

**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)

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)

**DEFENDANTS' NOTICE OF ADDITIONAL
IMPLEMENTATION GUIDANCE**

Pursuant to the Order dated January 10, 2012, ECF No. 268, Defendants hereby notify the Court that the Department of Defense, the Navy, and the Marine Corps have issued additional guidance related to the rescission of the vaccine mandate. On February 24, 2023, the Deputy Secretary of Defense issued a memorandum titled *Guidance for Implementing Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces* (attached as Ex. 1). Among other things, the DoD memorandum confirms that the rescission “rendered

all DoD Component policies, directives, and guidance implementing those vaccination mandates as no longer in effect as of January 10, 2023,” and directs specific procedures for any future vaccination requirements.

On the same day, the Secretary of the Navy issued a memorandum titled *Department of the Navy Actions to Implement Coronavirus Disease 2019 Vaccine Rescission* (attached as Ex. 2). Among other things, it directs the Navy and Marine Corps to review records of current service members who sought an exemption in order to remove adverse actions.

And on February 28, 2023, the Marine Corps issued MARADMIN 109/23 (attached as Ex. 3). Among other things, the MARADMIN includes implementing procedures for removal of adverse actions.

Dated: February 28, 2023

Respectfully submitted,

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Principal Deputy Assistant Attorney
General

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Director, Federal Programs Branch

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/s/ Amy E. Powell
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Exhibit 1



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

FEB 24 2023

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

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

In today's rapidly changing global security environment, vaccines continue to play a critical role in assuring a ready and capable force that is able to rapidly deploy anywhere in the world on short notice. Department leadership is committed to ensuring the safety of our Service members and will continue to promote and encourage vaccinations for all Service members along with continued use of other effective mitigation measures. This includes monitoring changing public health conditions, relevant data, and geographic risks; and updating policies and processes as required to maintain the strategic readiness of our forces and our ability to defend national security interests around the globe.

This memorandum provides additional guidance to ensure uniform implementation of Secretary of Defense Memorandum, "Rescission of the August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces," January 10, 2023 (January 10, 2023 memorandum).

As required by section 525 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, the January 10, 2023 memorandum rescinded the August 24, 2021 and November 30, 2021 Secretary of Defense mandates that members of the Armed Forces be vaccinated against the coronavirus disease 2019 (COVID-19) and thereby also rendered all DoD Component policies, directives, and guidance implementing those vaccination mandates as no longer in effect as of January 10, 2023. These include, but are not limited to, any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.

DoD Component policies, directives, and guidance have not been operative since the January 10, 2023 memorandum was issued, regardless of the status of the DoD Component conforming guidance. DoD Component heads shall formally rescind any such policies, directives, and guidance as soon as possible, if they have not done so already. DoD Component heads shall certify to the Under Secretary of Defense for Personnel and Readiness in writing that these actions have been completed no later than March 17, 2023.

The January 10, 2023 memorandum recognizes that other standing Departmental policies, procedures, and processes 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, such as when vaccination is



OSD001649-23/CMD002077-23

required for travel to, or entry into, a foreign nation. This continues to be the case, in accordance with the guidance below.

The Department's Foreign Clearance Guide will be updated to reflect that DoD personnel must continue to respect any applicable foreign nation vaccination entry requirements, including those for COVID-19. Other than to comply with DoD Foreign Clearance Guidance, DoD Component heads and commanders will not require a Service member or group of Service members to be vaccinated against COVID-19, nor consider a Service member's COVID-19 immunization status in making deployment, assignment, and other operational decisions, absent establishment of a new immunization requirement in accordance with the process described below. It is my expectation that any requests to the Assistant Secretary of Defense for Health Affairs (ASD(HA)) for approval to initiate mandatory immunizations of personnel against COVID-19 will be made judiciously and only when justified by compelling operational needs and will be as narrowly tailored as possible.

Department of Defense Instruction (DoDI) 6205.02, "DoD Immunization Program," July 23, 2019, will be updated as follows to establish a process requiring the Secretary of a Military Department, the Director of a Defense Agency or DoD Field Activity that operates medical clinics, or the Commandant of the Coast Guard, to submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel. Effective immediately, I direct the following action:

Paragraph 2.11. of DoDI 6205.02 is revised by adding a new subsection g., which will read:

"Submit requests to the ASD(HA) for approval to initiate, modify, or terminate mandatory immunizations of personnel and voluntary immunizations of other eligible beneficiaries determined to be at risk from the effects of deliberately released biological agents or naturally occurring infectious diseases of military or national importance."

The Commander of a Combatant Command must submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel through the Joint Staff, consistent with existing processes specified in DoDI 6205.02.

The Director of Administration and Management will make the revision directed above as a conforming change to the version of DoDI 6205.02 published on the DoD Issuances website.

