

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

**COLONEL FINANCIAL MANAGEMENT
OFFICER, *et al.*,**

Plaintiffs,

v.

LLOYD AUSTIN, in his official capacity as
Secretary of the United States Department of
Defense, *et al.*,

Defendants.

Case No. 8:22-cv-1275 (SDM/TGW)

**DEFENDANTS' MOTION TO DISMISS FOR MOOTNESS OR FOR AN
INDICATIVE RULING TO DISSOLVE INJUNCTION**

Pursuant to Federal Rules of Civil Procedure 12(h)(3), 23(c), and 62.1, the Court should dismiss this case in its entirety as moot, de-certify the class, and dissolve the preliminary injunctions, issuing an indicative ruling if necessary.¹

On December 23, 2022, the President signed into law the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 ("NDAA"). *See* Pub. L. No. 117-263, § 525, 136 Stat. 2395, 2571-72 (Dec. 23, 2022). Section 525 of the NDAA directs the Secretary, within 30 days, to rescind the August 2021 memorandum requiring vaccination of service members for COVID-19. On January 10, 2023, the Secretary rescinded the mandate as directed. *See* Ex. 1, Declaration of Chad Schrecengost, Ex. A ("Rescission Mem."). The rescission memorandum prohibits separations based solely on refusal of the COVID-19 vaccine by service members who sought an exemption from the mandate, and directs the Services to "remove any

¹ In accordance with the Order dated January 10, 2023, ECF No. 268, this brief also addresses *Navy SEAL 1 v. Austin*, Case No. 8:21-cv-2429, and is filed on that docket as well.

adverse actions solely associated with denials of such requests.” The memorandum halts the processing of religious accommodation requests (“RARs”) for exemption to the now-defunct mandate. The Plaintiffs’ challenge to the August 2021 mandate is therefore moot in its entirety, and the case should be dismissed.

Changed circumstances, including mootness, further justify decertification of the class and vacatur of the preliminary injunctions entered in this matter to date.

PROCEDURAL BACKGROUND

The original complaint in the *Navy SEAL 1* matter asserted claims on behalf of service members, federal employees, and federal contractors, regarding different requirements to vaccinate against COVID-19, including constitutional and statutory religious freedom claims, as well as statutory “informed consent” claims. Compl., ECF No. 1. The Court denied Plaintiffs’ original motion for a preliminary injunction in part and deferred it in part. *See generally* ECF No. 40.

The Court then heard a series of emergency motions by individual Plaintiffs claiming to be subject to imminent adverse action and irreparable harm. As relevant here, the Court entered preliminary injunctive relief on behalf of Navy Commander and USMC Lieutenant Colonel 2 (“LTC2”), holding that they had established both a likelihood of success on the merits of their RFRA claims and irreparable harm, and enjoining Defendants “from enforcing against Navy Commander and [LTC2] any order or regulation requiring COVID-19 vaccination” and “from any adverse or retaliatory action against Navy Commander or [LTC2]” related to their religious exemption requests. ECF No. 111. The Eleventh Circuit partially stayed the injunction

“insofar as it precludes the Navy from considering the plaintiffs’ vaccination status in making deployment, assignment, and other operational decisions until disposition of this appeal,” ECF No. 148 (citing *Austin v. U.S. Navy SEALs 1-26*, 142 S. Ct. 1301 (2022) (Mem.)). The Government’s appeal of the injunction is fully briefed and pending. *See Navy SEAL 1 v. Sec’y of the U.S. Dep’t of Defense*, No. 22-10645 (11th Cir.).²

The Court later severed the service member claims by military Service, with one action deemed “The United States Marine Corps Action,” and ordered the action stayed “pending an amendment of the complaint to include a service member in the Marine Corps for whom venue is proper.” ECF No. 194, at 6–7. Navy Commander and LTC2 were maintained in the original *Navy SEAL 1* action in light of the already pending appeal of their injunction; the original action was stayed. *Id.* at 7-8, 11.

Plaintiffs filed the Third Amended Complaint (“TAC”) on June 30, 2022, in what is captioned the *Colonel Financial Management Officer* case, on behalf of 15 members of the Marine Corps and a putative class of “servicemembers who have been denied religious exemption” from the DoD directive. TAC ¶¶ 25–39, 157–66, ECF No. 198. Counts II and III allege that the “Federal COVID-19 Vaccine Mandate, on its face and as applied” violated the First Amendment and RFRA. *Id.* ¶¶ 194-34. Plaintiffs also continued to raise informed consent claims. TAC ¶¶ 167-93. The Prayer

² The Court later entered preliminary injunctive relief with respect to another Marine service member, USMC Captain 1, enjoining Defendants “from enforcing against USMC Captain any order or regulation requiring COVID-19 vaccination,” “from separating USMC Captain from the Marine Corps,” and “from any retaliatory action against USMC Captain;” the Court noted that the Order was not intended to prevent defendants from considering his vaccination status in making operational decisions. *See* ECF No. 173. That appeal is pending as well. *Captain v. Sec’y of the U.S. Dep’t of Def.*, No. 22-12029 (11th Cir.). The Government has filed motions to hold both of these appeals (as well as the appeal of the class-wide injunction) in abeyance pending resolution of this mootness briefing.

for Relief seeks injunctive and declaratory relief including an order, *inter alia*, that Defendants comply with the Emergency Use Authorization Statute (“EUA”), grant Plaintiffs’ RARs from the COVID-19 Vaccine Mandate, and cease any actions arising from Plaintiffs’ RARs. TAC, Prayer.

Defendants moved to dismiss on July 14, 2022, asserting, *inter alia*, that the Court lacked jurisdiction over the religious freedom claims because they were neither ripe nor exhausted, and that Plaintiffs failed to state, and the Court lacked jurisdiction over, the informed consent claims. Defs.’ MTD, at 6-22, ECF No. 205. On August 18, 2022, the Court denied that motion in part, but held under advisement the portion of the motion related to the informed consent claims. ECF No. 230. The Court granted Plaintiffs’ motion for class certification and a class-wide preliminary injunction relying solely on the religious freedom claims. ECF No. 229. The Court described the “only the contention that unifies the class” as “whether . . . before ordering Marines to accept a vaccination religiously repugnant (to the class) the Marine Corps asked the questions that RFRA demands and answered those questions in the manner . . . that RFRA demands”. ECF No. 229, at 4. The Court explained that “[f]or a remedy, the plaintiffs request *only* (which is the *only* remedy foreseeably ‘appropriate’) an order re-committing the Marines’ applications [for a religious accommodation from the COVID-19 vaccination requirement] *en masse* to the Marine Corps for a determination in accord with the ‘to the person’ requirement and other requirements of RFRA.” *Id.* at 46 (emphasis added). The Government’s appeal is pending (and held in abeyance). *Chief Warrant Officer 4 v. Sec’y of the U.S. Dep’t of Def.*, No. 22-13522 (11th Cir.).

FACTUAL BACKGROUND

A. The DoD Mandate. On August 24, 2021, the Secretary directed the Secretaries of the Military Departments to ensure that all members of the Armed Forces were fully vaccinated against COVID-19. Sec’y of Def. Mem. (Aug. 24, 2021), <https://perma.cc/N759-S758>; ECF No. 1-4. The Navy and Marine Corps implemented the August 2021 vaccine requirement. *See generally* Merz Decl., ECF No. 23-18 (Navy); Furness Decl., ECF No. 206-2 (Marine Corps). Consistent with DoD requirements and existing Navy and Marine Corps policies, the Marine Corps orders permitted service members to seek certain medical, religious, or administrative exemptions based on their individual circumstances. *See* Merz Decl. ¶¶ 4-16; Furness Decl. ¶¶ 6-28; MARADMIN 462/21 ¶¶ 3.j, 3.k. A Sailor or Marine was not subject to adverse action, while pending final adjudication of any exemption and appeal. NAVADMIN 225/21 ¶ 3.c; MARADMIN 612/21 ¶ 3.b.

B. The NDAA. On December 23, 2022, the President signed the NDAA into law. Section 525 directs the Secretary, within 30 days, to rescind the August 2021 memorandum requiring vaccination of service members for COVID-19.³ On January 10, 2023, the Secretary of Defense rescinded the mandate as directed. *See* Rescission Mem. The rescission memorandum directs that currently serving service members who sought an exemption may not be “separated solely on the basis of their refusal to

³ An explanatory statement in the Congressional Record notes that DoD “has mechanisms to correct a servicemember’s military record for discharge due to failure to receive the COVID-19 vaccine” and that “the military departments have the ability to consider applications for reinstatement of servicemembers who were previously separated for refusing the vaccine.” *See* 168 Cong. Rec. H9441 (Dec. 8, 2022).

receive the COVID-19 vaccination” and directs the Services to “update the records of such individuals to remove any adverse actions solely associated with denials of such requests.” *Id.*⁴ It further directs that decisionmakers should “cease any ongoing reviews” of requests for accommodation from the COVID-19 vaccination requirement. *Id.* Other policies regarding immunizations remain in effect, including “the ability of Commanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions.” *Id.* The Navy and Marine Corps have issued initial implementing guidance. Ex. 1 ¶ 13 & ExB; Ex. 2, Decl. of Capt Mery-Angela Katson ¶ 5 & ExB.

C. Plaintiffs.

Under the rescission memorandum, none of the Marine Corps Action Plaintiffs are subject to the August 2021 vaccine mandate, and none will have a record of discipline or adverse action based on their failure to be vaccinated. Of the nine Plaintiffs who were required to be vaccinated prior to rescission, four had no pending or past adverse action based on the vaccine requirement.⁵ *See* Ex. 1 ¶¶ 7, 10 (Captain

⁴ Former 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, “may petition their Military Department’s Discharge Review Boards and Boards for Correction of Military or Naval Records to individually review and correct personnel records, including records regarding the characterization of their discharge.” *Id.*

⁵ To account for all other plaintiffs, six of the 15 named Marine Plaintiffs were not subject to a vaccine requirement in the weeks prior to the rescission. One Plaintiff (Chief Warrant Officer 3) has been fully vaccinated since before joining this lawsuit, *see* ECF No. 244, and another Plaintiff (Lance Corporal 1) agreed to discharge and stipulated to dismissal, *see* ECF No. 249. Three named Plaintiffs had RAR appeals pending at the time of the rescission, and therefore were never required to be vaccinated. *See* Ex. 1 ¶¶ 3-4 (2d Lt, Gunnery Sergeant); Ex. 3 ¶ 3 (Lance Corporal 3). One additional Plaintiff (Reserve LtCol) voluntarily separated without receiving any adverse action and is in the Individual Ready Reserve. *See* Ex. 3. ¶ 4.

