

**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 :

**MEMORANDUM IN OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, WITH  
THE FRCP 56(f) DECLARATION OF CHRISTOPHER WIEST IN SUPPORT, AND  
SUPPORTED BY OTHER SWORN EVIDENCE ALREADY IN THE RECORD**

Defendants moved to dismiss this matter pursuant to FRCP 12(b)(1) and FRCP 12(b)(6), arguing, that the Plaintiffs’ claims are not ripe, and that Plaintiffs have failed to exhaust administrative remedies. The Court already rejected Defendants’ arguments in its decision granting a Preliminary Injunction. Defendants’ current motion changes nothing, they still are wrong.

**I. FACTS**

On or about September, 2021, Defendant Kendall, Secretary of the Air Force, issued an order to members of the Air Force and Space Force to be vaccinated for COVID-19. (Pl.’s Ver. Compl., DE#1, ¶ 24; DE#11-2). On November 29, 2021, the Air Force placed a hold on any Permanent Change of Stations related to the vaccination order (hereinafter “mandate”), effectively pausing duty changes, and career progression, for personnel who had pending vaccination exemption requests. (Pl.’s Ver. Compl., DE#1, ¶ 25; DE#11-3). Many of the Plaintiffs who are currently pursuing Masters or PhD work at Air University at AETC at Wright Patterson Air Force Base received an email to this effect soon thereafter. *Id.*

All of the Plaintiffs sought religious exemptions from that vaccination mandate, as outlined in the following paragraphs, pursuant to the federal Religious Freedom Restoration Act (“RFRA”) (42 USC 2000bb) and its implementing regulations, including, without limitation, Department of Defense Instruction (“DoDI”) 1300.17. (Pl.’s Ver. Compl., DE#1, ¶ 26).<sup>1</sup>

### **The Plaintiffs Religious Accommodation Requests**

The chart below summarizes the submittals and processing of the Plaintiffs’ religious accommodation requests – all of which were timely and all of which included an Air Force Chaplain confirming the sincerity of the applicant’s beliefs.

<b>Plaintiff Name and Rank</b>	<b>Active or Reserve?</b>	<b>Date accommodation submitted to Command and Commander</b>	<b>Date accommodation denied</b>	<b>Date appeal taken to Air Force Surgeon General</b>	<b>Date Surgeon General Denied Appeal</b>
1LT Hunter Doster <sup>2</sup>	Active	9/7/2021, LTG Webb	1/6/2022	1/18/2022	2/22/2022
Col. Jason Anderson <sup>3</sup>	Active	9/2021, LTG Webb	Pending	N/A	N/A
Maj. Paul Clement <sup>4</sup>	Active	9/28/2021, LTG Webb	3/23/2022	4/11/2022	Pending
A1C McKenna Colantonio <sup>5</sup>	Active	9/20/2021, LTG Slife	12/2/2021	12/9/2021	1/6/2022
Maj. Benjamin Leiby <sup>6</sup>	Active	9/20/2021, updated	Pending	N/A	N/A

<sup>1</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130017p.pdf> (last visited 2/16/2022). Page 10 of this Instruction contains processing timelines for religious accommodation requests, that require action within 30 days for Active-Duty Personnel, and 60 days for Reservists from the relevant action authority (i.e. the General Court Martial Convening Authority); and, for appeals, 60 days from submission.

<sup>2</sup> (Pl.’s Ver. Compl., DE#1, ¶ 27; Admin. Materials, DE#11-4; Doster Declaration, DE#191). As reflected in this chart, several Plaintiffs have been recently promoted, including Lt. Doster.

<sup>3</sup> (Pl.’s Ver. Compl., DE#1, ¶ 28; Admin. Materials, DE#11-6). In contravention of the timelines contained in DoDI 1300.17, Colonel Anderson’s request remains pending with Lt. General Webb as of today. *Id.*

<sup>4</sup> (Pl.’s Ver. Compl., DE#1, ¶ 29; Admin. Materials, DE#11-8). Supp Decl. Wiest, attached.

<sup>5</sup> (Pl.’s Ver. Compl., DE#1, ¶ 30; Admin. Materials, DE#11-7).

<sup>6</sup> (Pl.’s Ver. Compl., DE#1, ¶ 31; Admin. Materials, DE#11-9). In contravention of the timelines contained in DoDI 1300.17, Major Leiby’s request remains pending with Lt. General Webb as of today. *Id.*

		11/29/2021, LTG Webb			
1LT Brett Martin <sup>7</sup>	Active	9/22/2021, LTG Webb	3/29/2022	4/6/2022	Pending
1LT Connor McCormick <sup>8</sup>	Active	9/8/2021, LTG Webb	2/22/2022	3/7/2022	4/9/2022
Capt. Peter Norris <sup>9</sup>	Active	9/28/2021, LTG Webb	Pending	N/A	N/A
1LT Alex Ramsperger <sup>10</sup>	Active	9/3/2021, LTG Webb	3/29/2022	4/5/2022	Pending
Lt. Col Daniel Reineke <sup>11</sup>	Active	9/20/2021, LTG Webb	1/28/2022	2/11/2022	3/13/2022
Capt. Benjamin Rinaldi <sup>12</sup>	Active	9/14/2021, LTG Webb	3/29/2022	4/4/2022	Pending
Lt. Col. Douglas Ruyle <sup>13</sup>	Active	9/27/2021, LTG Webb	Pending	N/A	N/A
Lt. Col. Edward Stapanon, III <sup>14</sup>	Active	9/13/2021, LTG Webb	1/7/2022	1/19/2022	4/19/2022
SSgt Adam Theriault <sup>15</sup>	Active	9/3/2021, LTG Slife	11/5/2021	11/19/2021	1/21/2022
SRA Joe Dills <sup>16</sup>	Reserve	10/2/2021, LTG Scobee	11/2021	12/2021	12/2021
Maj. Heidi Mosher <sup>17</sup>	Reserve	10/16/2021, LTG Scobee	1/31/2022	2/7/2022	3/13/2022
Maj. Patrick Pottinger <sup>18</sup>	Reserve	9/13/2021, LTG Scobee	1/7/2022	1/19/2022	3/18/2022
SMSgt Chris Schuldes <sup>19</sup>	Reserve	10/2/2021, LTG Scobee	10/22/2021	10/30/2021	12/16/2021

<sup>7</sup> (Pl.'s Ver. Compl., DE#1, ¶ 32; Admin. Materials, DE#11-10; DE#33-5, DE#33-6). Supp Decl. Wiest, attached.

