

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO – Cincinnati Division**

HUNTER DOSTER, et. al. : Case No.: 1:22-cv-00084
Plaintiff :
v. :
Hon. FRANK KENDALL, et. al. :
Defendants :

PLAINTIFFS’ NOTICE OF SUBSEQUENT FACTUAL DEVELOPMENTS

On March 13, 2022, the Air Force Surgeon General denied the religious accommodation appeal of Major Mosher, one of the Plaintiffs herein (Exhibit 1), and on March 18, 2022, that denial was transmitted to her (Exhibit 2), along with an order to vaccinate or face adverse action. Further, Lt. Col. Edward Stapanon received the denial of his religious accommodation request on March 8, 2022 (Exhibit 3), and took an appeal therefrom to the Surgeon General of the Air Force on March 13, 2022 (Exhibit 4). Finally, Lt. Connor McCormick received a denial of his religious accommodation request on March 1, 2022 (Exhibit 5), and took an appeal therefrom to the Surgeon General of the Air Force on March 13, 2022 (Exhibit 6).

Respectfully submitted,

/s/ Christopher Wiest
Christopher Wiest (OH 0077931)
Chris Wiest, Atty at Law, PLLC
25 Town Center Blvd, Suite 104
Crestview Hills, KY 41017
513/257-1895 (c)
859/495-0803 (f)
chris@cwiestlaw.com

/s/Aaron Siri
Siri Glimstad, LLP
Aaron Siri (admitted PHV)
Elizabeth Brehm (admitted PHV)

Wendy Cox (PHV pending)
200 Park Avenue, 17th Floor
New York, NY 10166
(212) 532-1091 (v)
(646) 417-5967 (f)
aaron@sirillp.com

/s/Thomas Bruns
Thomas Bruns (OH 0051512)
4750 Ashwood Drive, STE 200
Cincinnati, OH 45241
tbruns@bcvalaw.com
513-312-9890
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing by CM/ECF, this 24 day of March, 2022.

/s/ Christopher Wiest
Christopher Wiest (OH 0077931)



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

MAR 13 2022

MEMORANDUM FOR MAJOR HEIDI J. MOSHER

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

SUBJECT: Decision on Religious Accommodation Appeal

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

The Department of the Air Force has a compelling government interest in requiring you to comply with the requirement for the COVID-19 immunization because preventing the spread of disease among the force is vital to mission accomplishment. In light of your circumstances, your healthcare role requires frequent, close contact with multiple individuals, which would significantly impact mission accomplishment if you, your colleagues, or your patients are exposed or actively infected. Your duties are not fully achievable via telework or with adequate distancing. In addition, your deployable position may require you to deploy in a time-frame in which you cannot attain fully immunized status prior to departure and others may need to deploy in your place. Your status as a supervisor was also taken into consideration. While some of these duties may be completed remotely, institutionalizing remote completion of those duties permanently would be detrimental to readiness, good order and discipline, and unit cohesion. We must be able to leverage our forces on short notice as evidenced by recent worldwide events. Your health status as a non-immunized individual in this dynamic environment, and aggregated with other non-immunized individuals in steady state operations, would place health and safety, unit cohesion, and readiness at risk. Foregoing the above immunization requirement would have a real adverse impact on military readiness and public health and safety. There are no less restrictive means available in your circumstance as effective as receiving the above immunization in furthering these compelling government interests.

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

A handwritten signature in cursive script that reads "Robert Miller".

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

----- Forwarded message -----

From: **ANDINO, RAFAEL V Col USAF AFRC 94 ASTS/CC** <rafael.andino@us.af.mil>

Date: Fri, Mar 18, 2022, 6:06 PM

Subject: FW: AF/SG's Adjudication of Airmen's appeal 94 AW

To: MOSHER, HEIDI J Maj USAFR AFRC 94 ASTS/SGN <heidi.mosher.1@us.af.mil>, Heidi Mosher <heidimosher14@gmail.com>

Cc: 94 ASTS/CSS <94asts.css@us.af.mil>, BELCHER, ANDREW B Lt Col USAR AFRC 94 ASTS/SGN <andrew.belcher@us.af.mil>, CAMPOS, NATALIE M Maj USAF AFRC 94 AW/CCE <natalie.campos@us.af.mil>, ORTIZGUZMAN, ANTONIO J Lt Col USAF AFRC 94 AW/HC <antonio.ortizguzman@us.af.mil>

Maj Mosher –

Attached is the denial of your COVID 19 religious exemption appeal. As stated below, you now have 5 days to decide on one of three options:

- 1) Take the vaccine
- 2) Submit a retirement request if eligible
- 3) Refuse vaccine in writing. Any refusal to receive the COVID-19 vaccine, absent an approved exemption, may be punishable under the Uniform Code of Military Justice (UCMJ). Continued refusal will result in involuntary reassignment to the IRR.

Please let us know your decision ASAP so we can respond appropriately. Thank you.

V/r,

Rafael V. Andino, Col, USAF

Commander

94th Aeromedical Staging Squadron

1175 Fourth Street; Bldg 550

Dobbins ARB, GA 30069

625-4258 (DSN)

678-655-4258 (COMM)

770-598-6293 (MOB)

rafael.andino@us.af.mil

From: AFRC/CC Workflow <afrc.ccworkflow@us.af.mil>

Sent: Friday, March 18, 2022 12:29 PM

To: MAGNUSSON, CARL J Col USAFR AFRC 94 AW/CC <carl.magnusson@us.af.mil>

Cc: LARSON, BRET C Maj Gen USAF AFRC 22 AF/22AF/CC <bret.larson@us.af.mil>

Subject: AF/SG's Adjudication of Airmen's appeal 94 AW

Col Magnusson,

The attached documents contain AF/SG's adjudication of your Airmen's Religious Accommodation Request appeals.

This is being communicated to you directly for the adjudication to reach your member(s) as soon as possible. Notification should be made in person, via telephone, or through official government e-mail. A certified letter is acceptable if other forms of communication are ineffective. In addition to member notification a copy of the memo should be sent to the member's servicing FSS to ensure a copy of the final decision is included in the member's automated personnel records.

If the appeal is a denial, the member will have **five (5) calendar days** to do one of the following: 1) take the vaccine, 2) submit retirement request if eligible 3) refuse vaccine in writing. Any refusal to receive the COVID-19 vaccine, absent an approved exemption, may be punishable under the Uniform Code of Military Justice (UCMJ). Continued refusal will result in involuntary reassignment to the IRR.

I encourage you to communicate with your respective NAF/CC and my vaccine OPT Team Lead, Brig Gen Preston McFarren if you have any questions concerning the RAR process.

Thank you for what you are doing during these challenging times.

RICHARD W. SCOBEE

Lieutenant General, USAF

Commander



**DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

4 March 2022

MEMORANDUM FOR LIEUTENANT COLONEL EDWARD J. STAPANON III

FROM: HQ AETC/CC
1 F Street, Suite 1
JBSA Randolph TX 78150-4324

SUBJECT: Decision Regarding Religious Accommodation Request

I have received your accommodation request for exemption from the COVID-19 immunization requirement based on your religious beliefs. After careful consideration of the specific facts and circumstances, I deny your request for exemption from Air Force COVID-19 immunization standards based on the recommendations from your chain of command and the Religious Resolution Team (any other religious exemption that you seek must be addressed in a separate, specific request). A copy of this decision memorandum will be placed in your automated personnel records.

I thoroughly reviewed your request, examined the comments and recommendations from the functional and legal experts, and considered the impact on you personally, the Airmen with whom you work and the mission. I find that your request, while sincere, does not meet the threshold necessary for an exemption.

First, the Air Force's compelling government interest outweighs your individual belief and no lesser means satisfy the government's interest. For the past 18 months, the Air Education and Training Command fought through the COVID pandemic by implementing several extreme measures and processes to ensure the health, safety and welfare of our Airmen. These measures included maximum telework, workplace occupancy limitations, extreme adjustments to Basic Military Training to include multiple training sites and modified training, and remote learning for most Professional Military Education to name just a few actions. Similar measures for the medical community included telehealth consultations and reduced in-person appointments. Despite these efforts, the Air Force remained in this posture until vaccinations became available and administered, and only then did our pandemic numbers begin to decrease. Continuing to implement these drastic measures detracts from the readiness, efficiency, good order and discipline of the force, and is unsustainable as the long-term solution.

