

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**AIR FORCE OFFICER, AIR FORCE NCO,** )  
**AIR FORCE SPECIAL AGENT,** and )  
**AIR FORCE ENGINEER,** on behalf of )  
 themselves and all others similarly situated, )

Plaintiffs, )

v. )

**LLOYD J. AUSTIN, III,** in his )  
 official capacity as Secretary of Defense; )  
**FRANK KENDALL, III,** in his )  
 official capacity as Secretary of the Air Force; and )  
**ROBERT I. MILLER,** in his )  
 official capacity as Surgeon General of the )  
 Air Force, )

Defendants. )

Case No. 5:22-cv-00009-TES

**PLAINTIFFS’ MOTIONS TO CERTIFY CLASS, TO APPOINT CLASS COUNSEL,  
AND FOR CLASS-WIDE PRELIMINARY INJUNCTION**

Pursuant to Federal Rules of Civil Procedure 23 and 65, Plaintiffs Air Force Officer, Air Force NCO, Air Force Special Agent, and Air Force Engineer (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated, hereby move **(1)** to certify a class (the “Class”), under Rule 23(b)(2), consisting of all members of the United States Air Force who (a) are subject to a mandate of the Department of Defense or Air Force to receive a COVID-19 vaccine, (b) submitted a request for religious accommodation regarding such mandate based on a sincerely held religious belief, and (c) have received or will receive a final denial of such request from the Department of Defense or Air Force; **(2)** for appointment of Plaintiffs’ counsel as Class counsel, under Rule 23(g); and **(3)** for entry of a Class-wide preliminary injunction, under Rule 65, enjoining Defendants from enforcing certain COVID-19 vaccine mandates—specifically,

Department of Defense’s August 24, 2021 Order and Department of Air Force’s September 3, 2021 Order (collectively, the “Mandates”)<sup>1</sup>—against Air Force NCO, Air Force Special Agent, Air Force Engineer, or any member of the Class,<sup>2</sup> and enjoining Defendants from taking any adverse action against Air Force NCO, Air Force Special Agent, Air Force Engineer, or any member of the Class on the basis of this lawsuit or of any Plaintiff’s or Class member’s request for religious accommodation related to the Mandates.<sup>3</sup>

1. The Court should certify the Class because the Class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the Class, Plaintiffs’ claims are typical of the claims of the Class, and Plaintiffs will fairly and adequately protect the interest of the Class. Fed. R. Civ. P. 23(a)(1)-(4). In its February 15, 2022 Order [Doc. 51, p. 25] granting Air Force Officer’s Motion for Preliminary Injunction [Doc. 2], the Court “easily” found that “the Air Force’s process to protect religious rights is both illusory and insincere.” Defendants have therefore acted or refused to act on grounds that apply generally to the Class, so

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<sup>1</sup> Plaintiff Air Force Officer, on behalf of herself and all others similarly situated, also seeks relief as to certain federal civilian employee COVID-19 vaccine mandates—specifically, President Biden’s September 9, 2021 Executive Order 14043, Department of Defense’s October 1, 2021 Order, and Department of Air Force’s October 8, 2021 Order. *See* Second Amended Class Action Complaint. However, those mandates are preliminarily enjoined pursuant to another court’s order, *Feds. for Med. Freedom v. Biden*, --- F. Supp. 3d. ----, 2022 WL 188329, at \*8 (S.D. Tex. Jan. 21, 2022). *See* February 15 Injunction [Doc. 51], p. 2 n.2. A panel of the Fifth Circuit Court of Appeals issued a ruling reversing the injunction order, but the mandate is not due to issue until the May 31, 2022, so the injunction remains in place. Therefore, the present motions do not seek relief as to those federal civilian employee mandates. Plaintiff Air Force Officer reserves the right to pursue such relief in the future if and as appropriate.

<sup>2</sup> The Class includes Plaintiffs. The Court has already granted a preliminary injunction in favor of Plaintiff Air Force Officer individually. [Doc. 51].

<sup>3</sup> Plaintiffs, on behalf of themselves and all others similarly situated, also seek relief as to Defendants’ violation of the Administrative Procedure Act. *See* Second Amended Class Action Complaint, Count III. The present motions do not seek relief as to this claim. Plaintiffs reserve the right to pursue such relief in the future if and as appropriate.

that preliminary and final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. Fed. R. Civ. P. 23(b)(2).

**2.** The Court should appoint Plaintiffs' counsel as Class counsel because they are qualified to and will diligently prosecute this action and will fairly and adequately represent the interests of the Class.

**3.** The Court should enter a Class-wide injunction because the Class is likely to succeed on the merits of its Religious Freedom Restoration Act (RFRA) and First Amendment claims, just as the Court found Air Force Officer was individually; the thousands of Class members face irreparable harm in the absence of an injunction, just as Air Force Officer did; consistent with the Court's initial preliminary injunction, the balance of hardships weighs in the Class's favor; and a Class-wide injunction would not be adverse to the public interest.

Plaintiffs further rely on and incorporate the Memorandum in Support of the present motions filed simultaneously herewith, the declarations in support of these motions and exhibits thereto filed simultaneously herewith, Air Force Officer's briefing and the declarations in support of her original Motion for Preliminary Injunction and exhibits thereto [including Doc. 2, 2-1 to 2-17, 40, 40-1, 40-2, 41, 41-1, and 45], and the Second Amended Class Action Complaint [Doc. 84].

WHEREFORE, Plaintiffs request that the Court enter an order (1) certifying a Class consisting of all members of the United States Air Force who (a) are subject to a mandate of the Department of Defense or Air Force to receive a COVID-19 vaccine, (b) submitted a request for religious accommodation regarding such mandate based on a sincerely held religious belief, and (c) have received or will receive a final denial of such request from the Department of Defense or Air Force; (2) appointing Plaintiffs' counsel as Class counsel; (3) enjoining Defendants from

enforcing the Mandates against Air Force NCO, Air Force Special Agent, Air Force Engineer, or any member of the Class, and enjoining Defendants from taking any adverse action against Air Force NCO, Air Force Special Agent, Air Force Engineer, or any member of the Class on the basis of this lawsuit or of any Plaintiff's or Class member's request for religious accommodation related to the Mandates; and (4) granting Plaintiffs and the Class such other and further relief as the Court deems just and proper.

Dated: May 3, 2022

Respectfully submitted,

/s/ Adam S. Hochschild

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Case No. 5:22-cv-00009-TES

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTIONS TO CERTIFY CLASS,  
TO APPOINT CLASS COUNSEL, AND FOR CLASS-WIDE PRELIMINARY  
INJUNCTION**

The Air Force's "record regarding religious accommodations requests" is "abysmal." *Air Force Officer v. Austin*, 2022 WL 468799, at \*1 n.1. [Doc. 51] ("February 15 Injunction"). The Air Force's religious-accommodation-request process is "illusory and insincere." *Id.* at \*10. The Court should certify the proposed class, appoint class counsel, and issue a class-wide preliminary injunction, to protect the thousands of Air Force service members who are or will be casualties of this unlawful process. Such Air Force class-wide relief would be consistent with the Navy class-wide relief that the District Court for the Northern District of Texas recently issued in *U.S.*

*Navy SEALs I-26 v. Austin*, No. 4:21-cv-0126-O, 2022 WL 1025144 (N.D. Tex. March 28, 2022) (“Navy Class Order”).<sup>1</sup>

The Court should certify the proposed class (the “Class”) because Plaintiffs and the Class satisfy the requirements of numerosity, commonality, typicality, and adequacy under Rule 23(a), and Defendants have acted or refused to act on grounds that apply generally to the Class, so injunctive relief as to the Class as a whole is appropriate. The Court should appoint Plaintiffs’ counsel as Class counsel because they are qualified to and will diligently prosecute this action and will fairly and adequately represent the interests of the Class. Finally, the Court should enter a Class-wide injunction because the Class is likely to succeed on the merits of its Religious Freedom Restoration Act (RFRA) and First Amendment claims, just as the Court found Air Force Officer was individually; the thousands of Class members face irreparable harm, just as Air Force Officer did; consistent with the Court’s initial preliminary injunction, the balance of hardships weighs in the Class’s favor; and a Class-wide injunction would not be adverse to the public interest.

## **I. BACKGROUND**

In December 2021, Defendants issued a final denial of Plaintiff Air Force Officer’s request for a religious accommodation to their military COVID-19 vaccine mandates. On

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<sup>1</sup> The Navy Class Order is consistent with the United States Supreme Court’s ruling in that case issued three days before. *Austin v. U.S. Navy SEALs I-26*, \_\_\_ S. Ct. \_\_\_, 2022 WL 882559 (March 25, 2022). Like the Northern District of Texas, this Court can grant substantial preliminary injunctive relief, including protecting Class members from the most permanent and irreparable injuries such as the forced termination of their careers and vocations, even while acknowledging during litigation, as the Supreme Court required in *SEALs I-26*, military discretion in considering vaccination status in making deployment, assignment, and other operational decisions. *Id.*; Navy Class Order.

January 6, 2022, Air Force Officer filed this lawsuit, originally only on her own behalf, together with a motion for preliminary injunction.

On February 15, 2022, the Court granted a preliminary injunction in favor of Air Force Officer. *Air Force Officer v. Austin*, 2022 WL 468799 (“February 15 Injunction”). [Doc. 51]. Among other findings the Court “easily” found that “the Air Force’s process to protect religious rights is both illusory and insincere. In short, it’s just ‘theater.’ *U.S. Navy SEALs 1-26 [v. Biden]*, [No. 4:21-cv-0126-O,] 2022 WL 34443, at \*1 [(N.D. Tex. Jan. 3, 2022)].” February 15 Injunction, 2022 WL 468799, at \*10. On February 28, 2022, Air Force Officer filed a First Amended Class Action Complaint and motions for class-wide relief. [Doc. 56, 57, 58].

Air Force NCO, Air Force Special Agent, and Air Force Engineer (“Additional Representatives”) received final denials of their requests for religious accommodation from the military COVID-19 vaccine mandate but have not yet received preliminary injunctive relief. On March 31, 2022, Air Force Officer, joined by the Additional Representatives, filed a motion for leave to file a Second Amended Class Action Complaint, to add the Additional Representatives as plaintiff Class representatives, and/or for intervention of the Additional Representatives and motions for class-wide relief. [Doc. 63 to 65]. The proposed Second Amended Class Action Complaint was attached to the motion. [Doc. 63-2].

On April 27, 2022, the Court granted the motion for leave to file the Second Amended Class Action Complaint. [Doc. 83]. In that April 27 Order, the Court directed Air Force Officer and the Additional Representatives (collectively, “Plaintiffs”) to re-file the Second Amended Class Action Complaint, which Plaintiffs did that same day [Doc. 84].

Also in its April 27 Order, the Court permitted Plaintiffs to re-file their previous class-relief motions as new, consolidated motions. [Doc. 83 at 10]. Plaintiffs have done so with their present motions. The present memorandum is in support of these motions.

Accordingly, with their present motions, Plaintiffs seek certification of the Class, appointment of Class counsel, and class-wide preliminary injunctive relief. The proposed Class consists of all members of the United States Air Force<sup>2</sup> who (a) are subject to a mandate of the Department of Defense or Air Force to receive a COVID-19 vaccine, (b) submitted a request for religious accommodation regarding such mandate based on a sincerely held religious belief, and (c) have received or will receive a final denial of such request from the Department of Defense or Air Force. Plaintiffs request injunctive relief on behalf of the Additional Representatives and the Class as a whole.

## **II. CLASS CERTIFICATION**

### **A. LEGAL STANDARD**

“The district court has broad discretion in determining whether to certify a class.” *Harris v. Georgia Dep’t of Corr.*, No. 5:18-CV-00365-TES, 2021 WL 6197108, at \*7 (M.D. Ga. Dec. 29, 2021)<sup>3</sup> (quoting *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1569 (11th Cir. 1992)). The Court can certify a class if a plaintiff representative establishes that the

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<sup>2</sup> The members of the United States Air Force include all active duty and reserves of the Air Force, Space Force, and Air National Guard. *See* 10 U.S.C. § 9081 (“There is established a United States Space Force as an armed force within the Department of the Air Force”); 10 U.S.C. § 10111 (Air National Guard is a “reserve component of the Air Force”).

<sup>3</sup> In its discretion, the Court can also consider alternative definitions of the class. *See, e.g., Harris*, 2021 WL 6197108, at \*1-3, 10. The Court can also choose *provisionally* to certify a class for purposes of providing preliminary injunctive relief. *See, e.g., Meyer v. Portfolio Recovery Assoc., LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012); *Keeler v. Hills*, 73 F.R.D. 10, 11-12 (N.D. Ga. 1976); *Tefel v. Reno*, 972 F. Supp. 608, 617 (S.D. Fla. 1997); *Mays v. Dart*, 453 F. Supp. 3d 1074, 1085 (N.D. Ill. 2020).

proposed class is adequately defined and clearly ascertainable, meets the requirements of Rule 23(a), and demonstrates that the class is one of the types of class actions listed in Rule 23(b).

*Harris*, 2021 WL 6197108, at \*8 (citing *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012)).

Rule 23(a) provides:

One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so **numerous** that joinder of all members is impracticable;
- (2) there are questions of law or fact **common** to the class;
- (3) the claims or defenses of the representative parties are **typical** of the claims or defenses of the class; and
- (4) the representative parties will fairly and **adequately** protect the interests of the class.

Fed. R. Civ. P. 23(a) (emphasis added).

Rule 23(b) provides in relevant part:

A class action may be maintained if Rule 23(a) is satisfied and if... (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

Fed. R. Civ. P. 23(b)(2). Frequently, analysis under Rule 23 “will entail some overlap with the merits of the plaintiff’s underlying claim.” *Harris*, 2021 WL 6197108, at \*8 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)).

## **B. THE COURT SHOULD CERTIFY THE CLASS**

### **1. The Class is Adequately Defined and Clearly Ascertainable.**

The Class is more than adequately defined and is clearly ascertainable. *Harris*, 2021 WL 6197108, at \*7. Defendants are well aware of who has submitted a request for religious accommodation and to whom they have issued a final denial. The procedures Defendants

established for applying for and receiving both initial and final denials from the vaccine mandates are extensive and formal. [Doc. 2-3, 2-4, 2-6, 2-11, 2-13, 2-16, 2-17; Exhibits to Declarations of Air Force NCO, Air Force Special Agent, and Air Force Engineer submitted herewith]. Before issuing a final determination on a request for accommodation, Defendants require submission of a completed set of materials, twice. *Id.* Moreover, each final denial (the triggering event rendering someone a Class member) is documented in a communication from a superior officer. *Id.* Class membership is therefore instantly and permanently ascertainable by both the Defendants and potential Class members.

The Air Force has already certified that it can identify the number of individuals who are in each stage of the process of applying for religious accommodation, in sworn submissions required by the United States District Court for the Middle District of Florida. [*See, e.g.*, Doc. 40-2]. There is no way to count such individuals unless their identities are ascertainable.<sup>4</sup>

## **2. Plaintiff and the Class Satisfy the Requirements of Rule 23(a).**

“Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate,” and it involves “four requirements—numerosity, commonality, typicality, and adequate representation.” *Dukes*, 564 U.S. at 349. Plaintiffs and the Class satisfy these requirements.

### **a. The Class is so numerous that joinder of all members is impracticable.**

“[W]hile there is no fixed numerosity rule, generally less than twenty-one is inadequate, more than forty is adequate, with numbers in between varying according to other factors.” *Cox v.*

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<sup>4</sup> Even if Defendants were to claim that it would be burdensome to ascertain all Class members, that alone does not defeat Class certification. As this Court held in *Harris*, “Plaintiffs aren’t required to limit their proposed class to the one that is the easiest to figure out.” *Harris*, 2021 WL 6197108, at \*10. However, the facts offered by both Plaintiffs and Defendants in this case indicate that there is nothing burdensome about identifying members of the proposed class.

*Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986); *Harris*, 2021 WL 6197108, at \*11 (quoting *Cox*). There are at least 2,027 current members of the putative Class (those who have already received final denials) and thousands more who will likely receive final denials and become Class members. DAF COVID-19 Statistics - Apr. 26, 2022, <https://www.af.mil/News/Article-Display/Article/2989918/daf-covid-19-statistics-apr-26-2022/> (“Air Force Statistics”) (last visited May 2, 2022). Plaintiffs satisfy the numerosity requirement. *Cox*, 784 F.2d at 1553; *Harris*, 2021 WL 6197108, at \*11.

**b. There are questions of fact and law common to the Class.**

Issues common to all members of the Class include:

- Whether the Air Force’s process that supposedly protects religious rights as required by RFRA and the First Amendment is illusory and insincere. February 15 Injunction, 2022 WL 468799, at \*10.
- Whether the religious accommodation requests the Air Force claims to have approved are for service members already slated for separation.
- Whether the Air Force has a policy, practice, or procedure of not conducting “to the person” assessment to which service members are entitled under RFRA and/or the First Amendment.
- Whether the Air Force can demonstrate that it has a compelling interest in denying any religious exemptions from the mandates while freely granting exemptions for secular purposes.
- Whether the Air Force can demonstrate that vaccination of a religious service member is the least restrictive means of preventing the spread of COVID-19 when the Air Force is almost universally vaccinated, evidence is mounting that COVID-

19 vaccination does not prevent COVID-19 infection or transmission, and the Air Force permits alternative prevention measures for secular objectors to vaccination.

Resolution of any one these common issues, and especially all of them, would resolve “in one stroke” a question that is “central to the validity of each class member’s claim.” *Dukes*, 564 U.S. at 350. Put another way, all Class members have suffered a common injury that is susceptible to Class-wide resolution: wrongful denial of religious accommodation requests pursuant to an illegal policy, practice, or procedure. *See id.*

Commonality “may also be demonstrated by showing that the defendants ‘operated under a general policy of discrimination.’” *Id.* at 353 (quoting *Gen. Tele. Co. of Sw. v. Falcon*, 347 U.S. 147, 159 n.15 (1982)). This is precisely what Plaintiffs have alleged: a general policy of discriminating against religious service members in violation of RFRA and the First Amendment. As this Court recently stated:

[T]he Air Force has rejected 99.76% of all religious accommodation requests, and until about two weeks ago, it had rejected every single one it “carefully consider[ed].” [Doc. 2-15, p. 1]. With such a marked record disfavoring religious accommodation requests, the Court easily finds that the Air Force’s process to protect religious rights is both illusory and insincere. In short, it’s just “theater.” *U.S. Navy SEALs I–26*, 2022 WL 34443, at \*1.