<sup>8</sup> (Pl.'s Ver. Compl., DE#1, ¶ 33; Admin. Materials, DE#11-11; DE#38-5; DE#38-6). Supp Decl. Wiest, attached.

<sup>9</sup> (Pl.'s Ver. Compl., DE#1, ¶ 34; Admin. Materials, DE#11-13). In contravention of the timelines contained in DodI 1300.17, Captain Norris' request remains pending with Lt. General Webb as of the date of the filing of this Complaint. *Id.*

<sup>10</sup> (Pl.'s Ver. Compl., DE#1, ¶ 35; Admin. Materials, DE#11-15). Supp Decl. Wiest, attached.

<sup>11</sup> (Pl.'s Ver. Compl., DE#1, ¶ 36; Admin. Materials, DE#11-16). Supp Decl. Wiest, attached.

<sup>12</sup> (Pl.'s Ver. Compl., DE#1, ¶ 37; Admin. Materials, DE#11-17). Supp Decl. Wiest, attached.

<sup>13</sup> (Pl.'s Ver. Compl., DE#1, ¶ 38; Admin. Materials, DE#11-18). In contravention of the timelines contained in DodI 1300.17, Lt. Colonel Ruyle's request remains pending with Lt. General Webb as of the date of the filing of this Complaint. *Id.*

<sup>14</sup> (Pl.'s Ver. Compl., DE#1, ¶ 39; Admin. Materials, DE#11-20; DE#38-3; DE#38-4). Supp Decl. Wiest, attached.

<sup>15</sup> (Pl.'s Ver. Compl., DE#1, ¶ 40; Admin. Materials, DE#11-21).

<sup>16</sup> (Pl.'s Ver. Compl., DE#1, ¶ 44; Admin. Materials, DE#11-5).

<sup>17</sup> (Pl.'s Ver. Compl., DE#1, ¶ 45; Admin. Materials, DE#11-12; #33-1; DE#38-1; DE#38-2).

<sup>18</sup> (Pl.'s Ver. Compl., DE#1, ¶ 46; Admin. Materials, DE#11-14). Supp Decl. Wiest, attached.

<sup>19</sup> (Pl.'s Ver. Compl., DE#1, ¶ 47; Admin. Materials, DE#11-19).

**The Air Force employs a double standard for exemption requests. It has granted thousands of medical and administrative requests, while denying all but a few religious exemptions, all of which otherwise qualify for another exemption**

As of May 10, 2022, the Air Force *received 11,700 requests for religious accommodation, approved 60, denied 5884, received 3414 appeals, and denied 2404 of those, while only approving 13.*<sup>20</sup> In the meantime, the Air Force has granted 855 medical exemptions, and 1,081 administrative exemptions. *Id.* The granting of more than one thousand medical and administrative exemptions belies any assertion that vaccination is mission-critical and that no religious accommodation exemptions can be granted.

Defendants Kendall, Scobee, Miller, Webb, and Slife each failed to grant (or even meaningfully consider) thousands of religious accommodation requests, while processing and approving medical and/or administrative accommodation requests, including for job duties similar in risk from the COVID-19 perspective to those of the Plaintiffs. Nevertheless, each, in violation of RFRA, has taken and continues to take actions against the Plaintiffs, including threats of punitive actions to include court-martial. (Pl.'s Ver. Compl., DE#1, ¶ 52). Because the order in question violates Plaintiffs' fundamental rights of free exercise of religion, Plaintiffs are unable to comply with the order, even if it means federal prison through the UCMJ process. (Pl.'s Ver. Compl., DE#1, ¶ 53).

Consistent with how the Air Force admittedly has treated administrative and medical exemption requests, almost all Plaintiffs have submitted declarations that demonstrate they too

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<sup>20</sup> <https://www.af.mil/News/Article-Display/Article/3018445/daf-covid-19-statistics-may-10-2022/> (last visited 5/14/2022).

seek **temporary exemptions** from the Air Force’s vaccination mandate until a non-objectionable vaccine comes to market. [Declarations of Plaintiffs, DE#30-3 through 20].

Plaintiffs have also adduced proof that not one single religious exemption has been granted without also being eligible for an administrative exemption. [Dec. Wiest, DE#30-2, with transcript of hearing in *Poffenbarger v. Kendall* attached]. None of these Plaintiffs are eligible for an administrative exemption. Lt. Doster likewise testified that Defendants are systemically denying all religious accommodations except for those at the end of service or who qualify for administrative exemptions. [Third Dec. Doster, DE#46-1].

## II. LAW AND ARGUMENT

### A. Standard of Review

Attacks on subject-matter jurisdiction under Rule 12(b)(1) come in two forms, “facial” and “factual” attacks. *Oh. Nat’l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). “A facial attack on the subject matter jurisdiction alleged by the complaint merely questions the sufficiency of the pleading[.]” and “[i]n reviewing such a facial attack, a trial court takes the allegations in the complaint as true, which is a similar safeguard employed under 12(b)(6) motions to dismiss.”<sup>21</sup> *Id.* (emphasis omitted). By contrast, “when a court reviews a complaint under a factual attack, . . . no presumptive truthfulness applies to the factual allegations[.]” and

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<sup>21</sup> In terms of a facial attack, the operative facts in the Plaintiffs’ Complaint allege that the Secretary imposed a vaccine mandate for COVID-19. (Pl.’s Ver. Compl., DE#1, ¶24). It alleges that the Plaintiffs submitted accommodation requests, and each had a Chaplain confirm the sincerity of the belief, but either had their request denied or that their request would be denied. (*Id.* at ¶¶ 27-48). It also explains that many of the Plaintiffs have natural immunity from prior infection. (*Id.* at ¶48). It explains that the Department of the Air Force has granted thousands of administrative and medical exemptions, but only a handful of religious accommodations to the same mandate. (*Id.* at ¶¶ 49-58). It is clear that the Department of the Air Force has not approved any religious accommodations other than those at the end of their term of service. (*Id.* at ¶2). It alleges that directives were given for blanket denials of religious accommodations. (*Id.* at ¶51).

“a trial court has wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts.” *Id.* (emphasis omitted).

The Court should order an evidentiary hearing, and require Defendants to present a witness who can speak to the administrative processing of Plaintiffs’ requests to date, the systemic denial of religious exemptions, and the granting of medical and administrative exemptions.