When I reviewed your request, I used the same method as I did for requests from other similarly situated individuals, taking into account factors such as your duty position and rank. In your particular position as an Assistant Director of Operations and T-38C Introduction to Fighter Fundamentals Instructor Pilot, there is a compelling government interest for you to receive the vaccine. Specifically, you are required to have close contact with students and other personnel in order to accomplish your mission. An exemption will detract from good order and discipline by creating the perception that there are different standards for those in leadership roles. Unit

cohesion will also be negatively impacted as your ability to train and mentor Airmen will be limited. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas. Even if you are permitted to travel on official orders with an exemption, your ability to perform the mission may be limited due to restriction of movement and isolation requirements that are inapplicable to vaccinated members. Finally, failure to receive the vaccine increases the risk to your own personal health and safety and that of those around you.

Lesser means to accomplish the government's compelling interest are insufficient. You cannot train your students via teleworking. Additionally, you cannot perform as effectively as a leader if you are required to socially distance from your students. Finally, mask wear is not permitted while flying as it will interfere with your equipment and ability to communicate.

Upon receipt of this decision, I expect you will take every action necessary to comply with the requirement for COVID-19 immunization as soon as possible. You have five (5) calendar days from receipt of this memorandum to accomplish one of the following: (1) receive an approved COVID-19 vaccination and provide proof of vaccination to your commander; (2) submit for retirement or separation; or (3) appeal this decision to the Air Force Surgeon General. Should you elect to appeal this decision, follow the procedures in AFI 52-201, *Religious Freedom in the Department of the Air Force*, Chapter 6. If you appeal this decision, submit your appeal to your commander in writing. Include in your appeal any additional matters you wish for the AF/SG to consider. Your commander will forward your appeal and any additional matters to HQ AETC/SG for further processing.

If you have any questions, contact HQ AETC/HC at 210-652-3822 (DSN 487), or email at aetc.hc@us.af.mil.



MARSHALL B. WEBB
Lieutenant General, USAF
Commander

cc:
Member's Unit
Member's Servicing FSS

1st Ind, LT COL EDWARD J. STAPANON III

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

I have received AETC/CC's decision regarding my request for a religious based exemption from the COVID-19 vaccine on 8 March 2022 (date). I understand that I have five (5) calendar days to accomplish one of the following:

- a. Receive an approved COVID-19 vaccine and provide proof of vaccination to my commander;
- b. Apply for retirement or separation;
- (c)** Appeal this decision in writing to the Air Force Surgeon General.

STAPANON.EDWARD
D.J.III.1005687744

Digitally signed by
STAPANON.EDWARD.J.III.1005
687744
Date: 2022.03.08 10:26:04 -06'00'

EDWARD J. STAPANON III, Lt Col, USAF

2d Ind, LT COL EDWARD J. STAPANON III

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

Five calendar days have elapsed since I received AETC/CC's decision denying my request for a religious based exemption from the COVID-19 vaccine. I have chosen to:

_____ Receive an approved COVID-19 vaccine on _____ (date) and provide proof of vaccination to my commander on _____ (date).

_____ Apply on _____ (date) for retirement or separation.

ES Appeal this decision in writing on **13 Mar 22** (date) to the Air Force Surgeon General.

_____ Refuse to comply with this order.

STAPANON.EDWARD
RD.J.III.1005687744

Digitally signed by
STAPANON.EDWARD.J.III.1005687
744
Date: 2022.03.13 14:49:43 -05'00'

EDWARD J. STAPANON III, Lt Col, USAF



NEW YORK | LOS ANGELES | MIAMI
PHOENIX | DETROIT | DENVER | AUSTIN

700 S Flower Street, Suite 1000, Los Angeles, CA 90017
sirillp.com | P: (213) 376-3739 | F: (646) 417-5967

March 13, 2022

Lieutenant General Robert I. Miller
Air Force Surgeon General
1670 Air Force Pentagon
Washington, DC 20330-1670

Re: Lieutenant Colonel Edward Stapanon, USAF

Dear Lieutenant General Miller:

We represent Lieutenant Colonel Edward Stapanon (“**Lt Col Stapanon**”), and this letter serves as Lt Col Stapanon’s formal appeal to the denial of his religious accommodation request to the COVID -19 vaccines.

Lt Col Stapanon has sincerely held Christian beliefs that conflict with receiving the COVID-19 vaccines.¹ Because of these sincerely held beliefs, he is entitled to the exemption and again asks the Department of the Air Force (the “**DOAF**”) for religious accommodation.

Lt Col Stapanon, through counsel, received his denial letter by email on March 8 2022. He had five calendar days to submit his appeal. Lt Col Stapanon’s request is timely.

I. STATEMENT OF FACTS

On September 21, 2021, Lt Col Stapanon submitted a request for religious accommodation from the COVID-19 vaccinations.² On March 8, 2022, Lt Col Stapanon was notified by his commanding officer that the DOAF denied his request for religious

¹ Attachment A (Request for Religious Accommodation).

² Id.

accommodation concerning the COVID-19 vaccines.³ Pursuant to his right to appeal, he now appeals this unlawful denial.

II. THE DOAF COVID-19 VACCINE MANDATE SUBSTANTIALLY BURDENS LT COL STAPANON'S SINCERELY HELD RELIGIOUS BELIEF

The DOAF agrees that Lt Col Stapanon has a sincere religious belief preventing him from receiving the current COVID-19 vaccines.⁴

I thoroughly reviewed your request, examined the comments and recommendations from the functional and legal experts, and considered the impact on you personally, the Airmen with whom you work and the mission. I find that your request, while sincere, does not meet the threshold necessary for an exemption.

Thus, the only issue is whether DOAF can accommodate Lt Col Stapanon without undermining its mission. The applicable test is set forth by the Religious Freedom Restoration Act (the “**RFRA**”) and the First Amendment. Congress established the RFRA in 1993 to restore a compelling interest standard “in all cases where free exercise of religions is substantially burdened.”⁵ RFRA imposes strict scrutiny on all federal government actions that “substantially burden a person’s exercise of religion.”⁶ The RFRA applies to all federal and state law, and includes the COVID-19 vaccine mandate. The First Amendment’s Free Exercise Clause prohibits the government from enacting non-neutral and non-generally applicable laws or policies unless they are narrowly tailored to a compelling government interest.

Also applicable is the Department of Defense Instruction (“**DODI**”) 1300.17, stating that:

[a]ccommodation includes excusing a Service member from an otherwise applicable military policy, practice, or duty. In accordance with RFRA, if such a military policy, practice, or duty substantially burdens a Service member’s exercise of religion, accommodation can only be denied if:

³ Attachment B (Initial Denial Letter signed by Lieutenant General, Marshall B. Webb).

⁴ Attachment B.

⁵ 42 U.S.C. 2000bb *et seq.*

⁶ 42 U.S.C. § 2000bb-1(b).

(1) The military policy, practice, or duty is in furtherance of a compelling governmental interest; and

(2) It is the least restrictive means of furthering that compelling governmental interest.

Pursuant to RFRA, First Amendment to the Constitution of the United States, and the DODI, the DOAF's denial of Lt Col Stapanon's religious exemption is a substantial burden on the free exercise of his religion and violates all applicable law.

As acknowledged by the DOAF, Lt Col Stapanon has sincerely held Christian beliefs and convictions contrary to taking the COVID-19 vaccines. Yet, the DOAF is forcing Lt Col Stapanon to choose between violating those sincerely held religious beliefs or forfeiting his livelihood and ability to serve this country. If Lt Col Stapanon does not receive the COVID-19 vaccination, the DOAF will end his 21-year career. But, on the other hand, if he receives the vaccination, he will violate his sincerely held religious beliefs. The U.S. District Court in the Northern District of Texas recently granted a preliminary injunction to Plaintiffs in *U.S. Navy Seals v. Biden*⁷, who are similarly situated to Lt Col Stapanon. In *Navy Seals*, the Court found that the government had substantially burdened the Navy Seals' religious beliefs, and "[t]he substantial burden is especially true when the government imposes a choice between one's job and one's religious belief."⁸ Like the Navy Seals, the DOAF is forcing Lt Col Stapanon to choose between continuing his service in the military or violating his sincerely held religious beliefs. The DOAF's vaccination mandate clearly places a substantial burden on Lt Col Stapanon's religious beliefs.