1, CWO4); Ex. 3, Decl. of Colonel Mark S. Jimison ¶ 6 (LtCol 1); Ex. 4, Decl. of Capt. Edward J. Pingel ¶ 3 (Midshipman). Five Plaintiffs were placed on the Officer Disciplinary Notebook (ODN) and/or in some form of processing. *See* Ex. 1, ¶¶ 5-6, 8-9 (Col FMO, Captains 2-3, 1st Lt); Ex. 3, ¶ 5 (Lance Corporal 2). Only one Plaintiff (1st Lieutenant) completed the administrative separation process, but he was not actually separated. Ex. 1 ¶ 5; *see generally* ECF Nos. 220, 224-1. Pursuant to the rescission memorandum, separation processing based on failure to be vaccinated will be discontinued, and any adverse action on that basis will be removed from the record of each of these Plaintiffs. Ex. 1 ¶¶ 13-15; Ex. 3 ¶¶ 8-10. It is anticipated that officers will be removed from the ODN. *See* Ex. 1 ¶ 15. Only two Plaintiffs have a record in their personnel file of adverse action based solely on failure to be vaccinated (1st Lt and Lance Corporal 2), and that action will be removed from their record pursuant to the rescission memorandum. Ex. 1 ¶ 15; Ex. 3 ¶ 10.

Similarly, Lieutenant Colonel 2, and Navy Commander remain on active duty, and have not been subject to discipline or adverse administrative action based on their failure to be vaccinated. Ex. 1 ¶ 11 (LTC2); Ex. 2. ¶ 3 (Navy Commander). Any discipline or adverse action for other Navy Plaintiffs is subject to the policies outlined in the rescission memo as well. Ex. 2 ¶¶ 5-6.

LEGAL STANDARDS

“Plaintiffs must maintain their personal interest in the dispute at all stages of litigation.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021). “The doctrine of mootness derives directly from the case-or-controversy limitation because ‘an action

that is moot cannot be characterized as an active case or controversy.’” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335–36 (11th Cir. 2001) (quoting *Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997)).

“If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” *Id.* at 1336; *see also Tinnerman v. United States*, No. 21-14023, 2022 WL 3654844, at *3 (11th Cir. Aug. 25, 2022); *Hand v. Desantis*, 946 F.3d 1272, 1275 (11th Cir. 2020); *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328 (11th Cir. 2004). Moreover, “government actors carry a lesser burden than others when they have unambiguously terminated the challenged policy.” *See Rich v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 525, 531 (11th Cir. 2013); *Coral Springs*, 371 F.3d at 1328-29. “[W]hen a government fully repeals a challenged law, a case challenging that law is almost surely moot.” *Keister v. Bell*, 29 F.4th 1239, 1250 (11th Cir. 2022), *pet. for cert. filed*, No. 22-388 (U.S. Oct. 25, 2022). “Past exposure to illegal conduct does not in itself show a pending case or controversy regarding injunctive relief if unaccompanied by a continuing, present injury or real and immediate threat of repeated injury.” *See Stanley v. Broward Cnty. Sheriff*, 773 F. App’x 1065, 1069 (11th Cir. 2019) (citing *Cotterall v. Paul*, 755 F.2d 777, 780 (11th Cir. 1985)).

ARGUMENT

I. The Court Should Dismiss These Actions as Moot.

The challenged August 2021 vaccine mandate has been “unambiguously terminated,” *see Rich*, 716 F.3d at 531, and neither the relief the Court envisioned nor

the relief Plaintiffs sought is available; nor is any “meaningful relief.” *See Al Najjar*, 273 F.3d at 1336. Accordingly, a judicial ruling as to whether the now-rescinded policy violated the EUA statute, the First Amendment or RFRA would be an impermissible advisory opinion. *Cf. Log Cabin Republicans v. United States*, 658 F.3d 1162, 1166–68 (9th Cir. 2011) (finding moot a challenge to the military’s don’t-ask-don’t-tell policy when the policy was repealed by statute after judgment).

For example, under the terms of the rescission Defendants can no longer enforce the August 2021 mandate with respect to Navy Commander or LTC2, nor take adverse action against them based on it. *See* ECF Nos. 111, 133. The sole relief that the Court identified as possibly available on a class-wide basis – “an order re-committing the Marines’ [RARs] *en masse* to the Marine Corps for a determination in accord with . . . RFRA” – is also not available. ECF No. 229, at 46. There is no requirement from which an exemption can be sought or a determination made. Indeed, the Secretary’s rescission memorandum halts the processing of requests for exemption to the now-defunct mandate. Rescission Mem.

The other injunctive and declaratory relief sought in the TAC is equally unavailable in light of the rescission.⁶ An order to “cease in their refusal to consider . . . Plaintiffs’ requests for exemption” or an order to “grant Plaintiffs’ requests for

⁶ The TAC purported to seek “actual damages” as well. TAC, Prayer. To the extent that claim was premised on a fear of “personal injury resulting in damages” from taking the COVID-19 vaccine, TAC ¶ 147, that claim is also moot. In any event, as explained further in Defendants’ forthcoming dispositive motion, there is no waiver of sovereign immunity that would permit a damages award against the Government, and Defendants would be entitled to judgment on any such claim. *See Davila v. Gladden*, 777 F.3d 1198, 1210 (11th Cir. 2015) (“RFRA does not therefore authorize suits for money damages against officers in their official capacities”).

religious exemption” from the COVID-19 vaccination requirement, TAC, Prayer, would be meaningless because there is no requirement from which exemption can be sought. And an order to “immediately cease any actions arising from or connected to Plaintiffs’ religious exemption . . . requests,” *id.*, is moot as well, because the rescission memorandum already halts such actions. Finally, an order to “comply with the [EUA] Statute so that each individual has the ‘option to accept or refuse’ administration of the COVID-19 vaccines,” TAC, Prayer, is meaningless because COVID-19 vaccination in the military is now voluntary.⁷ To the extent Plaintiffs seek injunction against other future adverse acts, they do not have standing to seek relief where there is no “real and immediate threat” of future injury. *City of L.A. v. Lyons*, 461 U.S. 95, 110 (1983).

Plaintiffs also argued that the “voluntary cessation” exception to the mootness doctrine would apply, *see City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982). But “[W]hen a government fully repeals a challenged law, a case challenging that law is almost surely moot.” *Keister*, 29 F.4th at 1250. And even when a challenged law is not fully repealed, so long as the law or policy has been “unambiguously terminated,” any challenge to it is moot, unless a plaintiff identifies a “reasonable basis to believe that the policy will be reinstated if the suit is terminated.” *Id.* (quoting *Troiano v. Supervisor of Elections in Palm Beach Cnty.*, 382 F.3d 1276, 1285 (11th Cir.

⁷ Plaintiffs’ “informed consent” claim is also moot because, regardless of the merits of Plaintiffs’ legal arguments, *see* Defs.’ MTD, at 6-12, the licensed, BLA-labelled vaccines are readily available at DoD facilities (and elsewhere). *See* Ex. 5, Defs.’ Interrogatory Responses, at Interrogatory 9.

2004)).⁸ Here, the challenged policy has been unambiguously terminated by Congress (not the Defendants), and the exception does not apply. Even if implementation of the NDAA were deemed “voluntary cessation,” Plaintiffs have provided no reason to think the challenged vaccine requirement will be reinstated, that they will once again be subject to that requirement, and any RAR they seek regarding a new requirement will once again be denied. On the contrary, Defendants have gone beyond what was required by Congress by, for example, requiring the records of current service members who sought an exemption to be updated.⁹

To the extent Plaintiffs argue that the RAR process itself is being challenged, Plaintiffs’ challenge is explicitly premised on the theory that there is a blanket denial of RARs for exemption to this particular requirement. *See generally* TAC. No Plaintiff claims that they have requested and been denied any other religious accommodation. Accordingly, Plaintiffs cannot establish standing to raise such a future, speculative challenge because “Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.” *TransUnion LLC*, 141 S. Ct. at 2208

⁸ “[G]overnment actors carry a lesser burden than others” under the voluntary cessation doctrine. *See Rich*, 716 F.3d at 531. “[W]hen the defendant is not a private citizen but a government actor, there is a rebuttable presumption that the objectionable behavior will *not* recur.” *Troiano*, 382 F.3d at 1283.

⁹ Other policies related to immunization remain in effect, including command discretion to consider vaccination status in making operational decisions, but Plaintiffs have never claimed to challenge such decisions directly; nor have they sought waivers from any individual operational decisions. Any future new vaccination requirement would present wholly different burden, compelling-interest, and least-restrictive-means issues. In any event, assignment and other operational decisions are nonjusticiable. *See, e.g., Orloff v. Willoughby*, 345 U.S. 83, 93 (1953); *Dep’t of Navy v. Egan*, 484 U.S. 518, 530 (1988); *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973); *Navy SEALs 1-26*, 142 S. Ct. at 1301; *id.* at 1302 (Kavanaugh, J., concurring); *Navy SEAL I*, No. 22-10645 (11th Cir. Mar. 30, 2022).

(quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466 (2016)).

II. The Court Should De-Certify the Class and Dissolve the Injunctions.

Because this action is now moot, the case should be dismissed and the preliminary injunction dissolved. But even if the case were not entirely moot, the Court should enter an indicative ruling that it would de-certify the class and dissolve the preliminary injunction in light of changed circumstances.¹⁰ “On a motion to dissolve a preliminary injunction, the movant must show a change in circumstances that justifies the relief requested.” *Delta T, LLC v. Kale Fans Am. S.A. DE C.V.*, No. 6:20-cv-1740-Orl-40EJK, 2021 WL 716629, at *1 (M.D. Fla. Jan. 22, 2021) (citing *Hodge v. Dep’t of Hous. & Urban Dev., Hous. Div., Dade Cnty.*, 862 F.2d 859, 861–62 (11th Cir. 1989), *appeal dismissed*, No. 21-10576-DD, 2021 WL 2102311 (11th Cir. Mar. 18, 2021). Here, at a minimum, judicial precedent requires decertifying the class and dissolving the injunction because none of the named Plaintiffs nor any members of the class have shown a present injury, much less irreparable harm. *See, e.g., TransUnion*, 141 S. Ct. 2190.