February 15 Injunction, 2022 WL 468799, at \*10. *See also* Navy Class Order, 2022 WL 1025144, at \*5 (“Here, the potential class members have suffered the ‘same injury,’ arising from violations of their constitutional rights. Each has submitted a religious accommodation request, and each has had his request denied, delayed, or dismissed on appeal. Exactly zero requests have been granted. And while Defendants encourage this Court to disregard the data, it is hard to imagine a more consistent display of discrimination.”); *Navy Seal I v. Austin*, No. 8:21-CV-2429-SDM-TGW, 2022 WL 534459, at \*20 (M.D. Fla. Feb. 18, 2022) (“[T]o the extent a

‘substantial disruption’ results from the defendants’ systemic failure to assess a religious exemption request ‘to the person,’ the ‘harm’ suffered by defendants results only from the defendants’ own failure to comply with RFRA.”).

**c. Plaintiffs’ claims are typical.**

“The typicality element overlaps somewhat with the commonality element.” *Harris*, 2021 WL 6197108, at \*12 (M.D. Ga. Dec. 29, 2021) (quoting *Taylor v. Screening Reports, Inc.*, 294 F.R.D. 680, 689 (N.D. Ga. 2013)). In short, “commonality refers to the group characteristics of the class as a whole and typicality refers to the individual characteristics of the named plaintiff in relation to the class.” *Harris*, 2021 WL 6197108, at \*12 (quoting *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1256, 1278 (11th Cir. 2000)).

Plaintiffs’ claims are typical. They are members of the Air Force; they are subject to mandates of the Department of Defense and Air Force to receive a COVID-19 vaccine; they submitted requests for religious accommodation regarding such mandates based on sincerely held religious beliefs; they received final denials; and Defendants cannot show that vaccination is the least restrictive means, *i.e.*, actually necessary by comparison to alternative measures, of pursuing a compelling interest.

Even if there may be circumstances unique to these Plaintiffs or unique to a certain subset of the Class, “there is no requirement that all members of the proposed class share the same experiences.” *Harris*, 2021 WL 6197108, at \*12. As the Court in *Harris* further explained:

“[The typicality] requirement may be satisfied **even though varying fact patterns** support the claims or defenses of individual class members[.]” *Collins v. Int’l Dairy Queen, Inc.*, 168 F.R.D. 668, 674 (M.D. Ga. 1996) (quoting *In re Domestic Air Transp. Antitrust Litig.*, 137 F.R.D. 677, 698 (N.D. Ga. 1991)). Instead, typicality can be satisfied by the showing of a “**strong similarity of legal theories**” amongst individual class members. *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). That is exactly what Plaintiffs have shown here.

*Id.* (emphasis added). At the very least there is a “strong similarity” of legal theories amongst the members of the Class here. Plaintiffs’ claims are therefore typical of the claims of the Class. *Id.* See also Navy Class Order, 2022 WL 1025144, at \*7 (“Factual differences do not defeat typicality. All members of the class have unsuccessfully requested religious accommodation. The Named Plaintiffs’ claims ‘have the same essential characteristics’ of the Navy Class and subclasses. See *James* [v. *City of Dallas*], 254 F.3d [551,] 571 [(5th Cir. 2001)]. Thus, despite factual differences, the Named Plaintiffs’ causes of action are typical of the class.”).

**d. Plaintiffs will fairly and adequately protect the interests of the Class.**

“The adequacy-of-representation requirement encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action.” *Harris*, 2021 WL 6197108, at \*13 (quoting *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 23 (11th Cir. 2008)). The commonality and typicality requirements “tend to merge with the adequacy-of-representation requirement, although the latter requirement also raises concerns about the competency of class counsel and conflicts of interest.” *Dukes*, 564 U.S. at 350 n.5 (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157-158, n. 13 (1982)).

**(1) No conflict exists.**

Nothing in the record suggests any conflicts between Plaintiffs and the Class, let alone a substantial one. See *Harris*, 2021 WL 6197108, at \*13.

**(2) Plaintiffs and their counsel will adequately prosecute the case.**

Plaintiffs and their counsel will diligently prosecute this action. Air Force Officer has already pursued, and the Court has issued, a preliminary injunction on her own behalf. Air Force Officer also has demonstrated a strong interest in vindicating the rights of her fellow service

members. Her motivation in pursuing individual relief has at all times included an interest in creating an avenue toward relief for her similarly situated brothers and sisters in uniform.

February 15 Injunction, 2022 WL 468799, at \*4. That interest and motivation is shared by her three new co-Plaintiffs, who all seek preliminary injunctive relief for themselves and for similarly situated service members throughout the entire Air Force.

As experienced religious liberty advocates with the backing of a longstanding, national public interest law firm, Plaintiffs' counsel will diligently prosecute the case on behalf of Plaintiffs and the entire Class. In appointing Class counsel, the Court must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

i. Plaintiffs' counsel have done substantial work identifying and investigating potential claims in this action and other related potential actions. They have already obtained preliminary injunctive relief on Air Force Officer's behalf [Doc. 51], sharing Air Force Officer's, and the additional three Plaintiffs', interest in obtaining relief for similarly situated service members. Five of Plaintiffs' attorneys listed below are associated with the Thomas More Society, a national religious-liberty law firm that is able to provide pro bono representation to its clients. As such, counsel have been contacted, both before and during the current action, by many putative Class members with interests similar to Plaintiffs'. Declaration of attorney Adam Hochschild submitted herewith, ¶ 12.

ii. Counsel have substantial experience in handling class actions, other complex litigation, and the types of claims in this case, as detailed, for example, in the declarations of attorneys Adam Hochschild, Paul Jonna, and Mary Catherine Hodes submitted herewith (“Attorney Declarations”). These attorneys alone<sup>5</sup> have served as counsel in numerous different class actions and, as Thomas More Society attorneys, have engaged extensively in litigation involving religious liberty and First Amendment rights, among other complex subject matters. *See* Attorney Declarations. Mr. Jonna, for example, successfully represented numerous churches in litigation arising out of the COVID-19 restrictions on houses of worship. Jonna Declaration, ¶ 6. One of those cases, which Mr. Jonna argued at the District Court level three times, resulted in an historic win when the Supreme Court struck down California’s indoor worship ban. *See id.*; *South Bay United Pentecostal Church, et al. v. Gavin Newsom, et al.*, 141 S.Ct. 716 (2021). Mr. Jonna also helped successfully delay the vaccine mandate imposed by the San Diego Unified School District in *Doe v. San Diego Unified Sch. Dist.*, \_\_ S. Ct. \_\_, 2022 WL 498812 (Feb. 18, 2022) (denying application without prejudice due to cessation of mandate); Jonna Declaration ¶ 11.

iii. Counsel are well-versed in the applicable law, as evidenced by their experience and preliminary success in this case, and by their experience in numerous other religious liberty cases as attorneys with the Thomas More Society. *See* Attorney Declarations.

iv. As attorneys associated with the Thomas More Society, counsel can commit any and all necessary resources to representing the Class. *See* Attorney Declarations.

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<sup>5</sup> While Plaintiffs believe the three attorney declarations submitted herewith are more than sufficient to show counsel’s adequacy, the other three attorneys entered in this case on behalf of Plaintiff also have substantial relevant experience and can submit declarations of their own upon the Court’s request.

Accordingly, Plaintiffs and their counsel can adequately prosecute the case.

### **3. Plaintiffs and the Class Satisfy the Requirements of Rule 23(b)(2).**

The Court should certify the Class under Rule 23(b)(2) because Defendants have “acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Like the plaintiffs in *Harris*, Plaintiffs seek to enjoin unlawful “policies, practices, and procedures” applicable to the Class. *Harris*, 2021 WL 6197108, at \*13 (citing *M.H. v. Berry*, No. 1:15-cv-1427-TWT, 2017 WL 2570262, at \*7 (N.D. Ga. June 14, 2017)). Further, “this is a civil rights case, and ‘[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples[]’ of lawsuits properly brought under Rule 23(b)(2).” *Harris*, 2021 WL 6197108, at \*13 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997)). *See also Holmes v. Continental Can Co.*, 706 F2d 1144, 1155 (11th Cir. 1983) (Rule 23(b)(2) “was intended primarily to facilitate civil rights class actions, where the class representatives typically sought broad injunctive relief against discriminatory practices.”). *See also Navy Class Order*, 2022 WL 1025144, at \*9 (“By uniformly denying potential class members’ religious accommodation requests, the Navy has ‘acted . . . on grounds that apply generally to the class.’ And because potential class members may receive relief from a single injunction, the claim is appropriate for class-wide resolution under Rule 23(b)(2).”). Accordingly, Plaintiffs have met the requirements of Rule 23(b)(2).

### **III. APPOINTMENT OF CLASS COUNSEL**

The Court should appoint Plaintiffs’ counsel as Class counsel under Rule 23(g). An order that certifies a class action must appoint class counsel under Rule 23(g). Fed. R. Civ. P. 23(c)(1)(B). As set forth in the attached attorney declarations and as discussed above in Section

II.B.2.d(2), Plaintiffs’ counsel is qualified to and will diligently prosecute this action. Fed. R. Civ. P. 23(g)(1)(A). Plaintiffs’ counsel will “fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). The Court should therefore appoint Plaintiffs’ counsel as Class counsel.

#### **IV. CLASS-WIDE PRELIMINARY INJUNCTION**

##### **A. LEGAL STANDARD**

A preliminary injunction is appropriate where, as here, plaintiffs establish that (1) they have a substantial likelihood of success on the merits of her claims, (2) irreparable injury will result absent injunctive relief, (3) the harms to plaintiffs in the absence of an injunction outweigh the harms to the defendants as a result of an injunction; and (4) the injunction would not be adverse to the public interest. *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016). The Class satisfies each of these factors, just as Air Force Officer individually satisfied them.<sup>6</sup>

##### **B. THE COURT SHOULD ISSUE A CLASS-WIDE INJUNCTION**

In granting an injunction to Air Force Officer, the Court found that available facts indicate that the Air Force’s entire “process to protect religious rights” is “illusory and insincere:”

“[O]ne must keep in mind that the Air Force has rejected 99.76% of all religious accommodation requests, and until about two weeks ago, it had rejected every single one it “carefully consider[ed].” [Doc. 2-15, p. 1]. With such a marked record disfavoring religious accommodation requests, the Court easily finds that the Air Force’s process to protect religious rights is both illusory and insincere. In short, it’s just “theater.” *U.S. Navy SEALs I-26*, 2022 WL 34443, at \*1.”

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<sup>6</sup> Defendants never argued Air Force Officer, as a final-denial recipient, failed to exhaust her remedies or that her claims are not justiciable. As the Court discussed at length in its February 15 Order, Air Force Officer exhausted her remedies and her claims are justiciable. February 15 Injunction, 2022 WL 468799, at \*5-8. Plaintiffs and putative Class members—all final-denial recipients—likewise exhausted their remedies, and their claims are likewise justiciable.

February 15 Injunction, 2022 WL 468799, at \*10. Days later, another district court found that the small number of “approved” religious accommodation requests have been granted to military service members already slated for retirement. *Navy Seal I*, 2022 WL 534459, at \*19. And just days after that, another district court granted a preliminary injunction, finding, “The current evidence appears to support Poffenbarger’s assertion that the Air Force is systematically denying religious exemptions.” *Poffenbarger v. Kendall*, No. 3:22-CV-1, 2022 WL 594810, at \*13 (S.D. Ohio Feb. 28, 2022). In yet another case, a district court granted a preliminary injunction, finding, “of the thousands of religious exemptions the Air Force has adjudicated, the Air Force has only approved a shameful number of 23 religious exemptions.” *Doster v. Kendall*, No. 1:22-CV-84, 2022 WL 982299, at \*4 (S.D. Ohio Mar. 31, 2022). And in yet another case, a district court granted a temporary restraining order in favor of an Air Force Cadet. *Navy Seal I v. Austin*, No. 8:21-CV-2429-SDM-TGW, slip op., Doc. 174, (M.D. Fla. April 25, 2022). It is indisputable that “Defendants’ COVID-19 vaccination requirement allows service members to refuse vaccination for secular reasons”—including medical accommodation requests and clinical trial participation<sup>7</sup>—“while disallowing refusal based on religious reasons.” February 15 Injunction, 2022 WL 468799, at \*11; Navy Class Order, 2022 WL 1025144, at \*1, 11-12.

The Class as a whole remains subject to this “illusory and insincere” religious-accommodation-request process. The Class is likely to succeed on the merits of its RFRA and First Amendment claims, just as the Court found Air Force Officer was individually; the

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<sup>7</sup> Indeed, Defendants allow a blanket exemption for all “COVID-19 clinical trial[]” participants. February 15 Injunction, 2022 WL 468799, at \*2; [Doc. 2-3, p. 1]. Such clinical trials presumably involve COVID-19 studies other than vaccination (see *id.* (“Service members who are actively participating in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19 until the trial is complete...”)) with some participants taking a placebo in any event (see *Navy Seals I-26*, 2022 WL 34443, at \*11), and such trials could last indefinitely [see Doc. 40, pp. 4-5].

thousands of Class members face irreparable harm as Air Force Officer did; consistent with the Court's initial preliminary injunction, the balance of hardships weighs in the Class's favor; and a Class-wide injunction would not be adverse to the public interest. Indeed, an injunction would affirmatively serve the public interest by protecting the religious freedom of thousands of service members while keeping them within the military so that they can fulfill their desire and commitment to protect and serve our country. For all of these reasons, a Class-wide injunction is appropriate.

**1. The Class is likely to succeed on the merits of its RFRA and First Amendment Claims.**

The Class is likely to succeed on the merits of both its RFRA and First Amendment claims. As to the first claim, RFRA provides:

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000bb-1. This Court has already concluded that, by making COVID-19 vaccination a condition of continued service in the Air Force, Defendants have substantially burdened Air Force Officer's religious beliefs. February 15 Injunction, 2022 WL 468799, at \*9. The same conclusion follows for Air Force NCO, Air Force Special Agent, and Air Force Engineer, all of whom likewise have sincerely held religious objections to COVID-19 vaccination and received final denials of their requests for religious accommodations from the military's COVID-19 vaccine mandate. Declaration of Air Force NCO, ¶¶ 17-20, 24-25; Declaration of Air Force Special Agent, ¶¶ 6-11; Declaration of Air Force Engineer, ¶¶ 13-20. "Very few scenarios paint a bleaker picture than giving up your livelihood in order to follow your religious beliefs." February 15 Injunction, 2022 WL 468799, at \*9. "Now, the question becomes whether Defendants can show that the substantial burden placed on [Plaintiffs'] religion by its COVID-19 vaccination

requirement furthers a compelling governmental interest and that vaccination is the least restrictive means to further that interest.” *Id.* The Court’s reasoning applies equally to every Class member, because they all face the termination of their career as a result of adhering to their religious beliefs.

Considering Defendants’ argument that their Mandates satisfy strict scrutiny with respect to Air Force Officer’s individual denial, this Court not only held that the Air Force had failed to justify that denial, but also, “[w]ith such a marked record disfavoring religious accommodation requests, the Court easily finds that the Air Force’s process to protect religious rights is both illusory and insincere. In short, it’s just ‘theater.’ *U.S. Navy SEALs I-26*, 2022 WL 34443, at \*1.” *Id.* at \*10. *See also Navy Seal I*, 2022 WL 534459, at \*19. As multiple courts have now found, Defendants are not individually assessing any requests for religious accommodation, and instead are denying all Class members’ requests pursuant to the same illusory and insincere process. February 15 Injunction, 2022 WL 468799, at \*10; Navy Class Order, 2022 WL 1025144, at \*9, 11-12; *Navy Seals I-26 v. Biden*, 27 F.4th 336, 352 (5th Cir. 2022); *Navy Seal I*, 2022 WL 534459, at \*19; *Poffenbarger*, 2022 WL 594810, at \*13; *Doster*, 2022 WL 982299, at \*11-15. *See also* Declaration of Air Force NCO, ¶¶ 23-25, 30; Declaration of Air Force Special Agent, ¶¶ 8-11, 26; Declaration of Air Force Engineer, ¶¶ 16-19, 25. The fundamental illegality of the entire process is sufficient to make it probable that each and every denial of a religious accommodation to a Class member fails to satisfy strict scrutiny.

Moreover, as this and other Courts have already recognized, Defendants cannot establish a compelling interest in denying any request for religious exemption by Air Force service members while Defendants are simultaneously exempting service members from vaccination for secular reasons and allowing these secular exemptees to employ alternative means of reducing

risk of infection. February 15 Injunction, 2022 WL 468799, at \*9-12; Navy Class Order, 2022 WL 1025144, at \*11-12; *U.S. Navy Seals I-26*, 27 F.4th at 352; *Poffenbarger*, 2022 WL 594810, at \*12-18; *Doster*, 2022 WL 982299, at \*11-15. And Defendants’ argument that vaccination in violation of the free exercise objections of the Class members is “actually necessary by comparison to alternative measures” that do not burden free exercise is just as fatally weak when applied to all Plaintiffs and the entire Class (still a tiny percentage of a nearly fully vaccinated Force) as it was with respect to Air Force Officer alone. February 15 Injunction, 2022 WL 468799, at \*10.

This is exemplified by the Air Force’s lack of compelling interest and narrow tailoring in applying the mandates in the specific circumstances of Air Force NCO, Air Force Special Agent, and Air Force Engineer. They are decorated Air Force service members who have served this country for more than 20, 10, and 10 years, respectively. Declaration of Air Force NCO, ¶ 3; Declaration of Air Force Special Agent, ¶ 3; Declaration of Air Force Engineer, ¶ 3. Their service has continued throughout the pandemic, both before and after the vaccine became available, without any incidents of spreading COVID to their knowledge, and despite each having contracted COVID themselves at least once in the previous two years (again, without any disruptions to the military whatsoever during those times). Declaration of Air Force NCO, ¶¶ 2-16, 32-34, 38; Declaration of Air Force Special Agent, ¶¶ 2-5, 14-17, 27-32; Declaration of Air Force Engineer, ¶¶ 2-8, 27-28. *See U.S. Navy Seals I-26*, 27 F.4th at 351-52 (no compelling interest where “multiple Plaintiffs successfully deployed overseas before and after the vaccine became available, and one even received” an award for “safely navigating restricted movement and distancing requirements” while on deployment, and many also trained Navy SEALs for deployments despite being unvaccinated).

Meanwhile, the alternative precautions the Air Force makes available and deems sufficient for its service members with medical or administrative exemptions are plainly available to the three new Plaintiffs as well. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (“[T]here is no evidence that the applicants have contributed to the spread of COVID-19, [and] there are many other less restrictive rules that could be adopted to minimize the risk to those attending religious services.”). And, with the passage of time, the Mandates have become increasingly less defensible as the effectiveness of certain alternative precautions becomes more clear<sup>8</sup> while the effectiveness of COVID vaccination becomes more doubtful.<sup>9</sup> These factors make it ever less likely that mandatory vaccination of the relatively small proportion of service members who cannot receive it for religious reasons is “actually necessary” (as it must be) to achieve the military’s interests. February 15 Injunction, 2022 WL 468799, at \*10. *See Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011). *See also* Doc. 84 ¶¶ 53-56 (quoting commander who acknowledged on March 2, 2022 that “[w]ith high levels of population immunity from both vaccinations and infections, the risk of medically significant disease, hospitalization, and death from COVID-19 has been greatly reduced”).<sup>10</sup>

For these reasons, which apply to the three Additional Representatives and the Class as or more strongly than to Air Force Officer individually, the Class is likely to prevail on the merits

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<sup>8</sup> CDC, COVID-19, *Types of Masks and Respirators – Summary of Recent Changes*, Jan 28, 2022 “Masks and respirators are effective at reducing transmission of SARS-CoV-2 . . . when worn consistently and correctly,” and N95 masks “filter at least 95% of particles in the air”), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>.