III. THE DEPARTMENT OF DEFENSE DOES NOT HAVE A COMPELLING INTEREST THAT JUSTIFIES BURDENING LT COL STAPANON'S RELIGIOUS BELIEFS

Because the mandate is a substantial burden on Lt Col Stapanon's religious freedom, it can only deny accommodation if the mandate is in furtherance of a compelling interest. In its denial letter dated March 4, 2022, the DOAF contends a variety of compelling interests for the purpose of denying Lt Col Stapanon's request for religious accommodation.⁹

⁷ *U.S. Navy Seals 1-26, et al., v. Biden, et al.*, 4:21-cv-01236-O, 2022 U.S. Dist. LEXIS 2268 (N.D. Tex. Jan. 3, 2022) (order granting preliminary injunction).

⁸ *Id.*

⁹ Attachment B.

When I reviewed your request, I used the same method as I did for requests from other similarly situated individuals, taking into account factors such as your duty position and rank. In your particular position as an Assistant Director of Operations and T-38C Introduction to Fighter Fundamentals Instructor Pilot, there is a compelling government interest for you to receive the vaccine. Specifically, you are required to have close contact with students and other personnel in order to accomplish your mission. An exemption will detract from good order and discipline by creating the perception that there are different standards for those in leadership roles. Unit cohesion will also be negatively impacted as your ability to train and mentor Airmen will be limited. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas. Even if you are permitted to travel on official orders with an exemption, your ability to perform the mission may be limited due to restriction of movement and isolation requirements that are inapplicable to vaccinated members. Finally, failure to receive the vaccine increases the risk to your own personal health and safety and that of those around you.

The DOAF appears to be grasping at straws at this point in its attempt to justify some sort of compelling interest. Since the beginning of the DOAF COVID mandate, the DOAF's compelling interest has notably changed from reducing transmission and preserving the health and readiness of the force, to now using its policies to self-impose restrictions and rules that have no bearing on COVID-19 transmission and the health and readiness of the force.

Instead, the Air Force attempts to justify its trampling over Lt Col Stapanon's religious beliefs by justifying their RFRA violation stating among other things, "[A]n exemption will detract from good order and discipline by creating the perception that there are different standards for those in leadership roles."¹⁰ This statement alone shows the DOAF's misunderstanding of the law. Of course there is a "different standard." The "standard" is called religious freedom and exercise, and it is protected by the First Amendment and RFRA.

In a final attempt to justify some sort of compelling interest in its initial denial, the DOAF states, "[F]inally, failure to receive the vaccine increases the risk to your own personal health and safety and that of those around you."¹¹ However, doing so through mandated COVID-19 vaccination is not, because the COVID-19 vaccines are not effective against the Omicron variant of the SARS-CoV-2 virus. Therefore, the last stated compelling interest of decreasing the risk to Lt Col Stapanon's "personal health and safety and that of those around you" is not possible for the foregoing reasons:

¹⁰ *Id.*

¹¹ *Id.*

1. The most recent Omicron variant accounts for over 98.3% of COVID-19 infections.¹²
2. After Omicron was first reported to the World Health Organization on November 24, 2021,¹³ the variant has “considerable escape from vaccine elicited immunity” due to a large number of mutations in the spike (the “S”) protein and elsewhere on the virus.^{14, 15}
3. A collection of 12 new scientific studies demonstrate that vaccine-derived antibodies have a 15-to-127-fold *reduced* ability to prevent SARS-CoV-2 cell entry.¹⁶
4. The CDC’s position is that “anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don’t have symptoms” and “breakthrough infections in people who are fully vaccinated are likely to occur.”¹⁷

While the DOAF, no doubt, is concerned with the health and safety of Lt Col Stapanon and those around him, doing so through a mandated COVID-19 vaccine is not scientifically feasible and is therefore not a compelling interest.

¹² Lovelace, Berkeley, *As Covid Deaths Rise, Many Still Caused by Delta Variant, CDC says*, NBC News.com (January 12, 2022), available at <https://www.nbcnews.com/health/health-news/omicron-covid-deaths-rise-many-are-still-delta-cdc-says-rcna11924>.

¹³ *SARS-CoV-2 B.1.1.529 (Omicron) Variant — United States, December 1–8, 2021*, Morbidity and Mortality Weekly Report (MMWR) Vol. 70, No. 50 (December 17, 2021), available at <https://www.cdc.gov/mmwr/index2021.html>.

¹⁴ Cele, Sandile *et al.*, *SARS-CoV-2 Omicron has extensive but incomplete escape of Pfizer BNT162b2 elicited neutralization and requires ACE2 for infection*, medRxiv (December 17, 2021), available at <https://www.medrxiv.org/content/10.1101/2021.12.08.21267417v3>. See also Lu Lu, *et al.*, *Neutralization of SARSCoV-2 Omicron variant by sera from BNT162b2 or Coronavac vaccine recipients*, Oxford Academic (December 16, 2021), available at <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciab1041/6463504>.

¹⁵ Wilhelm, Alexander *et al.*, *Reduced Neutralization of SARS-CoV-2 Omicron Variant by Vaccine Sera and monoclonal antibodies*, medRxiv (December 7, 2021), available at <https://www.medrxiv.org/content/10.1101/2021.12.07.21267432v1>.

¹⁶ See, e.g., Wilhelm, Alexander *et al.*, *Reduced Neutralization of SARS-CoV-2 Omicron Variant by Vaccine Sera and monoclonal antibodies*, medRxiv (December 7, 2021), available at

<https://www.medrxiv.org/content/10.1101/2021.12.07.21267432v2.full.pdf> and Ikemura, Nariko *et al.*, *SARS-CoV-2 Omicron variant escapes neutralization by vaccinated and convalescent sera and therapeutic monoclonal antibodies*, medRxiv (December 13, 2021), available at <https://www.medrxiv.org/content/medrxiv/early/2021/12/14/2021.12.13.21267761.full.pdf>.

¹⁷ *Omicron Variant: What you Need to Know*, CDC.gov (December 20, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>.

IV. THE DEPARTMENT OF DEFENSE MANDATE IS NOT NARROWLY TAILORED

The DOAF's stated compelling interest does not support crushing Lt Col Stapanon's religious freedoms. The COVID-19 vaccines do not prevent the vaccinated from contracting or spreading the SARS-CoV-2 virus, especially the Omicron variant. Thus, the DOAF cannot demonstrate a compelling interest in denying Lt Col Stapanon's request with which to overcome the substantial burden on Lt Col Stapanon's religious freedom. As such, the issue of least restrictive means is moot.¹⁸ However, even if the DOAF can show that it has a compelling interest in mandating the ineffective vaccine, its refusal to accommodate Lt Col Stapanon is still unlawful because it has not used the least restrictive means to achieve its stated compelling interest.

The DOAF states "[L]esser means to accomplish the government's compelling interest are insufficient."¹⁹ Yet, the DOAF operated for over a year during the COVID-19 pandemic with a ready and healthy force that had not been fully vaccinated. Moreover, the DOAF possesses multiple lesser restrictive and more effective methods of mitigating the spread of COVID-19, including masking, remote teleworking, physical distancing, and regular testing. Lt Col Stapanon has safely carried out his job as the Assistant Director of Operations and T-38C Instructor Pilot during the entirety of the, now over two years, pandemic. The DOAF has not provided any evidence of why maintaining the status quo now poses a risk to its mission.

Additionally, the mandate and denial do not account for natural immunity. Lt Col Stapanon recovered from COVID-19 and now has COVID antibodies, meaning that he now has natural immunity to the virus.²⁰ The DOAF cannot show that Lt Col Stapanon's lack of vaccination renders him unhealthy, not medically ready, or that he poses more of a threat of contracting and spreading the virus COVID-19 than his vaccinated peers.