A handwritten signature in black ink, appearing to read "Kathleen H. Holt". The signature is fluid and cursive, with the first name "Kathleen" written in a larger, more prominent script than the last name "Holt".

Exhibit 2



THE SECRETARY OF THE NAVY
WASHINGTON, D.C. 20350-1000

FEB 24 2023

MEMORANDUM FOR COMMANDANT OF THE MARINE CORPS
CHIEF OF NAVAL OPERATIONS
ASSISTANT SECRETARIES OF THE NAVY
GENERAL COUNSEL OF THE NAVY
JUDGE ADVOCATE GENERAL OF THE NAVY

SUBJECT: Department of the Navy Actions to Implement Coronavirus Disease 2019 Vaccine Rescission

Reference: (a) Secretary of Defense Memorandum, "Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces"
(b) ALNAV 009/23, "Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces", January 20, 2023

On 10 January 2023, Secretary of Defense (SECDEF) rescinded the COVID-19 vaccine mandate across the Department of Defense in reference (a). Accordingly, I am canceling all COVID-19 vaccine mandates directed by subordinate echelons of command within the Department of the Navy as of that same date. Further, in reference (b), you were directed to cease separating Sailors or Marines for refusal to receive the COVID-19 vaccination if those members had sought accommodation for religious, medical, or administrative reasons.

For those currently serving Sailors or Marines who previously submitted an accommodation request or appeal solely for exemption from the COVID-19 vaccine, you will consider those requests or appeals closed and return them without action. Such members will remain in service with no adverse action related to the COVID-19 vaccine refusal. For those religious accommodation requests that seek relief from the COVID-19 vaccine in addition to other mandatory vaccines, you will return those requests to the Sailor or Marine and engage with that member to ensure the remaining issues are properly focused and to determine how to proceed. These Sailors and Marines have the option to withdraw their religious accommodation request, or the appeal of that request if previously denied, or submit additional information that might support their request, but they are not required to do so. Requests that have been substantially processed may continue to be processed in those instances in which the Sailor or Marine's remaining issues are clearly understood and ready for resolution, or you may return the request to an earlier stage of the review for further effort to resolve the Sailor or Marine's request, at your discretion.

You will ensure the review of the records of all currently serving Service Members who sought and were subsequently denied an exemption from the COVID-19 vaccination. The service records for those Sailors and Marines so identified shall be reviewed and any adverse information related to their COVID-19 vaccine refusal shall be removed from the service record. All additional records corrections, including those for members who were denied an exemption and were discharged, may be reviewed, at the request of such members or veterans, if he or she chooses to petition the Board for Correction of Naval Records. You are hereby directed to

SUBJECT: Department of the Navy Actions to Implement Coronavirus Disease 2019 Vaccine Rescission

modify future selection board convening orders and precepts to include language ensuring the boards do not consider any adverse information related solely to COVID-19 vaccine refusal in cases in which an accommodation was requested.

The Department of the Navy remains committed to protecting our people. I expect you to clearly communicate the processes and procedures of this memorandum and references (a) and (b) to your Sailors and Marines, and provide any necessary amplifying guidance. The Commandant of the Marine Corps and the Chief of Naval Operations will report back to me within 30 days of the date of this memorandum to provide the process, timeline and status of your reviews.



Carlos Del Toro

cc:

ACMC

VCNO

DUSN

AUDGEN

CHINFO

DMCS

DNS

JAG

DON CIO

NAVIG

NCIS

OCMO

OLA

OSBP

Echelon 1 and 2 commands

Exhibit 3

UPDATE TO MANDATORY COVID-19 VACCINATION REQUIREMENT OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS

Date Signed: 2/28/2023 | MARADMINs Number: 109/23

MARADMINs : 109/23

R 272000Z FEB 23

MARADMIN 109/23

MSGID/GENADMIN/CMC WASHINGTON DC MRA//

SUBJ/UPDATE TO MANDATORY COVID-19 VACCINATION REQUIREMENT OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS//

REF/A/MSGID: MSG/CMC/DTG: 181130Z JAN 23//

REF/B/MSGID: DOC/SECDEF/YMD: 20230110//

REF/C/MSGID: DOC/SECNAV/YMD: 20230224//

REF/D/MSGID: MSG/CMC/DTG: 011400Z SEP 21//

REF/E/MSGID: MSG/CMC/DTG: 061806Z OCT 21//

REF/F/MSGID: MSG/CMC/DTG: 222100Z OCT 21//

REF/G/MSGID: MSG/CMC/DTG: 222015Z DEC 21//

REF/H/MSGID: MSG/CMC/DTG: 132100Z SEP 22//

REF/I/MSGID: DOC/SECDEF/YMD: 20210824//

REF/J/MSGID: DOC/CMC/YMD: 20140614//

REF/K/MSGID: DOC/SECNAV/YMD: 20190328//

REF/L/MSGID: DOC/SECNAV/YMD: 20190415//

REF/M/MSGID: DOC/SECNAV/YMD: 20190627//

REF/N/MSGID: DOC/SECNAV/YMD: 19971119//

REF/O/MSGID: DOC/CMC/YMD: 20210826//

REF/P/MSGID: DOC/CMC/YMD: 20190215//

NARR/REF A IS MARADMIN 025/23, RESCISSION OF COVID-19 VACCINATION REQUIREMENT.