A. Class Certification is No Longer Warranted.

Rule 23(c)(1) provides that a class certification order “may be altered or amended before [final judgment].” “[T]he district court retains the ability, and perhaps even a duty, to alter or amend a certification decision.” *Shin v. Cobb Cnty. Bd. of Educ.*,

¹⁰ If a party makes a motion for relief that the District Court “lacks authority to grant because of an appeal that has been docketed and is pending,” the District Court may defer consideration of the motion, deny the motion, or “state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” Fed. R. Civ. P. 62.1(a).

248 F.3d 1061, 1064 (11th Cir. 2001); *see also Richardson v. Byrd*, 709 F.2d 1016, 1019 (5th Cir. 1983) (“The district judge must define, redefine, subclass, and decertify as appropriate in response to the progression of the case.”).

The class should be decertified because the Court previously found that the “only . . . contention that unifies the class” was “whether . . . before ordering Marines to accept a vaccination religiously repugnant (to the class) the Marine Corps asked the questions that RFRA demands and answered those questions in the manner . . . that RFRA . . . demands.” ECF No. 229, at 4. And the only remedy “foreseeably ‘appropriate’”, was “an order re-committing the Marines’ applications [for a religious accommodation from the COVID-19 vaccination requirement at issue in Section 525] *en masse* to the Marine Corps for a determination in accord with the . . . requirements of RFRA.” *Id.* at 46. But there is no reason for the Court or the Defendants to make a determination about exemptions from a now-defunct requirement. Because the only class-wide claim presented is moot, the class should be de-certified. *Cf. Cox v. Porsche Fin. Servs., Inc.*, 337 F.R.D. 426, 434 (S.D. Fla. 2020) (decertifying class for injunctive relief where plaintiffs failed to plead a threat of future harm).

In *TransUnion LLC v. Ramirez*, the Supreme Court held that thousands of putative class members could not be included in any claim for relief based on a failure to follow proper procedures. 141 S. Ct. at 2208. “Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.” *Id.* (quoting *Tyson Foods, Inc.*, 577 U. S. at 466 (Roberts, C. J., concurring)). Similarly, this Court cannot consider relief for a class where at least some of the putative class members face

no injury.

Implementation of the NDAA also undermines prior findings of commonality, typicality, and adequacy of representation, as well the standard for certification under Rule 23(b)(2). *See* ECF No. 229, at 20-29. To the extent Plaintiffs argue that they might continue to experience adverse effects of the now-defunct mandate or might be subjected to a hypothetical future requirement based on their billets, those types of injuries, if they occur at all, will be idiosyncratic to the individual's circumstances, and require individualized inquiry and individualized relief. And the Government's interest in continuing whatever those alleged injuries are may vary widely as well. "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class," and not "when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011); *see also J.M. ex rel. Lewis v. Crittenden*, 337 F.R.D. 434, 453 (N.D. Ga. 2019).

B. The Preliminary Injunctions Should Be Dissolved.

Neither named Plaintiffs nor the class can show a likelihood of success on the merits of their claims because those claims are moot, for the reasons explained in Part I. The proper course of action is to dissolve the preliminary injunctions as well. *See, e.g., Log Cabin Republicans*, 658 F.3d at 1166–68 (vacating judgment and injunction); *Doe 2 v. Shanahan*, 755 F. App'x 19 (D.C. Cir. 2019) (dissolving injunction in light of changed military policy); *Wyatt ex rel. Rawlins v. Poundstone*, 941 F. Supp. 1100, 1108

(M.D. Ala. 1996) (indicative ruling that preliminary injunction was moot).

Plaintiffs also cannot show any current substantial burden on their beliefs, nor any threat of irreparable harm, because there is no current or future burden on their religious beliefs resulting from the challenged policy. For example, the Court opined that Plaintiffs had shown substantial burden and irreparable harm because the challenged policy “‘puts [each plaintiff] to th[e] choice’ of either betraying a sincerely held religious belief or facing a substantial threat of serious discipline.” ECF No. 229, at 43; *see also* ECF No. 111, at 44-45. No such forced choice exists after implementation of the NDAA, and Plaintiffs can no longer demonstrate either a current burden or irreparable harm. The mere possibility of future harm is insufficient. *See Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2009). Accordingly, the standards for a preliminary injunction are no longer met, and the injunctions entered in these two actions should be dissolved.

CONCLUSION

For the foregoing reasons, Court should dismiss these actions as moot.

LOCAL RULE 3.01(g) CERTIFICATION

On January 17, 2023, counsel for Defendants conferred via email with Plaintiffs’ counsel; Plaintiffs oppose the relief sought in this motion

Dated: January 18, 2023

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney
General

Respectfully submitted,

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Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

**COLONEL FINANCIAL MANAGEMENT
OFFICER, et al.,**

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official
capacity as Secretary of U.S. Dep't of Defense, et al.,

Defendants.

Case No. 8:22-cv-01275-SDM-TGW

DECLARATION OF MR. CHAD W. SCHRECENGOST

I, Chad Schrecengost, a government employee of the U.S. Marine Corps (USMC), hereby state and declare as follows:

1. I am a GS-15 in the USMC, currently serving as assigned as the Deputy Director, Manpower Management Division, Manpower and Reserve Affairs. I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. As the Deputy Director, Manpower Management Division, Manpower and Reserve Affairs, I oversee our Separations and Retirements Branch of Manpower Management Division, which manages all officer and enlisted separations from the U.S. Marine Corps. I have also been involved in discussions at Manpower and Reserve Affairs that pertain the COVID-19 vaccine mandate and have been briefed on the current statuses of the active duty plaintiffs in this case. Based on my position as the Deputy Director, Manpower Management Division, Manpower and Reserve Affairs, I am aware of the following information regarding named plaintiffs in the captioned litigation:

3. Plaintiff Second Lieutenant (2ndLt) submitted a religious accommodation appeal that has not been acted upon. Because the appeal never reached a final decision before the Secretary of Defense COVID-19 vaccine mandate rescission, 2ndLt has not been subject to adverse administrative action. Accordingly, 2ndLt's military record contains no adverse materials related to the COVID-19 vaccine mandate. 2ndLt remains on active duty assigned to The Basic School in Quantico, Virginia.

4. Plaintiff Gunnery Sergeant (GySgt) submitted a religious accommodation appeal that was not actioned before the Secretary of Defense COVID-19 vaccine mandate rescission. Because the appeal never reached a final decision before the vaccine mandate rescission GySgt has not been subject to adverse administrative action. Accordingly, GySgt's military record does not contain any adverse material related to the COVID-19 vaccine mandate. GySgt remains on active duty assigned to Marine Cryptologic Support Battalion in Tampa, Florida.

5. Plaintiff First Lieutenant (1stLt) submitted a religious accommodation request and an appeal and both were denied. Solely as a result of his failure to be vaccinated, 1stLt was placed on the Officer Disciplinary Notebook (ODN)¹ and processed for administrative separation. Accordingly, 1stLt's military record does contain adverse material related to not taking the COVID-19 vaccine. Consistent with the 18 August 2022 order of this court, 1stLt was not discharged. 1stLt remains on active duty and assigned to the 1st Marine Logistics Group at Camp Pendleton, California.

6. Plaintiff Colonel Financial Management Officer (Col FMO) submitted a religious accommodation request and an appeal and both were denied. Solely as a result of his failure to be

¹ See Volume 15 "Officer Misconduct and Substandard Performance," Marine Corps Order 5800.16 CH-7 (Legal Support and Administration Manual).

vaccinated, Col FMO was placed on the ODN and was in the process of being notified to show cause at an administrative separation hearing. Consistent with the 18 August 2022 order of this court, administrative separation proceedings that were pending pertaining to Colonel FMO's failure to be vaccinated were halted and no adverse materials were entered into his military record related to the COVID-19 vaccine mandate. Colonel FMO remains on active duty and assigned to Marine Forces Pacific in Hawaii.

7. Plaintiff Captain (Capt) submitted a religious accommodation request and an appeal and both were denied. Capt is not in the ODN for not taking the COVID vaccination and he does not have adverse materials in his military record related to not taking the COVID-19 vaccine. Capt remains on active duty and assigned to Marine Corps Recruit Depot at Parris Island, South Carolina.

8. Plaintiff Captain 2 (Capt 2) submitted a religious accommodation request and an appeal and both were denied. As a result of having his appeal denied during the Secretary of Defense COVID-19 vaccine mandate before it was rescinded, Capt 2 was placed on the ODN. Consistent with the 18 August 2022 order of this court, administrative proceedings pertaining to Capt 2's failure to be vaccinated were paused. Capt 2 does not have adverse materials in his military record related to the COVID-19 vaccine mandate. Capt 2 remains on active duty and assigned to the Expeditionary Warfare School in Quantico, Virginia.

9. Plaintiff Captain 3 (Capt 3) submitted a religious accommodation request and an appeal and both were denied. As a result of having his appeal denied during the Secretary of Defense COVID-19 vaccine mandate before it was rescinded, Capt 3 was placed on the ODN. Capt 3 does not have adverse materials in his military record related to the COVID-19 vaccine

mandate. Capt 3 remains on active duty and assigned to the Expeditionary Warfare School in Quantico, Virginia.

10. Plaintiff Chief Warrant Officer 4 (CWO4) submitted a religious accommodation request and an appeal and both were denied. He was not placed on the ODN and was not subject to adverse administrative action. Accordingly, CWO4's military record does not contain adverse materials related to the COVID-19 vaccine mandate. He remains on active duty assigned to Marine Corps Base Hawaii.

11. Plaintiff LtCol 2 submitted a religious accommodation request and appeal both were denied. Plaintiff LtCol 2 was not subject to any adverse administrative action and she is not on the ODN. She remains on active duty assigned to Marine Corps Forces Special Operations Command (MARSOC). She is currently serving as the Diversity and Inclusion Officer at MARSOC.

12. On 10 January 2023, Secretary of Defense Austin issued Exhibit A, "Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces." The memo directs "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."

13. On 18 January 2023, the Marine Corps issued Exhibit B, MARADMIN 025/23 which directs: (a) That MARADMINs 462/21, 533/21, 612/21, 733/21, and 464/22 are cancelled; (b) Commanders will immediately discontinue administrative separation processing of Marines solely on the grounds that they refused to receive the COVID-19 vaccine, including those with

approved separation letters; (c) Commanders will immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine; and (d) Commanders shall cease any ongoing reviews of requests by current Service members for a religious, administrative, or medical exemption from the COVID-19 vaccine mandate, or appeals of denials of such requests.

14. No Marines were subject to disciplinary action solely on the basis of their refusal to be vaccinated against COVID-19 after the denial of a religious accommodation request.