Finally, as of January 31, 2022, over 95.7% of the total Air Force was vaccinated.²¹ If the vaccine does maintain a healthy and ready military force, then the DOAF, as a whole, is sufficiently vaccinated against the virus, such that the DOAF has successfully obtained its mission and it can safely accommodate Lt Col Stapanon. On the other hand, if the vaccine is not effective at preventing vaccinated service members from contracting and/or

¹⁸ See *U.S. Navy Seals 1-26, et al., v. Biden, et al.*, 4:21-cv-01236-O, 2022 U.S. Dist. LEXIS 2268 (N.D. Tex. Jan. 3, 2022) (order granting preliminary injunction) (stating that "[w]ithout a compelling interest, the Court need not address whether Defendants have used the least restrictive means.")

¹⁹ Attachment B.

²⁰ Attachment C - COVID- 19 Antibody Test November 2021.

²¹ *DAF COVID-19 Statistics – Jan. 11, 2022*, amc.af.mil, (March 13, 2022) available at <https://www.amc.af.mil/News/Article-Display/Article/2831845/daf-covid-19-statistics-january-2022/>

transmitting the virus (as is the CDC's position), then the DOAF's mandate is not a compelling interest. Either way, the DOAF's refusal to accommodate Lt Col Stapanon is clearly unlawful.

IV. CONCLUSION

Lt Col Stapanon is entitled to a religious exemption from the COVID-19 vaccine, and the DOAF is required by law to grant him an accommodation. The DOAF's denial violates RFRA and the First Amendment to the U.S. Constitution and other law not cited herein. Nothing stated or not stated here shall constitute a waiver of any claims, rights, causes of action, defenses, positions, or remedies possessed by Lt Col Stapanon. Each of the foregoing is expressly reserved.

Please direct all future communications to Attorney Wendy Cox via email at wcox@sirillp.com and phone at (512) 265-5622.

Sincerely,



Wendy Cox, Esq.

cc: Lt Col Edward Stapanon
Attachments

ATTACHMENT

A



**DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

21 September 2021

MEMORANDUM FOR 435 FTS/CC
12 OG/CC
12 FTW/CC
19 AF/CC
AETC/CC
IN TURN

FROM: LIEUTENANT COLONEL EDWARD JOSEPH STAPANON, III

SUBJECT: Religious Accommodation Request for Waiver of COVID-19 Vaccination

1. In accordance with Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, I request a religious accommodation waiver of the immunization requirements found in Air Force Instruction (AFI) 48-110 *IP, Immunizations and Chemoprophylaxis for the Prevention of Infectious Disease*. My DoD ID number is [REDACTED] and my Air Force Specialty Code is T11F3Q. I am a practicing Catholic.
2. This request is based on my sincerely held belief regarding the sanctity of innocent human life. This belief stems from my decades-long, deeply-held devotion to the Catholic faith and its teachings. Every human life is sacred because they are created in the image and likeness of God. Based on this belief, I believe abortion is the intentional murder of a human life. Therefore I cannot before God, and in good conscience, accept a vaccine when the development, testing, or production of that vaccine has made use of morally compromised cell lines derived from aborted babies. Unfortunately, each of the three available COVID-19 vaccines in the United States used these cell lines at some stage of manufacturing or testing. Another aspect of my accommodation request is that, as shown in my Air Force medical record, I contracted COVID-19 on or about 1 Aug 21 and therefore have natural immunity to the virus.
3. I understand that IAW AFI 48-110 I have temporary exemption from vaccinations while my request is being processed. I also understand that I will be counseled by my commander and a military physician regarding: the diseases concerned; specific vaccine information including product constituents, benefits, and risks; and potential risks of infection incurred by unimmunized individuals. They must determine that I am making an informed decision and fully understand that my request may have an adverse impact on my deployability, assignment, and/or international travel.
4. I waive my privilege to this communication only and authorize the Chaplain to advise my leadership with regard to this request and only this request.

5. I implore that you not ask me to violate my moral beliefs and grant a religious accommodation to the vaccine mandate. Forcing me to take this vaccine will cause unnecessary moral injury to me. I will immediately take an FDA approved COVID-19 vaccine that is not associated with compromised fetal cell lines of illicit or unknown origin to further protect me and others when one is made available. If my request is disapproved and no appeal is granted, I understand I must comply with the vaccination mandate or face disciplinary actions. I understand that an approved accommodation continues throughout my career, but may be suspended, modified, or revoked by appropriate authorities when required by military necessity. The point of contact for this request is the undersigned at (623) 734-0654 or edward.stapanon@us.af.mil.

STAPANON.EDWA Digitally signed by
STAPANON.EDWARD.J.III.100568
RD.J.III.1005687744 7744
Date: 2021.09.21 13:44:38 -05'00'

EDWARD J. STAPANON, III, Lt Col, USAF
Asst Dir of Ops, 435th Fighter Training Squadron

4 Attachments:

1. Moral objection to COVID-19 vaccine
2. Impact of not taking the COVID-19 vaccine
3. Source documents
4. Memo from Deacon Maxwell



**DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

19 October 2021

MEMORANDUM FOR 435 FTS/CC
12 OG/CC
12 FTW/CC
19 AF/CC
AETC/CC
IN TURN

FROM: 435 FTS/ADO
1150 Fifth St East, Suite 2
JBSA-Randolph Air Force Base, Texas 78150

SUBJECT: Additional Attachment for Religious Accommodation Request, Lt Col Edward J. Stapanon, III

1. The Archbishop for the Military Services, Timothy P. Broglio, released a statement on 12 Oct 21 emphasizing that "...no one should be forced to receive a COVID-19 vaccine if it would violate the sanctity of his or her conscience." As stated in my initial accommodation request, I cannot in good conscience take a vaccine that is linked to abortion. I will take an FDA-approved vaccine that does not have a connection to abortion if one should become available in the future.
2. Archbishop Timothy P. Broglio also stated in the same statement that "[T]he denial of religious accommodations, or punitive or adverse personnel actions taken against those who raise earnest, conscience-based objections, would be contrary to federal law and morally reprehensible." My morally formed conscience is in line with Catholic teaching and I ask that you approve my religious accommodation request.
3. The point of contact for this request is the undersigned at (623) 734-0654 or edward.stapanon@us.af.mil.

STAPANON.EDWA
RD.J.III.1005687744

Digitally signed by
STAPANON.EDWARD.J.III.10056
87744
Date: 2021.10.19 07:19:51 -06'00'

EDWARD J. STAPANON, III, Lt Col, USAF
Asst Dir of Ops, 435th Fighter Training Squadron

Attachment:
ABP Statement, 12 Oct 21

ATTACHMENT

B



**DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

4 March 2022

MEMORANDUM FOR LIEUTENANT COLONEL EDWARD J. STAPANON III

FROM: HQ AETC/CC
1 F Street, Suite 1
JBSA Randolph TX 78150-4324

SUBJECT: Decision Regarding Religious Accommodation Request

I have received your accommodation request for exemption from the COVID-19 immunization requirement based on your religious beliefs. After careful consideration of the specific facts and circumstances, I deny your request for exemption from Air Force COVID-19 immunization standards based on the recommendations from your chain of command and the Religious Resolution Team (any other religious exemption that you seek must be addressed in a separate, specific request). A copy of this decision memorandum will be placed in your automated personnel records.

I thoroughly reviewed your request, examined the comments and recommendations from the functional and legal experts, and considered the impact on you personally, the Airmen with whom you work and the mission. I find that your request, while sincere, does not meet the threshold necessary for an exemption.

First, the Air Force's compelling government interest outweighs your individual belief and no lesser means satisfy the government's interest. For the past 18 months, the Air Education and Training Command fought through the COVID pandemic by implementing several extreme measures and processes to ensure the health, safety and welfare of our Airmen. These measures included maximum telework, workplace occupancy limitations, extreme adjustments to Basic Military Training to include multiple training sites and modified training, and remote learning for most Professional Military Education to name just a few actions. Similar measures for the medical community included telehealth consultations and reduced in-person appointments. Despite these efforts, the Air Force remained in this posture until vaccinations became available and administered, and only then did our pandemic numbers begin to decrease. Continuing to implement these drastic measures detracts from the readiness, efficiency, good order and discipline of the force, and is unsustainable as the long-term solution.