<sup>9</sup> *See, e.g.*, Elie Dolgin, “Omicron thwarts some of the world’s most-used COVID vaccines,” *Nature*, Jan. 13, 2022, <https://www.nature.com/articles/d41586-022-00079-6>; CDC, COVID-19, *Omicron Variant: What You Need to Know* (“[A]nyone with Omicron infection can spread the virus to others, even if they are vaccinated.”).

<sup>10</sup> *See* Doc. 131-1 filed March 9, 2022, in *Navy Seal 1 v. Austin*, No. 8:21-CV-2429-SDM-TGW (M.D. Fla).

of its claim that application of the Mandates to the entire Class violates RFRA. February 15 Injunction, 2022 WL 468799, at \*10-12; Navy Class Order, 2022 WL 1025144, at \*11-12; *Poffenbarger*, 2022 WL 594810, at \*12-18; *U.S. Navy SEALs I-26*, 2022 WL 34443, at \*1; *Navy Seal I*, 2022 WL 534459, at \*19; *Doster*, 2022 WL 982299, at \*11-15.

The Class is also likely to succeed on its First Amendment claim. The Air Force currently recognizes at least 1,013 medical exemptions and at least 1,273 administrative exemptions—in other words, more than 2,285 secular (non-religious) exemptions. *See* Air Force Statistics. *See also* February 15 Injunction, 2022 WL 468799, at \*3 (citing February 8, 2022 version of similar statistics); Doc. 40-2 (Air Force’s attested-to statistics as of January 21, 2022). Yet the Air Force has not approved any or essentially any<sup>11</sup> of the 7,925+ religious accommodation requests (with at least 2,027 **final** denials). Air Force Statistics; February 15 Injunction, 2022 WL 468799, at \*10; Navy Class Order, 2022 WL 1025144, at \*12; *U.S. Navy SEALs I-26*, 2022 WL 34443, at \*1; *Navy Seal I*, 2022 WL 534459, at \*19. In other words, the Air Force is considering and granting numerous secular requests—more than 2,285 of them—while it is not properly considering and is then denying all or essentially all religiously based requests. By treating religious-based accommodation requests less favorably than secular requests, the Air Force is implementing the Mandates in a manner that is not neutral toward, and indeed strongly disfavors, religion. As the Court already concluded, “[Air Force Officer] has clearly established the first necessary element to obtain a preliminary injunction because ‘any favorable treatment’ for service members exempted for any secular reason over those seeking exemption for religious reasons ‘defeats neutrality.’” February 15 Injunction, 2022 WL 468799, at \*11 (quoting *Navy*

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<sup>11</sup> The small number it claims to have “approved” (at most 46 of them; *see* Air Force Statistics) is service members already slated for separation. *Navy Seal I*, 2022 WL 534459, at \*19; *Poffenbarger*, 2022 WL 594810, at \*13 n.6.

*SEALs I-26*, 2022 WL 34443, at \*11). The same is true of Air Force NCO, Air Force Special Agent, and Air Force Engineer, who have all sought and been finally denied religious accommodations from the military's COVID-19 vaccine mandate, while fellow Air Force service members have been allowed exemptions for secular reasons. Strict scrutiny thus applies, and the Mandates fail the strict scrutiny required by the First Amendment for the same reasons they cannot satisfy it under RFRA, as explained above.

## **2. Irreparable injury will result absent injunctive relief.**

This Court has already held that Air Force Officer is suffering irreparable injury, and the same is true of her three new co-Plaintiffs, and thus the entire Class:

Since Defendant Miller ultimately denied [Air Force Officer]'s religious accommodation request and essentially infringed upon the free exercise of her religion, [Air Force Officer] has suffered an irreparable injury. She has faced “monumental . . . pressure to violate [her] religious beliefs[,]” and that is prohibited by the Constitution. [Doc. 40, p. 9]; [Doc. 1, ¶ 89]. Again, the choice to adhere to her religious beliefs or modify her behavior to violate those beliefs suffices to trigger constitutional protection. *Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. [707,] 718 [(1981)]. Thus, Plaintiff has satisfied the second element to obtain a preliminary injunction.

February 15 Injunction, 2022 WL 468799, at \*12; *see also* Declaration of Air Force NCO, ¶¶ 17-20, 25, 31-33, 35-37, 40; Declaration of Air Force Special Agent, ¶¶ 5-7, 11, 16-18; Declaration of Air Force Engineer, ¶¶ 13-15, 19, 31-32. The 7,925+ putative or potential Class members face the same irreparable injury, on a grand scale: Defendants are applying monumental pressure on thousands of service members to violate their religious beliefs by threatening to end their careers in the Air Force if they do not violate them, “and that is prohibited by the Constitution.”

February 15 Injunction, 2022 WL 468799, at \*12. *See also* *Eternal Word Television Network, Inc. v. Sec’y, U.S. Dep’t of Health & Hum. Servs.*, 756 F.3d 1339, 1350 (11th Cir. 2014) (holding RFRA violation constitutes irreparable harm). As such, irreparable injury to the Class will result absent injunctive relief.

**3. The balance of hardships weighs in the Class’s favor, and an injunction will not disserve the public interest.**

“The final two elements necessary to obtain a preliminary injunction merge when the government is the opposing party.” February 15 Injunction, 2022 WL 468799, at \*12. As the Court held, an injunction in Air Force Officer’s favor does not disserve the public interest, and this is likewise true for the entire Class. *Id.* “[W]hat real interest can our military leaders have in furthering a requirement that violates the very document they swore to support and defend?” *Id.* at \*13. *See also Navy Seal I*, 2022 WL 534459, at \*17 (“[M]ilitary officials cannot simply utter the magic words ‘military readiness and health of the force’ and as a result receive unlimited deference from those of us charged with resolving the dispute.”) (cleaned up; citing *Davila v. Gladden*, 777 F.3d 1198, 1206 (11th Cir. 2015)); *U.S. Navy Seals I-26*, 27 F.4th at 349; Navy Class Order, 2022 WL 1025144, at \*11 (“Of course, ‘judges don’t make good generals,’ but ‘it’s a two-way street: Generals don’t make good judges—especially when it comes to nuanced constitutional issues.’”) (quoting February 15 Injunction, 2022 WL 468799, at \*5).

The balance of hardships weighs in the Class’s favor, as well, where Class members stand to lose their careers and livelihoods, just as Air Force Officer would have absent injunctive relief. And a Class-wide injunction will not disserve the public interest. Since this was true even for a single plaintiff and is true for the three Additional Representatives, it is overwhelmingly true on a Class-wide basis: the public interest lies squarely on the side of retaining thousands of service members who are currently engaged in protecting and defending our country and contributing to military readiness. *U.S. Navy Seals I-26*, 27 F.4th at 353. *Accord Navy Seal I v. Biden*, No. 8:21-cv-2429-SDM-TGW, 2022 WL 483832, at \*4 (M.D. Fla. Feb. 2, 2022) (“[T]he military is most likely unable to establish, and certainly has not established, that permitting the relatively small number of RFRA objectors, even if every request for exemption (much less the

two at issue in this motion) were sincere and successful, to serve . . . will adversely affect the public's interest in the maintenance and readiness of the nation's military forces.”).

## **V. CONCLUSION**

As the Court concluded its February 15 Order, “All Americans, especially the Court, want our country to maintain a military force that is powerful enough to thoroughly destroy any enemy who dares to challenge it. However, we also want a military force strong enough to respect and protect its service members’ constitutional and statutory religious rights. This ruling ensures our armed services continue to accomplish both.” February 15 Injunction, 2022 WL 468799, at \*13.

Class-wide relief would manifestly serve the same goals, but on a larger scale. It would allow thousands of service members to remain in service or be reinstated, maintaining the strength of the military while simultaneously protecting the fundamental religious rights of service members. The Court should therefore certify the Class, appoint Plaintiffs’ counsel as Class counsel, and enter a preliminary injunction that enjoins Defendants from enforcing the Mandates against Air Force NCO, Air Force Special Agent, Air Force Engineer, or any member of the Class and from taking any adverse action against any member of the Class on the basis of this lawsuit or of any member’s request for religious accommodation related to the Mandates.

Dated: May 3, 2022

Respectfully submitted,

/s/ Adam S. Hochschild

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variety of matters, primarily litigation, including complex commercial litigation and complex civil rights and constitutional litigation.

6. Since 2019, through my firm I have served on certain matters—including this one—as Special Counsel for the Thomas More Society, a not-for-profit, national public interest law firm dedicated to restoring respect in law for life, family, and religious liberty. The Thomas More Society provides pro bono legal representation to plaintiffs and defendants involved in complex civil rights and constitutional litigation nationwide.

7. The Thomas More Society and its attorneys have a substantial record of raising and diligently pursuing legal challenges to incursions on First Amendment and other civil rights.

8. For example, a team of Thomas More Society attorneys (including myself and Stephen Crampton and Michael McHale who are also attorneys of record in this case) recently obtained a victory on appeal, after rehearing by the Second Circuit panel. In a case involving the First Amendment rights of pro-life sidewalk counselors in the context of the federal Freedom of Access to Clinic Entrances Act (FACE) and a similar state law and city ordinance, the District Court for the Eastern District of New York denied the State of New York’s motion for preliminary injunction against our clients. The State appealed, and a panel of the Second Circuit Court of Appeals first reversed the denial of the preliminary injunction, but then granted our clients’ petition for rehearing and vacated its own reversal of, and affirmed, the District Court’s decision. *New York by James v. Griep*, 11 F.4th 174 (2d Cir. 2021).

9. Prior to joining the Thomas More Society in 2019, I practiced law at RUNNYMEDE law group (2016-2018), Clark & Sauer, LLC (2013-2015), Bryan Cave LLP (now known as Bryan Cave Leighton Paisner LLP) (2010-2013), and Husch Blackwell Sanders, LLP (now known as Husch Blackwell LLP) (2000-2010) and represented clients across the

nation. As an attorney at each of these firms, I represented clients—including Fortune 500 companies—primarily in complex commercial litigation, including in the fields of securities, telecommunications, and tax, among others.

10. I have represented clients in several class action cases, including in *Bachman v. A.G. Edwards, Inc.*, No. 22052-01266 (Circuit Court of the City of St. Louis, Missouri) (securities); *Merrick v. Stifel Fin. Corp.*, No. 4:08CV1167–HEA (E.D.Mo.) (securities); *City of University City v. Sprint-Nextel*, No. 01-CC-004454 (Circuit Court of the County of St. Louis, Missouri) (telecommunications and tax); and *City of O’Fallon v. CenturyLink, Inc.*, No. 12SL-CC01723 (Circuit Court of the County of St. Louis, Missouri) (telecommunications and tax). In *Bachman*, for example, I successfully argued before the Missouri Court of Appeals, Eastern District, in favor of affirming the trial court’s order approving settlement. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260 (Mo. Ct. App. 2011).

11. The Thomas More Society is an entire law firm of specialists in the laws applicable in this case, including RFRA and the First Amendment. Our team has expended considerable effort already in connection with the preliminary injunction [Doc. 51] and formulating and presenting the legal issues before the Court in the First Amended Class Action Complaint. We are fully prepared to prosecute this matter on behalf of the Plaintiff and the proposed class.

12. I and co-counsel and other Thomas More Society attorneys have been contacted, both before and during the current action, by many putative class members with interests similar to Plaintiff’s.

13. I understand the nature and magnitude of the expenses involved in litigating class action lawsuits and, as attorneys associated with Thomas More Society, counsel have sufficient resources to vigorously prosecute this action.

Dated this 28th day of February 2022.

/s/ Adam Hochschild

Adam Hochschild



individual clients in the areas of complex business, securities, and real estate litigation, and we have a very successful First Amendment and RFRA practice. Our firm successfully defended Establishment Clause challenges to the Mt. Soledad War Memorial from 2004 to 2016, in serial actions in both state and federal court. *See, e.g., Paulson v. Abdelnour*, 145 Cal. App. 4th 400 (2006); *San Diegans for Mt. Soledad Nat. War Memorial v. Paulson*, 548 U.S. 1301 (2006) (Kennedy, J., in chambers). In that same time frame, we were involved in RFRA challenges to the Affordable Care Act's mandate that religious nonprofits provide health insurance to their employees covering contraception and abortifacients. *Priests for Life v. Sebelius*, No. 12–CV–753 (FB) (E.D.N.Y. Apr. 12, 2013).

6. More recently, in 2018, we obtained the first judicial ruling nationwide that a wedding professional's First Amendment rights excused her from participating in wedding ceremonies violative of her conscience. *D.F.E.H. v. Miller*, No. BCV-17-102855, 2018 WL 747835 (Cal. Super. Feb. 5, 2018). In 2020 we obtained the first two judicial rulings holding that California's lockdown of Churches violated Free Exercise principles (both of which were overturned by the California Court of Appeal), *County of Los Angeles v. Grace Community Church of the Valley*, No. 20STCV30695, 2020 WL 5553662 (Cal. Super. Aug. 14, 2020); *Burfitt v. Newsom*, No. BCV-20-102267, 2021 WL 2152961 (Cal. Super. Dec. 10, 2020), and in 2021, we obtained a similar ruling from the U.S. Supreme Court. *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021). I argued the *South Bay* case at the District Court level three times.

7. Prior to 2013, I was an associate at the national law firm of Gordon & Rees, where I represented a broad range of clients, including major Fortune 500 companies, small and

large businesses, and leading national and international insurers in complex commercial litigation and class actions in state and federal courts throughout California.

8. In my career I have represented clients in dozens of class actions, including plaintiffs in many of them.

9. Prior to joining Gordon & Rees, I was an associate at Bernstein Litowitz Berger & Grossmann, where I represented plaintiff institutional investors in complex litigation and securities class actions, including, for example, *Public Employees Ret. Sys. of Mississippi v. Merrill Lynch & Co.*, No. 08 Civ. 10841 (JSR) (S.D.N.Y. Jun. 16, 2011) (\$315 million recovery); *In re Wells Fargo Mortgage Pass-Through Certificate Litigation*, No. 09-CV-1376-LHK (PSG) (N.D. Cal. Nov. 14, 2011) (\$125 million); and *In re AXA Rosenberg Investor Litigation*, No. CV 11-00536 JSW (N.D. Cal. Mar. 26, 2012) (\$65 million).

10. Since 2019, our firm has served as Special Counsel for the Thomas More Society to represent pro bono clients in high-profile, complex constitutional cases throughout the country. The Thomas More Society is a not-for-profit, national public interest law firm dedicated to restoring respect in law for life, family, and religious liberty. The Thomas More Society provides pro bono legal representation to plaintiffs and defendants involved in complex civil rights and constitutional litigation in state and federal courts nationwide.

11. The Thomas More Society has taken a leading role in litigation challenging vaccine mandates across the country. For example, Thomas More Society attorneys, including Michael McHale, who is one of Plaintiff's attorneys of record in this case, won an injunction against the State of New York's mandate for health care workers before being overturned by a panel of the Second Circuit, *Dr. A. v. Hochul*, No. 1:21-CV-1009, 2021 WL 4734404 (N.D.N.Y. Oct. 12, 2021), *reversal noted by Dr. A v. Hochul*, 142 S. Ct. 552 (2021) (Gorsuch, J., dissenting

from denial of application). And Thomas More Society attorneys, including myself, succeeded in delaying the vaccine mandate imposed by the San Diego Unified School District in *Doe v. San Diego Unified Sch. Dist.*, \_\_ S. Ct. \_\_, 2022 WL 498812 (Feb. 18, 2022) (denying application without prejudice due to cessation of mandate).

12. The Thomas More Society is an entire law firm of specialists in the laws applicable in this case, including RFRA and the First Amendment. Our team has expended considerable effort already in connection with the preliminary injunction [Doc. 51] and formulating and presenting the legal issues before the Court in the First Amended Class Action Complaint. We are fully prepared to prosecute this matter on behalf of the Plaintiff and the proposed class.

13. I understand the nature and magnitude of the expenses involved in litigating class action lawsuits and, as attorneys associated with the Thomas More Society, counsel have sufficient resources to vigorously prosecute this action.

Dated this 28th day of February 2022.

/s/ Paul M. Jonna  
Paul M. Jonna



5. I am Special Counsel for the Thomas More Society, a not-for-profit, national public interest law firm dedicated to restoring respect in law for life, family, and religious liberty. The Thomas More Society provides pro bono legal representation to plaintiffs and defendants involved in complex civil rights and constitutional litigation nationwide.

6. The Thomas More Society and its attorneys have a substantial record of raising and diligently pursuing RFRA and First Amendment challenges to incursions on religious freedom.

7. For example, I and fellow Thomas More Society attorneys are awaiting determinations in the Eastern District of New York and the Second Circuit Court of Appeals as to our clients' RFRA and First Amendment challenges to New York State and New York City's "Boss Bills," which prohibit pro-life employers from refusing to hire someone who has had an abortion. *Slattery v. Cuomo*, No. 21-911 (2d. Cir.); *Slattery v. City of New York*, 1:20-cv-00580-PKC-RLM (E.D.N.Y.).

8. Prior to joining the Thomas More Society in 2018, I litigated constitutional and civil rights cases with D. John Sauer, now Solicitor General of the State of Missouri, first at Clark & Sauer, LLC, and then at James Otis Law Group, LLC.

9. From approximately 2008 to 2012, I practiced law at Schlichter, Bogard & Denton, in the appellate section of their ERISA fiduciary class action practice. The team I worked with brought novel, large-scale class actions against employers for breach of fiduciary duties within their 401(k) plans. Two of the cases I worked on, *Spano v. Boeing* and *Abbott v. Lockheed Martin*, were litigated for 9 years and ultimately resulted in \$57 million and \$62

million settlements, respectively, for employees. Courts have credited Schlichter's ERISA class action team for reforming the entire 401(k) industry through their numerous successful class actions challenging financial abuse: "The law firm Schlichter, Bogard & Denton has significantly improved 401(k) plans across the country by bringing cases such as this one[.]" *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at \*3 (S.D. Ill. Mar. 31, 2016).

10. The Thomas More Society is an entire law firm of specialists in the laws applicable in this case, including RFRA and the First Amendment. Our team has expended considerable effort already in connection with the preliminary injunction [Doc. 51] and formulating and presenting the legal issues before the Court in the First Amended Class Action Complaint. We are fully prepared to prosecute this matter on behalf of the Plaintiff and the proposed class.