15. Of the above named Plaintiffs, only 1stLt was subject to adverse administrative action placed into their Official Military Personnel Files. In accordance with the Secretary's memo described above and forthcoming Under Secretary of Defense guidance, the Service is expected to direct that their records will be updated to remove adverse actions. The Service expects that this will also include closing the cases of Officers placed on the ODN solely as a result of their refusal to take the COVID-19 vaccine, indicating a finding of no misconduct, and lifting any personnel holds.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of January, 2023.

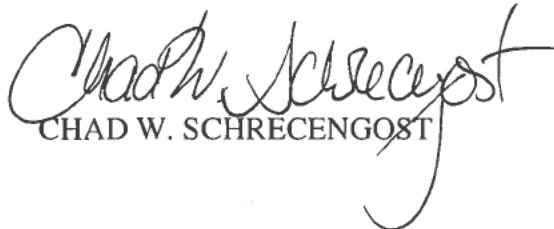

CHAD W. SCHRECENGOST

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.

Exhibit B

RESCISSION OF COVID-19 VACCINATION REQUIREMENT

Date Signed: 1/18/2023 | MARADMINS Number: 025/23

MARADMINS : 025/23

R 181130Z JAN 23

MARADMIN 025/23

MSGID/GENADMIN/CMC WASHINGTON DC PPO//

SUBJ/RESCISSION OF COVID-19 VACCINATION REQUIREMENT//

REF/A/DOC/SECDEF/10JAN23//

REF/B/MARADMIN/CMC/01SEP21//

REF/C/MARADMIN/CMC/07OCT21//

REF/D/MARADMIN/CMC/23OCT21//

REF/E/MARADMIN/CMC/22DEC21//

REF/F/MARADMIN/CMC/14SEP22//

REF/G/DOC/DODI/23JUL19//

REF/H/DOC/USN/07OCT13//

NARR/ REF A IS OSD MEMO, RESCISSION OF 24 AUG 2021 CORONAVIRUS DISEASE 2019 VACCINATION REQUIREMENT. REF B IS MARADMIN 462/21, MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF C IS MARADMIN 533/21, SUPPLEMENTAL GUIDANCE TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF D IS MARADMIN 612/21, SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF E IS MARADMIN 733/21, CHANGE 1 TO SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE DUTY AND RESERVE COMPONENTS. REF F IS MARADMIN 464/22, INTERIM GUIDANCE REGARDING MARINES REQUESTING

RELIGIOUS ACCOMMODATION FROM COVID-19 VACCINATION REQUIREMENTS. REF G IS DODINST 6205.02, DOD IMMUNIZATION PROGRAM. REF H IS BUMEDINST 6230.15B, JOINT REGULATION ON IMMUNIZATIONS AND CHEMOPROPHYLAXIS FOR THE PREVENTION OF INFECTIOUS DISEASES.//

POC/MANPOWER AND RESERVE AFFAIRS/HQMC/M&RA/CHIEF OF STAFF/ TEL: 703-432-9551/EMAIL: ZACHARY.SCHMIDT@USMC.MIL//

POC/MARINE CORPS COVID-19 CELL/HQMC/PP&O/MCCC/TEL: 703-571-1054/EMAIL: NATHAN.BOYAR@USMC.MIL//

POC/MARINE CORPS OPERATIONS CENTER/HQMC/PP&O/MCOC WATCH OFFICER/TEL: 703-695-5454/EMAIL: HQMC.MCC2@USMC.MIL//

POC/JUDGE ADVOCATE DIVISION/HQMC/CIVIL AND ADMINISTRATIVE LAW BRANCH/TEL: 703-614-2510/EMAIL: JCA@USMC.MIL//

POC/DRISCOLL, SEAN/CDR/HQMC/HS/DIRECTOR OF PUBLIC HEALTH/TEL: 703-604-4602/EMAIL: SEAN.DRISCOLL@USMC.MIL//

GENTEXT/REMARKS/1. With the publication of reference (a), MARADMINs 462/21, 533/21, 612/21, 733/21, and 464/22 are hereby cancelled. This MARADMIN provides direction for implementation of updated Secretary of Defense (SECDEF) guidance regarding the rescission of the COVID-19 vaccination requirement.

2. Background. On 10 January 2023, the U.S. Secretary of Defense issued updated guidance, rescinding the mandate that members of the armed forces be vaccinated against COVID-19.

3. Execution. Pursuant to reference (a), the Marine Corps Total Force is no longer subject to a Defense Department-wide COVID-19 vaccination mandate.

3.a. Per reference (a), the Department will still continue to promote and encourage COVID-19 vaccination for all Service members.

3.b. Commanders will immediately discontinue administrative separation processing of Marines solely on the grounds that they refused to receive the COVID-19 vaccine, including those with approved separation letters.

3.c. Commanders will immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine.

3.d. Commanders shall cease any ongoing reviews of requests by current Service members for a religious, administrative, or medical exemption from the COVID-19 vaccine mandate,

or appeals of denials of such requests.

4. Further implementation guidance will be provided via MARADMIN.

5. This MARADMIN is applicable to the Marine Corps Total Force.

6. This MARADMIN remains in effect until canceled.

7. Release authorized by Lieutenant General D.J. Furness, Deputy Commandant, Plans, Policies, and Operations.//

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL 1, *et al.*,

Plaintiffs,

v.

LLOYD AUSTIN, in his official capacity as
Secretary of the United States Department of
Defense, *et al.*,

Defendants.

Case No. 8:21-cv-2429 (SDM/TGW)

DECLARATION OF CAPT MERY-ANGELA SANABRIA KATSON

I, CAPT Mery-Angela S. Katson, U.S. Navy (USN), hereby state and declare as follows:

1. I am a captain in the USN, currently serving as the Branch Head, Enlisted Plans and Policy (OPNAV N132), located in Arlington, Virginia. I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. As the Branch Head at OPNAV N132, I am responsible for enlisted plans and policy for the Navy, and have additional duties relating to the processing of religious accommodation requests and administration of policies relating to the COVID-19 vaccine mandate. In these roles I have access to personnel management resources at Navy Personnel Command, where service records and separation actions are administered. Based on my position, I am aware of the following information regarding Plaintiff Navy Commander in the captioned litigation.

3. Plaintiff Navy Commander submitted a religious accommodation request and appeal that were denied. Consistent with this Court's February 18, 2022 order (ECF 111), no discipline has been imposed based on his failure to be vaccinated and administrative separation

proceedings have not been initiated. He remains on active duty and is assigned as a student at Joint Advanced Warfighting School in Norfolk, Virginia.

4. On January 10, 2023, Secretary of Defense Austin issued Exhibit A, “Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces.” The memo directs “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.”

5. On January 11, 2023, the Navy issued Exhibit B, NAVADMIN 005/23, which canceled NAVADMIN 190/21, Navy’s Mandatory COVID-19 Vaccination and Reporting Policy. NAVADMIN 005/23 directs all commands to immediately discontinue administrative separation processing of Navy personnel solely for refusing the COVID-19 vaccine, including those with approved separation letters. All commands will also immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine. NAVADMIN 005/23 announces that additional detailed guidance regarding implementation of this policy will be promulgated via future NAVADMIN.

6. Currently serving Navy personnel with religious accommodation requests who were subject to adverse administrative action solely on the basis of their refusal to be vaccinated against COVID-19 will have such adverse records removed consistent with Secretary Austin’s rescission memo of January 10, 2023 and further Under Secretary of Defense for Personnel and Readiness and Navy implementation guidance.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of January, 2023.

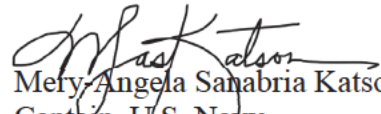

Mery-Angela Sanabria Katson
Captain, U.S. Navy

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.

Exhibit B

CLASSIFICATION: UNCLASSIFIED//
ROUTINE
R 112139Z JAN 23 MID600052628036U
FM CNO WASHINGTON DC
TO NAVADMIN
INFO CNO WASHINGTON DC
BT
UNCLAS

NAVADMIN 005/23

PASS TO OFFICE CODES:
FM CNO WASHINGTON DC//N1//
INFO CNO WASHINGTON DC//N1//
MSGID/GENADMIN/CNO WASHINGTON DC/N1/JAN//

SUBJ/REMOVAL OF COVID-19 VACCINATION MANDATE//

REF/A/DOC/NDAA-FY23/HR 7900//
REF/B/DOC/SECDEF/10JAN23//
REF/C/MSG/CNO WASHINGTON DC/311913ZAUG21//
REF/D/MSG/CNO WASHINGTON DC/132050ZOCT21//
REF/E/MSG/CNO WASHINGTON DC/152239ZNOV21//
REF/F/MSG/CNO WASHINGTON DC/151203ZDEC21//
REF/G/MSG/CNO WASHINGTON DC/302215ZMAR22//

NARR/REF A IS THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY-23.
REF B IS SECDEF MEMO TITLED RESCISSION OF COVID-19 VACCINATION REQUIREMENT FOR MEMBERS OF THE ARMED FORCES.
REF C IS NAVADMIN 190/21, 2021-2022 NAVY MANDATORY COVID-19 VACCINATION AND REPORTING POLICY.
REF D IS NAVADMIN 225/21, COVID-19 CONSOLIDATED DISPOSITION AUTHORITY (CCDA).
REF E IS NAVADMIN 256/21, CCDA GUIDANCE TO COMMANDERS.
REF F IS NAVADMIN 283/21, CCDA EXECUTION GUIDANCE TO COMMANDERS.
REF G NAVADMIN 083/22, CCDA INTERIM GUIDANCE REGARDING MEMBERS REQUESTING RELIGIOUS ACCOMMODATION FROM COVID-19 VACCINATION REQUIREMENTS.

RMKS/1. On 23 December 2022, reference (a) directed the Secretary of Defense (SecDef) to rescind the coronavirus disease 2019 (COVID-19) vaccination mandate within 30 days. On 10 January 2023, SecDef rescinded the mandate for all branches of the armed forces in line with reference (b). The actions below align the Navy with this guidance.

- a. Cancel reference (c).
- b. All commands will immediately discontinue administrative separation processing of Navy Service Members solely for refusing the COVID-19 vaccine, including those with approved separation letters.
- c. All commands will immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine as described in references (c) through (g).

2. Updated operational guidance will be promulgated in a follow-on standard operational guidance serial.

3. Additional detailed guidance regarding implementation of this policy will be promulgated via future NAVADMIN.

4. Released by Vice Admiral Richard J. Cheeseman, Jr., N1.//

BT

#0001

NNNN

CLASSIFICATION: UNCLASSIFIED//

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

**COLONEL FINANCIAL MANAGEMENT
OFFICER, et al.,**

Plaintiffs,

v.