When I reviewed your request, I used the same method as I did for requests from other similarly situated individuals, taking into account factors such as your duty position and rank. In your particular position as an Assistant Director of Operations and T-38C Introduction to Fighter Fundamentals Instructor Pilot, there is a compelling government interest for you to receive the vaccine. Specifically, you are required to have close contact with students and other personnel in order to accomplish your mission. An exemption will detract from good order and discipline by creating the perception that there are different standards for those in leadership roles. Unit

cohesion will also be negatively impacted as your ability to train and mentor Airmen will be limited. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas. Even if you are permitted to travel on official orders with an exemption, your ability to perform the mission may be limited due to restriction of movement and isolation requirements that are inapplicable to vaccinated members. Finally, failure to receive the vaccine increases the risk to your own personal health and safety and that of those around you.

Lesser means to accomplish the government's compelling interest are insufficient. You cannot train your students via teleworking. Additionally, you cannot perform as effectively as a leader if you are required to socially distance from your students. Finally, mask wear is not permitted while flying as it will interfere with your equipment and ability to communicate.

Upon receipt of this decision, I expect you will take every action necessary to comply with the requirement for COVID-19 immunization as soon as possible. You have five (5) calendar days from receipt of this memorandum to accomplish one of the following: (1) receive an approved COVID-19 vaccination and provide proof of vaccination to your commander; (2) submit for retirement or separation; or (3) appeal this decision to the Air Force Surgeon General. Should you elect to appeal this decision, follow the procedures in AFI 52-201, *Religious Freedom in the Department of the Air Force*, Chapter 6. If you appeal this decision, submit your appeal to your commander in writing. Include in your appeal any additional matters you wish for the AF/SG to consider. Your commander will forward your appeal and any additional matters to HQ AETC/SG for further processing.

If you have any questions, contact HQ AETC/HC at 210-652-3822 (DSN 487), or email at aetc.hc@us.af.mil.



MARSHALL B. WEBB
Lieutenant General, USAF
Commander

cc:
Member's Unit
Member's Servicing FSS

1st Ind, LT COL EDWARD J. STAPANON III

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

I have received AETC/CC's decision regarding my request for a religious based exemption from the COVID-19 vaccine on 8 March 2022 (date). I understand that I have five (5) calendar days to accomplish one of the following:

- a. Receive an approved COVID-19 vaccine and provide proof of vaccination to my commander;
- b. Apply for retirement or separation;
- c. Appeal this decision in writing to the Air Force Surgeon General.

EDWARD J. STAPANON III, Lt Col, USAF

2d Ind, LT COL EDWARD J. STAPANON III

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

Five calendar days have elapsed since I received AETC/CC's decision denying my request for a religious based exemption from the COVID-19 vaccine. I have chosen to:

Receive an approved COVID-19 vaccine on _____ (date) and provide proof of vaccination to my commander on _____ (date).

Apply on _____ (date) for retirement or separation.

Appeal this decision in writing on _____ (date) to the Air Force Surgeon General.

Refuse to comply with this order.

EDWARD J. STAPANON III, Lt Col, USAF

ATTACHMENT C

Stapanon, Edward

DOB: [REDACTED] 1979

Patient Report

Patient ID: 96135602

Age: 42

Account Number: 32047215

Specimen ID: 309 363 3599 0

Sex: Male

Ordering Physician: A ABRAHAM

Ordered Items: **SARS-CoV-2 Semi-Quant Total Ab; Venipuncture**

Date Collected: 11/05/2021

Date Received: 11/05/2021

Date Reported: 11/06/2021

Fasting: No

SARS-CoV-2 Semi-Quant Total Ab

Test	Current Result and Flag	Previous Result and Date	Units	Reference Interval
SARS-CoV-2 Semi-Quant Total Ab ^{A,01}	627.0 Antibodies against the SARS-CoV-2 spike protein receptor binding domain (RBD) were detected. It is yet undetermined what level of antibody to SARS-CoV-2 spike protein correlates to immunity against developing symptomatic SARS-CoV-2 disease. Studies are underway to measure the quantitative levels of specific SARS-CoV-2 antibodies following vaccination. Such studies will provide valuable insights into the correlation between protection from vaccination and antibody levels.		U/mL	Negative<0.8
SARS-CoV-2 Spike Ab Interp ^{A,01}	Positive Roche Elecsys Anti-SARS-CoV-2 S			

Disclaimer

The Previous Result is listed for the most recent test performed by Labcorp in the past 3 years where there is sufficient patient demographic data to match the result to the patient.

Icon Legend

▲ Out of reference range ■ Critical or Alert

Comments

A: This test has not been FDA cleared or approved. This test has been authorized by FDA under an Emergency Use Authorization (EUA). This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of COVID-19 under Section 564(b)(1) of the Act, 21 U.S.C. 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner. This test has been authorized only for detecting the presence of antibodies against SARS-CoV-2, not for any other viruses or pathogens.

Performing Labs

01: HD - LabCorp Houston 7207 North Gessner, Houston, TX, 77040-3143 Dir: Kyle Eskue, MD

For Inquiries, the physician can contact Branch: 800-762-4344 Lab: 713-856-8288

Patient Details

Stapanon, Edward
241 HAMBURG AVE, NEW BRAUNFELS, TX,
78132

Phone: 623-734-0654

Date of Birth: [REDACTED] 1979

Age: 42

Sex: Male

Patient ID: 96135602

Alternate Patient ID: 96135602

Physician Details

A ABRAHAM
LabCorp com COVID19 Testing06
531 South Spring Street, Burlington, NC,
27215

Phone: 800-845-6167

Account Number: 32047215

Physician ID: 1184883993

NPI: 1184883993

Specimen Details

Specimen ID: 309-363-3599-0

Control ID: 96135602

Alternate Control Number: 96135602

Date Collected: 11/05/2021 1011 Local

Date Received: 11/05/2021 0000 ET

Date Entered: 11/05/2021 1106 ET

Date Reported: 11/06/2021 0406 ET

Rte: 00



**DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

22 February 2022

MEMORANDUM FOR SECOND LIEUTENANT CONNOR P. MCCORMICK

FROM: HQ AETC/CC
1 F Street, Suite 1
JBSA Randolph TX 78150-4324

SUBJECT: Decision Regarding Religious Accommodation Request

I have received your accommodation request for exemption from the COVID-19 immunization requirement based on your religious beliefs. After careful consideration of the specific facts and circumstances, I deny your request for exemption from Air Force COVID-19 immunization standards based on the recommendations from your chain of command and the Religious Resolution Team (any other religious exemption that you seek must be addressed in a separate, specific request). A copy of this decision memorandum will be placed in your automated personnel records.

I thoroughly reviewed your request, examined the comments and recommendations from the functional and legal experts, and considered the impact on you personally, the Airmen with whom you work and the mission. I find that your request, while sincere, does not meet the threshold necessary for an exemption.

First, the Air Force's compelling government interest outweighs your individual belief and no lesser means satisfy the government's interest. For the past 18 months, the Air Education and Training Command fought through the COVID pandemic by implementing several extreme measures and processes to ensure the health, safety and welfare of our Airmen. These measures included maximum telework, workplace occupancy limitations, extreme adjustments to Basic Military Training to include multiple training sites and modified training, and remote learning for most Professional Military Education to name just a few actions. Similar measures for the medical community included telehealth consultations and reduced in-person appointments. Despite these efforts, the Air Force remained in this posture until vaccinations became available and administered, and only then did our pandemic numbers begin to decrease. Continuing to implement these drastic measures detracts from the readiness, efficiency, good order and discipline of the force, and is unsustainable as the long-term solution.

When I reviewed your request, I used the same method as I did for requests from other similarly situated individuals, taking into account factors such as your duty position and rank. In your particular position as a Air Force Institute of Technology Masters Student there is a compelling government interest for you to receive the vaccine. Specifically, you are required to perform official travel and have close contact with staff members and other students in order to complete your program. An exemption could cause the perception of favoritism to similarly situated individuals, eroding good order and discipline. Unit cohesion will also be degraded if

you receive an exemption as your ability to travel for your curriculum will be limited. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas. Even if you are permitted to travel on official orders with an exemption, your ability to perform the mission may be limited due to restriction of movement and isolation requirements that are inapplicable to vaccinated members. Finally, remaining unvaccinated increases the risk to both your own health and safety and that of those you interact with while performing your duties.