11. I understand the nature and magnitude of the expenses involved in litigating class action lawsuits and, as attorneys associated with Thomas More Society, counsel have sufficient resources to vigorously prosecute this action.

Dated this 28th day of February 2022.

/s/ Mary Catherine Hodes  
Mary Catherine Hodes



7. After joining the Air Force in October 2000, I served on Active Duty before transitioning to full-time Active Guard Reserve positions with the Air Force Reserves. I've been deployed four times.

8. I have worked remotely at various times throughout my career, including during much of the COVID-19 pandemic.

9. My Air Force career has been entirely in the interest of military readiness, unit cohesion, good order, discipline, health, and safety.

10. I have served with distinction in duties that include being flight member and supervisor in missions both stateside and overseas, as well as being a weapons instructor, and a deployment manager.

11. Since the COVID-19 pandemic began, I have assiduously followed all COVID-19 related precautions, including masking, social distancing, and working remotely.

12. I have consistently and fully supported and sustained Defendants' interest in military readiness, unit cohesion, good order, discipline, health, and safety.

13. My current professional responsibilities do not involve personal engagement in physical operations or require extremely close proximity with other service members at all times.

14. Indeed, during the COVID-19 pandemic, I worked almost exclusively from home in a telework environment from approximately mid-2020 until mid-2021. I have since returned to in-person work for two to three days per week, and just recently, I was ordered to return to a full in-person, five-day work week with the rest of my co-workers.

15. In April 2021 I took a COVID-19 antibody test and tested positive for COVID-19 antibodies.

16. Seven months later, in November 2021, I took another COVID-19 antibody test and again tested positive for COVID-19 antibodies.

17. I am a member of the Christian faith, and the authoritative texts for my faith tradition are contained in the Holy Bible. My religious conscience is formed by biblical teachings, the advice of religious leaders, Scripture, and prayer.

18. Based on these sources, I believe Christians are to treat their bodies as a holy temple of God to glorify and Honor him, since the Bible teaches, “My body is not my own but one that belongs to an Almighty God,” (1 Corinthians 6:19), and, “My body is a temple for God and His Holy Spirit to dwell. I must maintain it . . . and take care not to damage it,” (1 Corinthians 3:16-17). Thus, I believe that submitting to mRNA vaccines violates this biblical mandate since it introduces a novel substance of unknown long-term effects into my body that takes over the body’s natural processes and is thus impure.

19. As a Christian, I also believe that all human life is sacred from the moment of conception, and thus I oppose abortion and all its pernicious effects. I thus also oppose the available COVID-19 vaccines because they were developed through use of or testing on aborted fetal cell lines. The only reason I did not expressly raise this objection in my September 2021 request for religious exemption (attached as Exhibit 1) is because my chaplain told me not to.

20. I do not oppose all vaccines. I oppose the currently available COVID-19 vaccines for religious reasons.

21. I am aware of the following military orders that purportedly require that I submit to COVID-19 vaccination:

- a. Department of Defense’s August 24, 2021 Order (Ex. 1 to Doc. 2-2);
- b. Department of Air Force’s September 3, 2021 Order (Ex. 2 to Doc. 2-2);

c. Department of Air Force's September 21, 2021 Order (attached as Exhibit 5);

22. I am aware of AFI 48-110 (Ex. 7 to Doc. 2-2), an Air Force Instruction.

23. The Air Force provided me and other service members with a form religious accommodation request (Ex. 9 to Doc. 2-2).

24. I timely sought, in writing, religious exemption from the Mandates and sought accommodation (attached as Exhibit 1 (request submitted September 23, 2021) Exhibit 3 (appeal submitted November 1, 2021), and Exhibit 3A (supplemental information submitted November 15, 2021)).

25. Defendants' responses to my accommodation requests are attached as Exhibit 2 (initial denial received by me no earlier than October 28, 2021) and Exhibit 4 (final denial received by me on January 7, 2022).

26. I am aware of reported information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, relating to religious accommodation requests.

27. Based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I understand that the Air Force currently recognizes at least 1,102 medical accommodations.

28. Based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I understand the Air Force currently recognizes at least 1,407 administrative accommodations.

29. Based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I understand that at least 96.5% of Air Force service members have received COVID-19 vaccinations.

30. I am not aware of any military branch (including the Air Force, Navy, Army, Marines, and Coast Guard) granting any religious accommodation requests to service members not already slated for separation, and I'm aware that the Pentagon's Inspector General is investigating whether the military's process for considering and denying religious accommodation requests to COVID-19 vaccination complies with its own protocols. <https://www.military.com/daily-news/2022/03/02/pentagon-watchdog-investigate-militarys-covid-19-exemption-process.html>.

31. After receiving the final denial of my religious accommodation requests, I was given the following three options: (1) take the vaccine; (2) early retirement; (3) or face military discipline for disobeying the COVID-19 vaccine mandates. On January 12, 2022, I chose early retirement, under duress, with an effective retirement date of no later than June 1, 2022. However, I have been told that I have been placed in a "medical hold," meaning that I cannot begin the process of formal separation until an "evaluation" of my current health status is complete, which I have been informed could take "a while."

32. Until the putative effective date of my forced early retirement in June 2022, as a military service member I am still permitted to work from home and on base and to perform my normal work duties, even while unvaccinated, provided I abide by any applicable alternative COVID-19 precautions.

33. Currently my work unit is understaffed and task-saturated, and I believe none of the already limited personnel there is currently able or qualified to effectively take over my position. In my opinion, this may be a significant negative impact on military readiness for multiple years, which is especially dangerous to our national security at this war-torn time in the world, and forcing competent and capable unvaccinated service members such as myself to separate would exacerbate the problem.

34. As a service member in my position, I understand that service members with approved medical accommodations are permitted to work in person, indefinitely, with no forced early retirement or other adverse employment consequences.

35. If I had not been forced into early retirement in 2022, I understand I could have retired in a later year with full active-duty benefits and privileges. I stand to lose several hundreds of thousands of dollars in lost pay, not counting the value of lost benefits including medical benefits.

36. It is more important to me to remain faithful to my Christian faith than to violate my religiously formed conscience for the sake of work and compensation.

37. The Mandates have lowered my morale as a service member by forcing me to choose between my faith and my livelihood. I personally know other Air Force service members who have expressed to me that the Mandates have lowered their morale for the same reasons.

38. I have continued to maintain protocols for health and safety, and to my knowledge I have not transmitted COVID-19 to others.

39. Based on Facebook comments that I am aware of related to the WMAZ and WGXA news reports about Air Force Officer and this case (Docs. 48 and 49), and based on numerous other public statements made by individuals in government or the media that are critical

of people not taking the COVID-19 vaccine, I am concerned about serious social stigmatization and my personal safety and security.

40. I have talked with others in the military who expressed to me that they want to speak out in opposition to the vaccine mandates but are afraid to do so.

41. The attached exhibits are redacted to remove some personal identifiers.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 30, 2022.

/s/Air Force NCO  
Air Force NCO



**DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND**

23 September 2021

MEMORANDUM FOR AFRC/CC

FROM: [REDACTED]

SUBJECT: Religious Accommodation Request for Immunization Waiver

References: (a) DODI 1300.17, *Religious Liberty in the Military Services*, 1 Sept 20.  
 (b) AFI 1-1, 7 Aug 12, *Air Force Standards*.  
 (c) AFI 48-110, 16 Feb 18, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*.  
 (d) AFPD 52-2, 28 Jul 20, *Accommodation of Religious Practices in the Air Force*.  
 (e) DAFI 52-201, *Religious Freedom in the Department of the Air Force*, 32 Jun 21.

1. I, [REDACTED], request a religious accommodation waiver from immunization for the reasons set out below.
2. As a member of the Christian faith, I am requesting a religious accommodation for exemption of the COVID 19 Vaccine, in accordance with AFI 48-110, paragraph (2-10 (3) (a) (1)). I believe this request will not interfere with any of my primary duties, which include [REDACTED].
3. The authoritative texts for my faith tradition are contained in the Holy Bible. My religious conscience is built on biblical teachings, the advice of religious leaders, scripture and prayer. The following scriptural references are among the many that teach Christian believers to treat their bodies as a temple (or a gift from God), instructing them to use them to glorify and honor Him, and to trust His Word for guidance
  - "...God created man in his own image; in the image of God He created them (**Genesis 1:27**)
    - We were all created in His image and have the responsibility of not polluting our bodies or souls
  - "...your body is the temple of the Holy Spirit who is in you, whom you have from God, and you are not your own...for you were bought at a price; therefore, glorify God in your body and in your spirit, which are God's (**1 Corinthians 6:19**)
    - My body is not my own but one that belongs to an Almighty God. The choices that affect it should therefore glorify Him and not man.
  - "...do you not know that you are the temple of God and that the Spirit of God dwells in you? If anyone defiles the temple of God, God will destroy him. For the temple of God is holy, which the *temple* you are (**1 Corinthians 3:16-17**).
    - My body is a temple for God and His Holy Spirit to dwell. I must maintain it and care for it to keep it holy and take care not to damage it. This is accomplished through daily choices that shape my physical and spiritual environment
  - "For God has not given us a spirit of fear, but of power and of love and of a sound mind" (**2 Timothy 1:7**)
    - This verse encourages Christians to not make decisions out of fear but with biblically-guided reason
  - "Therefore, whether you eat or drink, or whatever you do, do all to the glory of God" (**1 Corinthians 10:31**).
    - This verse reflects the biblical belief that whatever we put into our bodies should honor our God. This includes food and drink as well as pharmaceuticals. For that reason, I live a clean life, relying on healthy foods and beverages, and opt for vitamins and supplements whenever possible with the exception of imminently life-threatening situations.
  - "Trust in the Lord with all your heart, and lean not on your own understanding; in all your ways acknowledge him and He shall direct your paths" (**Proverbs 3:5-6**).

- This highlights the Christian conviction that through biblical study and prayer, God provides guidance and direction for our choices and actions
- “Through your precepts, I get understanding...” (Psalm 104)
  - This demonstrates the importance of relying on Biblical teachings for guidance
- “In the beginning was the Word, and the word was with God, and the Word was God...All things were made through Him, and without Him nothing was made that was made. In Him was life, and that life was the light of men (**John 1:1-4**)
  - All living things have DNA and RNA which I believe represents God’s perfect design (His Word) for each individual living thing. As for humans, God created us in His likeness; I believe that the COVID-19 immunization’s mRNA technology represents a false message/word that masks and/or takes over the role of the body’s natural processes and is thus unnatural and impure.

4. I was raised in the Roman Catholic Church but converted to Protestantism in [REDACTED]. This conversion was perhaps the most significant turning point in my life, my marriage and my career. I have spent the last [REDACTED] years studying the scripture and applying its teachings in all major areas of my life to include what I feed my mind, body, and soul. My application of Christian scriptural teachings have made me a better father, husband and Non Commissioned Officer, the latter of which is evidenced by consistent exemplary job and fitness performance. I have now proudly and faithfully served this great nation for 21 total years of which are 18 years of Total Active Federal Service TFAMS. While I have complied with all that was asked of me, the conflict between my religious convictions and this COVID vaccination is one that I cannot in good conscience ignore. To do so would be to deny my faith, to ignore my religious conscience, and to deny my God to whom I owe my earthly life and eternal salvation. I ask for your sincere and measured consideration towards my request to grant me a religious exemption to this vaccination so that I may continue to serve in my present position at AFRC until my projected August 2023 retirement.

5. I understand that IAW AFI 48-110 I have temporary exemption from vaccinations while my request is being processed. I also understand that I will be counseled by my commander and a military physician regarding: the diseases concerned; specific vaccine information including product constituents, benefits, and risks; and potential risks of infection incurred by unimmunized individuals. They must determine that I am making an informed decision and fully understand that my request may have an adverse impact on my deployability, assignment, and/or international travel.

6. I waive my privilege to this communication only and authorize the Chaplain to advise my leadership with regard to this request and only this request. I understand that my request will reach AFRC/CC staff NLT 30 days from the date of this memorandum as I’m in active duty status CONUS.

7. If you have any questions, please contact [REDACTED]  
[REDACTED]@us.af mil.

Digitally signed by

Date: 2021.09.23 15:48:25 -04'00'

[REDACTED], USAF



DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND

MEMORANDUM FOR [REDACTED]

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

SUBJECT: Request for Immunization Exemption-[REDACTED], HQ AFRC [REDACTED]

1. I have reviewed your request for religious exemption from the recently approved COMIRNATY®/Pfizer-BioNTech COVID-19 vaccine, the EUA COVID-19 vaccines that include Johnson's Janssen and the Moderna COVID-19 vaccines. I understand your concerns, which are based on your sincerely held beliefs. After carefully considering the specific facts and circumstances of your request, the recommendation of your director and the MAJCOM Religious Resolution Team, I **disapprove** your request for religious exemption from required immunizations, including the COVID-19 vaccine.

2. I do not doubt the sincerity of your beliefs. However, when evaluating your request for religious exemption, I also had to consider the risk to our mission. All immunizations, including those listed above, are an important element of mission accomplishment, as they contribute to the health, safety, and readiness of the force. Given the importance of our mission, the Department of Defense and the Department of the Air Force have a compelling government interest in maintaining a healthy and ready military force through vaccination. Specifically regarding the COVID-19 vaccination, since less restrictive means of protecting our force from COVID-19 are unavailable, all uniformed Airmen must be fully vaccinated against COVID-19 and other infectious diseases. Individual medical readiness is a critical requirement for maintaining a healthy and ready force.

3. If you choose to appeal this decision, please submit your written request to your director within 72 hours of receiving notice of my decision.

4. A copy of this decision memorandum will be placed in your online personnel records. My point of contact is [REDACTED], [REDACTED]@us.af.mil, DSN [REDACTED].

Digitally signed by [REDACTED]

Date: 2021.10.27 08:35:21 -0400

[REDACTED], USAF

cc:

HQ AFRC [REDACTED]



## DEPARTMENT OF THE AIR FORCE

## EXHIBIT 3

01 November 2021

MEMORANDUM FOR AFRC/CC

FROM:

SUBJECT: Intent to submit Religious Accommodation Appeal

1. I, [REDACTED], request a COVID-19 Vaccine Religious Accommodation Appeal due to the disapproval of my original request for exemption.
2. As a member of the Christian faith, I requested a religious accommodation for exemption of the COVID 19 Vaccine, in accordance with AFI 48-110, paragraph (2-10 (3) (a) (1)). I believe this request will not interfere with any of my primary duties, which include Manager, Phoenix Raven/SF Contingencies.
3. My [REDACTED] duty assignment, position number [REDACTED] is DX coded, which means that I am not deployable [REDACTED] and thus not required to meet deployment standards such as Anthrax, Small Pox and Japanese encephalitis to name several deployment-required vaccines. According to DAFMAN [REDACTED] given my [REDACTED] duty [REDACTED] assigned to headquarters positions will not be involuntarily tasked to fulfill a Regular Air Force contingency requirement. (T-1)". I have teleworked since April of 2020 due to COVID restrictions, social distancing and precautions. That equates to more than half of the time that I have been in this staff position. I believe teleworking has been extremely effective because it has allowed us to be much more productive than in a standard office environment. With the caveat of mask wearing, regular COVID testing as well as continued approval for teleworking, I do not believe that my COVID unvaccinated status will impact my job performance or the overall mission and am committed to contributing to a safe environment by continuing to wear a mask in public and get COVID tested as my leadership sees fit.
4. The authoritative texts for my faith tradition are contained in the Holy Bible. My religious conscience is built on biblical teachings, the advice of religious leaders, scripture and prayer. The following scriptural references are among the many that teach Christian believers to treat their bodies as a temple (or a gift from God), instructing them to use them to glorify and honor Him, and to trust His Word for guidance
  - "...God created man in his own image; in the image of God He created them (Genesis 1:27)
    - We were all created in His image and have the responsibility of not polluting our bodies or souls
  - "...your body is the temple of the Holy Spirit who is in you, whom you have from God, and you are not your own...for you were bought at a price; therefore, glorify God in your body and in your spirit, which are God's (1 Corinthians 6:19)
    - My body is not my own but one that belongs to an Almighty God. The choices that affect it should therefore glorify Him and not man.
  - "...do you not know that you are the temple of God and that the Spirit of God dwells in you? If anyone defiles the temple of God, God will destroy him. For the temple of God is holy, which the temple you are (1 Corinthians 3:16-17).
    - My body is a temple for God and His Holy Spirit to dwell. I must maintain it and care for it to keep it holy and take care not to damage it. This is accomplished through daily choices that shape my physical and spiritual environment
  - "For God has not given us a spirit of fear, but of power and of love and of a sound mind" (2 Timothy 1:7)
    - This verse encourages Christians to not make decisions out of fear but with biblically-guided reason
  - "Therefore, whether you eat or drink, or whatever you do, do all to the glory of God" (1 Corinthians 10:31).

- This verse reflects the biblical belief that whatever we put into our bodies should honor our God. This includes food and drink as well as pharmaceuticals. For that reason, I live a clean life, relying on healthy foods and beverages, and opt for vitamins and supplements whenever possible with the exception of imminently life-threatening situations.
- “Trust in the Lord with all your heart, and lean not on your own understanding; in all your ways acknowledge him and He shall direct your paths” (**Proverbs 3:5-6**).
  - This highlights the Christian conviction that through biblical study and prayer, God provides guidance and direction for our choices and actions
- “Through your precepts, I get understanding...” (Psalm 104)
  - This demonstrates the importance of relying on Biblical teachings for guidance
- “In the beginning was the Word, and the word was with God, and the Word was God... All things were made through Him, and without Him nothing was made that was made. In Him was life, and that life was the light of men (**John 1:1-4**)
  - All living things have DNA and RNA which I believe represents God’s perfect design (His Word) for each individual living thing. As for humans, God created us in His likeness; I believe that the COVID-19 immunization’s mRNA technology represents a false message/word that masks and/or takes over the role of the body’s natural processes and is thus unnatural and impure.

5. I was raised in the Roman Catholic Church but converted to Protestantism in [REDACTED]. This conversion was perhaps the most significant turning point in my life, my marriage and my career. I have spent the last [REDACTED] years studying the scripture and applying its teachings in all major areas of my life to include what I feed my mind, body, and soul. My application of Christian scriptural teachings have made me a better father, husband and Non Commissioned Officer, the latter of which is evidenced by consistent exemplary job and fitness performance. I have now proudly and faithfully served this great nation for 21 total years of which are 18 years of Total Active Federal Service TFAMS. While I have complied with all that was asked of me, the conflict between my religious convictions and this COVID vaccination is one that I cannot in good conscience ignore. To do so would be to deny my faith, to ignore my religious conscience, and to deny my God to whom I owe my earthly life and eternal salvation. I ask for your sincere and measured consideration towards my request to grant me a religious exemption to this vaccination so that I may continue to serve in my present position at AFRC until my projected 2023 retirement.