**B. Discovery should be ordered to the extent Defendants make a factual attack on jurisdiction**

Numerous cases provide that where, as here, Defendants make a factual attack, and where, as here, Plaintiffs request discovery via a proper FRCP 56(f) Declaration seeking discovery (which is included in the Declaration of Mr. Wiest, attached), such discovery should be ordered. *Abumchi v. Joak Am. Homes, Inc.*, 2022 U.S. Dist. LEXIS 74070 (MIED 2022); *Shepherd v. United States*, 2010 U.S. Dist. LEXIS 44292 (TNED 2010); *Exchange Nat’l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1131 (2nd Cir. 1976); *Johnson v. United States*, 534 F.3d 958, 965 (8th cir. 2008); *see also Rutkofske v. Norman*, 114 F.3d 1188 [published in full-text format at 1997 U.S. App. LEXIS 13262], at \*3 (6th Cir. June 4, 1997) (*citing Exchange Nat’l Bank*, 544 F.2d at 1131).

Plaintiffs here seek discovery to uncover whether it is still the case, as the Government previously represented, that no religious accommodations are granted unless an administrative ground for an exemption applies. Of course, this goes to the question of the futility exception to exhaustion and to ripeness. [Declaration. Wiest with Discovery attached].

"When a [dispositive motion] is filed, the party opposing the motion may, by affidavit, explain why he is unable to present facts essential to justify the party's opposition to the motion." *Summers v. Leis*, 368 F.3d 881, 887 (6th Cir. 2004). "The burden is on the party seeking

additional discovery to demonstrate why such discovery is necessary." *Id.* Having done so here, the Court should permit the requested discovery.

### **C. Plaintiffs' Claims are Ripe**

Defendants contend that this matter and the claims in it are not ripe. Like other claims, a RFRA claim becomes ripe if the plaintiff faces an "actual or imminent" injury, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1970), which occurs if the plaintiff confronts an actual or imminent burden on religious practice.

Put simply, "one does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (cleaned up); *see also Steffel v. Thompson*, 415 U.S. 452, 459 (1974) ("[I]t is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights.").

"If the rule were otherwise, the contours of regulation would have to be hammered out case by case—and tested only by those hardy enough to risk criminal prosecution to determine the proper scope of the regulation." *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965). Under that scenario, the First Amendment—"of transcendent value to all society, and not merely those exercising their rights—might be the loser." *Id.* As the Supreme Court remarked on this issue:

We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them. Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution.

*Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988).

Plaintiffs have standing and a claim is ripe regardless of whether they have been prosecuted or threatened with prosecution. *Doe v. Bolton*, 410 U.S. 179, 188 (1973). And where, as here, a government policy with exemptions vests “unbridled discretion in a government official over whether to permit or deny” First Amendment protected activity, one who is subject to the law or policy may challenge it facially without the necessity of first applying for, and being denied that same exemption. *City of Lakewood v. Plain Dealer Publ'n Co.*, 486 U.S. 750, 755-56 (1988); *see also East Brooks Books, Inc. v. Shelby Cnty. Tenn.*, 588 F.3d 360, 369 (6th Cir. 2009) (finding that plaintiff had standing based on the suppression of his future protected speech even where his license was not actually revoked); *Faith Baptist Church v. Waterford Twp.*, 522 Fed. Appx. 322 (6<sup>th</sup> Cir. 2013) (mere threat of potential prosecution was sufficient to establish that the claim was ripe and standing existed).

As of today, 10 Plaintiffs have had their appeal process fully adjudicated and have final denials from the Air Force Surgeon General (Doster, Colantonio, McCormick, Reineke, Stapanon, Theriault, Dills, Mosher, Pottinger, and Schuldes) – many of them in the short time this case has been pending. Further, 4 more (Clement, Martin, Ramsperger, and Rinaldi) have their final appeals pending with the Air Force Surgeon General and will have final denials in the next four weeks. That leaves four who have not had adjudications from their MAJCOM (Anderson, Leiby, Norris, and Ruyle), but each will be denied, because each is not otherwise qualified for an administrative exemption. [Dec. Wiest, DE#30-2, with transcript of hearing in *Poffenbarger v. Kendall* attached; Third Dec. Doster, DE#46-1].

“Ripeness requires that the injury in fact be certainly impending.” *Nat’l Rifle Ass’n of Am. v. Magaw*, 132 F.3d 272, 280 (6th Cir. 1997). It is a question of imminence. *Thomas More Law Center v. Obama*, 651 F. 3d 529, 536 (6<sup>th</sup> Cir. 2011). “Imminence is a function of



probability.” *Id.* “And probabilities can be measured by many things, including the certainty that an event will come to pass.” *Id.* “The uncertainty that the event will come to pass may be based on developments that may occur during a gap in time between the filing of a lawsuit and a threatened future injury.” *Id.* Courts also look to “developments that could prevent this injury from occurring” and ask if they are “probable” or “highly speculative.” *Id.* at 537.<sup>22</sup>

This matter is plainly ripe under Circuit precedent. *Berry v. Schmitt*, 688 F.3d 290 (6<sup>th</sup> Cir. 2012). In *Berry*, a letter from a body, with authority to take action, telling the Plaintiff that his actions were unlawful was sufficient to establish ripeness. Clearly here, we are well beyond what was sufficient for ripeness in *Berry* where there is a direct order and counseling that outlines a parade of unconstitutional horrors that will befall Plaintiffs for continued non-compliance with the mandate. (Complaint, Exhibit 12, DE#1-12, PageID#35-36). *See, also*, *Winter v. Wolnitzek*, 834 F.3d 681, 687-688 (6<sup>th</sup> Cir. 2016) (any communication directed at a Plaintiff that threatens that Plaintiff with enforcement, even if it is contingent upon future events, sufficiently establishes ripeness).