Lesser means to accomplish the government's compelling interest are insufficient. You cannot accomplish the four in-person classes you are currently enrolled in via telework. In addition, as a junior officer, hands-on supervision and guidance from your leadership are also necessary for your professional development. Finally, mask wear alone is an insufficient intervention.

Upon receipt of this decision, I expect you will take every action necessary to comply with the requirement for COVID-19 immunization as soon as possible. You have five (5) calendar days from receipt of this memorandum to accomplish one of the following: (1) receive an approved COVID-19 vaccination and provide proof of vaccination to your commander; (2) submit for retirement or separation; or (3) appeal this decision to the Air Force Surgeon General. Should you elect to appeal this decision, follow the procedures in AFI 52-201, *Religious Freedom in the Department of the Air Force*, Chapter 6. If you appeal this decision, submit your appeal to your commander in writing. Include in your appeal any additional matters you wish for the AF/SG to consider. Your commander will forward your appeal and any additional matters to HQ AETC/SG for further processing.

If you have any questions, contact HQ AETC/HC at 210-652-3822 (DSN 487), or email at aetc.hc@us.af.mil.



MARSHALL B. WEBB
Lieutenant General, USAF
Commander

cc:
Member's Unit
Member's Servicing FSS

1st Ind, 2D LT CONNOR P. MCCORMICK

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

I have received AETC/CC's decision regarding my request for a religious based exemption from the COVID-19 vaccine on March 1, 2022 (date). I understand that I have five (5) calendar days to accomplish one of the following:

- a. Receive an approved COVID-19 vaccine and provide proof of vaccination to my commander;
- b. Apply for retirement or separation;
- c. Appeal this decision in writing to the Air Force Surgeon General.

MCCORMICK.CONNOR.PATRICK.1524223925
Digitally signed by
MCCORMICK.CONNOR.PATRICK.1
524223925
Date: 2022.03.01 13:22:37 -05'00'
CONNOR P. MCCORMICK, 2d Lt, USAF

2d Ind, 2D LT CONNOR P. MCCORMICK

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

Five calendar days have elapsed since I received AETC/CC's decision denying my request for a religious based exemption from the COVID-19 vaccine. I have chosen to:

_____ Receive an approved COVID-19 vaccine on _____ (date) and provide proof of vaccination to my commander on _____ (date).

_____ Apply on _____ (date) for retirement or separation.

_____ Appeal this decision in writing on _____ (date) to the Air Force Surgeon General.

_____ Refuse to comply with this order.

CONNOR P. MCCORMICK, 2d Lt, USAF



**DEPARTMENT OF THE AIR FORCE
AIR UNIVERSITY (AETC)**

7 March 2022

MEMORANDUM FOR AF/SG (LT GEN ROBERT I. MILLER)

FROM: SECOND LIEUTENANT CONNOR P. MCCORMICK
2950 Hobson Way
Wright-Patterson AFB OH 45433

SUBJECT: Appeal of Religious Accommodation Request for Immunization Waiver Denial

References: (a) AFI 48-110_IP, 7 September 2021, *Immunizations and Chemoprophylaxis for prevention of Infectious Disease*
(b) DAFI 52-201, 23 June 2021, *Religious Freedom in the Department of the Air Force*

1. I respectfully request an appeal for a waiver of the immunization requirements directed by AFI 48-110_IP, *Immunizations and Chemoprophylaxis for prevention of Infectious Disease*, from the COVID-19 vaccinations. This request is based on my Roman Catholic beliefs, which conflict with the requirement. My DoD ID number is [REDACTED]. My Specialty Code is 0YEA.
2. This request for an appeal is in response to the denial of my religious accommodation request regarding the COVID-19 vaccination mandate. I would like to make note of the extreme difficulty in producing this appeal under the given situation. From the moment I completed my package, 4 October 2021, to receiving my denial, 1 March 2022, five months had passed. Being required to submit an appeal in 6 days including a 24-hour extension since 6 March 2022 is a Holy Day of Obligation, is extremely difficult. On top of a short turn around, I am not allowed access to the documents of my package the AETC commander based their decision on.
3. My date of birth is [REDACTED] and was baptized into the Catholic Church on 19 July 1998. I grew up in the Catholic faith, attending religious education classes in my youth. For nine years I served as an altar boy, until I was Confirmed on 12 April 2014 where I transitioned to a Eucharistic Minister in my parish. In 2017 I taught religious education to second graders during my year at the Air Force Academy Preparatory School. In November 2021 I joined Schola, the choir at Holy Family which is a Traditional Latin Church. On average I spend three out of seven days at Holy Family, twice for mass and once for choir rehearsal. In addition to the commitments to my parish I read the Bible, pray daily, participate in Catholic social groups outside of mass, and go to confession.
4. My initial request is based on the burden these vaccines would place upon my ability to exercise my faith. Jesus was crucified on the cross to redeem the sins of mankind, he rose from the dead and appeared to his disciples before ascending into heaven. On the day of Pentecost, the Holy Spirit was sent to dwell within followers of Christ making them living temples of His Spirit. 1 Corinthians 6:19-20 reads, "Do you not know that your body is a temple of the Holy Spirit within you, which you have

from God? You are not your own; you were bought with a price. So glorify God in your body.” (Revised Standard Version Catholic Edition, RSVCE) As a temple for the Holy Spirit, I cannot accept anything into my body which deals with sin or that may disrupt the functioning of said temple as intended by my Creator. I do not have any tattoos for it would be graffiti on the temple and do not take ibuprofen due to its fetal cell affiliation. The currently available COVID-19 vaccines in the U.S. are all tied to aborted fetal cell line. Abortion is murder, a capital sin, therefore, my Lord forbids me from accepting any of them into my body. One of the 10 Commandments is “Thou shall not kill,” and since abortion is killing living human beings, I cannot put that into my body. The chaplain writes that I show life begins at conception and provide scriptural references¹. Specifically, Angel Gabriel came down to tell Mother Mary she will bear the Son of God and the Apostle’s Creed states, “conceived by the Holy Spirit.”

5. On 5 September 2021, God told me not to receive the COVID vaccine. After the encounter with God, I began to fear what would happen should I not obey his command. “Like the nations that the Lord makes to perish before you, so shall you perish, because you would not obey the voice of the Lord your God.” (Deuteronomy 8:20, RSVCE). I was given a direct order from my God to not receive the COVID-19 vaccination. Father Frank Pavone writes that a person must not be forced to act contrary to their conscience, especially in religious matters². My conscience has been set and it disagrees with the stance the Pope holds in this matter. As time passed, I dove into researching the mRNA approach as well as the effectiveness of natural immunity.