6. If you have any questions, please contact [REDACTED].

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Date: 2021.11.01 15:51:10 -0400



**TULLY RINCKEY** PLLC  
ATTORNEYS & COUNSELORS AT LAW

3724 EXECUTIVE CENTER DRIVE  
PROCTOR BUILDING, SUITE 205  
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EMAIL: INFO@TULLYLEGAL.COM

15 November 2021

MEMORANDUM FOR [REDACTED]

Memorandum Thru: [REDACTED]

**SUBJECT:** [REDACTED], Request for  
**Religious Accommodation to Covid-19 Vaccination Mandate**

**1. PURPOSE:**

Tully Rinckey, PLLC has been retained to represent [REDACTED] regarding his submission of an appeal of a denial of his request for a religious accommodation to the Dept. of Defense mandate issued on 24 August 2021, directing all service members to receive a Covid-19 vaccination. (*See* Power of Attorney, Encl. 1).

Please be aware that although the undersigned, as counsel, has prepared this formal response for submission, [REDACTED] has reviewed its contents and the positions espoused herein should be considered his own. Thus, where a factual statement is asserted and does not include a citation to a supporting declaration, the source is [REDACTED].

As discussed below, [REDACTED] is a devoted Christian who has strong religious and moral convictions against receiving any of the Covid-19 vaccines presently on the market due to the documented use of fetal cell lines in the production or testing phase of these vaccines. These religious convictions will be substantially burdened should [REDACTED] be forced to comply with the mandate referenced above. The present vaccination mandate places substantial pressure on [REDACTED] to comply with orders that are contrary to sincerely held religious beliefs, placing a substantial burden on his ability to exercise his religion. [REDACTED] decision to submit a religious accommodation request was not one that was reached in haste. Rather, it was the product of long hours of research, profound deliberation, and the weighing of several factors. Ultimately, [REDACTED] concluded that that his religious convictions against the Covid-19 vaccine could not give way in the face of the ongoing pandemic. Therefore, [REDACTED] is requesting a religious accommodation be granted exempting him from complying with the Covid-19 vaccination requirements recently promulgated by the Dept. of Defense ("DoD"). It is important to note that extensive peer reviewed research indicates that individuals can still contract and transmit the virus regardless of vaccination status. There are equally effective and less burdensome measures that can and have been implemented that would not substantially

burden ██████ exercising of his religion. These measures include the wearing of masks, social distancing and practicing appropriate hygiene measures. These measures have been implemented and enforced across the DoD since the beginning of the pandemic. Therefore, granting this request is proper, in accordance with controlling laws and regulations, and will not adversely affect mission readiness, good order and discipline, or the health and safety of other service members. Please direct all future correspondence in this matter to this office.

## **2. OVERVIEW:**

█████ has served honorably in the United States military for over █████ years with 18 years of federal active service years. He currently serves in a non-deployable position. █████ was raised as a Roman Catholic but converted to Protestantism in █████ which he considers one of the most significant events of his life.

On 21 September 2021, █████ received an order to receive the COVID-19 vaccine from Major General █████. In the order, █████ was advised that he could submit a religious objection pursuant to receiving a religious exemption from the vaccine.

█████ promptly submitted his religious exemption request through his chain of command. On 27 October 2021, █████ denied █████ request but advised him that he could submit an appeal within 72 hours. In his denial, █████ conceded that █████ beliefs were sincere but based his denial on the risk to the mission. █████ wrote that all COVID immunizations were “important” elements of mission accomplishment as they contribute to the health, safety, and readiness of the force. █████ also asserted that less restrictive means of protecting the force against COVID-19 were “unavailable.”

On 1 November 2021, █████ submitted his appeal arguing that his specific position would not be impact mission accomplishment if he were to remain unvaccinated.

## **3. LAW:**

Pursuant to the Free Exercise Clause of the First Amendment to the United States Constitution, a service member has the right to observe the tenets of their religion or to observe no religion at all. A request for an accommodation of practices that reflects a service member’s sincerely held conscience or moral principles will be governed by the policies of the Department of Defense (DoD) Component concerned. In accordance with Section 533(a)(1) of Public Law 112-239, the DoD Components will accommodate individual expressions of sincerely held beliefs, which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety. Certain vaccines are required for all service members, while others may only be required for those who are deploying to specific locations.

DOD Instruction (DoDI) 6205.02 establishes the DOD Immunization Program that generally directs combatant commands and the military departments (MILDEPs) to identify and define “mandatory immunization requirements” for service members. The Joint Regulation on Immunization and Chemoprophylaxis for the Prevention of Infectious Diseases outlines specific vaccination requirements for service members. In general, DOD vaccination requirements will

follow the recommendations of the U.S. Centers for Disease Control and Prevention (CDC) and the Advisory Committee on Immunization Practices (ACIP). DOD vaccination requirements fall into one of three categories; first, vaccinations during initial entry or basic training; second, routine adult vaccinations; and, third, special risk-based, or occupation-specific vaccinations.

Pursuant to the Religious Freedom Restoration Act (42 U.S.C. §2000bb-1), administrative exemptions for religious reasons may also be granted. DOD policy requires that the unit commander seek input from medical, legal, and chaplain representatives; the unit commander counsel the service member on potential adverse impact to “deployability, assignment, or international travel”; and, a military physician counsel the service member on the benefits and risks of forgoing a required vaccination. Unit commanders may revoke a religious exemption “if the individual and/or unit are at imminent risk of exposure to a disease for which an immunization is available. According to DoDI 1300.17, an accommodation includes excusing a service member from an otherwise applicable military policy, practice, or duty. In accordance with RFRA, if such a military policy, practice or duty substantially burdens the service member’s exercise of religion, accommodation can only be denied if: one, the military policy, practice, or duty is in furtherance of a compelling governmental interest; or, it is the least restrictive means of furthering that compelling governmental interest. When applying this **standard the burden of proof is placed upon the DoD Component**, not the individual requesting the exemption.

According to DoDI 1300.17, military commanders should consider the following factors, in addition to any other factors deemed appropriate, when determining whether to grant a request for the accommodation of religious practices. The specified factors are:

- a. The importance of military requirements in terms of the mission accomplishment, military readiness, unit cohesion, standards, and discipline.
- b. The religious importance of the accommodation to the requestor.
- c. The cumulative impact of repeated accommodations of a similar nature.
- d. Alternative means available to meet the requested accommodation.
- e. Previous treatment of the same or similar requests, including treatment of similar requests made for other than religious reason.

The guidance in this Instruction shall be used by the Military Departments in the development of implementing documents on the exercise of command discretion concerning the accommodation of religious practices.

- a. Worship practices, holy days, and Sabbath or similar religious observance requests shall be accommodated, except when precluded by military necessity.
- b. Religious beliefs shall be included as a factor for consideration when granting separate rations.
- c. Religious beliefs shall be considered as a factor for the waiver of required medical practices, subject to military requirements and medical risks to the unit.
- d. Familiarization with religious accommodation policies shall be included in the training curricula for command, judge advocate, chaplain, and other appropriate career fields or assignments.
- e. Applicants for commissioning, enlistment, and reenlistment shall be advised of their Military Department’s specific religious accommodation policies.

The Air Force provides exemptions to vaccines under Chapter 2-6 of AFI 48-110, which states the following;

There are two types of exemptions from immunization-medical and administrative. Granting medical exemptions is a medical function. Granting administrative exemptions is a nonmedical function.

(3) Religious exemptions.

(a) Servicemembers. Immunization exemptions for religious reasons may be granted according to Service-specific policies to accommodate religious beliefs of a Service member. This is a command decision made with medical, judge advocate, and chaplain input.

1. Requests for religious exemption must comply with the provisions of the applicable policy and/or regulation for the Servicemember requesting religious accommodation. For the Army, religious accommodation policy is provided in AR 600-20. For the Navy and Marine Corps, waivers are granted on a case-by-case basis by the Chief, Bureau of Medicine, and Surgery. For the Air Force, permanent exemptions for religious reasons are not granted; the MAJCOM commander is the designated approval and revocation authority for temporary immunization exemptions. For the Coast Guard, CG-122 is the designated approval and revocation authority for religious immunization exemptions. USCG requests must be forwarded through the appropriate chain to Commandant CG-122 via CG-112.

2. A military physician must counsel the applicant. The physician should ensure that the Servicemember is making an informed decision and should address, at a minimum, specific information about the diseases concerned; specific vaccine information including product constituents, benefits, and risks; and potential risks of infection incurred by unimmunized individuals.

3. The commander must counsel the individual that noncompliance with immunization requirements may adversely impact deployability, assignment, or international travel.

4. Per DODI 1300.17 and applicable service regulations will be provided whether Servicemembers with pending active requests for religious exemption are temporarily deferred from immunizations, pending outcome of their request.

5. Religious exemptions may be revoked, in accordance with Service-specific policies and procedures, if the individual and/or unit are at imminent risk of exposure to a disease for which an immunization is available.

While DoD components have compelling governmental interests in mission readiness at the individual, unit, and organizational levels, to include interests in good order and discipline, as well as the health and safety of the Military Departments concerned, DoD components “**will normally accommodate religious practices of a service member based upon a sincerely held religious belief.**” *DoDI 1300.17, 1.2e*. Religious accommodation requests include those that excuse or otherwise exempt a service member “from an otherwise applicable military policy, practice or duty.” *Id.* Moreover, in accordance with the Religious Freedom Restoration Act (“RFRA”), if a “military policy, practice, or duty substantially burdens a service member’s exercise of religion, accommodation can only be denied if: (1) the military policy, practice or duty is in furtherance of a compelling government interest; and (2) it is the least restrictive means

of furthering [those] compelling government interests.” *Id.* ***When evaluating whether the military policy, practice or duty is the least restrictive means available for furthering a compelling governmental interest, the burden of proof is place upon the military branch concerned, not the service member.*** *Id.* [Emphasis added]. A “substantial burden” to a service member’s exercise of religion exists when the governmental act, policy, practice or duty requires participation in an activity prohibited by a sincerely held religious belief; prevents participation in conduct motivated by a sincerely held religious belief; ***or places substantial pressure on a service member to engage in conduct contrary to a sincerely held religious belief.***

Moreover, Air Force Policy Directive 52-2 requires that the Air Force approve an individual request for religious accommodation unless the request would have a real (not theoretical) adverse impact on military readiness, unit cohesion, good order, discipline, or public health and safety. AFPD 52-2, paragraph 1.4. We contend that no such showing has been made for the reasons discussion herein.

#### **4. ANALYSIS:**

In the present matter, [REDACTED] is a Protestant who is serving in the Air Force in a non-deployable position. He has and continues to hold a strong Christian belief that includes an objection to any and all forms of abortion. This includes the use of aborted cells in the production and/or testing of a vaccine. [REDACTED] is requesting a religious accommodation to the COVID-19 vaccine and [REDACTED] has already conceded that his convictions are sincere.<sup>1</sup>

Once a service member has established a sincerely held religious belief, the burden then shifts to the Government to prove that it possesses a compelling government interest in mandating vaccination requirements, AND that the measures imposed to achieve this compelling interest are the least restrictive methods available. With these questions in mind, we respectfully contend that granting this request will not adversely impact mission readiness, detract from good order and discipline, or otherwise affect the health and safety of other service members. The accommodation will not burden the military for a number of reasons. First, granting an accommodation would not be an impediment to mission readiness. According to Johns Hopkins University the current mortality rate in the United States is 1.7%.<sup>2</sup> Further, according to the CDC, those who are most at-risk to become severely ill or even die from the virus are those who are not suitable for retention in military service.<sup>3</sup> In other words, the risk is extremely low.

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<sup>1</sup> [REDACTED] has complied with all protocol regarding the religion exemption process, but he wants the command to know that this process has been far from straight forward. the RAR process and appeal process were far from straight forward or transparent. Pertaining to the appeal, he received his RAR denial at noon on a Thursday and was only given until Monday to get the appeal completed without much direction on how to do so. [REDACTED] sent several follow-up emails to ask about the process and what would take place once he had drafted his appeal. He did not receive an overview of the process until Monday, the same day the appeal was due. This is an unacceptable timeline and prevented [REDACTED] from being able to fully address the issues under consideration.

<sup>2</sup> <https://coronavirus.jhu.edu/data/mortality>

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

Looking closer, over 80% of COVID deaths have been those aged 65 and older.<sup>4</sup> Statistics published by the Air Force indicate that very few service members are hospitalized as a result of Covid-19 infection, and even fewer service members have died as result of infection. Secondly, the CDC has acknowledged that transmission of the virus can still occur regardless of an individual's vaccination status.<sup>5</sup> Therefore, there is no increased threat to mission readiness, or the health and safety of other service members should this request be granted. Additionally, the Dept. of Defense still requires all individuals, regardless of vaccination status, to wear face masks while indoors. The DoD's reliance on the wearing of face masks is a clear indication that it believes such measures are effective at controlling the virus, otherwise such measures, to include social distancing, would not have been implemented in the first place.

Dr. Marty Makary of Johns Hopkins University has recently opined that research indicates that the immunity one develops naturally as a result of Covid-19 infection is more effective than the immunity one develops as a result of vaccination.<sup>6</sup> Research studies on this topic coming out of Israel indicated that natural immunity is 6.7 times more effective than the immunity one develops as a result of receiving a Covid-19 vaccine.<sup>7</sup> In addition to vaccination, there are recognized alternatives that are effective at controlling the spread of the virus, to include the wearing of facemasks<sup>8</sup>, something that the DoD has implemented since the beginning of the pandemic,<sup>9</sup> as well as practicing social distancing.

In the present matter, [REDACTED] has multiple alternative methods to COVID and is not considered "at-risk." [REDACTED] can continue to work in the same manner he has without a threat to mission accomplishment as he has been since the beginning of the pandemic. Additionally, [REDACTED] may have natural immunity as a result of already having contracted and recovered from Covid-19.

DoD installations have been implementing a mask mandate again, thus, it is perceived the vaccine is not as effective as originally thought, otherwise a mask mandate would not be needed again. [REDACTED] can continue to wear a mask on the DoD installations without a threat to himself or others. COVID vaccine accommodation requests are a new front Commanders must face. Thus, each accommodation must be given serious thought and not given a blanket denial or risk the people losing faith in military leadership recognizing the diversity of the service members. Therefore, the accommodations must be for those who have demonstrated a tradition of religion in one's life, as [REDACTED] has exemplified.

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<sup>4</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

<sup>5</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html#:~:text=%E2%80%A2%20Fully%20vaccinated%20people%20with,the%20virus%20to%20others.>

<sup>6</sup> See <https://www.msn.com/en-us/health/medical/dr-makary-says-natural-immunity-is-more-effective-then-vaccine-immunity/ar-AAMX3sM>

<sup>7</sup> See <https://www.msn.com/en-us/health/medical/dr-makary-says-natural-immunity-is-more-effective-then-vaccine-immunity/ar-AAMX3sM>

<sup>8</sup> See <https://www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/face-masks-including-surgical-masks-and-respirators-covid-19#:~:text=If%20worn%20properly%2C%20face,Considerations%20for%20Wearing%20Masks>

<sup>9</sup> <https://www.militarytimes.com/news/your-army/2020/04/07/keep-it-conservative-services-break-out-face-mask-rules/>

██████████ has strong moral convictions against receiving any of the Covid-19 vaccines presently on the market, regardless of whether those vaccines have received full licensure from the FDA or were granted EUA approval. ██████████ religious beliefs are predicated upon explicit religious scripture and his interpretation of those teachings. Moreover, ██████████ sincerely believes that abortion is fundamentally and morally wrong and has strong religious convictions against receiving vaccinations derived from aborted-fetal cells. Presently, all the Covid-19 vaccines on the market made use of, in one way or another, aborted fetal cells. These convictions hold true regardless of how far removed from the initial, morally repugnant, event these vaccines are derived from. ██████████ conscience steadfastly opposes receiving any of the Covid-19 vaccines listed above due to his sincerely held belief regarding abortion.

██████████ is still fully capable of performing his duties while wearing a mask or social distancing. There is no impact on mission readiness due to the fact he is not in a deployable position. Because an individual can still contract and spread the virus even when they have been vaccinated, the risk to mission readiness and the health and safety of others will remain the same regardless of whether this request is granted. Mission readiness will be more negatively impacted from the loss of separated service members who do not receive accommodations that it would ever have been affected by the virus in any other way. Therefore, when each of these factors and practices are considered, it becomes abundantly clear that less burdensome means exist for achieving the same objective, which is to protect mission readiness. While the government does have compelling interests in ensuring orders are complied with, good order and discipline will not be adversely affected by granting this request, as ██████████ is merely exercising his right to seek a religious accommodation rather than outright refusing the vaccine without seeking such a request. ██████████ has deeply held religious and moral convictions that have guided him throughout the decision-making process when determining whether to put forth this request. Upon weighing all relevant factors, to include his religious beliefs and the medical complications that could arise following Covid-19 infection, ██████████ has concluded that his religious convictions and conscience cannot give way in the face of the ongoing pandemic.

While the ongoing pandemic has presented new challenges for commanders and subordinates alike, policies and guidance pertaining to the imposition of military justice can provide a starting point when navigating and processing requests such as this. Specifically, the Commander's Quick Reference Legal Handbook suggests that a commander imposing punishment pursuant to Article 15, UCMJ, should take a holistic approach to ensure any potential punishment is not unjust or otherwise disproportionate. A commander should consider all relevant circumstances of the offense rather than issuing blanket decisions for the same offense involving different service members. This policy is equally applicable when determining whether to grant a religious accommodation request, and such requests should not be summarily dismissed merely because others have put forth less compelling requests for religious accommodations. When the above guidance is taken into consideration, it is abundantly clear that the DoD policies cited above require a religious accommodation be granted in situations such as these when the service member has demonstrated the existence of a sincerely held religious

belief that will be substantially burdened by DoD policy and when less intrusive means exist that do not amount to an invasion of an individual's right to freely practice a religion.

Here, [REDACTED] is requesting a reasonable religious accommodation based upon the present vaccine mandate conflicting with his sincerely held religious beliefs. The decision to submit this request came after [REDACTED] engaged in a profound and comprehensive decision-making process that considered his religious beliefs, recently published scientific literature regarding Covid-19, and a balancing of those competing interests. It was only after deep reflection that [REDACTED] determined that his religious beliefs could not give way to the vaccination mandate that was issued by the Sec. of Defense.

While [REDACTED] did receive other vaccines in the past, those vaccinations were administered without [REDACTED] informed consent. [REDACTED] is not opposed to vaccinations in general, just those that have been produced, in one way or another, using morally repugnant methods, including those that used aborted fetal cells. [REDACTED] does not wish to participate in such evil. While [REDACTED] has not sought religious accommodations regarding other vaccines, his failure to do so should have no bearing the present matter, as this decision is made on a case-by-case basis and reflects his current conscience. Unlike every other mandatory vaccine, the Covid-19 vaccines were hastily produced in under a year using aborted fetal cells. [REDACTED] conscience opposes the manner in which the Covid-19 vaccines were developed and tested, and he cannot, in good conscience, look the other way and set aside his moral convictions due to a perceived threat to his health.