Here, and since the filing of this matter in mid-February 2022, all but 8 of the Plaintiffs have had their appeals expectantly denied by the Surgeon General, and four more will be denied in a matter of weeks. But for the current injunction, there is also no question but that each Plaintiff will then have adverse actions taken against him or her, because orders to comply always follow final denials, and then discipline. In part, the Government argues that the Court

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<sup>22</sup> Defendants cite to *Vance v. Wormuth*, 2022 U.S. Dist. LEXIS 67345 (WDKY 2022). The issue in *Vance* was that the Plaintiff had a pending medical discharge board in relation to a service-connected combat injury. That medical board put on hold further adjudication of his vaccine accommodation request and likewise put on hold any adverse action. Evidence of record also established that it was more likely than not that he would be medically discharged and adverse action from not receiving the vaccine would never come to pass. In other words, it made “developments that could prevent this injury from occurring” “probable.” *Obama*, 651 F. 3d 529, 537. There are no such similar circumstances applying to any Plaintiff here.

must permit these disciplinary measures to be imposed and then maybe, someday, years from now, after terms of imprisonment in Leavenworth are fully served, service records can be corrected. Besides concluding this course of action should be considered abhorrent by all who have sworn to uphold and defend the Constitution, one should also conclude that this absurd course of action is hardly “appropriate relief.” 42 U.S.C. 2000bb-1(c).

Not surprisingly, this “you must let us fully carryout our unconstitutional actions and damn the consequences” position is rejected by other courts as well. This Court and other courts are in accord that where, as here, there is a mandate that significantly burdens religion, and there is threatened enforcement and adverse consequences, a claim under RFRA is ripe. *Oklevueha Native Am. Church of Haw., Inc. v. Holder*, 676 F.3d 829 (9<sup>th</sup> Cir. 2012); *Navy Seal 1 v. Biden*, 2021 U.S. Dist. LEXIS 224656 (MDFL 2021); *Usn Seals 1-26 v. Biden*, 2022 U.S. Dist. LEXIS 2268 (NDTX 2022); *Church of Our Lord & Savior Jesus Christ v. City of Markham*, 913 F.3d 670 (7<sup>th</sup> Cir. 2019).

Because ripeness tests “the fitness of the issues for judicial resolution” and “the hardship to the parties of withholding court consideration,” both elements are met where it is clear that accommodations will continue to be denied to these Plaintiffs, and these Plaintiffs will face disciplinary or separation measures including “adverse administrative actions, non-judicial punishment, administration demotions, administrative discharges, and courts-martial.” (Decl. of Col. Hernandez, Doc. 27-14, Pg. ID 1941.) *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 201 (1983). This matter is ripe.

**D. RFRA does not contain an administrative exhaustion requirement. Most Plaintiffs have exhausted, and the remaining Plaintiffs need not await the predetermined outcome of a denial of the futile act that is their final appeal, particularly where Defendants have not complied with applicable timelines for processing under Department of Defense Regulations**

1. RFRA does not contain an administrative exhaustion requirement

The Government continues to argue, contrary to what this Court has already held, that Plaintiffs must exhaust their administrative remedies before seeking relief in in this Court. Exhaustion is not required for a statutory claim that does not contain an exhaustion requirement. *Hitchcock v. Cumberland Univ.* 403(b) DC Plan, 851 F.3d 552 (6<sup>th</sup> Cir. 2017) (declining to read an exhaustion requirement into a statute that did not contain such a requirement). RFRA does not contain an exhaustion requirement. To the contrary, 42 U.S. Code § 2000bb–1(c) permits an action for any person whose “religious exercise has been burdened in violation of this section,” subject only to Article III standing. Several cases support the proposition that administrative exhaustion simply does not apply to RFRA. *Singh v. Carter*, 168 F. Supp. 3d 216, 226 (DCD 2016) (exhaustion is not required for a RFRA claim); *Oklevueha Native Am. Church of Haw., Inc. v. Holder*, 676 F.3d 829, 838 (9<sup>th</sup> Cir. 2012) (“We decline . . . to read an exhaustion requirement into RFRA where the statute contains no such condition, see 42 U.S.C. §§ 2000bb–2000bb–4, and the Supreme Court has not imposed one.”).

The Fifth Circuit just explained this very fact in the context of military vaccine requirements: “Congress rendered justiciable Plaintiffs’ claims under RFRA, which applies to every ‘branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States[.]’” *U.S. Navy Seals 1-26 v. Biden*, 2022 U.S. App. LEXIS 5262, --- F.4<sup>th</sup> --- (5<sup>th</sup> Cir. 2022), *citing* 42 U.S.C. § 2000bb-2(1). “RFRA, in turn, sets the standards binding every department of the United States to recognize and accommodate sincerely held religious beliefs.” *Id.* “It undoubtedly ‘applies in the military context.’” *Id.*, *citing* *United States v. Sterling*, 75 M.J. 407, 410 (C.A.A.F. 2016), cert. denied, *Sterling v. United States*, 137 S. Ct. 2212, 198 L. Ed. 2d 657 (2017).

“This makes sense because service members ‘experience increased needs for religion as the result of being uprooted from their home environments, transported often thousands of miles to territories entirely strange to them, and confronted there with new stresses that would not otherwise have been encountered if they had remained at home.’” *Id.*, citing *Katcoff v. Marsh*, 755 F.2d 223, 227 (2nd Cir. 1985). “Federal courts are therefore empowered to adjudicate RFRA’s application to these Plaintiffs.” *Id.*

Even if military operations require some deference from courts, “‘resolving a claim founded solely upon a constitutional right is singularly suited to a judicial forum and clearly inappropriate to an administrative board.’” *Adair v. England*, 183 F. Supp. 2d 31, 55 (D.D.C. 2002) (quoting *Downen v. Warner*, 481 F.2d 642, 643 (9th Cir. 1973)). In *Adair*, the court rejected the military’s argument that plaintiffs with free-exercise claims should have “first exhausted their administrative remedies by raising their personnel claims with the Board for Correction of Naval Records (‘BCNR’) before coming to federal court.” *Id.* Indeed, “the Supreme Court and [the D.C. Circuit] have heard numerous [constitutional] challenges to military policies.” *Brannum v. Lake*, 311 F.3d 1127, 1130 (D.C.Cir.2002). The D.C. Circuit has explained that the logic underlying non justiciability in military cases is “wholly inappropriate ... when a case presents an issue that is amenable to judicial resolution,” recognizing that “courts have shown no hesitation to review cases in which a violation of the Constitution, statutes, or regulations is alleged.” *Dilley v. Alexander*, 603 F.2d 914, 920 (D.C.Cir.1979); *see id.* (“It is a basic tenet of our legal system that a government agency is not at liberty to ignore its own laws and that agency action in contravention of applicable statutes and regulations is unlawful.... The military departments enjoy no immunity from this proscription.”).

Further, *Harkness v. Sec’y of the Navy*, 858 F.3d 437 (6<sup>th</sup> Cir. 2017) is not to the contrary.