6. The DAFI 52-201 Section 2.4 states, “Any restriction on the expression of sincerely held beliefs must use the least restrictive means with respect to the applicant to achieve the compelling governmental interest.” My denial letter acknowledges that I have a sincerely held belief and claims that “lesser means to accomplish the government’s compelling interest are insufficient.”³ I respectfully dispute this assertion as there are many effective lesser means available.

a. I was infected with SARS-CoV-2 in November 2020 as well as January 2022 and have made a full recovery from both incidents.⁴ I would like to state from personal experience that the second time around was far less painful than the first time. I did not lose smell or taste; on top of that I felt normal in just four days. The only symptoms I had were congestion and a headache. Additionally, I would be willing to submit for an antibody test or T-cell test if additional proof is needed for you to come to a fully informed decision. As such, I would have an immune response that is superior to the vaccine mediated immune response according to the Centers for Disease Control and Prevention (CDC)⁵, studies published on PubMed Central⁶ and Medscape⁷, and a report from the National Public Radio.⁸ Furthermore, there are over 150 independent research studies affirming naturally acquired immunity to COVID-19.⁹ By recovering from two previous exposures to COVID-19, I am quite possibly more protected from severe disease and thus mission ready like other military personnel who were only vaccinated against SARS-CoV-2. To deny natural immunity is to deny current and historical medical knowledge. Thus, natural immunity is a lesser restrictive means of achieving the compelling government interest, and my recovery from a previous infection accomplished this.

b. The denial states, “Lesser means to accomplish the government’s compelling interest are insufficient. You cannot effectively complete your training via telework or social distancing. As a junior officer, hands-on supervision and guidance from your leadership is also necessary for your professional development.” I respectfully disagree with this statement as lesser means

were established and proven operational and sustainable prior to COVID vaccine mandate, and I have been successful in completing my training accommodated with those lesser means.

c. Lt Gen Webb's statement implies that my readiness and capability of completing my training will suddenly change on the arbitrary deadline to be vaccinated. His interpretation (of readiness and mission accomplishment) directly contradicts Major General Jeffrey Taliaferro, Joint Staff's Vice Director of Operations, 17 Feb 2021 (which is prior to the vaccine mandate) testimony to the House Armed Services Committee, "[w]e have already demonstrated last year that we are fully capable of operating in a COVID environment."¹⁰ When asked if Airmen remain deployable even without vaccination, Major General Taliaferro replied affirmatively. Furthermore, Major General Taliaferro elaborated that during the pre-vaccine mandated COVID-19 world, the "overall C ratings or readiness ratings for all the services and combat commands have stayed within historic norms." Therefore, I have been mission-ready and able to continue my training during the COVID pandemic, both before and after the vaccine mandate.

d. While at AFIT, I have accomplished the Air Force's mission as a junior officer. I have effectively completed my training and received effective supervision and guidance via in-person and/or virtual settings under the COVID-19 operational environment for the past 8 months. This includes successful completion of nearly half my AFIT program, collaborated with my peers on group projects, course assignments, presentations, and performed other military duties such as passing the Physical Fitness Assessment with an excellent score. Therefore, lesser means have already been established and proven effective and operational throughout the whole pandemic.

e. Contrary to the premise of "lesser means to accomplish the government's compelling interest are insufficient," as of 1 March 2022, the Air Force has approved 1,294 medical waivers and 1,686 administrative waivers.¹¹ Based on DAFI 52-201 Paragraph 2.4.1, one of the factors in "determining whether a compelling governmental interest exists and whether the restriction uses the least restrictive means necessary to achieve the compelling interest" is to consider "[p]revious decisions on similar requests, including decisions on similar requests made for other than religious reasons." According to the cited section of DAFI when coupled with the approval of medical and administrative waivers, it demonstrates the Air Force can achieve the compelling government interests with approval of multiple types of COVID-19 immunization waivers. The source for medical and administrative waivers reveals a total force vaccination rate of 96%. The Air Force has maintained readiness throughout the entire pandemic and has proven itself capable of defending the country with the approval of waivers; therefore, readiness is achievable under COVID-19 immunization waiver approval, and a religious waiver approval is no different.

7. According to my denial, "failure to receive the vaccine increases risk to your own personal health and safety and that of those around you." I respectfully disagree with this statement for a plethora of scientific studies point to potential risks in accepting the currently available vaccines.

a. There is a potential for adverse effects to the available vaccines, namely Pfizer, Moderna, and Johnson and Johnson. According to CDC¹² and a study published in the New England Journal of Medicine,¹³ myocarditis and pericarditis are known adverse effects of the Pfizer and Moderna vaccines. Since these vaccine products are so new there is a potential for

more insidious adverse effects that remain currently unknown. One of the three studies published by JAMA, Beatty et al. stated “the factors most strongly associated with adverse effects were full vaccination dose, brand of vaccine, younger age, female sex, and having had COVID-19 before vaccination.”¹⁴ I had a prior case of COVID-19, which places me at elevated risk of experiencing adverse effects of these vaccines. In a second study Oster et al. concluded that the risk of myocarditis was elevated “across multiple age and sex strata” after receiving doses of mRNA-based vaccines.¹⁵ In the third study Montgomery et al. showed myocarditis has been noted to occur in “previously healthy military patients” after mRNA vaccination.¹⁶ Furthermore, there are close to 1000 peer-reviewed studies on adverse effects from receiving COVID-19 vaccines.¹⁷ To name a few, there are over 200 studies on myocarditis adverse effect following vaccinations, roughly 150 on thrombosis, over 100 on thrombocytopenia, over 50 on cerebral venous thrombosis, and over 40 on vasculitis and Guillain-Barré syndrome. My sincerely held belief forbids me from accepting these vaccines into my body as they have a preliminary and unknown safety profile and may cause harm such as myocarditis, pericarditis, or thrombosis. Therefore, DAFI 52-201 Section 2.4 affirms, “Any restriction on the expression of sincerely held beliefs must use the least restrictive means with respect to the applicant to achieve the compelling governmental interest.”

b. Diversity of immune responses amongst the men and women in uniform would lead to a healthier and more robust fighting force. The vaccines that exist today are based upon a single antigen, i.e., the spike protein, of the original strain of SARS-CoV-2 (COVID-19). The major issue with this is that any variation in said spike protein which has been observed in multiple countries and within our own country would lead to inadequate immune responses due to the action of original antigenic sin (OAS). According to a medical literature published on PubMed Central¹⁸, the concept of OAS is that the immune system mounts a secondary immune response only when the antigen or epitope is identical to the earlier infection causing agent. If the antigen in the second exposure varies slightly, then the body’s memory B cells mount an ineffective response or even no response at all to the second exposure. This would hinder the naïve B cells from mounting a primary response leading to a worse course of the disease in the second exposure. Since the currently available COVID-19 vaccines are for a single spike protein that has mutated in multiple noted variants, i.e., original, delta, omicron, and omicron subvariants, the concept of OAS comes into play and leads to worse outcomes when exposed to individuals who took the vaccine.

c. Additional literature published on the New England Journal of Medicine¹⁹ further elaborates upon this by stating, memory B cells that are from previous exposures to an antigen can in fact attenuate the response of naïve B cells that would have been effective against the second infection but for the prior infection. This explains why young children consistently mild courses of COVID-19 as their bank of memory B cells had been smaller than those of a geriatric adult. Children consistently mounted effective primary responses to SARS-CoV-2, while older adults were mounting semi-effective or even ineffective secondary responses. In generating three vaccines that all target the same spike protein, one forgoes the possibility of a primary response and instead opts for a secondary response. Again, OAS means that if this secondary response is ineffective coupled with the fact that the mutation rate of this coronavirus makes this highly likely, then the vaccine itself would increase susceptibility to other variants of SARS-CoV-2. This scientific fact means that accepting any of these vaccines would in fact make me more prone to developing a severe disease upon a second exposure

thereby decreasing my mission readiness. I should not accept this risk as my prior recovery from a SARS-CoV-2 virus already affords me enduring protection against severe disease.

d. The possibility of OAS coming into play is bad enough, but an even worse phenomenon can occur if mass inoculation with a highly specific antigen presenting vaccine is achieved. This worst-case scenario phenomenon is known in scientific literature as Antibody Dependent Enhancement (ADE). According to Fierz and Walz, "The worst scenario would be when such cross-reactive memory antibodies to related coronaviruses would not only be non-protective but even enhance infection and the clinical course. Such a phenomenon of antibody dependent enhancement (ADE) has already been described in several viral infections [including coronaviruses...Original Antigenic Sin] poses a note of caution when treating COVID-19 patients with convalescent sera"²⁰ as cross reactivity can lead to an attenuated immune response or even an enhanced disease course according to ADE upon secondary exposure. This also applies to the idea of mass inoculation using a highly specific antigen containing vaccine such as the ones available in the U.S.

