

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

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

**PLAINTIFFS' EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER PENDING
DECISION ON MOTION FOR PRELIMINARY INJUNCTION
RELIEF REQUESTED BY MARCH 3, 2022, AT 2:00 P.M.**

Plaintiffs, pursuant to Fed. R. Civ. P. 65(b)(1) and the Court's Order of October 18, 2021 (Doc. 9), move the Court for an emergency temporary restraining order (TRO) to preserve the status quo ante for Plaintiff CAPTAIN, United States Marine Corps ("USMC Captain") (Second Am. V. Compl., Doc. 105, ¶¶ 45, 115, 140), pending the Court's decision on Plaintiffs Motion for Preliminary Injunction (Doc. 2) and Supplemental Memorandum and Renewed Motion for Preliminary Injunction. (Doc. 51). In support thereof, Plaintiffs show unto the Court as follows:

INTRODUCTION

In its first Order in this case, the Court invited Plaintiffs to "move on behalf of any individual member of the alleged class" who "imminently will suffer serious and irreparable injury before a preliminary injunction, if any, issues[]; whose interests are

otherwise not adequately protected by the hearing on November 15, 2021; and whose circumstances are for some singular reason markedly more acute than other members of the putative class.” (Doc. 9 at 4.) As demonstrated below and in the Declaration of USMC Captain attached hereto as EXHIBIT A, USMC Captain faces immediate and irreparable harm to his free exercise rights and military career absent immediate injunctive relief from the Court. Emergency, interim injunctive relief is necessary pending determination of Plaintiffs’ preliminary injunction motion. Plaintiffs did not seek, or invite any action requiring, their return to this Court for emergency relief, but Defendants’ march toward final separation of all religiously unvaccinated service members continues unabated except by judicial intervention. The Marine Corps, on March 1, 2022, ordered USMC Captain to receive a COVID-19 vaccine **within 2 days—by tomorrow, March 3, at 3:00 P.M.**—or be in violation of “a lawful order” subjecting him “to punitive and/or administrative action.” (Ex. A, ¶¶ 5–6.) Thus, **USMC Captain needs relief before 2:00 P.M. tomorrow, March 3, 2022**, or he faces life-altering discipline.

ARGUMENT

In addition to the argument below, Plaintiffs incorporate by reference the legal argument contained in their Motion for Preliminary Injunction (Doc. 2), Reply in Support (Doc. 30), and Supplemental Memorandum and Renewed Motion for Preliminary Injunction (Doc. 51), as well as the Court’s analysis in its Preliminary Injunction and Order of February 18, 2022 (Doc. 111, “PI Order”). As variously set forth therein, Defendants’ refusal to consider or grant Plaintiffs’ requests for religious

exemption and accommodation while granting thousands of similarly situated nonreligious exemptions violates the First Amendment and the Religious Freedom Restoration Act.

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

“A Rule 65 TRO often functions to preserve the status quo until a court can enter a decision on a preliminary injunction application” *United States v. DBB, Inc.*, 180 F.3d 1277, 1282 n.5 (11th Cir. 1999); *see also Grasso v. Dudek*, No. 6:130cv01536-Orl-28GK, 2014 WL 12621193, at *2 (M.D. Fla. Jan. 6, 2014) (“In the Eleventh Circuit, TRO’s are intended to protect against irreparable harm and to preserve the status quo until a decision on the merits can be made.”); *Talib v. SkyWay Comms. Holding Corp.*, No. 8:05-cv-282-T-17TBM, 2005 WL 8160176, at *5 (M.D. Fla. Apr. 5, 2005) (same). (*See also* Doc. 67 at 8 (granting TRO for the “preservation of the status quo” while a decision on the preliminary injunction is pending).) Here, a TRO pending preliminary injunction is necessary to preserve the status quo ante and prevent immediate and irreparable harm that will occur for USMC Captain **beginning at 3:00 P.M. on March 3.**

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

Plaintiff USMC Captain will suffer immediate and irreparable injury absent a TRO pending decision on Plaintiffs’ preliminary injunction motion because he will suffer the irretrievable sacrifice of cherished First Amendment liberties. *See Roman*