REF B IS OSD MEMO, RESCISSION OF 24 AUG 2021 CORONAVIRUS DISEASE 2019 VACCINATION REQUIREMENT. REF C IS SECNAV MEMO, DEPARTMENT OF NAVY ACTIONS TO IMPLEMENT CORONAVIRUS DISEASE 2019 VACCINE RESCISSION. REF D IS MARADMIN 462/21, MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF E IS MARADMIN 533/21, SUPPLEMENTAL GUIDANCE TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF F IS

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MARADMIN 612/21, SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF G IS MARADMIN 733/21, CHANGE 1 TO SUPPLEMENTAL GUIDANCE (2) TO MANDATORY COVID-19 VACCINATION OF MARINE CORPS ACTIVE AND RESERVE COMPONENTS. REF H IS MARADMIN 464/21, INTERIM GUIDANCE REGARDING MARINES REQUESTING RELIGIOUS ACCOMMODATION FROM COVID-19 VACCINATION REQUIREMENTS. REF I IS OSD MEMO, MANDATORY CORONAVIRUS DISEASE 2019 VACCINATION OF DEPARTMENT OF DEFENSE SERVICE MEMBERS. REF J IS MCO P1400.32D W/CH 1-2, MARINE CORPS PROMOTION MANUAL, VOLUME 2, ENLISTED PROMOTIONS. REF K IS SECNAVINST 1420.3, DEPARTMENT OF THE NAVY COMMISSIONED OFFICER PROMOTION PROGRAM. REF L IS SECNAVINST 1412.6M, PROMOTION OF OFFICERS TO THE GRADE OF LIEUTENANT (JUNIOR GRADE) IN THE NAVY AND TO THE GRADE OF FIRST LIEUTENANT IN THE MARINE CORPS. REF M IS SECNAVINST 1412.11, MARINE CORPS WARRANT OFFICER PROMOTION AND CONTINUATION AND LIMITED DUTY OFFICER CONTINUATION PROCEDURES. REF N IS SECNAVINST 5420.193, BOARD FOR CORRECTION OF NAVAL RECORDS. REF O IS MCO 5800.16, LEGAL SUPPORT AND ADMINISTRATION MANUAL. REF P IS MCO 1900.16 W/CH 2, MARINE CORPS SEPARATIONS MANUAL.//

POC/MANPOWER AND RESERVE AFFAIRS/HQMC/M&RA/SECRETARIAT//EMAIL:

DC.MRA.SECRETARIAT.OFFICE@USMC.MIL//

POC/MARINE CORPS COVID-19 CELL/HQMC/PP&O/MCCC/TEL: 703-571-1054/ EMAIL:

SMB_HQMC_MCCAT@USMC.MIL//

POC/JUDGE ADVOCATE DIVISION/HQMC/MILITARY PERSONNEL LAW BRANCH/ TEL: 703-693-8404/EMAIL: JPL@USMC.MIL//

GENTEXT/REMARKS/1. This MARADMIN supplements reference (a) and provides implementing guidance related to rescission of the COVID-19 vaccination requirement.

2. Background. On 10 January 2023, the Secretary of Defense rescinded the requirement that members of the armed forces be vaccinated against COVID-19.

Per ref (c), SECNAV issued additional guidance with required administrative actions.

3. Execution. Pursuant to references (a), (b), and (c), the Marine Corps will no longer require Marines to receive the COVID-19 vaccine as a matter of service policy.

3.a. Religious Accommodation Requests

3.a.1. All pending requests for religious accommodation solely for the COVID-19 vaccine, or appeals of denials of such requests, will be closed without action.

3.a.2. All pending requests for religious accommodation for the COVID-19 vaccine and another mandatory vaccine, or appeals of denials of such requests, will be returned to the requestor with the option to (1) withdraw the request or appeal, (2) provide additional information for consideration, or (3) continue processing as originally submitted.