## **5. CONCLUSION:**

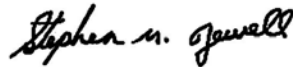
[REDACTED] is a deeply religious Airman with a long-standing history of church involvement and faith-based decision making. [REDACTED] has strong moral convictions regarding the use of fetal cells in the production or testing phase of the vaccine development, and his conscience is vehemently opposed to receiving vaccines that were produced in such a manner. The vaccination mandate places extreme pressure upon [REDACTED] to engage in conduct that is contrary to his sincerely held religious beliefs, and this pressure constitutes a substantial burden on his exercise of religion. [REDACTED] decision to submit this religious accommodation request was not one that he reached in haste. Rather, it was only after weighing several competing factors that he concluded seeking an accommodation request was proper.

During the course of the pandemic, [REDACTED] has steadfastly complied with all Covid-19 safety protocols that have been implemented to date, to include wearing face masks, exercising appropriate hygiene, and practicing social distancing. Despite contracting and recovering from the virus, there was no community spread to other service members. The right to submit this religious accommodation is firmly grounded in our nation's constitution, which all service members have sworn to uphold and defend. Therefore, less restrictive measures should be relied upon to ensure that mission readiness, good order and discipline, and the health and safety of other service members are not adversely affected by granting this request. Any action on a religious accommodation request must be based upon an individualized assessment of the reasons for the service member's request. Considering the above discussion outlining [REDACTED]

██████████ religious beliefs and applicable policies, we respectfully contend that granting this request is proper and in accordance with the regulatory provisions discussed herein. As such, we respectfully ask that ██████████ be granted a religious accommodation exempting him from complying with the Covid-19 vaccination requirements recently enacted by the Dept. of Defense.

Thank you for your time and careful consideration of this matter. If you require additional information, please do not hesitate to contact me.

Respectfully Submitted,  
Tully Rinckey, PLLC

A handwritten signature in black ink that reads "Stephen M. Jewell". The signature is written in a cursive, slightly slanted style.

Stephen Jewell  
Senior Associate  
Counsel for ██████████



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

DEC 27 2021

MEMORANDUM FOR [REDACTED]

FROM: HQ USAF [REDACTED]  
1780 Air Force Pentagon  
Washington, DC 20330-1780

SUBJECT: Decision on Religious Accommodation Appeal

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

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

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

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

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



DEPARTMENT OF THE AIR FORCE

EXHIBIT 5

21 September 2021

MEMORANDUM FOR [REDACTED]

[MEMBER'S RANK/NAME]

FROM: [REDACTED]

SUBJECT: Order to Receive Mandatory COVID-19 Vaccine

References: (a) Secretary of the Defense, *Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members* (24 August 2021)  
(b) Secretary of the Air Force, *Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military Members* (3 September 2021)  
(c) AFI 48-110\_IP, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases* (16 February 2018)

1. On 24 August 21, the Secretary of Defense issued a mandate for all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, to receive the COVID-19 vaccine (Reference (a)). On 3 September 2021, the Secretary of the Air Force issued additional direction that all Ready Reserve Airmen will be fully vaccinated by 2 December 2021 (Reference (b)).
2. Mandatory vaccination will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA).
3. As of the date of this order, your servicing medical facility did not have record of your COVID-19 vaccination. As a result, and in accordance with the above paragraph, **I am ordering you to receive an initial dose of a COVID-19 vaccine with full licensure approval from the FDA AND provide proof by 28 October 2021. Additionally, you are ordered to receive the second dose of the same vaccine AND provide proof by 18 November 2021.**
  - a. If you previously received the completed vaccination series but your military medical records do not reflect it, you are required to provide proof of vaccination by the date listed above.
  - b. The due date above also applies to exemptions. This means that by the due date, you must provide either a completed request for a religious accommodation addressed to AFRC/CC (delivered to me) or proof of a medical exemption approved by a military medical provider. *Requests for religious accommodation must comply with the requirements in the HQ AFRC Religious Accommodation Requests for Immunizations Guide.*
4. The Pfizer COVID-19 vaccine is not the only option available for complying with this order. Alternatively, you may choose to receive the two-shot Moderna COVID-19 vaccine or the single shot J&J COVID-19 vaccine. If you choose to receive the Moderna series vaccine, you must comply with the two deadlines listed above. If you choose to receive the J&J vaccine, you must

comply with the first deadline listed above. It is YOUR responsibility to pay attention to these timelines. A request (to me) for good cause for an extension to this order must be received in writing before the ordered due date.

5. If you have concerns about the COVID-19 vaccine, you have access to free advice and counseling through any of the installation agencies listed below. The completion dates listed above should provide a reasonable amount of time in which to coordinate.

a. Medical Concerns the base COVID-19 vaccination information office can be reached at [REDACTED].

b. Legal Implications the base Area Defense Counsel (ADC) can be reached at [REDACTED].

c. Religious Objections – the [REDACTED] Chaplain's Office can be reached at [REDACTED].

6. Failure to comply with this lawful order may result in administrative and/or punitive action for Failing to Obey an Order under Article 92, Uniform Code of Military Justice.

[REDACTED]  
Major General, USAF  
Deputy Commander

1st Ind, [REDACTED]  
[MEMBER'S RANK/NAME]

9/23/21 (Date)

#### MEMORANDUM FOR AFRC/CD

1. I acknowledge receipt of this order on 9/23/21 (DATE). I understand the dates for starting and completing the COVID-19 vaccination process. I also understand I must provide proof by the dates listed in the order.

2. I understand a request for an extension to this order must be writing, prior to the due dates, and can only be approved by the Commander.

[REDACTED] Digitally signed by [REDACTED]  
Date: 2021.09.23 15:18:09  
-04'00'  
[REDACTED]  
[NAME, Rank, USAF]

2d Ind to [REDACTED], 21 Sep 21, Order to Receive Mandatory COVID-19 Vaccine

AFRC/CD

MEMORANDUM FOR [REDACTED] \_\_\_\_\_ (Date)  
[MEMBER'S RANK/NAME]

On \_\_\_\_\_ (DATE), Member:

- a. ☐ provided proof of receiving an initial dose of a Pfizer or Moderna COVID-19 vaccination series;
- b. ☐ provided proof of receiving of a J&J COVID-19 vaccination;
- c. ☐ submitted a completed religious accommodation request;
- d. ☐ provided proof of an approved military medical exemption; or
- e. ☐ did not provide sufficient documentation and thus failed to comply with the lawful order and is in violation of Article 92, UCMJ. Member must comply as soon as possible or risk continued adverse consequences.

[REDACTED]  
Major General, USAF  
Deputy Commander



3. I have served my country for over 10 years, having been on Active Duty before going on Reserves, and planned to serve another 15 years and maximize my retirement benefits.

4. The military has rewarded me with fifteen (15) medals for my service, including two Air and Space Commendation Medals, an Air and Space Achievement Medal, and an Air Force Good Conduct Medal.

5. Until receiving a Letter of Reprimand for not getting the COVID-19 vaccination, I have never been disciplined by the Air Force, nor has there ever been cause to discipline me for any reason.

6. I am a Christian, and the Bible is the authoritative text for my faith. My religious conscience is formed by biblical teachings, the counsel of church leaders, Scripture, and prayer.

7. Based on these sources, I believe my body is the temple of the Holy Spirit that must be kept pure (1 Cor. 3:16-17), and injection of a foreign substance containing in some cases aborted fetal cells, animal parts, carcinogens, and chemical waste, violates this mandate (Genesis 9:4, Leviticus 17:11, 17:14, Deuteronomy 12:23, Leviticus 17:10, Acts 15:20, and Acts 15:29).

8. On November 1, 2021 I submitted a request for religious accommodation to the requirement that I take the COVID-19 vaccination. (Exhibit 1, attached).

9. I received notice of the denial of my request for religious accommodation on or about January 18, 2022. (Ex. 2, attached.)

10. I timely appealed that denial on January 22, 2022. (Ex. 3, attached.) Before filing my appeal, I telephoned the Director of Staff to ask about the process for appeals, the options available to me, and any additional resources that might be of assistance in preparing my appeal. The Director interrupted my questions to inform me that that there had not been a single exemption granted in the Air Force, and although I had a right to appeal, it was highly likely that

it would be denied. In fact, he left no doubt that my appeal would be denied, and I would then have to take the vaccine.

11. As the Director had predicted, on February 17, 2022, I received notice of the final denial of the appeal of my religious accommodation request (Ex. 4, attached).

12. Because I was not eligible for retirement, the only options I was given were to either take the vaccine or to face discipline.

13. On March 2, 2022, I was informed that I was being promoted, but warned again that to fulfill the duties of the new position and continue serving in the Air Force I would be required to comply with the vaccine mandate.

14. On January 18, 2022, I had tested positive for COVID-19, and have since fully recovered. I continue to maximize telework and remote work, wear a mask, and practice social distancing when inside the office or traveling. Additionally, in my civilian job I screen weekly for COVID-19.

15. In my home state of California as well as under CDC guidance, those who have tested positive for COVID-19 and are no longer symptomatic are advised to wait 90 days to take the vaccine. I therefore requested an extension of the deadline for compliance with the mandate. In addition, I had been informed that I had five days after final denial of my appeal to “initiate” the process, and that it must be completed no later than seven weeks from receipt of the denial. (*See Ex. 2, ¶¶ 2 and 3.*)

16. I therefore scheduled an appointment to take the vaccine, under duress, because even though it went against my religion, I did not believe I could give up my livelihood at this time, because I have a wife and children to provide for and I am the sole provider in my family. I

was unable to keep my appointment, however, due to a scheduling conflict with my civilian job. I therefore rescheduled my appointment to take the vaccine.

17. Nevertheless, on March 18, 2022, I was issued a Letter of Reprimand for failure to timely comply with the order to obtain the vaccine (Ex. 6, attached). I was given forty-five (45) days to submit comments or documents for consideration. The specific punishment to be meted out was not set forth.

18. If I am discharged, I stand to lose my health insurance, my Air Force salary, future retirement and lifetime medical benefits, as well as opportunities for advancement.

19. I do not oppose all vaccines. I oppose the currently available COVID-19 vaccines for religious reasons.

20. I am aware of the following military orders purportedly requiring me to take the vaccine:

- a. Department of Defense August 24, 2021 Order (Ex. 1 to Doc. 2-2);
- b. Department of Air Force September 3, 2021 Order (Ex. 2 to Doc. 2-2);
- c. Department of Air Force December 7, 2021 Supplemental Vaccine Policy (attached as Ex. 5).

21. I am aware of AFI 48-110 (Ex. 7 to Doc. 2-2), an Air Force instruction.

22. I am also aware of reported information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, relating to religious accommodation requests.

23. Based on information publicly available from the Air Force, including [https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-](https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/)

[2022/](#), I understand that the Air Force currently recognizes at least 1,102 medical accommodations.

24. Further, also based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I understand the Air Force currently recognizes at least 1,407 administrative accommodations.

25. Based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I understand that at least 96.5% of Air Force service members have received COVID-19 vaccinations.

26. I am not aware of any military branch (including the Air Force, Navy, Army, Marines, and Coast Guard) granting any religious accommodation requests to service members not already slated for separation, and I'm aware that the Pentagon's Inspector General is investigating whether the military's process for considering and denying religious accommodation requests to COVID-19 vaccination complies with its own protocols. <https://www.military.com/daily-news/2022/03/02/pentagon-watchdog-investigate-militarys-covid-19-exemption-process.html>.

27. My request for a religious exemption would not seriously impact my ability to perform my duties. As a reservist, I work only one day each month and two weeks each year. Throughout the pandemic, senior OSI leaders have strongly encouraged telework, rather than coming into an office. In fact, I live in a different state than that in which my base is located, and have not had to set foot inside the office at headquarters for years. I work out of an isolated,

single-person office and was never a threat to the mission and maintained good health throughout the pandemic. Furthermore, numerous vacancies have been advertised that are 100% telework.

28. Moreover, the OSI has civilian agents who perform virtually identical duties to mine. But the federal civilian mandate was enjoined by a federal court in Texas, and ever since the OSI civilian agents have not been required to take the vaccine yet have been allowed to continue working, upon information and belief, without any additional restraints imposed upon them.

29. In addition, with our current capabilities, all meetings and trainings are either telephonic, Zoom, Microsoft Teams, WebEx, etc., and there is always an option to dial in by phone. All official documents can be digitally signed, and everyone has become accustomed to conducting business through email/phone, and most prefer the flexibility of continuing to work in a highly socially distanced environment. In short, in my current position there are virtually no physical interactions with others and COVID-19 is not a factor.

30. The OSI Reserve Common Training Assembly (“CTA”) took place on January 8-9, 2022, and was entirely virtual. OSI senior leaders described the virtual event as highly successful, the first in over twelve years, and an extremely effective forum for hundreds of OSI Individual Mobilization Augmentees (“IMAs”) that were geographically dispersed throughout the U.S. and abroad to “meet” with OSI leaders and other Air Force leaders who may have not had the opportunity to travel to a similar, in-person meeting. During the virtual CTA, it was reiterated to us that due to a limited budget, OSI IMAs will not be provided any specialized training, nor be sent to any additional courses. Due to the slowed-down deployment tempo, IMA’s would likely not get the opportunity to deploy.

31. I have maintained and continue to maintain protocols for health and safety, I have no known comorbidities, and to my knowledge I have not transmitted COVID-19 to others.

32. My Air Force career has been entirely in the interest of military readiness, unit cohesion, good order, discipline, health, and safety.

33. Based on Facebook comments that I am aware of related to the WMAZ and WGXA news reports about Air Force Officer and this case (Docs. 48 and 49), and based on numerous other public statements made by individuals in government or the media that are critical of people not taking the COVID-19 vaccine, I am concerned about serious social stigmatization and my personal safety and security.

34. I have talked with others in the military who expressed to me that they want to speak out in opposition to the vaccine mandates but are afraid to do so.

35. The attached exhibits are redacted to remove some personal identifiers.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 30, 2022.

/s/Air Force Special Agent  
Air Force Special Agent



## DEPARTMENT OF THE AIR FORCE

## EXHIBIT 1

01 NOV 21

MEMORANDUM FOR [REDACTED]

FROM: [REDACTED]

SUBJECT: Religious Accommodation Request – Vaccine Exemption

1. I request an accommodation waiver of the COVID-19 vaccine requirement based upon my religious beliefs.

- a. My DoD ID number is [REDACTED].
- b. My Specialty Code is [REDACTED].
- c. My unit of assignment is at [REDACTED].
- d. My faith group of preference is Eastern Orthodox.

2. This request is based on our family's personal religious beliefs, which prohibit the injection of foreign substances into our bodies. To inject into ourselves or our children any substance which would alter the state into which one is born would be to criticize our Lord and question His divine omnipotence. Our faith will not allow us to question our Lord and God, nor to challenge His divine power. In the Bible, blood represented the life force of the human or animal. Human blood was to be kept pure under all circumstances and free of contaminants like animal parts and blood (Genesis 9:4, Leviticus 17:11, 17:14, Deuteronomy 12:23, Leviticus 17:10, Acts 15:20, and Acts 15:29). The Covid-19 vaccine contains aborted fetal cells, animal parts, carcinogens, and chemical wastes that are proven harmful to the human body (Center for Disease Control). Our objection is based on our lifelong, deeply-held spiritual beliefs based on scripture. To vaccinate ourselves violates laws put forth within us by a higher force at the time of conception. Our personal religious beliefs include our obedience to God's law, the Holy Bible, and we believe that we are responsible before God for our life and safety, created by God.

3. I understand I must arrange an in-person interview with a Department of the Air Force chaplain and an in-person appointment with an appointed Air Force medical provider as part of the process for requesting a religious accommodation.

4. I understand that I am not required to receive this vaccine while I await a decision on my request. If my request is disapproved, I understand I must comply with the aforementioned vaccine requirement. I understand that even if my request is approved, the approved accommodation may be suspended, modified, or revoked by appropriate authorities when required by military necessity. For any questions, I may be contacted at [REDACTED] and [REDACTED].

Digitally signed by [REDACTED]

Date: 2021.11.01 14:31:08 -07'00'





**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS OFFICE OF SPECIAL INVESTIGATIONS  
QUANTICO VIRGINIA**

**EXHIBIT 2**

18 January 2022

MEMORANDUM FOR [REDACTED]

FROM: OSI/CC

SUBJECT: Decision – Request for Religious Accommodation

1. I am in receipt of the religious accommodation request you submitted on 01 November 2021 , related to my 13 September 2021 order for all OSI active duty and reserve personnel to become fully vaccinated against COVID-19. I understand you have completed all required counseling related to this request, and a Religious Resolution Team (RRT) has reviewed your request and supporting documentation. Based upon the results of this process, I have made the following determinations:
  - a. The moral/religious basis for this request is sincerely held;
  - b. There is a significant compelling government interest as relates to the need to ensure a healthy, ready, flexible and deployable force (specific to you and those with whom you serve) for mission accomplishment; and
  - c. There are no less restrictive measures related to COVID-19 vaccination which can be implemented to meet this compelling government interest.
2. As a result of this evaluation, I have assessed that the compelling government interest in this instance supersedes your sincerely held moral/religious objection. In addition, I have determined that, due to the nature of your duties and the needs of the government, no less restrictive means exist to meet the compelling government interests in this instance. Therefore, I **DISAPPROVE** your request for religious accommodation to my 13 September 2021 order to become fully vaccinated against COVID-19. Consequently, I direct you to initiate the vaccination process, as directed in my 13 September 2021 order, and provide proof of doing so to your supervisor within **5 calendar days** of receipt of this memorandum. Furthermore, I direct you to be in full compliance with the requirement to be fully vaccinated, as I established in my 13 September 2021 order, no later than **7 weeks** from receipt of this memorandum. Failure to comply may result in administrative and/or punitive action for Disobeying an Order under Article 90, Uniform Code of Military Justice.
3. Pursuant to DAFI 52-201, *Religious Freedom in the Department of the Air Force*, you have the right to appeal this decision to the Air Force Surgeon General (AF/SG). If you desire to appeal this decision, you must submit such a request through the OSI COVID-19 Task Force ([osi.c19.tf@us.af.mil](mailto:osi.c19.tf@us.af.mil)) within **5 calendar days** of receiving this notification. You will continue to be temporarily exempt from becoming fully vaccinated until such time as a timely filed appeal is formally acted upon. If you need assistance in filing an appeal, please contact the OSI COVID-19 Task Force and they will provide you information to assist in filing an appeal. If you file an appeal and it is denied, you will be required to initiate the vaccination process, as described in my 13 September 2021 order, and provide proof of doing so to your supervisor within **5 calendar days** of receipt of a denial notification, unless directed otherwise by the AF/SG or other competent authority. Unless directed otherwise, you must be in full compliance with the

requirement to be fully vaccinated, as I established in my 13 September 2021 order, no later than **7 weeks** from receipt of the AF/SG's appeal denial notification. Failure to comply may result in administrative and/or punitive action for Disobeying an Order under Article 90, Uniform Code of Military Justice.