**LLOYD J. AUSTIN, III, in his official
capacity as Secretary of U.S. Dep't of Defense, et al.,**

Defendants.

Case No. 8:22-cv-01275-SDM-TGW

DECLARATION OF MARK JIMISON

I, Colonel Mark S. Jimison, U.S. Marine Corps (USMC), hereby state and declare as follows:

1. I am a Colonel (O-6) in the USMC, currently serving as the Branch Head, Reserve Affairs Management Branch, Manpower and Reserve Affairs. I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. Based on my position as the Branch Head, I am aware of the following information regarding named Reserve Marine plaintiffs in the captioned litigation.

3. Plaintiff Lance Corporal 3 (LCpl 3) submitted a religious accommodation appeal that has not been acted upon. Because the appeal is pending, LCpl 3 has not been subject to adverse administrative action. LCpl 3 has since been promoted to the rank of Corporal. Plaintiff LCpl 3's military record does not contain any adverse material relating to the COVID-19 vaccine mandate. LCpl 3 remains on active duty assigned to 4th Assault Amphibian Battalion in Tampa, Florida.

4. Plaintiff Reserve Lieutenant Colonel (Reserve LtCol) submitted a religious accommodation request and appeal that was denied. Reserve LtCol was not subject to any adverse administrative action. Reserve LtCol voluntarily moved to the Individual Ready Reserve, where she remains. As the Secretary of Defense's rescission gets implemented across the Services, it is anticipated that nothing pertaining to the COVID-19 vaccine would prevent Reserve LtCol from mobilizing to active duty. Plaintiff Reserve LtCol's military record does not contain adverse materials related to the COVID-19 vaccine mandate.

5. Plaintiff Lance Corporal 2 (LCpl 2) submitted a religious accommodation request and appeal both were denied. Solely as a result of his refusal to be vaccinated, LCpl 2 was subject to the following adverse administrative action: he was issued a formal counseling for his failure to obey a lawful order, which resides in his Official Military Personnel File. LCpl 2 reached the end of his active service on 26 May 2022 and is not currently on active duty in the Marine Corps. . As the Secretary of Defense's rescission gets implemented across the Services, it is anticipated that nothing pertaining to the COVID-19 vaccine would prevent LCpl 2 from continuing his current service in the Reserves.

6. Plaintiff Lieutenant Colonel 1 (LtCol 1) submitted a religious accommodation request and an appeal and both were denied. LtCol 1's military record does not contain adverse materials related to the COVID-19 vaccine mandate. He remains on active duty at the Headquarters Battalion, Marine Forces Reserve in New Orleans, Louisiana.

7. On 10 January 2023, Secretary of Defense Austin issued Exhibit A, "Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces." The memo directs "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.”

8. On 18 January 2023, the Marine Corps issued Exhibit B, MARADMIN 025/23 which directs:(a) That MARADMINs 462/21, 533/21, 612/21, 733/21, and 464/22 are cancelled; (b) Commanders will immediately discontinue administrative separation processing of Marines solely on the grounds that they refused to receive the COVID-19 vaccine, including those with approved separation letters; (c) Commanders will immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine; and (d) Commanders shall cease any ongoing reviews of requests by current Service members for a religious, administrative, or medical exemption from the COVID-19 vaccine mandate, or appeals of denials of such requests.

9. No Marines were subject to disciplinary action solely on the basis of their refusal to be vaccinated against COVID-19 after the denial of a religious accommodation request.

10. Of the above named Plaintiffs, only LCpl 2 was subject to adverse administrative action solely as a result of his failure to take the COVID-19 vaccine. Consistent with the Secretary’s memo described above, LCpl 2’s record will be updated and the adverse action will be removed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of January, 2023.



M. S. JIMISON
Colonel, U.S. Marine Corps

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."

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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."

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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. Dunne". The signature is written in a cursive, flowing style.

Exhibit B

RESCISSION OF COVID-19 VACCINATION REQUIREMENT

Date Signed: 1/18/2023 | MARADMINS Number: 025/23

MARADMINS : 025/23

R 181130Z JAN 23

MARADMIN 025/23

MSGID/GENADMIN/CMC WASHINGTON DC PPO//

SUBJ/RESCISSION OF COVID-19 VACCINATION REQUIREMENT//

REF/A/DOC/SECDEF/10JAN23//

REF/B/MARADMIN/CMC/01SEP21//

REF/C/MARADMIN/CMC/07OCT21//

REF/D/MARADMIN/CMC/23OCT21//

REF/E/MARADMIN/CMC/22DEC21//

REF/F/MARADMIN/CMC/14SEP22//

REF/G/DOC/DODI/23JUL19//

REF/H/DOC/USN/07OCT13//

NARR/ REF A IS OSD MEMO, RESCISSION OF 24 AUG 2021 CORONAVIRUS DISEASE 2019 VACCINATION REQUIREMENT. REF B IS MARADMIN 462/21, MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF C IS MARADMIN 533/21, SUPPLEMENTAL GUIDANCE TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF D IS MARADMIN 612/21, SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF E IS MARADMIN 733/21, CHANGE 1 TO SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE DUTY AND RESERVE COMPONENTS. REF F IS MARADMIN 464/22, INTERIM GUIDANCE REGARDING MARINES REQUESTING

RELIGIOUS ACCOMMODATION FROM COVID-19 VACCINATION REQUIREMENTS. REF G IS DODINST 6205.02, DOD IMMUNIZATION PROGRAM. REF H IS BUMEDINST 6230.15B, JOINT REGULATION ON IMMUNIZATIONS AND CHEMOPROPHYLAXIS FOR THE PREVENTION OF INFECTIOUS DISEASES.//

POC/MANPOWER AND RESERVE AFFAIRS/HQMC/M&RA/CHIEF OF STAFF/ TEL: 703-432-9551/EMAIL: ZACHARY.SCHMIDT@USMC.MIL//

POC/MARINE CORPS COVID-19 CELL/HQMC/PP&O/MCCC/TEL: 703-571-1054/EMAIL: NATHAN.BOYAR@USMC.MIL//

POC/MARINE CORPS OPERATIONS CENTER/HQMC/PP&O/MCOC WATCH OFFICER/TEL: 703-695-5454/EMAIL: HQMC.MCC2@USMC.MIL//

POC/JUDGE ADVOCATE DIVISION/HQMC/CIVIL AND ADMINISTRATIVE LAW BRANCH/TEL: 703-614-2510/EMAIL: JCA@USMC.MIL//

POC/DRISCOLL, SEAN/CDR/HQMC/HS/DIRECTOR OF PUBLIC HEALTH/TEL: 703-604-4602/EMAIL: SEAN.DRISCOLL@USMC.MIL//

GENTEXT/REMARKS/1. With the publication of reference (a), MARADMINs 462/21, 533/21, 612/21, 733/21, and 464/22 are hereby cancelled. This MARADMIN provides direction for implementation of updated Secretary of Defense (SECDEF) guidance regarding the rescission of the COVID-19 vaccination requirement.

2. Background. On 10 January 2023, the U.S. Secretary of Defense issued updated guidance, rescinding the mandate that members of the armed forces be vaccinated against COVID-19.

3. Execution. Pursuant to reference (a), the Marine Corps Total Force is no longer subject to a Defense Department-wide COVID-19 vaccination mandate.

3.a. Per reference (a), the Department will still continue to promote and encourage COVID-19 vaccination for all Service members.

3.b. Commanders will immediately discontinue administrative separation processing of Marines solely on the grounds that they refused to receive the COVID-19 vaccine, including those with approved separation letters.

3.c. Commanders will immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine.

3.d. Commanders shall cease any ongoing reviews of requests by current Service members for a religious, administrative, or medical exemption from the COVID-19 vaccine mandate,

or appeals of denials of such requests.

4. Further implementation guidance will be provided via MARADMIN.

5. This MARADMIN is applicable to the Marine Corps Total Force.

6. This MARADMIN remains in effect until canceled.

7. Release authorized by Lieutenant General D.J. Furness, Deputy Commandant, Plans, Policies, and Operations.//

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

**COLONEL FINANCIAL MANAGEMENT
OFFICER, et al.,**

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official
capacity as Secretary of U.S. Dep't of Defense, et al.,

Defendants.

Case No. 8:22-cv-01275-SDM-TGW

DECLARATION OF CAPTAIN EDWARD PINGEL

I, Captain Edward J. Pingel, U.S. Marine Corps (USMC), hereby state and declare as follows:

1. I am a Captain in the USMC, currently serving as a Marine Officer Instructor (MOI) at the Norwich University Naval Reserve Officer Training Corps (NROTC). I make this declaration in my official capacity, based upon my personal knowledge and upon information that has been provided to me in the course of my official duties.

2. As the MOI at Norwich NROTC, I am responsible for advising, training, and mentoring all aspiring Midshipmen seeking a commission in the USMC. Based on my position as the advisor, I am aware of the following information regarding named plaintiff in the captioned litigation.

3. Plaintiff MIDN 2/C submitted a religious accommodation request and appeal that was denied. She was not subject to any adverse administrative action as a result of her refusal to take the COVID-19 vaccination. Her unvaccinated status no longer prevents her from attending Officer Candidates School.

4. On 10 January 2023, Secretary of Defense Austin issued Exhibit A, "Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces." The memo directs "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."

5. On 18 January 2023, the Marine Corps issued Exhibit B, MARADMIN 025/23 which directs: (a) That MARADMINs 462/21, 533/21, 612/21, 733/21, and 464/22 are cancelled; (b) Commanders will immediately discontinue administrative separation processing of Marines solely on the grounds that they refused to receive the COVID-19 vaccine, including those with approved separation letters; (c) Commanders will immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine; and (d) Commanders shall cease any ongoing reviews of requests by current Service members for a religious, administrative, or medical exemption from the COVID-19 vaccine mandate, or appeals of denials of such requests.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of January, 2023.



EDWARD J. PINGEL
CAPTAIN, U.S. Marine Corps

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.

