the Guard, which was able to begin testing months before private-sector testing was available.

12. TDEM also relies on the Guard's expertise in search-and-rescue operations and law-enforcement support when responding to disasters. While other agencies and private entities have search-and-rescue capabilities, the Guard's expertise and size enables faster, larger, and more efficient deployment and operations, particularly when coupled with the Guard's communications expertise. This gets help to those stranded in disaster areas sooner and on a larger scale than would otherwise be possible. Further, members of the Guard are available to be deployed into disaster areas to assist law-enforcement personnel with protecting those stranded in such areas and the property left behind in those areas, reducing criminal predation on those who have already been injured or displaced, particularly by natural disasters.



Declaration Continues on Page 4 of 4

13. Simply put, the Texas Air and Army National Guard acts as a force multiplier for Texas disaster-relief efforts. In addition to helping individuals on its own, its efforts enable other agencies and entities to get more help to more people in less time. Were the National Guard to suffer even a ten percent reduction in size, particularly in specialized areas like air operations and civil assistance, TDEM's ability to respond to disasters and emergencies would be drastically reduced. In a state that must sometimes simultaneously respond to major snow, windstorm, and flooding events, as happened just last year during Winter Storm Uri, this would result in a drastic reduction in the ability of TDEM and the state and local governments to perform the single most basic function of government: keeping the lives and property of its citizens safe.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed on February 3, 2022.



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W. Nim Kidd

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
capacity as Governor of the State of  
Texas,  
*Plaintiff,*

and

GOVERNOR MIKE DUNLEAVY, in his official  
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JOSEPH R. BIDEN, in his official capacity as  
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FRANK KENDALL III, in his official capacity  
as Secretary of the Air Force; DEPARTMENT  
OF THE ARMY; and CHRISTINE WORMUTH,  
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Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 9

Letter from Governor Abbott to Secretary Kendall Dated December 16, 2021



GOVERNOR GREG ABBOTT

December 16, 2021

The Honorable Lloyd J. Austin III  
Secretary  
U.S. Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Austin:

As Governor of Texas, I am the commander-in-chief of this State's militia. In that capacity, on October 4, 2021, I ordered the Adjutant General of Texas to comply with my Executive Order GA-39. My letter to Major General Tracy R. Norris read as follows:

As you know, I issued Executive Order GA-39, which commands that "[n]o governmental entity can compel any individual to receive a COVID-19 vaccine." That includes the Texas National Guard and Texas State Guard.

Under this order, General Norris will not punish any guardsman in Texas for choosing not to receive the vaccine.

If unvaccinated guardsmen suffer any adverse consequences within the State of Texas, they will have only President Biden and his Administration to blame. Your memorandum of November 30, 2021 threatens to cut off the flow of federal dollars for unvaccinated members of the National Guard who serve in a so-called "Title 32" status. The Secretary of the Air Force has gone even further, explicitly warning of discharge proceedings in a memorandum of December 7, 2021.

This willingness to hollow out the National Guard is unconscionable in the face of growing global threats and a border crisis created by the Biden Administration. It is also in tension with recent legal decisions. President Biden and his Administration have suffered a string of losses in the federal courts with their other illegal vaccine mandates. *See BST Holdings, L.L.C. v. OSHA*, 17 F.4th 604 (5th Cir. Nov. 12, 2021) (enjoining the OSHA mandate); *Texas v. Becerra*, No. 2:21-cv-229 (N.D. Tex. Dec. 15, 2021) (enjoining the CMS mandate); *Georgia v. Biden*, No. 1:21-cv-163 (S.D. Ga. Dec. 7, 2021) (enjoining the federal-contractor mandate).



Honorable Lloyd J. Austin III

December 16, 2021

Page 2

The State of Texas will not enforce this latest COVID-19 vaccine mandate against its guardsmen. If the federal government keeps threatening to defund the Texas National Guard, I will deploy every legal tool available to me as Governor in defense of these American heroes.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott", written in a cursive style.

Greg Abbott  
Governor

GA:jsd

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GOVERNOR GREG ABBOTT, in his official  
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Army,  
*Defendants.*

No. 6:22-cv-3-JCB

GOVERNOR ABBOTT'S MOTION FOR PRELIMINARY INJUNCTION

## EXHIBIT 10

Letter from Secretary Austin to Governor Abbott Dated January 27, 2022



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

JAN 27 2022

The Honorable Greg Abbott  
Governor of Texas  
Austin, TX 78711-2428

Dear Governor Abbott:

Thank you for your letter dated December 16, 2021 concerning Coronavirus Disease 2019 (COVID-19) vaccination requirements for the members of the Army National Guard and Air National Guard.

As I have told other governors, in making the decision to require vaccination against COVID-19 for Service members, I considered the thousands of hospitalizations and the hundreds of deaths among Service members, civilians, and their families related to COVID-19. COVID-19 takes our Service members out of the fight, temporarily or permanently, and jeopardizes our ability to meet mission requirements. To ensure we maintain a healthy and ready military force capable of accomplishing our mission to defend this Nation and to protect the American people, vaccination against COVID-19 is an essential military readiness requirement for all components and units of the military, including the Texas National Guard.

This decision stems directly from my responsibility and authority as the Secretary of Defense to promote the health, safety, and readiness of our military personnel, regardless of duty status, to include all members of the National Guard performing any duty or training under title 10 or title 32, U.S. Code. The concerns raised in your letter do not negate the need for this important military readiness requirement.

In accordance with the Presidential authority in title 32, U.S. Code, section 110, to prescribe regulations and issue orders necessary to organize, discipline, and govern the non-Federalized National Guard, all members of the Texas Army and Air National Guard, regardless of duty status, must follow the directions of the Secretaries of the Army and the Air Force, respectively, regarding specific COVID-19 vaccine compliance deadlines and requirements. Failure by a member to do so will lead to a prohibition on participation in drills, training, and other duty conducted under title 32 and will jeopardize the member's status in the National Guard. In light of the litigation that you have now filed on behalf of Texas, I cannot comment further on the substance of your concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. R. Oltz", is written below the word "Sincerely".