Catholic Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 67 (2020) (“There can be no question that the challenged restrictions, if enforced, will cause irreparable harm. ‘The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Indeed, as this Court already held, “[t]he pertinent precedents (and a fair empathy for the conscience of the sincere religious objector) suggest that in a Free Exercise Clause claim the initial episode of denial of free exercise causes irreparable harm” (Order, Doc. 40, at 30.) Indeed, as this Court already held, “[r]equiring a service member either to follow a direct order contrary to a sincerely held religious belief or to face immediate processing for separation or other punishment undoubtedly causes irreparable harm.” (PI Order 45.)

As this Court observed in its PI Order, five days is hardly enough time to permit most service members to obtain judicial relief prior to facing irreparable harm. **Yet, the Marine Corps is treating USMC Captain even worse—giving him only 2 days** “to decide the life-altering question whether to accept COVID-19 vaccination or face discharge for disobeying an order.” (PI Order 5.)

Plaintiff USMC Captain is a patriotic American whose faith is Islam. (Ex. A, ¶ 2.) Desiring to serve his country, he enlisted in the United States Marine Corps in 2014, graduating from recruit training in March 2015. (*Id.*) After serving with a Law Enforcement Battalion and earning his undergraduate degree, USMC Captain was selected for Officer Candidate School, and commissioned as a second lieutenant in 2016. (*Id.*) After graduating from The Basic School, he attended the Military Police

Basic Officer Course, with his first duty assignment at a Marine Corps Law Enforcement Battalion as a Platoon Commander. (*Id.*) He has attended courses in Norway and commanded a Military Police Integrated Company during a NATO Exercise and has been deployed in several locations, including Africa. (*Id.*)

USMC Captain desires to continue serving in the Marine Corps, consistent with his Islamic religious beliefs that require him to abstain from participation in that which is *haram*—forbidden—including the destruction and commoditization of innocent human life as exemplified by the commercial use of human fetal cell lines derived from abortions. (Ex. A, ¶ 3.) USMC Captain’s sincere religious beliefs compel him to exercise “complete reliance on God” rather than in what he believes to be morally tainted COVID shots. (*Id.*) USMC Captain has performed multiple duty assignments during the COVID-19 pandemic, and neither COVID-19, nor USMC Captain’s or any other Marine’s vaccination status, has prevented the performance of any mission assigned to USMC Captain or any unit of which he has been a part. (Ex. A, ¶¶ 7–10.)

USMC Captain submitted a religious accommodation request to the Marine Corps supported by a Chaplain’s determination that his religious beliefs are sincere. (Ex. A, ¶ 4.) The Marine Corps denied USMC Captain’s religious accommodation request on October 27, 2021, and he timely appealed that decision on November 11, 2021. (*Id.*) The Marine Corps denied his appeal on February 23, 2022. (*Id.*) On March 1, 2022, the Marine Corps issued USMC Captain an Order to Receive COVID-19 Vaccination within 2 days—by March 3, 2022, at 3:00 P.M. (Ex. A, ¶ 5.) The March

1 vaccination order also states that his failure to comply would be a violation of a “lawful order” subjecting him to “punitive and/or administrative action.” (Ex. A, ¶ 6.)

In addition to USMC Captain (and Navy Commander and Marine Lieutenant Colonel 2, *see* PI Order), numerous named Plaintiffs and other class members have received final denials of their appeals from their initial denials, and their irreversible vaccinate-or-separate choices are imminent. (*See, e.g.*, Doc. 82.) Relief is needed now to prevent this immediate and irreparable harm to the Nation’s cherished heroes.

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

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

Here, only an immediate TRO pending decision on Plaintiffs’ preliminary injunction motion (Docs. 2, 51) can preserve the status quo ante. Absent immediate injunctive relief, USMC Captain will suffer irreparable deprivation of his free exercise rights and irreparable damage to his military career. Indeed, USMC Captain faces either “(1) a most-likely-unlawful deprivation of [his] accumulated status and standing in the United States military, as well as prospective advancement and benefits, or (2)

deprivation of [his] constitutional and statutory rights to Free Exercise and the statutory right to receive a religious exemption” (Order, Doc. 67, at 9.)