Exhibit B

RESCISSION OF COVID-19 VACCINATION REQUIREMENT

Date Signed: 1/18/2023 | MARADMINS Number: 025/23

MARADMINS : 025/23

R 181130Z JAN 23

MARADMIN 025/23

MSGID/GENADMIN/CMC WASHINGTON DC PPO//

SUBJ/RESCISSION OF COVID-19 VACCINATION REQUIREMENT//

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RELIGIOUS ACCOMMODATION FROM COVID-19 VACCINATION REQUIREMENTS. REF G IS DODINST 6205.02, DOD IMMUNIZATION PROGRAM. REF H IS BUMEDINST 6230.15B, JOINT REGULATION ON IMMUNIZATIONS AND CHEMOPROPHYLAXIS FOR THE PREVENTION OF INFECTIOUS DISEASES.//

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POC/DRISCOLL, SEAN/CDR/HQMC/HS/DIRECTOR OF PUBLIC HEALTH/TEL: 703-604-4602/EMAIL: SEAN.DRISCOLL@USMC.MIL//

GENTEXT/REMARKS/1. With the publication of reference (a), MARADMINs 462/21, 533/21, 612/21, 733/21, and 464/22 are hereby cancelled. This MARADMIN provides direction for implementation of updated Secretary of Defense (SECDEF) guidance regarding the rescission of the COVID-19 vaccination requirement.

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3. Execution. Pursuant to reference (a), the Marine Corps Total Force is no longer subject to a Defense Department-wide COVID-19 vaccination mandate.

3.a. Per reference (a), the Department will still continue to promote and encourage COVID-19 vaccination for all Service members.

3.b. Commanders will immediately discontinue administrative separation processing of Marines solely on the grounds that they refused to receive the COVID-19 vaccine, including those with approved separation letters.

3.c. Commanders will immediately suspend any new adverse administrative actions associated with refusing the COVID-19 vaccine.

3.d. Commanders shall cease any ongoing reviews of requests by current Service members for a religious, administrative, or medical exemption from the COVID-19 vaccine mandate,

or appeals of denials of such requests.

4. Further implementation guidance will be provided via MARADMIN.

5. This MARADMIN is applicable to the Marine Corps Total Force.

6. This MARADMIN remains in effect until canceled.

7. Release authorized by Lieutenant General D.J. Furness, Deputy Commandant, Plans, Policies, and Operations.//

Exhibit 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

**COLONEL FINANCIAL MANAGEMENT
OFFICER, *et al.*,**

Plaintiffs,

v.

LLOYD AUSTIN, III, in his official capacity
as Secretary of U.S. Dep't of Defense, *et al.*,

Defendants.

Case No. 8:22-cv-01275-SDM-TGW

**DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS'
FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants, by and through their undersigned counsel, hereby respond to Plaintiffs' first set of requests for production, served August 17, 2022.

Plaintiffs' Interrogatory No. 1:

1. State the total number of Religious Exemption requests, the total number of initially approved requests, the total number of initially denied requests, the total number of initially denied requests for which the cognizant command chaplain or any other relevant official determined that the stated religious beliefs were sincere, the total number of pending appeals from initially denied requests, the total number of initially denied requests for which the time to appeal has expired without appeal, the total number of appeals denied, and the total number of successful appeals resulting in the granting of a Religious Exemption.

Defendants' Response to Plaintiffs' Interrogatory No. 1:

Response. As of September 16, 2022, Marine Corps records reflect the following information:

- (1) Total Religious Accommodation Requests: 3736
- (2) Initially approved requests: 0
- (3) Initially denied requests: 3736
- (5) Pending appeals from initially denied requests: 767
- (6) Initially denied requests for which the time to appeal has expired: 2,139
- (7) Appeals denied: 621
- (8) Successful appeals resulting in the granting of a Religious Exemption: 14

Of the appeals to the Assistant Commandant of the Marine Corps, approximately 621 were denied, 14 were approved, 42 were withdrawn, and 106 were returned with no action.

Objections. Defendants object to the request insofar as it seeks information from DoD more broadly than the Marine Corps. The Department of Defense is an organization encompassing more than 2 million employees with offices, installations,

and bases worldwide, including components that have been severed from this case. Defendants will only provide information for the Marine Corps.

Defendants object to providing data on “initially denied requests for which the cognizant command chaplain or any other relevant official determined that the stated religious beliefs were sincere.” This request is overly burdensome and disproportionate to the needs of the case. This information is not centrally tracked. In order to provide information, someone would need to review each and every Religious Accommodation Request (RAR) file for any opinion or assessment of sincerity, including the chaplain interview checklist and assessment. Moreover, the resulting information would likely be incomplete or difficult to categorize because the answer as to whether someone has a sincerely held religious belief may be partial, caveated or incomplete in any individual file, opinion, or assessment. Even if review only took 2 minutes per file, the task would require at least 125 manhours, and is disproportionate to the needs of the case.

Defendants object to any instruction or argument that Defendants are required to regularly supplement this data, which may change on a daily or weekly basis. Supplementing responses regularly would be unreasonable, burdensome and disproportionate to the needs of the case.

Plaintiffs’ Interrogatory No. 2:

2. For any Marine who received a Religious Exemption, state the date of the approval, the name, rank, rate, rating, MOS, duty or command assignment, status (e.g., active duty or reserve), and time remaining in the Marine Corps at the time of the approval.

Defendants' Response to Plaintiffs' Interrogatory No. 2:

Response: See Appendix A, marked CONFIDENTIAL, PRODUCED PURSUANT TO PROTECTIVE ORDER.

Objection: Defendants object to the provision of personally identifiable information subject to the Privacy Act, especially insofar as that information relates to non-class members. The invasion of privacy is unnecessary, unreasonable, and disproportionate to the needs of the case. In light of the protective order in place in this matter, ECF No. 240, Defendants are nonetheless producing this information under a protective order.

Plaintiffs' Interrogatory No. 3:

3. State the total number of Medical Exemption requests, the total number of approved requests, and the total number of denied requests.

Defendants' Response to Plaintiffs' Interrogatory No. 3:

Response: As of September 9, 2022, the Medical Readiness Reporting System (MRRS) reflect that there are currently 31 "permanent" medical exemptions to the COVID-19 vaccine requirement and 59 temporary medical exemptions. These numbers do not reflect expired, revoked or otherwise withdrawn exemptions. Medical exemptions are placed in MRRS by individual primary care providers across the Department of Defense (DoD). The Marine Corps does not track requested or denied medical exemptions but relies on the MRRS data in what is reported for permanent and temporary medical exemptions to the COVID-19 vaccine mandate.

Objections: The request seeks information that is unreasonable, irrelevant and disproportionate to the needs of the case insofar as it seeks information about temporary medical exemptions, which are in no way comparable or analogous to the religious exemptions sought by Plaintiffs.

Defendants object to the request insofar as it seeks information from DoD more broadly than the Marine Corps. The Department of Defense is an organization encompassing more than 2 million employees with offices, installations, and bases worldwide, including components that have been severed from this case. Defendants will only provide information for the Marine Corps.

Defendants object to providing information about the total number of medical exemption requests made and the total number of denied requests. That information is not tracked by the Marine Corps. It may be recorded in individual medical records for individual service members, but is not available other than searching each and every individual medical record for hundreds of thousands of Marines, a task that is plainly disproportionate to the needs of the case.

Defendants object to the vagueness of the request which does not specify data ranges or whether current or historical data is sought. It is likely impossible to reconstruct the total exemptions granted in the past that have since expired (a number that is particularly irrelevant to the issues before the Court). Moreover, this information fluctuates frequently, as temporary exemptions expire or new requests are granted. Defendants have previously provided snapshot of exemptions in the past. *See, e.g.*, ECF Nos. 47-4; 52-4. Defendants object to any instruction or argument that

Defendants are required to regularly supplement this data, which may change on a daily or weekly basis. Supplementing responses regularly would be unreasonable, burdensome and disproportionate to the needs of the case.

Plaintiffs' Interrogatory No. 4:

4. State the number of Marines who have been separated from the Marine Corps for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination.

Defendants' Response to Plaintiffs' Interrogatory No. 4:

Response: No Marines are or have been separated “for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination.” Rather, Marine Corps records reflect that as of 16 September 2022, 3,468 Marines have been separated because they failed to follow a lawful order to be vaccinated. Not all of those Marines had previously submitted a Religious Accommodation Request (RAR) for exemption from the DoD COVID-19 vaccination mandate, and not all of the Marines had submitted an appeal after receiving a denied RAR. A total of 10 Marine officers have been approved for discharge following denial of an RAR appeal; 3 were discharged prior to the injunction. A total of 833 enlisted Marines who submitted a RAR were later separated for refusing to follow a lawful order to be vaccinated.

Objection: Defendants object to the premise that Marines are separated “for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination.” The process underlying separation and the bases therefore are

fully explained in Marine Corps policies and in the relevant declarations previously filed in this case. *See, e.g.*, Furness Decl., ECF No. 206-2; MARADMIN 612/21.

Defendants object that the requested numbers are not relevant to the questions before the Court and the request is therefore disproportionate to the needs of the case. Providing more detailed information than that provided above would impose a significant burden on Defendants without advancing the case. Defendants are not tracking the number of enlisted service members with a RAR appeal denial who have pending or completed separation proceedings.

Plaintiffs' Interrogatory No. 5:

5. State the number of courts-martial and the number of separation proceedings, whether pending or concluded, against a Marine whose request for a Religious Exemption was denied after appeal.

Defendants' Response to Plaintiffs' Interrogatory No. 5

Response: Marine Corps records reflect that there have been no court martials initiated based on failure to follow an order to be vaccinated.

Marine Corps records reflect that as of 16 September 2022, 3,468 Marines have been separated because they failed to follow a lawful order to be vaccinated. Not all of those Marines, however, previously submitted an RAR or had an RAR appeal denied. A total of 833 enlisted Marines who submitted a RAR were later separated for refusing to follow a lawful order to be vaccinated, but Defendants are not tracking the number of enlisted service members with a RAR appeal denial who have pending or

completed separation proceedings. Not all Marines who previously submitted RARs for exemption from the COVID-19 vaccination requirement, submitted an appeal or had an appeal denied. Officer data is tracked at Headquarters Marine Corps. Marine Corps records reflect that approximately 140 officers in the class failed to follow a lawful order to be vaccinated after their RAR appeals were denied. Of those officers, 3 were retained and 10 were approved for separation, with 3 of them actually being separated prior to the injunction. Of the 140 officers who refused to follow the order after their appeals were denied, 92 misconduct cases were being tracked on the Officer Disciplinary Notebook (ODN) prior to the preliminary injunction. The remaining 48 officers were not yet added to the ODN database prior to the injunction.

Objection: Defendants object to the total number of interrogatories. This compound interrogatory is at least 2 separate interrogatories (one related to courts martial, one to separation proceedings).