*Harkness* did discuss exhaustion for a First Amendment claim. But it did not involve any claims under RFRA. Again, RFRA itself contains no exhaustion requirement. 42 U.S.C. §§ 2000bb-1. Congress wanted to ensure that victims had the ability to obtain “appropriate relief,” and requiring exhaustion (particularly to the degree Defendants assert) would substantially frustrate that goal if service members were forced into potentially years of administrative proceedings. Compare that to the RLUIPA claims for prisoners, which contain explicit exhaustion requirements, with RLUIPA incorporating the PLRA requirements for administrative exhaustion. 42 U.S. Code § 2000cc-2(e); 42 U.S. Code § 1997e. Congress knows how to include an administrative exhaustion requirement, and it did not do so for RFRA claims. Thus, *Hitchcock*, 851 F.3d 552, is controlling and there is no exhaustion requirement for a RFRA claim.

Beyond this authority, in the religious freedom context, the U.S. Supreme Court has been clear that exhaustion is not required before obtaining relief in the District Court. *Parisi v. Davidson*, 405 U.S. 34 (1972). In *Parisi*, as here, the service member had a religious objection to aspects of military service – namely combat duties – and claimed conscientious objector status. And, like the RFRA statute here, a federal statute gave the service member the right to claim that status. The Supreme Court found, contrary to the Government’s arguments here, that resorting to the Board of Corrections for Military Records, or to court martial appeals, and to anything other than claiming the exemption under applicable Army regulations was not necessary. *Id.* at 41-42. The Supreme Court held that “we no more than recognize the historic respect in this Nation for valid [religious accommodation] to military service.” *Id.* at 45. “As the Defense Department itself has recognized, ‘the Congress . . . has deemed it more essential to respect a man’s religious beliefs than to force him to serve in the Armed Forces.’” *Id.* That

observation by the Supreme Court has equal weight in the administrative exhaustion context to RFRA claims – namely that no such exhaustion requirement exists under that statute.

2. Ten Plaintiffs have received their final Surgeon Appeal Denial and have exhausted

Ten Plaintiffs (Doster, Colantonio, McCormick, Reineke, Stapanon, Theriault, Dills, Mosher, Pottinger, and Schuldes) have received their final Surgeon General Appeal Denial and have exhausted. Once again, Defendants (without cite to any supporting caselaw) argue that these Plaintiffs have not exhausted, and that all Plaintiffs must resort to court martial appeals or the Board of Correction for military records. As noted, Defendants are wrong. And, these 10 Plaintiffs have had their exemption requests denied by the applicable decision-making authority, and no further exhaustion is required, particularly to third party boards. *Darby v. Cisneros*, 509 U.S. 137 (1993). In *Darby*, as here, the decisionmaker made the decisions denying Plaintiffs the exemption. They do not need to do more. And *Darby* is clear that the existence of an appeal procedure does not matter in terms of administrative exhaustion. Exhaustion is complete once ***the decision maker*** renders its decision.

Other cases are in accord that resort to the Board of Correction of Military Records and similar administrative actions is not required to exhaust. *Adair*, 183 F. Supp. 2d 31, 55; *Downen*, 481 F.2d 642, 643; *Brannum*, 311 F.3d 1127, 1130; *Dilley*, 603 F.2d 914, 920.

3. Of those eight remaining Plaintiffs who have not received their final appeal denial, futility and other exceptions apply.

Of the eight remaining Plaintiffs, four (Clement, Martin, Ramsperger, and Rinaldi) have their requests pending with the Air Force Surgeon General and, based on past processing times, will have their appeals denied in the next 2 to 3 weeks. Though it is true the remaining four are awaiting their initial denials (Anderson, Leiby, Norris, Ruyle), it is also true that none of them meet criteria for an administrative exemption, and thus all of them will certainly be denied. [Dec.

Wiest, DE#30-2, with transcript of hearing in *Poffenbarger v. Kendall* attached; Third Dec. Doster, DE#46-1].

Because Clement, Martin, Ramsperger, and Rinaldi have had their accommodation requests denied, they have exhausted. *Darby v. Cisneros*, 509 U.S. 137 (1993). The remaining Plaintiffs are waiting on their final, yet still certain, religious accommodation denials.

Also relevant to the inquiry is the Air Force's compliance with Department of Defense Instruction 1300.17 for these remaining eight Plaintiffs.<sup>23</sup> The Defendants failed to comply with that instruction, which is a ***mandatory timeline*** for processing accommodation requests, with exceptions to be explicitly set forth in service regulation, and in any event within 30 days of the submission of a service members' appeal to the service secretary with all review and action taken within 60 days of that date. *Id.* at ¶3.2.c. Consequently, the Defendants' failure to comply with the relevant regulation that mandates timely processing of the accommodation request obviates any arguments that Defendants now make regarding administrative exhaustion. *Mass. Mut. Life Ins. Co. v. Russel*, 473 U.S. 134, 144 (1985) (administrative exhaustion does not apply where the Defendant fails to comply with its own timely processing rules); *Villegas de la Paz v. Holder*, 614 F.3d 605, 608 (6<sup>th</sup> Cir. 2010) (calling the Government's failure to comply with processing requirements and attempts to deprive a court of jurisdiction thereby a "perversion" of justice and refusing to apply administrative exhaustion in such circumstances).

Even if exhaustion of administrative remedies were required, the Sixth Circuit has adopted the Fifth Circuit's reasoning concerning administrative remedy exhaustion. *Harkness v. Sec'y of the Navy*, 858 F.3d 437 (6<sup>th</sup> Cir. 2017), *citing Mindes v. Seaman*, 453 F.2d 197 (5<sup>th</sup> Cir.

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<sup>23</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/130017p.pdf> (last visited 11/17/2021).

1971). In *Mindes*, the Fifth Circuit articulated a test for determining the reviewability of a particular military decision. As a threshold matter, the *Mindes* court held that an internal military decision is unreviewable unless two initial requirements are satisfied: “(a) an allegation of the deprivation of a constitutional right, or an allegation that the military has acted in violation of applicable statutes or its own regulations, and (b) exhaustion of available intraservice corrective measures.” *Id.* at 201. Clearly, here, the first element is met.