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

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

On March 2, 2022 (less than 24 hours after USMC Captain received the March 1 vaccination order), and in accordance with the Court’s October 18, 2021 Order (Doc. 9), Plaintiffs’ counsel conferred by e-mail with counsel for Defendants, seeking Defendants’ agreement to pause the imminent adverse action against Plaintiff USMC Captain, pending the Court’s decision on Plaintiffs’ preliminary injunction motion. Plaintiffs’ counsel have already provided this Plaintiff’s identity to Defendants’ counsel under this Court’s Protective Order. (Docs. 59-1, 110.) As of the filing of this motion, Defendants’ counsel was unable to provide any such agreement. Given the imminent and irreparable adverse action facing USMC Captain as shown above and supported by the attached Declarations (Ex. A), the Court should not request or wait for any further response from Defendants before entering the requested TRO.

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

By signing below, and in accordance with the Court's October 18, 2021 Order (Doc. 9) and Rule 65(b)(1)(B), the undersigned Plaintiffs' counsel certifies the foregoing efforts made to confer with Defendants' counsel regarding the relief requested herein, and the foregoing reasons why the Court should issue the TRO immediately without waiting for any response from Defendants prior to issuing the TRO.

/s/ Roger K. Gannam

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

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

**DECLARATION OF PLAINTIFF USMC CAPTAIN
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
PENDING DECISION ON PRELIMINARY INJUNCTION**

I, CAPTAIN, United States Marine Corps (“USMC Captain”), hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this Declaration, and if called upon to testify to them, I would and could do so competently.

2. I am a citizen of the State of South Carolina, and a Plaintiff in this action. (Second Am. V. Compl., Doc. 105, ¶¶ 45, 115, 140.) I am a patriotic American whose faith is Islam. Desiring to serve my country, I enlisted in the United States Marine Corps in 2014, graduating from recruit training in March 2015. After serving with a Law Enforcement Battalion and earning my undergraduate degree, I was selected for Officer Candidate School, and commissioned as a second lieutenant in 2016. After graduating from The Basic School, I attended the Military Police Basic Officer Course,

EXHIBIT A

with my first duty assignment at a Marine Corps Law Enforcement Battalion as a Platoon Commander. I have attended courses in Norway and commanded a Military Police Integrated Company during a NATO Exercise. I have been deployed in several locations, including Africa.

3. I desire to continue serving in the Marine Corps, consistent with my Islamic religious beliefs that require me to abstain from participation in that which is *haram*—forbidden—including the destruction and commoditization of innocent human life as exemplified by the commercial use of human fetal cell lines derived from abortions. My sincere religious beliefs compel me to exercise “complete reliance on God” rather than in what I believe to be morally tainted COVID shots.

4. I submitted my religious accommodation request to the Marine Corps supported by a Chaplain’s determination that my religious beliefs are sincere. (A true and correct copy of the Chaplain’s sincerity determination dated October 1, 2021, from which my personally identifying information has been redacted, is attached hereto as EXHIBIT 1 (“He has expressed his religious beliefs with extensive research and deep conviction. He has made a definitive judgement based on his religious values.”).) The Marine Corps denied my religious accommodation request on October 27, 2021. (A true and correct copy of the denial from which my personally identifying information has been redacted is attached hereto as EXHIBIT 2.) I timely appealed that decision on November 11, 2021, but the Marine Corps denied my appeal on February 23, 2022.

(A true and correct copy of the appeal denial from which my personally identifying information has been redacted is attached hereto as EXHIBIT 3.)

5. On March 1, 2022, the Marine Corps issued me an Order to Receive COVID-19 Vaccination within 2 days—by March 3, 2022, at 3:00 P.M. (A true and correct copy of the order from which my personally identifying information has been redacted is attached hereto as EXHIBIT 4 (“[Y]ou are hereby ordered to report to Naval Hospital Immunizations Clinic on Thursday, March 3, 2022 between the hours of 0800 to 1200 or 1300 to 1500 to receive your first dose of the COVID-19 vaccine.”).)