Defendants object to the request as irrelevant and overbroad to the extent it seeks information about separations or court martials unrelated to vaccination status. Individuals may be subject to such actions for reasons unrelated to their failure to be vaccinated and unrelated to the matter before the Court. Attempting to track down courts martials or separations for everyone that had an RAR appeal denied irrespective of the connection to the vaccination requirement would be difficult or impossible, and plainly disproportionate to the needs of the case.

Defendants object that the requested numbers are not relevant to the questions before the Court and the request is therefore disproportionate to the needs of the case.

Providing more detailed information than that provided above would impose a significant burden on Defendants without advancing the case. Defendants are not tracking the total numbers of pending separations or the number of enlisted service members with a RAR appeal denial who have pending or completed separation proceedings. It would be unreasonably burdensome to attempt to discover the pending enlisted administrative separations, which are not tracked centrally. Hundreds of individual authorities would need to review their data, a task that is disproportionate to the needs of the case.

Plaintiffs' Interrogatory No. 6:

6. State the number of Marines who have been served with, issued, or provided Administrative Separation orders, papers, letters, or documents for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination.

Defendants' Response to Plaintiffs' Interrogatory No. 6:

Response. No Marines are or have been separated “for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination.” Marine Corps records reflect that as of 16 September 2022, 3,468 Marines have been separated because they failed to follow a lawful order to be vaccinated. Not all of those Marines had previously submitted RARs for exemption from the COVID-19 vaccination requirement, or had an appeal denied. Marine Corps records reflect that approximately 140 officers failed to follow a lawful order to be vaccinated after their RAR appeals were denied. Of those officers, 3 were retained and 10 were approved

for separation, with 3 of them actually being separated prior to the injunction. Of the 140 officers who refused to follow the order after their appeals were denied, 92 misconduct cases were being tracked on the Officer Disciplinary Notebook (ODN) prior to the preliminary injunction. The remaining 48 officers were not yet added to the ODN database prior to the injunction. Defendants are not tracking the number of enlisted service members with an RAR appeal denial who have pending or completed separation proceedings.

Objections. Defendants object to the premise that Marines are separated “for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination.” The process underlying separation and the bases therefore are fully explained in Marine Corps policies and in the relevant declarations previously filed in this case. *See, e.g.*, Furness Decl., ECF No. 206-2; MARADMIN 612/21.

Defendants object to the ambiguity of the phrase “served with, issued, or provided Administrative Separation orders, papers, letters, or documents” as it is unclear whether Plaintiffs are seeking information about the number of Marines for whom separation proceedings have commenced, or the number of Marines who have received final separation orders, or some other number connected to the service of unspecified documents.

Defendants object that the requested numbers are not relevant to the questions before the Court and the request is therefore disproportionate to the needs of the case. Providing more detailed information than that provided above would impose a significant burden on Defendants without advancing the case. Defendants are not

tracking the total numbers of pending separations or the number of enlisted service members with a RAR appeal denial who have pending or completed separation proceedings.

Plaintiffs' Interrogatory No. 7:

7. State the number of Marines against whom the Marine Corps has instituted a Board of Inquiry proceeding for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination, and the number of such Board of Inquiry proceedings that are pending or concluded.

Defendants' Response to Plaintiffs' Interrogatory No. 7:

Response. Marine Corps records reflect the following for each USMC region:

For the Pacific Region: There are 2 concluded Boards of Inquiry related to failure to comply with an order to be vaccinated.

For the East Region: There are 3 concluded BOIs and 3 pending BOIs related to failure to comply with an order to be vaccinated.

For the West Region: There are 2 concluded BOIs and 4 pending BOIs related to failure to comply with an order to be vaccinated.

For the National Capital Region: There are 4 concluded BOIs and 4 pending BOIs related to failure to comply with an order to be vaccinated.

Specific Objections. Defendants object to the premise that Marines are subject to a Board of Inquiry "for declining to accept or receive a COVID-19 vaccination based on a religious objection to the vaccination." The process underlying separation and the bases therefore are fully explained in Marine Corps policies and in the relevant

declarations previously filed in this case. *See, e.g.*, Furness Decl., ECF No. 206-2; MARADMIN 612/21.

Defendants object that the requested numbers are not relevant to the questions before the Court and the request is therefore disproportionate to the needs of the case. Providing more detailed information than that provided above would impose a significant burden on Defendants without advancing the case. Defendants are not centrally tracking which of the pending or completed BOIs involved individuals who had an RAR appeal denied. Defendants continue to investigate and may be able to supplement this interrogatory response within 2 weeks with additional information about which of the individuals with pending or completed BOIs had RARs or RAR appeals denied, depending on what information is available.

Plaintiffs' Interrogatory No. 8:

8. State the number of Marines who have been granted a Religious Exemption, Medical Exemption, or any other exemption, accommodation, exception to policy, or arrangement, for any reason, that permitted them to continue to serve in the positions or duty assignments they held at the time of requesting such exemption, accommodation, exception to policy, or arrangement.

Defendants' Response to Plaintiffs' Interrogatory No. 8:

Response. Defendants stand on their objections.

Specific Objections. Defendants object that the request is ambiguous, overbroad, unduly burdensome and disproportionate to the needs of the case. "Exception to policy" and "arrangement" are undefined and could conceivably apply

any of a number of formal and informal arrangements across the Force that are not readily tracked. The information sought is not centrally tracked anywhere, and broadly read, the request would require Defendants to individually review medical and personnel files for every Marine who had even a temporary exemption for any reason to determine when the exemption was requested, when it was granted and whether their duties changed during or after the approval. The resulting numbers would shed no light on the frequency, propriety or viability of such assignments for Plaintiffs or the Class. For example, a Marine who was temporarily exempt for 30 days in December 2021 because the vaccine was not available at their deployed location, for example, may or may not have had their duties changed when the exemption was granted for reasons that may or may not have been related to their vaccination status. Similarly, a Marine who was granted a medical exemption due to prolonged recovery from COVID-19 may or may not have had their duties changed due to their medical status, unrelated to vaccination.

Moreover, the request seeks information that is unreasonable, irrelevant and disproportionate to the needs of the case insofar as it seeks information about temporary medical and administrative exemptions, which are in no way comparable or analogous to the religious exemptions sought by Plaintiffs.

Plaintiffs' Interrogatory No. 9:

9. State the number and identify the location of any BLA-compliant COVID-19 vaccine doses that Defendants have in their possession.

Defendants' Response to Plaintiffs' Interrogatory No. 9:**Response.**

Defendants respond that Defense Health Agency records reflect that as of September 14, 2022, DoD possesses BLA and BLA-compliant doses as follows:

Row Labels	Sum of DOSES	Count of Sites
Pfizer BLA manufactured, Comirnaty-labeled	30,360	41
GFEBs Beaufort NH EAST	7,848	
Nellis AFB (99th MDG) ACC	6,360	
GFEBs San Diego NMC WEST	2,964	
GFEBs Camp Pendleton NH WEST	1,260	
Ft Leonard Wood (Leonard Wood) RHC-C	1,110	
Luke AFB (56th MDG) AETC	1,080	
Ft Sam Houston (Brooke-BAMC) RHC-C	858	
Whiteman AFB (509th MDG) AFGSC	720	
GFEBs Patuxent River (Pax) NHC	720	
Eglin AFB (96th MDG) AFMC	654	
Misawa AB (35th MDG) PACAF	600	
GFEBs Cherry Point NH EAST	540	
Ft Campbell (Blanchfield) RHC-A	510	
Ft Benning (Martin) RHC-A	450	
Sheppard AFB (82nd MDG) AETC	390	
Yokota AB (374th MDG) PACAF	342	
Tyndall AFB (325th MDG) AETC	300	
Ft Riley (Irwin) RHC-C	300	
GFEBs Guantanamo Bay NH EAST	300	
Ft Bragg (Womack-WAMC) RHC-A	300	
Lackland AFB (Wilford Hall 59th MLRS) AETC	300	
Kadena AB (18th MDG) PACAF	294	
Ft Hood (Darnall) RHC-C	288	
Vandenberg AFB (30th MDG) AFSPC	288	
Wright-Patterson AFB (88th MDG) AFMC	240	
GFEBs Jacksonville NH EAST	204	
Walter Reed National MMC Bethesda (WRNMMC) DHA	180	
GFEBs Camp Lejeune NMC EAST	162	
Elmendorf AFB (673rd MDG) PACAF	120	
Ft Rucker (Lyster) RHC-A	108	
Ft Knox (Ireland) RHC-A	102	
GFEBs Bremerton NH WEST	96	
GFEBs Quantico NHC (Naval Health Clinic) EAST	72	
US Air Force Academy (USAFA 10th MDG) USAFA	60	

GFEBS 29 Palms NH WEST	60	
Hurlburt Field AFB (1st SPEC OPS MDG) AFSOC	54	
Ellsworth AFB (28th MDG) ACC	36	
Mountain Home AFB (366th MDG) ACC	30	
Aviano AB (31st MDG) USAFE	30	
Maxwell AFB (42nd MDSS) AETC	24	
Goodfellow AFB (17th MDG) AETC	6	
Moderna BLA manufactured, Spikevax labeled	1,090	2
GFEBS Beaufort NH EAST	1,000	
Kirtland AFB (377th MDG) AFMC	90	
Pfizer, EUA labeled, BLA Compliant	1,008	2
Langley AFB (633rd MDG) ACC	948	
Ft Lewis (Madigan-MAMC) RHC-P	60	
Total:	32,458	45

If vaccine meets logistics parameters for redistribution, those doses can be moved around as needed, and medical treatment facilities may order additional Comirnaty or Spikevax based on local demand. There are no restrictions on ordering.

Specific Objections. Defendants object that the request is ambiguous insofar as the parties have previously disputed the definition of BLA-compliant. Defendants will provide information consistent with Defendants' position that "BLA-compliant doses" encompass both EUA-labelled vaccines identified by FDA as BLA-compliant, as well as BLA doses labelled as Comirnaty or Spikevax. This answer does not concede in any way Defendants' position that other EUA-labeled Pfizer or Moderna vaccine may be used interchangeably with Comirnaty or Spikevax, as though it were the licensed vaccine.

Moreover, responsive information fluctuates frequently, as doses are used, expire or are obtained. Defendants therefore object to any instruction or argument that Defendants are required to regularly supplement this data, which may change on

a daily basis, and is burdensome to compile. Supplementing responses regularly would be unreasonable, burdensome and disproportionate to the needs of the case.