4. In addition, in accordance with 7 Dec 21 SECAF *Supplemental Coronavirus Disease 2019 Vaccination Policy*, if eligible, you 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 following this notification of religious accommodation request denial. Such a request must be made within **5 calendar days** of receipt of this denial notification.

Digitally signed by [REDACTED]  
Date: 2022.01.18 14:55:50 -0500  
[REDACTED]  
[REDACTED] USAF  
[REDACTED]

1st Ind to OSI/CC, Decision – Request for Religious Accommodation, 18 January 2022

MEMORANDUM FOR OSI/CC

I acknowledge receipt and understanding of your decision and order on [REDACTED]. I understand that I must comply with your order to become fully vaccinated within the timelines identified, file an appeal with the AF/SG within 5 calendar days, or, if eligible, request to separate or retire on or before 1 April 2022.

[REDACTED] USAF  
[REDACTED] Region



DEPARTMENT OF THE AIR FORCE  
[REDACTED] (OSI)  
[REDACTED]

EXHIBIT 3

22 Jan 2022

MEMORANDUM FOR [REDACTED]

FROM: [REDACTED]

SUBJECT: Religious Accommodation Appeal

1. I would like to thank General [REDACTED] and the Religious Resolution Team (RRT) for reviewing my Religious Accommodation request and unanimously determining that there is a sincerely held religious belief. Col (SA) [REDACTED] indicated that lesser restrictive measures do not exist to meet the government interest, therefore I am required to choose between my religious faith and service to my country. Respectfully, the past two years of this pandemic demonstrated that there are in-fact lesser restrictive measures available.

2. I am submitting this because the denial that I received ignored my individual case, specific mission, and duty requirements as an [REDACTED]. Since the beginning of the pandemic until now, I have not been an undue burden in any way during these past twenty-two months. I have followed all the CDC protocols during my annual tours and IDT days and always stayed "Green." By maximizing telecommuting, masking, social distancing, and working out of an isolated single-person office at [REDACTED] I was never a threat to the mission and remained completely healthy throughout the pandemic.

3. The RRT memo did not provide any compelling evidence that the government's interest would be placed in jeopardy by accommodating me. The letter did not address how remaining unvaccinated would present an undue hardship that will negatively impact military readiness. During the latest Reserve Common Training Assembly (CTA), it was discussed that agent [REDACTED] would rarely deploy and would likely not receive any additional formal training, unless mandated across the entire force. In the past six years as an [REDACTED], I was never allowed to attend any additional training courses to further my skills or volunteer for any deployments, as the fiscal funds were appropriated primarily for the Active Duty component.

4. For my civilian law enforcement job, I conduct weekly Covid-19 testing, which gets recorded and stored for contact-tracing/identification purposes on a government database. Furthermore, I do not travel overseas for any reason whatsoever, so I do not carry the additional risk associated with travel.

5. Every day, I feel blessed to be a part of the extraordinary OSI family. Having trained hundreds of rookie agents across many regions and working alongside other seasoned agents, OSI is truly a remarkable organization that I envisioned being with for the next fifteen years, totaling close to thirty years of service. My children have grown up alongside other OSI families and it would be traumatic to cut that short.

6. Thank you for your time and consideration reviewing my appeal request. I hope you reconsider your decision and allow me to continue serving my country, while respecting my religious beliefs. If you have any questions, please do not hesitate to call me at [REDACTED]  
[REDACTED]

Digitally signed by [REDACTED]

Date: 2022.01.23 16:43:42 -08'00'

[REDACTED], USAF



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

EXHIBIT 4

FEB 10 2022

MEMORANDUM FOR [REDACTED]

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

SUBJECT: Decision on Religious Accommodation Appeal

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

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

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

A handwritten signature in cursive script, reading "Robert Miller", is positioned above the printed name.

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



SECRETARY OF THE AIR FORCE  
WASHINGTON

**EXHIBIT 5**

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.



**DEPARTMENT OF THE AIR FORCE**  
**AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS**  
**FIELD SUPPORT SQUADRON**  
**QUANTICO, VIRGINIA**

**EXHIBIT 6**

18 March 2022

MEMORANDUM FOR SPECIAL AGENT / [REDACTED]

FROM: [REDACTED]

SUBJECT: Letter of Reprimand

1. On 13 Sep 21, [REDACTED] Air Force Office of Special Investigations (AFOSI), Quantico Marine Corps Ground Base, Virginia, issued an order for all active duty and reserve personnel assigned to AFOSI to receive the COVID-19 vaccine. Under this directive, all Reserve personnel, including you, must have been fully vaccinated by 2 Dec 21. This order stated that "failure to comply with this lawful order may result in administrative and/or punitive action for Failure to Obey an Order under Article 92, Uniform Code of Military Justice." On 5 Nov 21, you submitted a request for religious accommodation, and a Religious Resolution Team (RRT) later met to discuss your request. On 18 Jan 22, [REDACTED] denied your request. You subsequently appealed that decision, and on 10 Feb 22, Lt Gen Robert I. Miller, Air Force Surgeon General, informed you that he had reviewed your final appeal and denied it. You were again directed to obtain your first vaccination for COVID-19 by 22 Feb 22. As you still have not obtained a vaccination against COVID-19, you are in violation of these orders.

2. You are hereby reprimanded! You sought an exemption to the lawful order, and the Air Force Surgeon General denied your appeal because the Air Force has a compelling government interest in requiring you to comply with the COVID-19 immunization requirement because preventing the spread of disease among the force is vital to mission accomplishment. Despite this order and notification of your appeal denial, you were not vaccinated against COVID-19 by 12 Feb 22 due to your strongly held personal beliefs. You are in violation of Failure to Obey an Order, Article 92, Uniform Code of Military Justice.

3. The following information required by the Privacy Act is provided for your information. AUTHORITY: 10 USC § 9013. PURPOSE: To obtain any comments or documents you desire to submit (on a voluntary basis) for consideration concerning this action. ROUTINE USES: Provides you an opportunity to submit comments or documents for consideration. If provided, the response you submit becomes a part of the record. DISCLOSURE: Your written acknowledgment of receipt and signature are mandatory. Any other comments or documents you provide are voluntary.

4. You will acknowledge receipt of this Letter of Reprimand immediately by signing the first indorsement. Within 45 calendar days from the day you received this letter, via e-mail or certified mail, you will provide your response by signing the second indorsement below. Any comments or documents you wish to be considered concerning this letter must be submitted at that time and will become part of the record, consistent with AFI 36-2907, *Adverse Administrative Actions*, paragraph 2.4.2.5. After receiving your response, you will be notified of my final decision regarding any comments submitted by you within 45 calendar days.

[REDACTED]  
 [REDACTED] USAF  
 Commander, [REDACTED]

6 Attachments:

1. [REDACTED] OSI CC COVID Vaccination Order, dtd 13 Sep 21 (4 pgs)
2. RRT Memo for SA [REDACTED], dtd 28 Dec 21 (4 pgs)
3. OSI/CC Decision Memo [REDACTED], dtd 18 Jan 22 (2 pgs)
4. [REDACTED] RAR SG Decision, dtd 10 Feb 22 (1 pg)
5. SECAF Memo, re: Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military Members, dtd 3 Sep 21 (2 pgs)
6. SECAF Memo, re: Supplement COVID-19 Vaccination Policy, dtd 7 Dec 21 (6 pgs)

1st Ind, [REDACTED]

TO: [REDACTED]/CC

ACKNOWLEDGEMENT

1. I acknowledge receipt and understanding of this letter on \_\_\_\_\_ at \_\_\_\_\_ hours.
2. I understand that I have 45 calendar days to provide a response and that I must include in my response any comments or documents I wish to be considered concerning this letter. I understand that any comments or documents I provide will become part of the record of this action.

2nd Ind, [REDACTED]

\_\_\_\_ (date)

TO: [REDACTED]/CC

I have/have not provided comments or supporting documents in supporting documents in response to this letter.

[REDACTED] USAFR

3d Ind, [REDACTED]/CC

\_\_\_\_\_ (date)

TO: [REDACTED]

1. Member (did) (did not) provide written matters in response to this letter.
2. I have reviewed the matters submitted by the member. The LOR will be upheld/rescinded.

SETH A. MILLER, Colonel, USAF  
Commander, OSI [REDACTED]

4th Ind, [REDACTED]

\_\_\_\_\_ (date)

TO: [REDACTED] CC

I acknowledge that on \_\_\_\_\_ (date) you advised me that you had considered the matters submitted by me in response to the above counseling and informed me of your final decision regarding the same.

[REDACTED] USAFR



6. I currently serve in a managerial role providing a broad range of civil engineering support to multiple Air Force bases across the continental United States.

7. On December 6, 2021, I tested positive for COVID-19, after beginning to feel ill on December 3, 2021. Even though I had been working in the office the previous week, to my knowledge none of my fellow Airmen became infected. Having fully recovered from COVID-19 and thus having natural immunity, I believe I am at less risk of becoming infected again than my fellow vaccinated coworkers and pose less risk to mission accomplishment no matter where I am assigned.

8. The mitigation efforts put in place by the Air Force since March 2020 have proven effective. These same mitigation efforts have allowed the Air Force to accomplish its mission — arguably better than ever.

9. In addition, based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I understand that the Air Force currently recognizes at least 1,102 medical accommodations.

10. Based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I further understand the Air Force currently recognizes at least 1,407 administrative accommodations.

11. Based on information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, I understand that at least 96.5% of Air Force service members have received COVID-19 vaccinations.

12. I do not understand how temporary continued mitigation efforts for approximately 3% of the Air Force would significantly impact mission readiness, especially in light of the fact that the Air Force readily accommodates those granted medical and administrative accommodations when 100% of the Air Force has been operating under the same parameters for months.

13. I am a member of the Christian faith. I understand that vaccinations are a condition of military service and am not opposed to vaccines in principle. However, in accordance with my faith, it is my sincerely held religious belief that abortion is a grave evil and that use of vaccines that cooperate in that evil by incorporating the cell lines of aborted children in their development or testing is not morally justified except in extraordinary circumstances not present here.

14. I understand that all three COVID-19 vaccines currently authorized for use in the United States – either fully approved by the FDA (COMIRNATY®) or available under Emergency Use Authorization (Johnson & Johnson and Moderna) – utilized fetal cell lines in their production or testing. Those fetal cell lines are descended from fetal tissue taken from elective abortions of unborn children. I am aware of several sources, including the University of Nebraska Medical Center and the Charlotte Lozier Institute, that acknowledge this.

15. Because all three COVID-19 vaccines authorized for use in the United States utilized fetal cell lines in their production or testing, and the fetal cell lines are descended from fetal tissue taken from elective abortions of unborn children, use of the vaccines would constitute cooperation in the evil of abortion. Such cooperation with evil would violate my sincere religious beliefs.

16. On September 20, 2021, I submitted a request for religious accommodation to the requirement that I take the COVID-19 vaccination. (Exhibit 1, attached).

17. I received notice of the denial of my request for religious accommodation on or about December 20, 2021. (Ex. 2, attached.)

18. I timely appealed that denial on Christmas Eve, December 24, 2021. (Ex. 3, attached.)

19. I received notice of the final denial of the appeal of my religious accommodation request on January 31, 2022. (Ex. 4, attached).

20. I do not oppose all vaccines. I oppose the currently available COVID-19 vaccines for religious reasons.

21. I have been willing and able and remain willing and able to work remotely, wear a mask, and test periodically, as appropriate and as required.

22. I am aware of the following military orders purportedly requiring me to take the vaccine:

- a. Department of Defense August 24, 2021 Order (Ex. 1 to Doc. 2-2);
- b. Department of Air Force September 3, 2021 Order (Ex. 2 to Doc. 2-2).

23. I am aware of AFI 48-110 (Ex. 7 to Doc. 2-2), an Air Force instruction.

24. I am also aware of reported information publicly available from the Air Force, including <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/>, relating to religious accommodation requests.

25. I am not aware of any military branch (including the Air Force, Navy, Army, Marines, and Coast Guard) granting any religious accommodation requests to service members not already slated for separation, and I'm aware that the Pentagon's Inspector General is

investigating whether the military's process for considering and denying religious accommodation requests to COVID-19 vaccination complies with its own protocols.

<https://www.military.com/daily-news/2022/03/02/pentagon-watchdog-investigate-militarys-covid-19-exemption-process.html>.

26. My request for a religious exemption would not seriously impact my ability to perform my duties. As shown above, I have recovered from COVID-19 and have natural immunity which has been shown to be superior than vaccine-induced immunity, which wanes after a matter of months.

27. I have maintained and continue to maintain protocols for health and safety, I have no known comorbidities, and to my knowledge I have not transmitted COVID-19 to others.

28. My Air Force career has been entirely in the interest of military readiness, unit cohesion, good order, discipline, health, and safety.

29. Based on Facebook comments that I am aware of related to the WMAZ and WGXA news reports about Air Force Officer and this case (Docs. 48 and 49), and based on numerous other public statements made by individuals in government or the media that are critical of people not taking the COVID-19 vaccine, I am concerned about serious social stigmatization and my personal safety and security.

30. I have talked with others in the military who expressed to me that they want to speak out in opposition to the vaccine mandates but are afraid to do so.

31. After receiving final denial of my religious accommodation requests, I was given the following three options: (1) take the vaccine; (2) separate from military service; (3) or face military discipline for disobeying the COVID-19 vaccine mandates.

32. I have not yet responded to the ultimatum. I cannot in good conscience take the vaccine; it is more important to me to remain faithful to my Christian faith than to violate my religiously formed conscience for the sake of work and compensation. Still, I would very much like to stay in the Air Force, and cannot bring myself to choose separation.

33. The attached exhibits are redacted to remove some personal identifiers.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 30, 2022.

/s/Air Force Engineer  
Air Force Engineer



DEPARTMENT OF THE AIR FORCE



20 September 2021

MEMORANDUM FOR [REDACTED] /CC

FROM: [REDACTED]

SUBJECT: Religious Accommodation Request for COVID-19 Vaccine

References: (a) DODI 1300.17, 1 September 2020, *Religious Liberty in the Military*.  
(b) AFI 1-1, 07 August 2020, *Air Force Standards*  
(c) AFPD 52-2, 28 July 2020, *Accommodation of Religious Practices in the Military*.  
(d) DAFI 52-201, 23 June 2021, *Religious Freedom in the Department of the Air Force*

1. I, [REDACTED], [REDACTED], request a religious accommodation from the COVID-19 immunization for the reasons set out below.
2. As a Roman Catholic, I am requesting a religious accommodation for the COVID-19 Vaccine, in accordance with AFI 48-110, paragraph 2-6.b.3. In my opinion, the request will not interfere with my primary duties, which include leadership, supervision, and management of civil engineer personnel, programs, and projects.
3. I request a religious accommodation in order to be temporarily excused from the recent mandate that all members of the United States Air Force receive a vaccination for COVID-19 until a vaccine is available that did not utilize fetal cell lines from aborted children in their production or testing.
4. I make this religious accommodation request due to the fact that all three COVID-19 vaccines currently authorized for use in the United States - either fully approved by the FDA (COMIRNATY®) or available under Emergency Use Authorization (Johnson & Johnson and Moderna) utilized fetal cell lines in their production or testing. Those fetal cell lines are descended from fetal tissue taken from elective abortions of unborn children. This fact is acknowledged by several sources to include the University of Nebraska Medical Center [1] and the Charlotte Lozier Institute. [2]
5. I understand that vaccinations are a condition of military service am not opposed to vaccines in principle. However, in accordance with my Roman Catholic faith, it is my sincerely held religious belief that abortion is a grave evil and that use of vaccines that cooperate in that evil by incorporating the cell lines of aborted children in their development or testing is not morally justified except in extraordinary circumstances. This is especially true considering the low

mortality rate and rare instances of permanent complications associated with COVID-19 infections among those of military age.

6. The Catholic Church teaches that a person may be required to refuse medical intervention, including a vaccination, if his or her conscience comes to this judgement. While the Catholic Church does not prohibit the use of most vaccines, and generally encourages them to safeguard public health, the following authoritative Church teachings demonstrate the principled religious basis on which a Catholic may determine that he or she out to refuse certain vaccines:

- a) Vaccination is not morally obligatory in principle and so must be voluntary. [3]
- b) There is a moral duty to refuse the use of medical products, including certain vaccines, that are created using human cells lines derived from abortion; however, it is permissible to use such vaccines only under case-specific conditions—if there are no other alternatives available and the intent is to preserve life. [4]
- c) A person's assessment of whether the benefits of a medical intervention outweigh the undesirable side-effects are to be respected unless they contradict authoritative Catholic moral teachings. [5]
- d) A person is morally required to obey his or her conscience. [6]

7. A Catholic may judge it wrong to receive certain vaccines for a variety of reasons consistent with these teachings, and there is no authoritative Church teaching universally obliging Catholics to receive any vaccine. An individual Catholic may invoke Church teaching to refuse a vaccine that used abortion-derived cell lines at any stage of the creation of the vaccine. More generally, a Catholic might refuse a vaccination based on the church's teaching concerning therapeutic proportionality.

8. Therapeutic proportionality is an assessment of whether the benefits of a medical intervention outweigh the undesirable side-effects and burdens in light of the integral good of the person, including spiritual, psychological, and bodily goods.[7] For instance, we know that COVID-19 has resulted in significantly elevated mortality rates for individuals who are advanced in age or suffer from pre-existing conditions such as obesity, diabetes, COPD, asthma, and other such comorbidities. For individuals who are advanced in age or have one (or more) of the conditions listed above, the significantly elevated threat of death posed to them by COVID-19 could permit the use of otherwise morally unjustifiable vaccines in order to preserve their lives. However, for those not falling into one of the categories above, the mortality rate of COVID-19 is less than one percent. As noted above, this would account for the low mortality rate and rare instances of permanent complications associated with COVID-19 infections among those of military age who tend to be younger, generally healthy and more active. For such individuals, use of a morally compromising vaccine is not justifiable. According to the Catholic Bishops of Colorado, the judgement of therapeutic proportionality must be made by the person who is the potential recipient of the intervention,[8] not by public health authorities or by other individuals who might judge differently in their own situations.

9. I would like to reiterate that I am requesting a temporary religious accommodation until a vaccine is available that did not utilize aborted fetal cell lines in production or testing. I would also like to encourage the Air Force to pursue procuring non-fetal cell line derived vaccines for

all other mandatory immunizations in order to avoid placing Airmen and Guardians in future morally compromising situations.