6. The March 1 Order to Receive COVID-19 Vaccination also states that my failure to comply would be a violation of a “lawful order” subjecting me to “punitive and/or administrative action.” (Ex. 3 (“This correspondence is a lawful order, the violation of which may subject you to punitive and/or administrative action.”).)

7. Throughout the COVID-19 pandemic, I was assigned as the Marine Logistics Group Antiterrorism Force Protection Officer, where I rewrote the entire Critical Infrastructure Protection Program, and rewrote the standard operating procedures on tracking personnel traveling outside the Continental United States (OCONUS). I deployed to Djibouti, Africa in July 2020, where I was the Officer in Charge of planning Base Cluster Defense. Subsequently, I executed orders to report to Marine Corps Recruit Depot Parris Island in May 2021, where I served as a Series Commander responsible for three platoons in each Series of Marine Recruits and their

Drill Instructors. I interfaced with them all on a daily basis. The only time where I, the recruits, and the instructors were required to wear masks was in the chow halls; otherwise, we attempted to maintain social distancing as much as was possible. I graduated over 160 recruits into the U.S. Marines, and trained and mentored 24 non-commissioned officers.

8. During my tenure at Parris Island, I have stood duty, in which I checked on all recruits who were in COVID quarantine barracks, going in and out of the barracks, standing within 20 feet to 6 feet from the quarantined recruits, over the course of multiple months. I have had four Drill Instructors who have had COVID and recovered. None of my Drill Instructors were hospitalized. I was in proximity to them as well. I credit my God-given immune system and God's protection to the fact that I have never been diagnosed with COVID to date.

9. From September 2021 to the present: I have performed indoor office work at Parris Island, creating trackers using Microsoft Excel, and also began serving as a "floater" Assistant Series Commander, which entails my standing multiple types of duty, including Officer of the Day, and other supervisory obligations, such as watching chow, supervising Physical Training events with the recruits, supervising the firing range with the recruits, answering Drill Instructor questions in person and via email, and other general, indoor supervisory requirements and office duties.

10. Neither COVID-19 nor my or any other Marine's vaccination status has prevented the performance of any mission assigned to me or any unit of which I have been a part.

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

Executed this March 2, 2022.

/s/ USMC Captain
USMC Captain

CHAPLAIN MEMORANDUM FOR THE RECORD

01 Oct 21

From: LT A [REDACTED] M [REDACTED] CHC, USN

To: Commanding Officer, Second Recruit Training Battalion, Marine Corps Recruit Depot,
Parris Island, South Carolina

Subj: REQUEST FOR A WAIVER OF POLICY TO ACCOMMODATE PRACTICE BASED ON
RELIGIOUS BELIEF ICO CAPTAIN [REDACTED]

Ref: (a) SECNAVINST 1730.8B
(b) SECNAVINST 1730.9A
(c) MCO 1730.9

1. Captain [REDACTED] submitted a request for accommodation of a religious practice per reference (a). Per reference (c), I interviewed the requestor on 30 Sep 2021. I explained that this interview would not be a confidential communication as defined by reference (b) and informed the requestor that a referral for confidential chaplain support was available.
2. Nature of the request. Capt [REDACTED] to be exempt from receiving the COVID-19 vaccination. He expressed that he was both raised and practices Islam. He firmly holds to his religious belief regarding several conflicts between taking the vaccine and the Qur'an.
3. Basis. Capt [REDACTED] is a Muslim who prays Salat 5 times each day, studies the Qur'an, and keeps the other requirements of Islam. He believes that, due to his doubts about the vaccine, taking it would be "a major sin that could be a reason for punishment by God in the Afterlife."
4. Alternate means. Capt [REDACTED] is willing to take precautionary measures including mask wearing and periodic Covid testing to prevent transmission of the virus.
5. Sincerity. I believe that Capt [REDACTED] is sincere. He has expressed his religious beliefs with extensive research and deep conviction. He has made a definitive judgement based on his religious values.
6. My contact information is [REDACTED] and [REDACTED]@usmc.mil.

