



U.S. Department of Justice
Civil Division, Appellate Staff
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Washington, DC 20530

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January 11, 2023

VIA CM/ECF

Lyle W. Cayce, Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
600 South Maestri Place
New Orleans, LA 70130

RE: *Abbott v. Biden*, No. 22-40399 (5th Cir.) (argument held Nov. 8, 2022)

Dear Mr. Cayce:

Plaintiff has requested a preliminary injunction against the military's enforcement of its COVID-19 vaccination requirement against non-federalized members of the Texas National Guard. *See* ROA.255. The government writes to notify the Court that on January 10, 2023, in accordance with the National Defense Authorization Act for Fiscal Year 2023 (NDAA), the Secretary of Defense rescinded the COVID-19 vaccination requirement for military service members, including members of the National Guard. *See* Ex. A (Rescission Memorandum) (rescinding the August 24, 2021 and November 30, 2021 memoranda requiring COVID-19 vaccination). The Rescission Memorandum provides that "[n]o individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds." *Id.* at 1. It further provides that the "Military Departments will update the records of such individuals to remove any adverse actions solely associated with denials of such requests." *Id.*

Sincerely,

/s/ Sarah J. Clark
Sarah J. Clark
Counsel for the United States

cc: Counsel of Record (via CM/ECF)

EXHIBIT A



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

JAN 10 2023

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

SUBJECT: Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019
Vaccination Requirements for Members of the Armed Forces

I am deeply proud of the Department's work to combat the coronavirus disease 2019 (COVID-19). Through your leadership, we have improved the health of our Service members and the readiness of the Force, and we have provided life-saving assistance to the American people and surged support to local health care systems and agencies at all levels of government. The Department has helped ensure the vaccination of many Americans, while simultaneously providing critical and timely acquisition support for life-saving therapeutics, tests, and treatments for COVID-19. We have demonstrated the ability to support and defend the Nation under the most trying of circumstances.

The Department will continue to promote and encourage COVID-19 vaccination for all Service members. The Department has made COVID-19 vaccination as easy and convenient as possible, resulting in vaccines administered to over two million Service members and 96 percent of the Force — Active and Reserve — being fully vaccinated. Vaccination enhances operational readiness and protects the Force. All commanders have the responsibility and authority to preserve the Department's compelling interests in mission accomplishment. This responsibility and authority includes the ability to maintain military readiness, unit cohesion, good order and discipline, and the health and safety of a resilient Joint Force.

On December 23, 2022 the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 was enacted. Section 525 of the NDAA for FY 2023 requires me to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19, issued in my August 24, 2021 memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members." I hereby rescind that memorandum. I also hereby rescind my November 30, 2021 memorandum, "Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve."

No individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds. The Military Departments will update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand. The Secretaries of the Military Departments will further cease any ongoing reviews of current Service member religious, administrative, or medical accommodation requests solely for exemption from the COVID-19 vaccine or appeals of denials of such requests.

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of Federal law. Service members have the right to observe the tenets of their religion or to observe no religion at all, as provided in applicable Federal law and Departmental policy. Components shall continue to apply the uniform standards set forth in DoD Instruction 1300.17, "Religious Liberty in the Military Services."

Other standing Departmental policies, procedures, and processes regarding immunizations remain in effect. These include the ability of commanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions, including when vaccination is required for travel to, or entry into, a foreign nation.

For Service members administratively discharged on the sole basis that the Service member failed to obey a lawful order to receive a vaccine for COVID-19, the Department is precluded by law from awarding any characterization less than a general (under honorable conditions) discharge. Former Service members may petition their Military Department's Discharge Review Boards and Boards for Correction of Military or Naval Records to individually request a correction to their personnel records, including records regarding the characterization of their discharge.

The Under Secretary of Defense for Personnel and Readiness shall issue additional guidance to ensure uniform implementation of this memorandum, as appropriate.

The Department's COVID-19 vaccination efforts will leave a lasting legacy in the many lives we saved, the world-class Force we have been able to field, and the high level of readiness we have maintained, amidst difficult public health conditions. Our efforts were possible due, first and foremost, to the strength and dedication of our people. I remain profoundly grateful to the men and women of the Department of Defense for their efforts to protect our Force, the Department of Defense community, and to aid the American people.

A handwritten signature in black ink, appearing to read "Mark P. Daulton". The signature is written in a cursive, flowing style.