3.b. Separations

3.b.1. Separation authorities for enlisted administrative separations will

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terminate cases for Marines who submitted a request for an administrative exemption, medical exemption, or religious accommodation with a memorandum for the record added to the Command Legal Action (CLA) module in Marine Online (MOL), citing this MARADMIN as authority. Adverse material related to the COVID-19 vaccine requirement shall not be included in the Marine's official military personnel file (OMPF). Adverse material includes, but is not limited to, formal counseling entries for refusing the vaccine, entries related to administrative processing, promotion restriction or delay for refusing the vaccine, adverse fitness report remarks related to vaccine refusal, and memorandum terminating administrative separation proceedings. A copy of the memorandum shall be provided to the Marine.

3.b.2. For officers who submitted a request for an administrative exemption, medical exemption, or religious accommodation, HQMC (JPL) will close the Officer Disciplinary Notebook (ODN) cases and notify the officers the cases are closed. Adverse material will not be placed in officers' OMPFs.

3.b.2.a. Manpower Management (MM), in coordination with HQMC (JPL), will identify officers who have been held past their end of active service (EAS) date and establish new EAS dates as soon as practicable, if no other reason for personnel hold exists (i.e., other misconduct or substandard performance).

3.b.3. Marines who are otherwise eligible may request voluntary retirement or resignation. Active Component Marines may also request transition into the Reserve Component.

3.c. Promotion

3.c.1. For enlisted Marines (sergeants and below) placed in promotion restriction and who submitted a request for an administrative exemption, medical exemption, or religious accommodation, commanders shall remove the "not recommended" for promotion from the MOL Junior Enlisted Performance Evaluation System (JEPES) module and/or Marine Corps Total Force System (MCTFS). If the Marine is otherwise qualified for promotion, commanders shall submit a remedial promotion request to CMC (MMPR-2). Send requests to enlistedpromotions@usmc.mil with the subject line "remedial promotion request due to cancellation COVID-19 vaccine requirement."

3.c.2. Staff noncommissioned officers (SNCOs) whose promotion has been delayed may be eligible for delivery of promotion by following the procedures in reference (j). Commands will submit requests for delivery of promotion and include endorsements through the first general officer in the Marine's chain of command stating (1) whether the sole reason for the promotion delay was because the Marine refused to receive the COVID-19 vaccine, (2) whether the Marine submitted a request for an administrative exemption, medical exemption, or religious accommodation, and (3) whether the Marine remains fully qualified for promotion.

3.c.3. Officers whose promotions were delayed or withheld related to the COVID-

19 vaccine will be notified by HQMC (JPL) of their opportunity to submit matters through the chain of command stating (1) whether the sole reason for the promotion delay was because the Marine refused to receive the COVID-19 vaccine, (2) whether the Marine submitted a request for an administrative exemption, medical exemption, or religious accommodation, and (3) whether the Marine remains fully qualified for promotion. References (k) through (m) govern officer promotion processes.

3.d. Retention

3.d.1. Enlisted Marines who submitted a request for an administrative exemption, medical exemption, or religious accommodation are no longer restricted to a 12-month extension.

3.d.2. Officers who have not had the opportunity to screen for career designation may request to have a new EAS date established to provide the officer the opportunity to screen on the next officer retention board.

3.e. Assignments

3.e.1. Marines may execute permanent change of station (PCS) and permanent change of assignment (PCA) orders, other official travel, and transfer between Reserve Component categories.

3.e.2. Marines screened by a Marine Corps non-statutory assignment board (i.e., command screening, education selection, etc.) and selected for assignment but not able to execute PCS or PCA orders, may screen on future assignment boards as long as the Marine meets all eligibility requirements for the board.

3.f. Record Administration

3.f.1. DC M&RA will direct an audit to search for adverse information in the OMPFs of all currently serving members who requested religious accommodations to the COVID-19 vaccine mandate. Adverse matters will be removed as necessary.

3.f.2. Marines who submitted requests for a medical or administrative exemption may submit written requests to DC M&RA, through their chain of command, requesting removal of adverse material from their OMPF.

3.f.3. Separated Marines may petition the Board for Corrections of Naval Records to request removal of adverse matters.

3.f.4. Command Individual Risk and Resiliency Assessment System (CIRRAS).

Commands shall remove CIRRAS entries for Marines if related solely to the COVID-19 vaccine.

3.g. Reaccessions

3.g.1. Separated Marines who meet all other eligibility requirements may submit a request through a Prior Service Recruiter (PSR) to affiliate with the Reserve Component or an Active Component recruiter to access with the Active Component in accordance with the references.

3.g.2. Prior service applicants who were separated with a reenlistment (RE) code preventing reaccession due to COVID-19 vaccine refusal, and requesting reaccession into the Reserve or Active Component, must provide documentation

4. This MARADMIN is applicable to the Marine Corps Total Force.
5. This MARADMIN remains in effect until canceled.
6. Release authorized by Lieutenant General J. F. Glynn, Deputy Commandant for Manpower and Reserve Affairs.//