Once the threshold step of *Mindes* is satisfied, the next step is weighing the following four factors to determine the justiciability of a claim regarding internal affairs: the nature and strength of the plaintiff’s challenge to the military determination; the potential injury to the plaintiff if review is refused; the type and degree of anticipated interference with the military function; and the extent to which the exercise of military expertise or discretion is involved. *Mindes*, 453 F.2d at 201-2. Application of these factors compels review of Plaintiffs’ claims by this Court.

As set forth below, under the first factor, the nature and strength of Plaintiffs’ challenge favors judicial review. Second, without review, Plaintiffs face serious, irreparable injury. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The third factor, type, and degree of anticipated military function, provides a caveat: “[i]nterference *per se* is insufficient since there will always be some interference when review is granted, but if the interference would be such as to seriously impede the military in the performance of vital duties, it militates strongly against relief.” *Mindes*, 453 F.2d at 201.

Granting review of whether the Air Force has properly followed the law in the evaluation of religious accommodation requests does not pose a threat to its performance of vital duties. Further, there is no evidence that the relief requested by these Plaintiffs would cause significant



interference with the operations of the Air Force – the granting of secular accommodations and exemptions by the Government belies any such conclusion. Also, granting injunctive relief to these complainants only accounts for a small fraction of the Air Force Active, Reserve, and Guard Force. Therefore, the “traditional deference” cited by the Government in applying *Mindes* to “internal military decisions” is inapplicable, as Plaintiffs make an argument based on legal sufficiency, not military expertise. Therefore, because each of the four factors weigh in favor of review, *Mindes* does not serve as a procedural bar to Plaintiffs’ claims, even if it applied here.

Also, the Sixth Circuit recognizes exceptions to exhaustion where administrative remedies are inadequate or not efficacious; where pursuit of administrative remedies would be a futile gesture; and where irreparable injury will result unless immediate judicial review is permitted. *Southern Ohio Coal Co. v. Office of Surface Mining, Reclamation & Enforcement*, 20 F.3d 1418, 1424 (6<sup>th</sup> Cir. 1994); *see, also, Seepe v. Department of Navy*, 518 F.2d 760, 762 (6<sup>th</sup> Cir. 1975) (recognizing exceptions to exhaustion for futility, an exception for where the *status quo* under the administrative decision pending review would itself constitute a hardship or leave the complainant in an emergency situation, and where the complaint involved a matter of law only and did not require or involve application of military expertise); *Kentucky, Educ. & Workforce Dev. Cabinet, Office for the Blind v. United States*, 759 F.3d 588, 598 (6<sup>th</sup> Cir. 2014) (recognizing exceptions where (1) requiring exhaustion will result in irreparable harm; (2) the administrative remedy is wholly inadequate; or (3) that the administrative body is biased, making recourse to the agency futile.)

The Fifth Circuit likewise has identified at least four such exceptions to military exhaustion: futility, inadequacy of administrative remedies, irreparable injury, and a substantial constitutional question. *Von Hoffburg v Alexander*, 615 F.2d 633 at 638. All these exceptions clearly apply here.

As with the Navy in *Usn Seals I-26 v. Biden*, 2022 U.S. Dist. LEXIS 2268 (TXND 2022), “[t]he facts overwhelmingly indicate that the [Air Force] will deny the religious accommodations.” “Outside of Plaintiffs’ requests, the [Air Force] has, to date, never granted a religious accommodation request for the COVID-19 vaccine.” *Id.* In fact, the Air Force Surgeon General himself has already predetermined the denial of religious accommodation appeals demonstrating that the entire religious accommodation process is nothing more than an exercise in futility and certainly for show. There will be no approvals unless you are within the last few months of your service to the Air Force or qualify for an administrative exemption, which none of these Plaintiffs are and none of them do. The Government has already admitted in the record in *Poffenbarger v. Kendall* that all these requests will be denied. [Dec. Wiest, DE#30-2, with transcript]. Therefore, exhausting remedies in this scenario provides no real opportunity for adequate relief.

The Fifth Circuit recently was clear that “exhaustion is unnecessary if, *inter alia*, the administrative remedy is futile, and plaintiffs raise substantial constitutional claims.” *U.S. Navy Seals I-26*, 2022 U.S. App. LEXIS 5262, --- F.4<sup>th</sup> ---. There, as here:

The [Air Force] . . . has denied all religiously based claims for exemption from COVID-19 vaccination [other than those who otherwise qualified for administrative exemptions]. It is true that futility is not a function of the likely ultimate success of administrative exhaustion. But evidence, recited previously and not meaningfully challenged here, suggests that the [Air Force] has effectively stacked the deck against even those exemptions supported by Plaintiffs’ immediate commanding officers and military chaplains. This is sufficiently probative of futility. Further, as explained more fully below, Plaintiffs raise substantial, legally clear-cut questions under RFRA. Courts are specifically equipped to address RFRA claims and, by the same token, the issues are less suitable for administrative adjudication.

Ultimately, the Fifth Circuit wisely found that *Mindes* justiciability was met, as did this Court, “exhaustion in this instance is futile.” *Doster v. Kendall*, ---F. Supp. 3d---, 2022 WL 982299, at \*9 (S.D. Ohio Mar. 31, 2022). Further, given the systemic denial of *every single religious exemption request other than those otherwise eligible for administrative exemptions*, the

Government hardly comes to this Court with clean hands to argue that there is any chance that any request will be granted. [Dec. Wiest, DE#30-2, with transcript]. The Government claims that appeals are not really futile. That is word play. The irrational hope that the Air Force could hypothetically grant *its very first* religious accommodation for someone not at the end of service or eligible for an administrative exemption, does not, on this record, “provide a real opportunity for adequate relief” and shows the Governments improprieties of their futile system. *Hodges*, 499 F.2d at 420.

Second, Plaintiffs need not exhaust military remedies when “available administrative remedies are inadequate” to grant the relief they seek. *Von Hoffburg*, 615 F.2d at 640. For example, “an administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). That exception for inadequate remedies is met because, make no mistake, the exemption requests here are predetermined, and the harm is ongoing.

The third exception, “exhaustion is not required when the petitioner may suffer irreparable injury if he is compelled to pursue his administrative remedies.” *Von Hoffburg*, 615 F.2d at 638. That resembles the second *Mindes* factor, which considers “[t]he potential injury to the plaintiff if review is refused.” *Mindes*, 453 F.2d at 201. Again, the burdening of Plaintiffs’ religious beliefs, which is occurring today, *is* irreparable harm. *Elrod v Burns*, 427 U.S. 347, 373; *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610; *Catholic Diocese of Nashville v. Sebelius*, 2013 U.S. App. LEXIS 25936 (6<sup>th</sup> Cir. 2013).