8. My denial letter states that "[d]espite these efforts, the Air Force remained in this posture until vaccinations became available and administered, only then did our pandemic numbers begin to decrease." This is factually untrue as the pandemic numbers are cyclical as shown by past data and have risen and fallen even after the vaccines were introduced. This is supported by the fact that from 17 August 2021 to 15 January 2022, the overall case rate trended upwards, culminating in an HPCON status for my duty station, Wright-Patterson AFB (WPAFB),²¹ of Delta from 07 January 2022 to 10 February 2022. WPAFB HPCON Delta declaration was when 97% of the military team and 91% of the civilian team were vaccinated. In his announcement to transition WPAFB to HPCON Delta on 7 Jan 2022, Colonel Patrick Miller noted that "September was the Delta variant peak at 270 reported cases" and "December was an all-time pandemic high for the base with 668 reported cases – a 398 case jump from September." The case jump statement further cements the fact that the vaccine has been ineffective at reducing overall transmission of the virus. Pfizer CEO, Albert Bourla, acknowledged the ineffectiveness of the Pfizer vaccine on an interview with Yahoo Finance in January 2022.²² Bourla stated that "we know that the two doses of the vaccine offer very limited protection, if any. The three doses, with the booster, they offer reasonable protection against hospitalization and deaths...[but] less protection against the infection." Given a report from DoD Project Salus which states that "prior COVID 19 infections have a major protective effect against breakthrough hospitalization,"²³ coupled with Pfizer CEO's statement on COVID vaccine, I earnestly request a COVID vaccine waiver for the fact that I had two prior COVID infections and recovered from them.

9. In my denial letter, it claims that to approve my waiver would cause a "perception of favoritism" that would erode "good order and discipline." By federal law, a strict scrutiny test requires the government to conduct an individualized inquiry for my Religious Accommodation Request (RAR). The fact that Lt Gen Webb stated that an exemption would lead to perceptions of favoritism suggests that he has not conducted an individualized case-by-case review of my request for an exemption based on my religious beliefs. Thus, I sincerely ask that you consider my waiver request specific to my individualized circumstances.

10. In my denial letter, it claims that my RAR request did "not meet the threshold" for approval. I was never advised on the threshold for the religious exemption. Therefore, I was never given an opportunity to reach said threshold. How could anyone be expected to reach a threshold

when they are never made aware of what that threshold is or that a threshold even exists?

11. Ongoing litigation in Federal Court,²⁴ particularly in the case *Navy Seal 1 v. Austin*,²⁵ has found that multiple branches of the military have failed to meet the standards set by the Religious Freedom Restoration Act (RFRA). It is the burden of the DOD to accommodate a service member with a sincerely held belief and to find the least restrictive means to reach a compelling government interest. My denial letter acknowledges my sincerely held belief and goes on to assert that “lesser means to accomplish the government’s compelling interest are insufficient” without any explanation as to why that claim was made based on a case-by-case review of my individualized RAR request. According to Judge Steven Merryday’s injunctive order on February 18, 2022, “the government has not shown that the stated interest cannot be reasonably preserved without subjecting [service members] to vaccination contrary to a sincerely held religious belief protected by RFRA.”³⁴ The injunctive order goes on to quote the case *Roman Catholic Diocese of Brooklyn v Cuomo* the following, “The loss of First Amendment freedoms, even for minimal periods of time unquestionably constitutes irreparable injury.” The subjugation of my religious conscience to accept the COVID-19 vaccination when lesser restrictive means exist and are readily available is applicable to that quote. Since litigation is ongoing, I am requesting a temporary waiver to last until case law is established and the legality of the DAF’s handling of religious accommodation requests has been settled.

12. If you have any questions or concerns, the point of contact for this request is the undersigned with a cell phone (661) 886-8150 or email connor.mccormick@afit.edu.

Connor McCormick

CONNOR P. MCCORMICK, 2d Lt, USAF

Attachments:

1. Chaplain Interview
2. Letter From Father Frank Pavone
3. Religious Accommodation Request Denial
4. COVID-19 Lab Results
5. 150 Studies Affirming Natural Immunity
6. DAF COVID-19 Statistics 1 March 2022
7. Studies of Adverse Effects Following Vaccines
8. DoD Project Salus Effectiveness Report
9. Search Request & Litigation Hold Memo listed 23 lawsuits
10. Navy Seal 1 v Austin

¹ See attachment 1. Chaplain Interview

² See attachment 2. Letter From Father Frank Pavone

³ See attachment 3. Religious Accommodation Request Denial

⁴ See attachment 4. COVID-19 Lab Results

⁵ ([COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis — California and New York, May–November 2021 | MMWR \(cdc.gov\)](#)) states “persons who survived a previous infection had lower case rates than persons who were vaccinated alone.”

⁶ ([Equivalency of Protection From Natural Immunity in COVID-19 Recovered Versus Fully Vaccinated Persons: A Systematic Review and Pooled Analysis \(nih.gov\)](#)) states “our review demonstrates that natural immunity in COVID-recovered individuals is, at least, equivalent to the protection afforded by complete vaccination of COVID-naïve populations.”

[Efficacy of Natural Immunity against SARS-CoV-2 Reinfection with the Beta Variant - PubMed \(nih.gov\)](#) states “the efficacy of natural infection against reinfection, which was derived by comparing the incidence rate in both cohorts, was estimated at 92.3% (95% CI, 90.3 to 93.8) for the beta variant and at 97.6% (95% CI, 95.7 to 98.7) for the alpha variant.” This proves that natural immunity is at minimal equivalent to the reported figures for those who were vaccinated alone.

⁷ Medscape is an accredited source of medical information according to the CDC by the Accreditation Council for Continuing Medical Education (ACCME), the Accreditation Council for Pharmacy Education (ACPE), and the American Nurses Credentialing Center (ANCC).

<https://www.medscape.com/viewarticle/968553> was published on February 15, 2022, and states that those who had recovered from a prior infection to SARS-CoV-2 had “antibodies that were more effective in the long run compared with others who were vaccinated but never infected.” Furthermore, it states an “Israeli study that shows that unvaccinated people with a prior SARS-CoV-2 infection create antibodies that are more effective in the long run compared with others who were vaccinated but never infected.” Natural immunity has been proven to have enduring protection, while vaccination’s protection only lasts 4 to 6 months.

⁸ [The future of the pandemic is looking clearer as we learn more about infection : Goats and Soda : NPR](#) states “a symptomatic infection triggers a remarkable immune response in the general population, likely offering protection against severe disease and death for a few years.” The report continues, “[Abu- Raddad et al.] found that a prior COVID-19 infection reduced the risk of hospitalization upon reinfection by about 90% compared with in people having their first infection.” Again, this is comparable to the official statistics reported post vaccination.

⁹ See attachment 5. 150 Studies Affirming Natural Immunity

¹⁰ [Full Committee Hearing: “Update on the Department of Defense’s Evolving Roles and Mission in Response to the COVID-19 Pandemic” - Hearings - House Armed Services Committee - Democrats](#) timestamp 35’50” – 37’30”

¹¹ See attachment 6. DAF COVID-19 Statistics 1 March 2022

¹² <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html>

¹³ <https://www.nejm.org/doi/full/10.1056/NEJMoa2109730>

¹⁴ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787361>

¹⁵ [Myocarditis Cases Reported After mRNA-Based COVID-19 Vaccination in the US From December 2020 to August 2021 | Cardiology | JAMA | JAMA Network](#)

¹⁶ [Myocarditis Following Immunization With mRNA COVID-19 Vaccines in Members of the US Military | Cardiology | JAMA Cardiology | JAMA Network](#)

¹⁷ See attachment 7. Studies of Adverse Effects Following Vaccines

¹⁸ <https://pubmed.ncbi.nlm.nih.gov/28479213/>

¹⁹ <https://journals.asm.org/doi/epub/10.1128/mSphere.00056-21>

²⁰ [Frontiers | Antibody Dependent Enhancement Due to Original Antigenic Sin and the Development of SARS | Immunology \(frontiersin.org\)](#)

²¹ WPAFB HPCON transitioning history from 2021 August to 2022 January: 17 Aug 2021 Bravo to Bravo + ; 27 Aug 2021 Bravo + to Charlie; 7 Jan 2022 Charlie to Delta.

²² [New COVID-19 vaccine that covers Omicron ‘will be ready in March,’ Pfizer CEO says \(yahoo.com\)](#)

²³ See attachment 8. DoD Project Salus Effectiveness Report

²⁴ See attachment 9. Search Request & Litigation Hold Memo listed 23 lawsuits

²⁵ See attachment 10. Navy Seal 1 v Austin