

**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 NAVY IMPLEMENTATION

Defendants hereby notify the Court that the Navy has issued additional guidance related to the rescission of the vaccine mandate. On January 20, 2023, the Navy issued ALNAV 009/23 (attached as Ex. 1), providing additional implementation guidance. And on February 15, 2023, the Navy issued NAVADMIN 038/23 (attached as Ex. 2), updating its standard operating guidance to remove the distinction between vaccinated and unvaccinated service members when making assignment and deployment decisions. The Navy and Marine Corps both anticipate additional guidance.

Dated: February 22, 2023

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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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Counsel for Defendants

Exhibit 1

CLASSIFICATION: UNCLASSIFIED//
ROUTINE
R 201839Z JAN 23 MID20080671031U
FM SECNAV WASHINGTON DC
TO ALNAV
INFO SECNAV WASHINGTON DC
CNO WASHINGTON DC
CMC WASHINGTON DC
BT
UNCLAS

ALNAV 009/23

MSGID/GENADMIN/SECNAV WASHINGTON DC/-/JAN//

SUBJ/RESCISSION OF COVID-19 VACCINATION REQUIREMENT FOR MEMBERS OF THE ARMED FORCES//

REF/A/DOC/SECDEF/10JAN23//
REF/B/DOC/ALNAV 062/21//

NARR/REF A IS SECDEF MEMO RESCISSION OF AUGUST 24, 2021 AND NOVEMBER 30, 2021 CORONAVIRUS DISEASE 2019 VACCINATION REQUIREMENTS FOR MEMBERS OF THE ARMED FORCES. REF B IS ALNAV 062/21 2021-2022 DEPARTMENT OF NAVY MANDATORY COVID-19 VACCINATION POLICY OF 30 AUG 21//

RMKS/1. Per reference (a), this message announces the rescission of the Coronavirus Disease 2019 (COVID-19) vaccination requirement for members of the Armed Forces. As a result, reference (b) is hereby canceled.

2. COVID-19 vaccines have proven to be safe, effective, and life-saving. I am confident that our high vaccination percentage across the Department of the Navy (DON) has both saved lives, and prevented hospitalizations across our entire force.

3. The Navy and Marine Corps are inherently expeditionary forces in readiness, and my expectation continues to be that all Sailors and Marines be worldwide deployable. To defend the nation, we need a healthy and ready force, this means a Navy and Marine Corps that is ready to deploy. Having credible, capable forces requires the DON to minimize addressable risks - contagious disease is a threat to our fighting forces. We will continue to consider medical readiness, of which vaccination plays a key role, in all appropriate settings. All commanders have the responsibility and authority to maintain military readiness, unit cohesion, good order and discipline, and the health and safety of their commands.

4. Because reference (b) is now canceled, the Services shall cease any ongoing reviews of current Service Members' religious, administrative, or medical accommodation requests solely for exemption from the COVID-19 vaccine or appeals of denials of such requests. No currently serving Sailor or Marine shall be separated solely on the basis of their failure to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds.

5. We will continue to promote and encourage the COVID-19 vaccination for everyone. As with all of our vaccinations, healthcare providers will continue to medically screen for contraindications. I thank you for your selfless devotion to your colleagues, military and civilian, throughout this pandemic.

6. Released by the Honorable Carlos Del Toro, Secretary of the Navy.//

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ROUTINE
R 152142Z FEB 23 MID600052759268U
FM CNO WASHINGTON DC
TO NAVADMIN
INFO SECNAV WASHINGTON DC
CNO WASHINGTON DC
BT
UNCLAS

NAVADMIN 038/23

MSGID/NAVADMIN/CNO WASHINGTON DC/CNO/FEB//

SUBJ/U.S. NAVY COVID-19 STANDARDIZED OPERATIONAL GUIDANCE 8.0//

REF/A/MSG/CNO/191436ZOCT22//
REF/B/MSG/SECNAV/201839ZJAN23//
REF/C/DOC/USD(PR)/30JAN2023//
REF/D/MSG/CNO/041827ZAUG21//
REF/E/OPNAVINST F3100.6K/10AUG21//

NARR/ REF A is NAVADMIN 234/22, U.S. NAVY COVID-19 STANDARDIZED OPERATIONAL GUIDANCE 7.0.

REF B is ALNAV 009/23 RESCISSION OF COVID-19 VACCINATION REQUIREMENT FOR MEMBERS OF THE ARMED FORCES.

REF C is USD P&R CONSOLIDATED DEPARTMENT OF DEFENSE CORONAVIRUS DISEASE 2019 FORCE HEALTH PROTECTION GUIDANCE available at <https://www.defense.gov/Spotlights/Coronavirus-DOD-Response/Latest-DOD-Guidance/> (Select "Health Protection Guidance" tab from the site menu on the left).

REF D is NAVADMIN 165/21, SOVEREIGN IMMUNITY POLICY.