The Government argues that these Plaintiffs must go through its multi-level administrative process before suing in court. In reality, this is nothing more than a subterfuge to hide a coercive process designed, in the case of the vaccine mandate, to significantly burden those who must

choose between their sincerely held religious beliefs and the end of their military careers. The unstated premise behind the Government's insistence on this process is its belief that if you take away one's liberty, career, and ability to support their family, they will eventually break. Thankfully, for these Plaintiffs, such a contention is directly contradicted by applicable case law. *Maryville Baptist Church, Inc.*, 957 F.3d 610; *Parisi*, 405 U.S. 34. It is no different than sending State Police into churches and denying individuals the ability to engage in corporate worship, which was irreparable harm. *Maryville Baptist Church, Inc.*, 957 F.3d 610. And the Government's absurd arguments that the Plaintiffs can exercise their religion by not getting the vaccine being somehow different than state police in churches in *Maryville Baptist Church, Inc.*, 957 F.3d 610 is absurd. The churchgoers could go to church also. But like the Plaintiffs here, they would be punished for it.

The fourth exception to exhaustion is when "the plaintiff has raised a substantial constitutional question." *Von Hoffburg*, 615 F.2d at 638. That inquiry raises the same issues as the first *Mindes* factor, the "nature and strength of the plaintiff's challenge to the military determination," which generally favors review of substantial constitutional questions. *Mindes*, 453 F.2d at 201. Here, there is no question a substantial Constitutional question exists.

### III. CONCLUSION

The Motion to Dismiss should be denied.

Respectfully submitted,

/s/ Christopher Wiest

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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing by CM/ECF, this 16 day of May, 2022.

/s/ Christopher Wiest

Christopher Wiest (OH0077931)

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

<b>HUNTER DOSTER, et. al.</b>	:	Case No. 1:22-CV-84
Plaintiffs	:	
<b>v.</b>	:	
<b>FRANK KENDALL, et. al.</b>	:	
Defendants	:	

**THIRD DECLARATION OF CHRISTOPHER WIEST**

Pursuant to 28 U.S.C. §1746, the undersigned, Christopher Wiest, makes the following declaration, under penalty of perjury under the laws of the United States of America, that the facts contained herein are true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge:

1. My name is Christopher Wiest, and I am one of the Counsel for Plaintiffs in the above captioned matter.
2. The Government has moved to dismiss the case on the grounds of, among other things, a factual attack on the Court's subject matter jurisdiction, and namely on grounds of ripeness and administrative exhaustion. We have argued, among other things, futility. The Government has responded that futility does not apply because they have granted a limited number of religious accommodations.
3. We have not had the ability to conduct discovery (because we have had no FRCP 26(f) conference that would permit discovery), necessary to fully respond to this argument.
4. We require discovery of the full factual circumstances of each of the religious accommodations to the COVID-19 vaccination, which the Government has granted, and is relying upon, including who the accommodation was granted to, what the accommodation request was, what the job duties were, how long the person had been in

the Air or Space Force, and, perhaps most importantly, whether the person was nearing the end of their term of service or otherwise qualified for an administrative exemption such as terminal leave.

5. We also require discovery on the process used to determine religious accommodations to the vaccination mandate, and the standards the Government has applied.
6. And we require discovery on the contents of directives given to Air Force leaders at the 2021 CORONA conference, where, we understand from a whistleblower, a directive was given concerning blanket denials of religious accommodations, and the chaplains were excused from the room.
7. We have significant evidence (including an admission by the Government on the record in *Poffenbarger v. Kendall*) that the handful of religious exemptions granted are *only* for those who otherwise qualify for an end-of-service administrative exemption. If that remains true, exhaustion is futile and the exemptions will be denied.
8. The Air Force Reserve has also put out a call for qualified Court Reporters, see **Exhibit A** hereto, for the purpose of conducting boards to discharge the numerous individuals who sought religious exemptions, further demonstrating futility and impending harm. The purpose of this request was due to the fact that the Active-Duty Air Force would no longer be able to provide court reporters to the AFRC due to an increase in separation boards for the Active component.
9. We have information that the results of these boards are a foregone conclusion, and will lead to the separation of those who have sought religious accommodations (where all of those accommodation requests will or have been denied).

10. I have tendered, herewith, and as an **Exhibit B**, written discovery that we would propose to propound to the Defendants.
11. A FRCP 30(b)(6) deposition of the United States, on the topics set forth in paragraphs 4-10 herein is also necessary before we can fully respond.
12. And, further, we require the depositions of the Government's witnesses to its motion, Major General Bannister, Colonel Riggsbee, Colonel Schermerhorn, Colonel Moschella, Lt. Colonel Bowers, and Lt. Colonel Salvatore. We likewise require the deposition of Lt. General Miller. We have information to believe that the foregoing declarations are materially inaccurate and materially incomplete, which have a bearing upon our ability to respond to the foregoing Motion to Dismiss.
13. The foregoing information will demonstrate that the entirety of the Government's motion is predicated upon bad faith; that the named Plaintiffs and others similarly situated will not only have their accommodation requests denied, but also will be removed from the service, as soon as the Air Force can do so.
14. Further, attached hereto, at **Exhibit C**, are true and accurate additional administrative materials received by certain of the Plaintiffs, which constitute records of the Government under FRE 803(6) and FRE 803(8) (Clement, Martin, McCormick, Ramsperger, Reineke, Rinaldi, Pottinger, and Stapanon) relative to their religious accommodation requests.

Pursuant to 28 U.S.C. §1746, I declare under penalties of perjury under the laws of the United States of America that the foregoing Declaration is true and correct to the best of my knowledge and belief and that such facts are made based on my personal knowledge.

Executed on 5/16/2022.



Christopher Wiest



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

From: **myPers** <[tfsc\\_1@mypersmail.af.mil](mailto:tfsc_1@mypersmail.af.mil)>

Date: Tue, May 3, 2022 at 3:42 PM

Subject: AFRC Requesting IRs with Court Reporting Experience Incident: 220503-010602

To:



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**Subject**

**AFRC Requesting IRs with Court Reporting Experience**

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**Response**

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Auto-Response By (Administrator) (05/03/2022 02:42 PM)

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Due to an increase in demand for Active Duty discharge boards (and due to several court reporter position vacancies), the Active Duty has limited its court reporter support for AFR administrative discharge boards until further notice. Therefore, AFRC would like to identify Airmen with court reporting experience willing to be placed on RPA orders to support upcoming AFR boards.