10. I understand that IAW AFI 48-110 I have temporary exemption from vaccinations while my request is being processed. I also understand that I will be counseled by my commander and a military physician regarding: the disease concerned; specific vaccine information including product constituents, benefits, and risks; and potential risks of infection incurred by unimmunized individuals. They must determine that I am making an informed decision and fully understand that my request may have an adverse impact on my deployability, assignment, and/or international travel.

11. I waive my privilege to this communication only and authorize the Chaplain to advise my leadership with regard to this request and only this request. I understand that my request will reach [REDACTED] CC staff NLT 30 days from the date of this memorandum as I am in active duty status [REDACTED]

12. If you have any questions, please contact me at [REDACTED] or [REDACTED]

[REDACTED] USAF

#### References:

[1] <https://www.nebraskamed.com/COVID/you-asked-we-answered-do-the-covid-19-vaccines-contain-aborted-fetal-cells>

[2] <https://safe.menlosecurity.com/https://lozierinstitute.org/update-covid-19-vaccine-candidates-and-abortion-derived-cell-lines/>

[3] Congregation for the Doctrine of the Faith (CDF), "Note on the Morality of Using Some Anti-COVID-19 Vaccines," December 17, 2020, n. 5: "At the same time, practical reason makes evident that vaccination is not, as a rule, a moral obligation and that, therefore, it must be voluntary."

[4] See Pontifical Academy for Life, "Moral Reflections on Vaccines Prepared from Cells Derived from Aborted Human Foetuses," June 9, 2005; Congregation for the Doctrine of the Faith, Instruction Dignitas personae, 2008, nn. 34-35; Congregation for the Doctrine of the Faith, "Note on the Morality of Using Some Anti-COVID-19 Vaccines," nn. 1-3. When there is a sufficiently serious reason to use the product and there is no reasonable alternative available, the Catholic Church teaches that it may be permissible to use the immorally sourced product under protest. In any case, whether the product is used or not, the Catholic Church teaches that all must

make their disagreement known and request the development of equal or better products using biological material that does not come from abortions.

[5] See United States Conference of Catholic Bishops (USCCB), *Ethical and Religious Directives for Catholic Health Care Services*, 6th ed. (Washington, DC: USCCB Publishing, 2018), n. 28. Hereafter “ERDs.”

[6] “A human being must always obey the certain judgment of his conscience. If he were deliberately to act against it, he would condemn himself...” *Catechism of the Catholic Church* (Vatican City: Libreria Editrice Vaticana, 1993), [www.vatican.va](http://www.vatican.va), n. 1790. Hereafter “CCC.”

[7] See ERDs, nn. 32-33; nn. 56-57; Part Three, Introduction, para. 2; Part Five, Introduction, para. 3.

[8] See ERDs, nn. 56-57. Both of these directives state that the proportionality of medical interventions is established “in the patient’s judgment.”



## DEPARTMENT OF THE AIR FORCE

## EXHIBIT 2

16 December 2021

MEMORANDUM FOR [REDACTED]

FROM: [REDACTED]/CC

SUBJECT: Request for Immunization Exemption – [REDACTED]

1. I have received your request for an exemption from the COVID-19 vaccine, based on your sincerely held beliefs. After carefully considering the specific facts and circumstances of your request, along with the recommendations from your chain of command and functional experts, I **disapprove** your request for exemption from the COVID-19 immunization requirement.

2. I understand your concerns about receiving the COVID-19 vaccine and appreciate the gravity of this immunization requirement in light of your beliefs. However, when evaluating your request, I also had to consider the risk your exemption would pose for mission accomplishment, including readiness, unit cohesion, good order, discipline, and the health and safety of you and other Airmen. As [REDACTED], you manage civil engineer personnel, programs and projects, and are subject to short-notice deployment; being unvaccinated restricts your role and increases the impact on the rest of your team. As an unvaccinated Airman, you would not be able to immediately deploy worldwide, undermining your unit's ability to fully respond to mission or contingency requirements. Not being vaccinated also increases your risk for serious illness, hospitalization, or even death from contracting COVID-19 where you live in Virginia during this ongoing pandemic, and/or spreading it to other Airmen in the workplace. This increased health risk elevates the threat to your unit's ability to accomplish its mission. I therefore find compelling government interest to require your vaccination. I also find that less restrictive means are insufficient to meet the compelling government interest in your vaccination because the totality of mitigation measures like 100% telework, social distancing and masking at all times afford less health protection than vaccination, while delayed readiness due to the time needed to become fully vaccinated and other mobility restrictions limit your role and degrade the operational effectiveness of your unit.

3. You have five (5) calendar days to begin a COVID-19 vaccination regimen or submit an appeal. If you wish to appeal, you must provide your written appeal request to your unit commander. Your unit commander will route your appeal to the Air Force Surgeon General for processing. A copy of this memorandum will be placed in your automated personnel records.

Digitally signed by [REDACTED]

Date: 2021.12.16 13:42:08  
-0500'

1st Ind, [REDACTED]

MEMORANDUM FOR [REDACTED]

I acknowledge receipt of decision on my religious accommodation request on  
20 Dec 2021 (DATE).

[REDACTED] USAF



DEPARTMENT OF THE AIR FORCE

EXHIBIT 3

24 December 2021

MEMORANDUM FOR [REDACTED]

FROM: [REDACTED]

SUBJECT: Appeal for Disapproval of Religious Accommodation Request for COVID-19 Vaccine

References: (a) DODI 1300.17, *Religious Liberty in the Military* (1 September 2020)  
(b) AFI 1-1, *Air Force Standards* (7 August 2020)  
(c) AFPD 52-2, *Accommodation of Religious Practices in the Military* (28 July 2020)  
(d) DAFI 52-201, *Religious Freedom in the Department of the Air Force* (23 June 2021)

1. I, [REDACTED], request an appeal to the disapproval of my religious accommodation request for a temporary deferment from the COVID-19 vaccination (TAB 1: Request for Immunization Exemption – [REDACTED], 16 December 2021) for the reasons set out below.
2. The disapproval memorandum from [REDACTED]/CC (TAB 1) is based on the risk to mission accomplishment, particularly the risk of my transmitting the illness to other Airmen in my workspace. On 6 December 2021, I tested positive for COVID-19 after beginning to feel ill on 3 December 2021. Even though I had been working in the office the previous week, none of my fellow Airmen became infected. The mitigation efforts which have been in place across the Air Force since March 2020 proved to be effective. These same mitigation efforts have allowed the Air Force to accomplish its mission – arguably better than ever. Having successfully recovered from COVID-19, I believe that I am at even less of a risk of becoming re-infected than my fellow vaccinated coworkers and pose less risk to mission accomplishment whether stateside or in a deployed location. Thus I disagree with the finding of a compelling government interest in requiring my vaccination.
3. The disapproval memorandum (TAB 1) failed to address the fact that my request was for a temporary deferment of the vaccination until a vaccine is developed without the use of aborted fetal cell lines (TAB 2: Religious Accommodation Request for COVID-19 Vaccine, 20 September 2021). The memorandum failed to address how the temporary continued mitigation efforts for approximately 3% of the Air Force would significantly impact mission readiness when 100% of the Air Force has been operating under the same parameters for months.

4. Finally, the memorandum (TAB 1) failed to address how the Air Force is seeking an ethically sound vaccine alternative in order to avoid placing future Airmen and Guardians in morally compromising situations. As an officer, the spiritual wellbeing of my Airmen is of upmost importance. I consider compromising a sincerely held religious belief to be a breach of integrity which is much harder to recover from than a physical illness. I sincerely hope the Air Force is seeking to rectify this ethical quandary which will not go away on its own.

5. I respectfully request reconsideration of my religious accommodation request (TAB 2). I trust that the Air Force will make the right decision that allows me to well and faithfully continue to serve the United States of America.

6. If you have any questions, please contact me at [REDACTED] or [REDACTED].

[REDACTED] USAF

Attachments:

TAB 1: Request for Immunization Exemption – [REDACTED], 16 December 2021

TAB 2: Religious Accommodation Request for COVID-19 Vaccine, 20 September 2021



## DEPARTMENT OF THE AIR FORCE

16 December 2021

MEMORANDUM FOR [REDACTED]

FROM: [REDACTED] CC

SUBJECT: Request for Immunization Exemption – [REDACTED]

1. I have received your request for an exemption from the COVID-19 vaccine, based on your sincerely held beliefs. After carefully considering the specific facts and circumstances of your request, along with the recommendations from your chain of command and functional experts, I **disapprove** your request for exemption from the COVID-19 immunization requirement.

2. I understand your concerns about receiving the COVID-19 vaccine and appreciate the gravity of this immunization requirement in light of your beliefs. However, when evaluating your request, I also had to consider the risk your exemption would pose for mission accomplishment, including readiness, unit cohesion, good order, discipline, and the health and safety of you and other Airmen. As [REDACTED] you manage civil engineer personnel, programs and projects, and are subject to short-notice deployment; being unvaccinated restricts your role and increases the impact on the rest of your team. As an unvaccinated Airman, you would not be able to immediately deploy worldwide, undermining your unit's ability to fully respond to mission or contingency requirements. Not being vaccinated also increases your risk for serious illness, hospitalization, or even death from contracting COVID-19 where you live in Virginia during this ongoing pandemic, and/or spreading it to other Airmen in the workplace. This increased health risk elevates the threat to your unit's ability to accomplish its mission. I therefore find compelling government interest to require your vaccination. I also find that less restrictive means are insufficient to meet the compelling government interest in your vaccination because the totality of mitigation measures like 100% telework, social distancing and masking at all times afford less health protection than vaccination, while delayed readiness due to the time needed to become fully vaccinated and other mobility restrictions limit your role and degrade the operational effectiveness of your unit.

3. You have five (5) calendar days to begin a COVID-19 vaccination regimen or submit an appeal. If you wish to appeal, you must provide your written appeal request to your unit commander. Your unit commander will route your appeal to the Air Force Surgeon General for processing. A copy of this memorandum will be placed in your automated personnel records.

Digitally signed by [REDACTED]

Date: 2021.12.16 13:42:08  
-0500'

USAF

1st Ind, [REDACTED]

MEMORANDUM FOR [REDACTED]

I acknowledge receipt of decision on my religious accommodation request on  
20 Dec 2021 (DATE).

[REDACTED] [REDACTED] USAF



DEPARTMENT OF THE AIR FORCE

20 September 2021

MEMORANDUM FOR [REDACTED]/CC

FROM: [REDACTED]

SUBJECT: Religious Accommodation Request for COVID-19 Vaccine

References: (a) DODI 1300.17, 1 September 2020, *Religious Liberty in the Military*.  
(b) AFI 1-1, 07 August 2020, *Air Force Standards*  
(c) AFPD 52-2, 28 July 2020, *Accommodation of Religious Practices in the Military*.  
(d) DAFI 52-201, 23 June 2021, *Religious Freedom in the Department of the Air Force*

1. I, [REDACTED], request a religious accommodation from the COVID-19 immunization for the reasons set out below.
2. As a Roman Catholic, I am requesting a religious accommodation for the COVID-19 Vaccine, in accordance with AFI 48-110, paragraph 2-6.b.3. In my opinion, the request will not interfere with my primary duties, which include leadership, supervision, and management of civil engineer personnel, programs, and projects.
3. I request a religious accommodation in order to be temporarily excused from the recent mandate that all members of the United States Air Force receive a vaccination for COVID-19 until a vaccine is available that did not utilize fetal cell lines from aborted children in their production or testing.
4. I make this religious accommodation request due to the fact that all three COVID-19 vaccines currently authorized for use in the United States - either fully approved by the FDA (COMIRNATY®) or available under Emergency Use Authorization (Johnson & Johnson and Moderna) utilized fetal cell lines in their production or testing. Those fetal cell lines are descended from fetal tissue taken from elective abortions of unborn children. This fact is acknowledged by several sources to include the University of Nebraska Medical Center [1] and the Charlotte Lozier Institute. [2]
5. I understand that vaccinations are a condition of military service am not opposed to vaccines in principle. However, in accordance with my Roman Catholic faith, it is my sincerely held religious belief that abortion is a grave evil and that use of vaccines that cooperate in that evil by incorporating the cell lines of aborted children in their development or testing is not morally justified except in extraordinary circumstances. This is especially true considering the low

mortality rate and rare instances of permanent complications associated with COVID-19 infections among those of military age.

6. The Catholic Church teaches that a person may be required to refuse medical intervention, including a vaccination, if his or her conscience comes to this judgement. While the Catholic Church does not prohibit the use of most vaccines, and generally encourages them to safeguard public health, the following authoritative Church teachings demonstrate the principled religious basis on which a Catholic may determine that he or she out to refuse certain vaccines:

- a) Vaccination is not morally obligatory in principle and so must be voluntary. [3]
- b) There is a moral duty to refuse the use of medical products, including certain vaccines, that are created using human cells lines derived from abortion; however, it is permissible to use such vaccines only under case-specific conditions—if there are no other alternatives available and the intent is to preserve life. [4]
- c) A person's assessment of whether the benefits of a medical intervention outweigh the undesirable side-effects are to be respected unless they contradict authoritative Catholic moral teachings. [5]
- d) A person is morally required to obey his or her conscience. [6]

7. A Catholic may judge it wrong to receive certain vaccines for a variety of reasons consistent with these teachings, and there is no authoritative Church teaching universally obliging Catholics to receive any vaccine. An individual Catholic may invoke Church teaching to refuse a vaccine that used abortion-derived cell lines at any stage of the creation of the vaccine. More generally, a Catholic might refuse a vaccination based on the church's teaching concerning therapeutic proportionality.

8. Therapeutic proportionality is an assessment of whether the benefits of a medical intervention outweigh the undesirable side-effects and burdens in light of the integral good of the person, including spiritual, psychological, and bodily goods.[7] For instance, we know that COVID-19 has resulted in significantly elevated mortality rates for individuals who are advanced in age or suffer from pre-existing conditions such as obesity, diabetes, COPD, asthma, and other such comorbidities. For individuals who are advanced in age or have one (or more) of the conditions listed above, the significantly elevated threat of death posed to them by COVID-19 could permit the use of otherwise morally unjustifiable vaccines in order to preserve their lives. However, for those not falling into one of the categories above, the mortality rate of COVID-19 is less than one percent. As noted above, this would account for the low mortality rate and rare instances of permanent complications associated with COVID-19 infections among those of military age who tend to be younger, generally healthy and more active. For such individuals, use of a morally compromising vaccine is not justifiable. According to the Catholic Bishops of Colorado, the judgement of therapeutic proportionality must be made by the person who is the potential recipient of the intervention,[8] not by public health authorities or by other individuals who might judge differently in their own situations.

9. I would like to reiterate that I am requesting a temporary religious accommodation until a vaccine is available that did not utilize aborted fetal cell lines in production or testing. I would also like to encourage the Air Force to pursue procuring non-fetal cell line derived vaccines for

all other mandatory immunizations in order to avoid placing Airmen and Guardians in future morally compromising situations.

10. I understand that IAW AFI 48-110 I have temporary exemption from vaccinations while my request is being processed. I also understand that I will be counseled by my commander and a military physician regarding: the disease concerned; specific vaccine information including product constituents, benefits, and risks; and potential risks of infection incurred by unimmunized individuals. They must determine that I am making an informed decision and fully understand that my request may have an adverse impact on my deployability, assignment, and/or international travel.

11. I waive my privilege to this communication only and authorize the Chaplain to advise my leadership with regard to this request and only this request. I understand that my request will reach [REDACTED] CC staff NLT 30 days from the date of this memorandum as I am in active duty status [REDACTED].

12. If you have any questions, please contact me at [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED], USAF  
[REDACTED]

#### References:

[1] <https://www.nebraskamed.com/COVID/you-asked-we-answered-do-the-covid-19-vaccines-contain-aborted-fetal-cells>

[2] <https://safe.menlosecurity.com/https://lozierinstitute.org/update-covid-19-vaccine-candidates-and-abortion-derived-cell-lines/>

[3] Congregation for the Doctrine of the Faith (CDF), "Note on the Morality of Using Some Anti-COVID-19 Vaccines," December 17, 2020, n. 5: "At the same time, practical reason makes evident that vaccination is not, as a rule, a moral obligation and that, therefore, it must be voluntary."

[4] See Pontifical Academy for Life, "Moral Reflections on Vaccines Prepared from Cells Derived from Aborted Human Foetuses," June 9, 2005; Congregation for the Doctrine of the Faith, Instruction Dignitas personae, 2008, nn. 34-35; Congregation for the Doctrine of the Faith, "Note on the Morality of Using Some Anti-COVID-19 Vaccines," nn. 1-3. When there is a sufficiently serious reason to use the product and there is no reasonable alternative available, the Catholic Church teaches that it may be permissible to use the immorally sourced product under protest. In any case, whether the product is used or not, the Catholic Church teaches that all must

make their disagreement known and request the development of equal or better products using biological material that does not come from abortions.

[5] See United States Conference of Catholic Bishops (USCCB), *Ethical and Religious Directives for Catholic Health Care Services*, 6th ed. (Washington, DC: USCCB Publishing, 2018), n. 28. Hereafter “ERDs.”

[6] “A human being must always obey the certain judgment of his conscience. If he were deliberately to act against it, he would condemn himself...” *Catechism of the Catholic Church* (Vatican City: Libreria Editrice Vaticana, 1993), [www.vatican.va](http://www.vatican.va), n. 1790. Hereafter “CCC.”

[7] See ERDs, nn. 32-33; nn. 56-57; Part Three, Introduction, para. 2; Part Five, Introduction, para. 3.

[8] See ERDs, nn. 56-57. Both of these directives state that the proportionality of medical interventions is established “in the patient’s judgment.”



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

JAN 21 2022

EXHIBIT 4

MEMORANDUM FOR [REDACTED]

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

SUBJECT: Decision on Religious Accommodation Appeal

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

The Department of the Air Force has a compelling government interest in requiring you to comply with the COVID-19 immunization requirement because preventing the spread of disease among the force is vital to mission accomplishment. Specifically, in light of your circumstances, your present duty assignment as the [REDACTED] requires frequent contact with others and is not fully achievable via telework or with adequate distancing. Your leadership role was also taken into consideration. While some of these duties may be completed remotely, institutionalizing remote completion of those duties permanently would be detrimental to readiness, good order and discipline, and unit cohesion. In addition, your unit has high-risk personnel that have an elevated potential for severe illness or death, if they were infected. We must be able to leverage our forces on short notice as evidenced by recent worldwide events. Your health status as a non-immunized individual in this dynamic environment, and aggregated with other non-immunized individuals in steady state operations, would place health and safety, unit cohesion, and readiness at risk. Foregoing the above immunization requirement would have a real adverse impact on military readiness and public health and safety. There are no less restrictive means available in your circumstance as effective as receiving the above immunization in furthering these compelling government interests.

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

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