Copy to:

Captain [REDACTED]

[REDACTED] [REDACTED]

EXHIBIT 1

ENCLOSURE (3)

MCO 1730.9
12 JUL 2021CHAPLAIN INTERVIEW CHECKLIST TEMPLATE

Requester:			Interview Date: 20210930		
Name: Capt [REDACTED]			Chaplain Interviewer: LT Ad [REDACTED] Mc [REDACTED]		
Phone: [REDACTED]			Phone: [REDACTED]		
Email: [REDACTED]@usmc.mil			E-mail: [REDACTED]@usmc.mil		
Command: H Company, 2nd RTBN			Chaplain's Command: 2nd RTBN		
Interview Preliminaries					
Yes	No	N/A			
X			Chaplain reviewed policy and doctrine on religious accommodation and the policy for which the requestor is seeking accommodation.		
X			Requester was notified that the interview is not confidential and will be used to advise the command.		
X			Chaplain explained to the requester that confidential support can be received from another chaplain.		
	X		Requester has been granted a waiver for this practice previously.		
Type of Waiver Requested					
Yes	No	N/A			
		X	Uniform standards		
		X	Grooming standards		
X			Immunization requirements		
		X	DNA sampling		
		X	Other (Please describe):		
Interview					
Yes	No	N/A			
X			Requester's beliefs (conscience, moral principles, or religious beliefs) seemed honestly and sincerely held using one or more of the following factors:		
X			1. Requester was credible (consistently keeps tenets, practices, etc.).		
X			2. Requester's demeanor and pattern of conduct are consistent with the request.		
X			3. Requester participates in activities associated with the belief(s).		
X			4. Other persons supporting the claim are credible.		
X			5. Request is supported by letter(s) of verification or endorsement from an organization espousing the beliefs which are the basis for the claim.		
X			Alternate means of accommodating the practice were explored in the interview.		
Process Checklist					
Yes	No	N/A			
X			Chaplain has prepared a memorandum documenting the interview.		
X			Chaplain reviewed memorandum with requester and provided a copy.		
X			Chaplain submitted the memorandum and this document to the commanding officer via chain of command.		
X			Chaplain referred requester to command to process request.		



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

1730
MRA
OCT 27 2021

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

Subj: REQUEST FOR IMMUNIZATION EXEMPTION

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

MR Ottignon
for

DAVID A. OTTIGNON

Copy to:
CG, MCRD PISC
CO, RTR
CO, 2D RTBn

EXHIBIT 2



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:

1020

ACMC

FEB 23 2022

From: Assistant Commandant of the Marine Corps
To: Captain [REDACTED] USMC

Subj: APPEAL FROM DENIAL OF RELIGIOUS ACCOMMODATION REQUEST IN THE
CASE OF CAPTAIN [REDACTED] USMC

Ref: (a) 42 U.S.C. § 2000bb et seq., Religious Freedom Restoration
Act of 1993 (RFRA)
(b) DoD Instruction 1300.17
(c) SECNAVINST 1730.8B CH 1
(d) DoD Instruction 6205.02
(e) MCO 1730.9
(f) MARADMIN 462/21
(g) Assistant Secretary of Defense for Health Affairs
Memo of 14 Sep 21, "Mandatory Vaccination of Service
Members using the Pfizer-BioNTech COVID-19 and
Comirnaty COVID-19 Vaccines"
(h) ASN M&RA Memo of 8 Sep 21, "Use of Pfizer-BioNTech Vaccine
for Mandatory Vaccination"

Encl: (1) Capt [REDACTED] Appeal 1000 CO
(2) DC M&RA ltr 1730 MRA of 27 Oct 21
(3) Capt [REDACTED] AA Form of 1 Oct 21
(4) Religious Accommodation Review Board Recommendation
Worksheet
(5) Applicant Information Form
(6) 3270 Data (BIR, BTR, Awards)

1. After careful consideration of the references and enclosures, I have decided to disapprove your appeal.

2. In your original request, you ask for a religious accommodation for an immunization exemption. Your request indicates that you are specifically requesting exemption from receiving the COVID-19 vaccine. Your request is based on your belief that the use of fetal stem cells from aborted fetuses is contrary to Islam. You are also concerned that the vaccine is experimental and therefore may only be used in extreme circumstances under Islamic law. You further object to mRNA technology. In response, the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) denied your request. You have appealed DC M&RA's decision.