Plaintiffs' Interrogatory No. 10:

10. Identify the highest ranking official or officials in the United States Marine Corps chain of command with authority over the content, implementation, administration, or enforcement of the Religious Exemption Policy, as applicable to United States Marine Corps servicemembers, the proposed deposition of whom by Plaintiffs would not be subject to an Apex-doctrine objection by Defendants.

Defendants' Response to Plaintiffs' Interrogatory No. 10:

Response. Defendants stand on their objections.

Specific Objections. Defendants object to this interrogatory, which is not a factual or legal inquiry relevant to a claim or defense in this case, but a request related to trial and discovery strategy. As such, a comprehensive answer would involve information protected by the work product doctrine. The rules and orders in this case impose an obligation on the parties to identify relevant witnesses in their initial disclosures, timely supplements, expert disclosures and in the pretrial report. Defendants will comply with those obligations, but not provide Plaintiffs with a premature response. Defendants will make best efforts to provide a supplement to the initial disclosures that will identify additional high-ranking officials that may testify on behalf of Defendants on these matters, on or before October 5, 2022, and supplement those disclosures further as required by the Rules.

**GENERAL OBJECTIONS AND RESPONSES
TO INSTRUCTIONS AND DEFINITIONS**

Relevance and Proportionality. Defendants' response is provided in accordance with Federal Rule 26(b)(1), which permits the discovery of any information, not privileged, that is both (1) relevant to any party's claim or defense, and (2) proportional to the needs of the case. Defendants object to the interrogatories and accompanying instructions and definitions to the extent they impose obligations in excess of those imposed by the Federal Rules of Civil Procedure. Defendants will comply with the Federal Rules.

No waiver. Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or other appropriate ground. The inadvertent production by Defendants of information or documents protected by any privilege or protection shall not constitute a waiver of the applicable privilege or protection as to any information or documents disclosed. And the identification of any individual in response to an interrogatory or the disclosure that a particular communication occurred does not waive any applicable privilege over the contents of relevant conversations.

Military Decisionmaking. Defendants object to these interrogatories as unduly burdensome and not proportionate to the needs of the case insofar as they seek information to undertake an independent evaluation of military data. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring) (noting the

court's role in evaluating military policy is so circumscribed that extra-record evidence and discovery is "quite beside the point") (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986)); *see also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453 U.S. at 81)). Courts "readily acknowledge" that such decisions "are not lightly to be overruled by the judiciary" and apply that deference by focusing their review on the military justifications reflected in the administrative record. *Pruitt v. Cheney*, 963 F.2d 1160, 1166-67 (9th Cir. 1992) (in service member case asserting constitutional claims, instructing that military deference "is best applied in the process of judging whether the reasons put forth on the record . . . are rationally related to any of the Army's permissible goals"); *cf. Austin v. U.S. Navy SEALs 1-26*, 142 S. Ct. 1301, 1302 (2022) (emphasizing that "[t]he Court 'should indulge the widest latitude' to sustain the President's 'function to command the instruments of national force,'" and citing *Gilligan v. Morgan*, 413 U.S. 1 (1973) and *Dep't of Navy v. Egan*, 484 U.S. 518 (1988)).

Privileged Material. Defendants object to Plaintiffs' requests to the extent they seek information or documents protected by the attorney-client privilege, work-product doctrine, deliberative process privilege, state secrets privilege, or any other applicable privilege, exemption, or immunity. Defendants incorporate their forthcoming privilege logs and all related information to the extent necessary to preserve against any waiver of any applicable privilege or immunity from discovery. To the extent that Defendants respond that they will search for and produce responsive documents,

Defendants are only undertaking to make a good faith effort to conduct a reasonable search of non-privileged records of those individuals likely to have meaningful information responsive to a reasonable request, as maintained in the ordinary course of business.

Classified Information. Defendants object to this request to the extent it seeks information that is subject to the privilege or statutory protections for national security information, including any information that is classified under Executive Order. The disclosure of such information could reasonably be expected to harm the national security interests of the United States and, thus, any such responsive information is withheld on the basis of this objection.

Definitions and Instructions.

Definitions:

1. Defendants object to all of the requests and accompanying instructions and definitions to the extent they impose obligations in excess of those imposed by the Federal Rules of Civil Procedure. Defendants will comply with the Federal Rules.

2. Defendants also object to Plaintiffs' "Definitions" to the extent they seek to impose unreasonable or burdensome obligations beyond what is required by the Federal Rules of Civil Procedure and object to any meaning or interpretation onto the requests other than that evident from the plain and ordinary meaning of the words used therein. Defendants will read and respond to Plaintiffs' requests with the

understanding that these terms have their plain and ordinary meaning in standard English usage.

3. Defendants object to Plaintiffs' Definition 1 of "Defendants", "you," and "your" in that it encompass all "officers," "employees," "attorneys," within the Department of Defense, the United States Marine Corps, and "all related departments and branches," "and any other person acting on behalf of any of them." The Department of Defense is an organization encompassing more than 2 million employees and Plaintiffs' definition seeks to have the Department search the records of every employee for records responsive to these requests including Military Branches that have been severed from this case. Accordingly, Plaintiffs' definition is unreasonable, overbroad, beyond the scope of the litigation, and unduly burdensome. Moreover, Plaintiffs' inclusion of "attorneys" and "and any other person acting on behalf of" Defendants expands this request to material protected by the attorney work product and attorney client privilege, including material from Department of Justice attorneys representing Defendants in this litigation. Such material is privileged and any such search would be unreasonable, overbroad, beyond the scope of the litigation, and unduly burdensome.

4. Defendants object to Plaintiffs' Definition of "Class Member" or "Putative Class Member" because it diverges from the class definition previously determined by the Court. *See* ECF No. 229. Defendants will use the definition provided by the Court.

5. Defendants object to Plaintiffs' Definition 6 of "Communication" as encompassing "telefaxes", "telegrams," "telexes," as these means of communication are not defined in Plaintiffs' Definitions and Defendants are unaware of individuals communicating by these means. Defendants further object to Plaintiffs' Definition 6 as encompassing "telephone calls" and "conversations" to the extent these conversations were not recorded or otherwise memorialized.

5. Defendants object to Plaintiffs' Definition 10 of "Document" and "documents" as encompassing "networks, databases, computer systems (including legacy systems, hardware, and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges, and other storage media, laptops, personal computers, tablets, digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voice-mail)," insofar as data collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts. Defendants further object to Plaintiffs' Definition 10 of "Document" and "documents" as encompassing "drafts," as overbroad, unreasonable, and unduly burdensome in that it solely seeks documents potentially subject to the deliberative process privilege. *See United States Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777 (2021); *Nat'l Wildlife Fed'n v. U.S. Forest Serv.*, 861 F.2d 1114, 1122 (9th Cir. 1988); *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Accordingly, it is unreasonable and unduly burdensome to conduct a search for

drafts—just as it would be unreasonable and unduly burdensome to conduct a search for all communications between an attorney and their client.

6. Defendants object to Definition 15 of “Vaccine Mandate” because, read broadly, it encompasses implementing policies, guidance and individual orders that are not directly challenged in this action. Accordingly, Plaintiffs’ definition results in requests that are unreasonable, overbroad, beyond the scope of the litigation, and unduly burdensome. Defendants will use the term “Vaccine Mandate” to refer to Defendant Secretary Austin’s August 24, 2021 Memorandum, and relevant implementing guidance, such as MARADMIN 462/21, MARADMIN 533/21, MARADMIN 612/21, MARADMIN 733/21, and MARADMIN 464/22.

Instructions.

1. Defendants object to all of the requests and accompanying instructions and definitions to the extent they impose obligations in excess of those imposed by the Federal Rules of Civil Procedure. Defendants will comply with the Federal Rules.

2. Defendants object to the identification of a supposedly “relevant time period” dating back to June 1, 2021, to the extent this time period is beyond the scope of the litigation, unreasonably burdensome and unlikely to yield any information relevant to the litigation. For example, a search for modifications to the Secretary’s August 24, 2021, mandate before the mandate even issued is unreasonable, unduly burdensome, and unlikely to yield any relevant information.

3. Defendants object to Plaintiffs' Instruction 2 in that it purports to require "continuing" and "timely" and "required" supplements without defining those terms. Many of Plaintiffs' Interrogatories seek information or data that may change on a daily or weekly basis. Supplementing responses regularly would be unreasonable, burdensome and disproportionate to the needs of the case. Accordingly, as specified in responses below, Defendants will respond as of a specific date.

4. Defendants object to Plaintiffs' Instruction 3 in that it purports to require Defendants to provide "all knowledge or information available to Defendants" with an expansive definition. The Department of Defense is an organization encompassing more than 2 million employees with offices, installations, and bases worldwide, Defendants will only search locations where it is reasonable and proportional to the needs of the case and not unduly burdensome, in accordance with the Federal Rules of Civil Procedure.

5. Defendants object to Plaintiffs' Instruction 5 insofar as it exceeds Defendants' obligations under the Federal Rules of Civil Procedure, which do not require the Defendants to identify inquiries made, documents or witnesses.

6. Defendants object to Instruction 6 to the extent it imposes obligations to provide information in excess of those imposed by the Federal Rules of Civil Procedure.

Dated: September 23, 2022

BRIAN M. BOYNTON
Principal Deputy Assistant
Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director

Respectfully submitted,

/s/ Amy E. Powell
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Certificate of Service

Undersigned served this document by electronic mail on Plaintiffs' counsel on September 23, 2022.

/s/ Amy Powell

Amy Powell

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

**COLONEL FINANCIAL MANAGEMENT
OFFICER, *et al.*,**

Plaintiffs,

v.

LLOYD AUSTIN, III, in his official capacity
as Secretary of U.S. Dep't of Defense, *et al.*,

Defendants.

Case No. 8:22-cv-01275-SDM-TGW

INTERROGATORY VERIFICATION

I am a medical doctor assigned to the Defense Health Agency. I have read the response to interrogatory 9. I certify, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information, and belief. I verify under penalty of perjury that the foregoing is true and correct.

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Table of Exhibits in Support of Defendants' Motion to Dismiss as Moot

Exhibit Number	Exhibit Description						
1.	Declaration of Chad Schrecengost with attachments (regarding USMC and active duty USMC Plaintiffs) <table border="1"> <tr> <td>1A.</td><td>Rescission Mem.</td></tr> <tr> <td>1B.</td><td>MARADMIN 025/23</td></tr> <tr> <td></td><td></td></tr> </table>	1A.	Rescission Mem.	1B.	MARADMIN 025/23		
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5.	Defs.' Objections and Responses to Plaintiffs' First Set of Interrogatories (appendix omitted) and Verifications.						