REF E is OPNAVINST F3100.6K, SPECIAL INCIDENT REPORTING PROCEDURES.

POC/OPNAV/COVID CELL, (703) 571-2822//EMAIL:
OPNAV_COVID_CRISIS_RESPONSE_CELL@US.NAVY.MIL.

RMKS/1. This NAVADMIN provides updated COVID-19 Standardized Operational Guidance (SOG 8.0), and rescinds and replaces reference (a) in its entirety, including the requirement that all personnel assigned to operational Navy units be fully vaccinated against COVID-19. Reference (b) rescinded the COVID-19 vaccination requirement for Department of the Navy Service members. Under no circumstances shall a Commander mandate that any Navy Service member receive the COVID-19 vaccination.

2. Steady State COVID-19 Posture. Commanders at all levels are directed to balance operational employment with the health and safety of their units in accordance with current USD (P&R) Force Health Protection Guidance (reference (c)). Commanders and medical providers are also encouraged to consider the COVID-19 Operational Risk Management Matrix for Deployments (available at <https://media.defense.gov/2023/Feb/13/2003160523/-1/-1/0/BUMED%20NAVY%20COVID-19%20OPERATIONAL%20RISK%20MATRIX.PDF>) as a tool to evaluate risks to mission, force, and individuals.

3. Mission Risk. Commanders should seek advice from medical providers regarding medical readiness of personnel to inform deployment and other operational mission decisions. COVID-19 vaccination status shall not be a consideration in assessing individual service member suitability for

deployment or other operational missions. Commanders retain the authority to implement Health Protection Measures at any time or manner deemed necessary in support of operational safety and effectiveness, and where necessary, to restrict movement of service members in order to comply with host nation quarantine regulations. Geographic Navy Component Commanders (GNCC) will coordinate with country teams and local authorities to identify any host nation requirements related to COVID-19 testing or vaccination status that may restrict or create conditions-based criteria for liberty.

4. Sovereign Immunity. U.S. Government policy protects the sovereign immunity of warships, naval auxiliaries, and aircraft, including protecting crew information to the maximum extent possible. Within the context of COVID-19, host nations may request or require crew or ship information that exceeds that authorized by U.S. policy or international law.

4.a. GNCCs will assess and determine in advance any host nation quarantine regulation requirements that may challenge U.S. sovereign immunity policy (see reference (d) for additional guidance). In all cases, GNCCs shall authorize the minimum information necessary to meet operational requirements. The Navy Declaration of Health (NAVMED 6210/3) is the only authorized form for providing health information to foreign officials. If required by the host nation, the GNCC may authorize Commanders to include on the NAVMED 6210/3 or on a separate U.S. generated document accompanying the NAVMED 6210/3 (e.g., Command Letterhead) that their unit is 100% vaccinated, those disembarking have tested negative within the required timeframe, or that those disembarking have received a COVID-19 vaccine booster. GNCC authority to approve these COVID-19 related exceptions to sovereign immunity policy may be delegated no further than the numbered Fleet Commander.

4.b. Exceptions to Policy (ETP). Where host nation quarantine regulations create requirements outside of the exceptions listed in paragraph 4.a, GNCCs shall determine, in accordance with reference (d), whether such requirements constitute a potential waiver of sovereign immunity. Any action the GNCC determines may constitute a waiver of sovereign immunity must be coordinated with OPNAV N3N5 for approval no later than five days ahead of need. To avoid setting precedence beyond COVID-19, ETPs will be messaged to the host nation as explicitly linked to the pandemic. Requests shall include justification for port selection, host nation mitigation and testing requirements, alternate port options, impact to mission if the request is denied, medical, legal, collection and privacy risk, and feedback from country team coordination. ETP notifications and requests may be sent via record message traffic or to the OPNAV N3N5 Legal and Oceans Policy Advisor.

4.c. Guidance for Commanders. Per GNCC direction, Commanders shall comply with domestic and foreign quarantine regulations for port entry and document compliance on NAVMED 6210/3. Absent GNCC approval in advance, Commanders will not submit to host nation COVID-19 testing nor provide individual or collective medical data, copies of health records, nor any supplementary or locally-demanded health forms, and shall not grant access to ship or crew health records or allow the same to be searched or inspected by host nations. If compelling circumstances require a Commander to acquiesce to additional host nation requirements without obtaining an ETP or GNCC concurrence (e.g., personnel emergency, weather avoidance), report the event and circumstances as soon as practicable to OPNAV N3N5 via the chain of command.

5. Reporting Procedures. Individual COVID-19 cases do not need to be reported. Medical providers shall report pandemic or infectious disease related medical evacuations, hospitalizations, and deaths via Disease Reporting System, internet (DRSi). OPREP-3 Navy Blue messages are required for significant shipboard operational impacts due to pandemic or infectious disease. Format messages per reference (e).

6. Released by VADM E. H. Black, III, Deputy Chief of Naval Operations for Operations, Plans and Strategy, OPNAV N3N5.//

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