3. In your appeal, you state that the denial ignored the appropriate legal standard and was not individualized to your request. You assert that the order you received was unlawful, and that there are less restrictive means to meet the government's end-state.

EXHIBIT 3

Subj: APPEAL FROM DENIAL OF RELIGIOUS ACCOMMODATION REQUEST IN THE
CASE OF CAPTAIN [REDACTED] USMC

4. Pursuant to reference (e), I am the appeal authority. In reaching a decision on your appeal, I considered the denial letter issued by DC M&RA on 27 October 2021, your appeal which was not dated, your initial request dated 1 October 2021, and the endorsements and enclosures attached to your initial request. Additionally, I considered the applicant information form, your basic individual record, basic training record, and your awards page. I further considered your right to the free exercise of your religion, and the government's compelling interest in mission accomplishment at the individual, unit, and organizational levels. Specifically, I considered such necessary elements of mission accomplishment as (1) military readiness, (2) unit cohesion, (3) good order and discipline, and (4) the health and safety of the force. I also considered whether the DC M&RA's previous decision constitutes the least restrictive means of furthering the government's compelling interests. Finally, I consulted with legal counsel.

5. I have determined that the COVID-19 vaccination requirement does not substantially burden your sincerely held religious belief because fetal stem cells are neither used in the manufacture of the Pfizer COVID-19 vaccine nor are they present in the vaccine itself. Furthermore, you have willingly received other FDA approved vaccines in your more than seven years of service and you do not adequately explain how COVID-19 inoculation is different from those vaccines. If your concern is with mRNA technology, then you can receive the Johnson and Johnson COVID-19 vaccine, which does not use mRNA. You also assert that receiving the COVID-19 vaccine is against your religious beliefs because the vaccine's efficacy is unproven and it has been shown to have various side effects. To the contrary, the Pfizer COVID-19 vaccine has been shown to be safe and effective for use in adults. As a result, your religious beliefs are not substantially burdened by the requirement to receive a COVID-19 vaccine.

6. Nonetheless, even assuming that the COVID-19 vaccination substantially burdens your religious beliefs, I have considered, in accordance with references (b) and (e), your assertions concerning your beliefs and weighed them against the government's compelling interests in military readiness and in the health and safety of the force. The COVID-19 vaccine is the most effective and readily available tool the Marine Corps has to keep service members healthy and safe, and to ensure that the Marine Corps continues to be able to accomplish its mission of protecting vital national interests. Service members who are fully vaccinated have a significantly smaller risk of hospitalization, severe disease, and death. The Marine Corps has seen increasingly convincing data that service members who remain unvaccinated are more likely to experience a wide range of new,

Subj: APPEAL FROM DENIAL OF RELIGIOUS ACCOMMODATION REQUEST IN THE
CASE OF CAPTAIN [REDACTED] USMC

returning, or ongoing health problems known as "long COVID" after being infected with COVID-19 as opposed to those who are fully vaccinated. Further, emerging variants, such as the Omicron variant, which is highly transmissible, pose additional concerns. Personnel who have fallen ill due to a failure to be vaccinated against COVID-19 undermine a unit's effective functioning and negatively impact their unit's ability to accomplish the mission. Moreover, personnel who are unvaccinated do not just put themselves at risk, they also risk the health and medical readiness of other persons within their unit, which in turn decreases the military readiness of the unit and the Marine Corps as a whole. For a unit to function effectively, either in garrison, in field training, or in combat, all personnel must be able to perform their individually assigned duties, which ensures military readiness, another of the government's compelling interests. As a result, an exemption from the COVID-19 vaccination poses a significant risk to military readiness, and the health and safety of the force, particularly in your case, where you work as a series commander responsible for supervising drill instructors, who are responsible for making Marines, which is the future of the Marine Corps. This critical role cannot be performed remotely and places you in close proximity to drill instructors and recruits on a daily basis. Additionally, recruits and drill instructors eat, sleep, train, and hygiene in a group setting where traditional mitigation measures are difficult to enforce. Finally, you are a Marine and military police officer, who must be world-wide deployable even when you are not currently in a deploying command.

7. Your claim that other mitigation measures are a lesser restrictive means is not supportable because these means are less effective than vaccination and they do not achieve the Marine Corps' compelling government interests in readiness, and health and safety. While masking, social distancing, hygiene, teleworking, and other similar measures, individually or in combination, have been shown to help slow the spread of the virus, they are simply not as effective as vaccination. Moreover, these measures are often incompatible with the demands of military life, where Marines and Sailors must live, work, realistically train, and, if necessary, fight in close quarters. The demands of military life render these less restrictive means of furthering the government's compelling interests in military readiness, and the health and safety of the force even less effective than such measures among the civilian community. Accordingly, because there is no less restrictive means to ensure these compelling government interests, your appeal is disapproved.

8. Your contention that your religious accommodation request was not considered and decided on a case-by-case basis is incorrect. While the DC M&RA letter may not have been individually tailored to

Subj: APPEAL FROM DENIAL OF RELIGIOUS ACCOMMODATION REQUEST IN THE
CASE OF CAPTAIN [REDACTED] USMC

your satisfaction, this does not mean that the adjudication authority did not consider the entirety of your individual request, and weigh the factors presented in order to reach a decision. Furthermore, my independent review of your appeal has been completed on an individualized basis. I have carefully reviewed the entire file and considered each of the facts and arguments presented by your appeal before reaching my final decision.

9. I urge you to consult your military health care provider regarding any medical concerns you may have about the COVID-19 vaccine. My point of contact on this matter is Mr. Michael D. Graham, Judge Advocate Division (JCA), (703) 614-2510, or email michael.d.graham@usmc.mil.



E. M. SMITH
Assistant Commandant
of the Marine Corps

Copy to:
DC M&RA
CG, MCRD PISC
CO, RTR
CO, 2d RTBn



RECRUIT TRAINING REGIMENT
MARADMIN'S RECRUIT REGIMENT
P.O. BOX 16200
PARRIS ISLAND, SOUTH CAROLINA 29905-6200

IN REPLY REFER TO:
6000
CO
MAR 01 2022

From: Commanding Officer

To: [REDACTED]

Subj: ORDER TO RECEIVE COVID-19 VACCINATION

Ref: (a) MARADMIN 462/21
(b) JMJ practice Advisory 8-21

1. In accordance with the references, you are hereby ordered to report to Naval Hospital Immunizations Clinic on Thursday, March 3, 2022 between the hours of 0800 to 1200 or 1300 to 1500 to receive your first dose of the COVID-19 vaccine. You are further ordered to receive your second dose of the COVID-19 vaccine at the Naval Hospital Immunizations Clinic, three weeks after your first dose. Full vaccination is defined as two weeks after completing the second dose of a two-dose vaccine or two weeks after receiving a single dose of a one-dose vaccine. You may receive the COVID-19 vaccine from an alternative medical provider, however the timeline outlined in this order remains in effect.

2. You shall report receipt of your first and second dose of the COVID-19 vaccine to the Battalion Executive Officer, [REDACTED] within one business day of receiving each dose. If the vaccine is unavailable on the above date, you shall notify your chain of command within one business day of learning of that unavailability.

3. This correspondence is a lawful order, the violation of which may subject you to punitive and/or administrative action.

From: [REDACTED]
To: Commanding Officer

Subj: ORDER TO RECEIVE COVID-19 VACCINATION

1. On _____ I received the foregoing order to be fully vaccinated against COVID-19 per the mandated timeline. I have been given a copy of this order and the MARADMIN listed as reference (a). I hereby certify that I have read and fully understand this order.

EXHIBIT 4 [REDACTED]