Airmen who qualify will be put on a list and offered the opportunity to work when needed. While most opportunities are in person, there is the possibility of limited telework as well.

If you have such experience, no matter your rank or AFSC, please contact Ms. Lisa List at [lisa.list@us.af.mil](mailto:lisa.list@us.af.mil).

myPers (<https://mypers.af.mil>) is available 24/7 for your Air Force HR needs.

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

<b>HUNTER DOSTER, et. al.</b>	:	Case No. 1:22-CV-84
Plaintiffs	:	
<b>v.</b>	:	
<b>FRANK KENDALL, et. al.</b>	:	
Defendants	:	

**WRITTEN DISCOVERY PROPOUNDED TO THE UNITED STATES AND  
SECRETARY KENDALL**

Plaintiffs, pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure and other applicable law, requests that Defendants United States of America and the Secretary of the Air Force, each, (“Defendants”): (i) answer the following interrogatories in writing and under oath, (ii) respond to each of the following requests for admission in writing, (iii) produce or make available for inspection and copying at the Law Office of Christopher D. Wiest, 25 Town Center Blvd, Suite 104, Crestview Hills, KY 41017, the following documents, materials, and things, and (iv) respond in writing to the following request for production (collectively, the “Discovery Requests”), within thirty (30) days after service hereof. These Discovery Requests shall be deemed continuing as to require supplemental answers if Defendant obtains further information and/or documentation between the time of service and the time of trial.

**DEFINITIONS**

1. “Complaint” refers to the lawsuit filed by Plaintiff in the United States District Court for the Southern District of Ohio, Case No. 1:21-cv-00626.

2. “Communication” shall mean any conversation or other oral or written contact, formal or informal, at any time or place, during which information of any nature was transmitted.

“Communication” includes, but is not limited to, meetings, telephone conversations, discussions, memoranda, correspondence, e-mail, and oral requests for information.

3. The terms “Defendant,” or “Defendants,” “you,” and “your,” mean each of the Defendants, as well as any of their present and former employees, servants, agents, attorneys, accountants, investigators, and all other persons known to be acting on his behalf.

4. The term “Air Force” means the Department of the Air Force, and includes both the Air Force, the Space Force, and, to the extent relevant, any of its present and former officers, agents, directors, attorneys, accountants, investigators, employees, servants, and all other persons known to be acting on its behalf.

5. As used in these Discovery Requests, the term "writing(s)" or "document(s)" shall mean every document (as defined in Fed. R. Civ. P. 34) in the possession, custody, or control of you, whether a copy, draft, or original, wherever located, with all exhibits, attachments, and schedules, including but not limited to the following: correspondence and drafts of correspondence; notes or summaries of conversations; income tax returns, forms, schedules or worksheets; inter- and intra-office memoranda; reports; comments; worksheets; plans; minutes; notes; notices or notifications; findings; memoranda; brochures, circulars, bulletins, advertisements, sales catalogs or literature; notes, records, summaries, or other reports of conferences, meetings, visits, surveys, discussions, inspections, examinations, reviews or telephone conversations; purchase orders, quotations, estimates, invoices, bids, receipts, or acknowledgments, including the reverse sides of all such documents with printing, typing or writing on the reverse sides; bills of lading and other shipping documents; credit memoranda; contract or lease offers or proposals; executed or proposed agreements, contracts, franchise agreements, licenses, leases, insurance policies and riders, or options; proposals or diaries; desk

calendars, appointment books, or telephone call books; property valuations or appraisals, and their updates; affidavits, depositions, transcripts and statements, or summaries or excerpts thereof; stenographic notes; books and records, including but not limited to journals, ledges, balance sheets, profit and loss statements, computer print-outs and notes and memoranda concerning them; financial data; stock certificates and evidence of stock ownership; newspaper or magazine articles; pamphlets, books, texts, notebooks, magazines, manuals, journals, and publications; note pads, tabulations, data compilations, calculations, or computations; schedules or drafts; charts and maps; forecasts and projections; drawings, designs, plans, specifications, graphs, blueprints, sketches, or diagrams; orders; pleadings and court filings; checks and check stubs (front and back); records or transcripts of statements, depositions, conversations, meetings, discussions, conferences or interviews, whether in person or by telephone or by other means; work papers; print-outs or other stored information from computers or other information retention or processing systems; photographic matter or sound reproduction matter however produced, reproduced or stored; government reports, regulations, filings or orders; any other written, printed, typed, taped, recorded, or graphic matters; any exhibits, attachments, or schedules to or with the foregoing; any drafts of the foregoing; and any copies or duplicates of the foregoing which are different because of marginal or handwritten notations, or because of any markings thereon. A draft or non-identical copy is a separate document within the meaning of this term.

6. “Identify” shall mean:

(A) With respect to a person, state the full name, home address, business address, employer, and position or positions within each organization employing such person. If the person’s full name is not available, provide the portion of the name known, and any identifying physical characteristic or job responsibilities;

(B) With respect to a corporation, partnership, or other business or government entity, state the full name and principal business address;

(C) With respect to an oral communication, state the speaker, each person spoken to or who otherwise heard the communication, the substance of the communication, and the precise date, time, and place of the communication;

(D) With respect to a document, state its title and a description of its subject matter, the identity of the person or persons who prepared it, the identity of the addressor and addressee or recipients of the document, the document's date, and if undated, its date of preparation, and its location and custodian; and

(E) With respect to an event or occasion, state the date(s) and time(s) at which it occurred, the location at which it occurred, and any witnesses to it or persons present at it.

7. "Relating to" means constituting or evidencing and directly or indirectly addressing, discussing, mentioning, describing, referring to, pertaining to, being connected with or reflecting upon the stated subject matter.

8. The word "or" shall be nonexclusive.

9. The term "including" means including without limitation.

10. The singular of any word shall include the plural, and the plural of any word shall include the singular.

11. "And/Or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Discovery Request all responses that might otherwise be construed to be outside of its scope.

### **INSTRUCTIONS**

1. The following Discovery Requests call for all information, including that contained in any documents or any other tangible thing, that is known or available to you, including all information in the possession of your agents, attorneys, accountants, or other experts, and any investigator or any person acting on your behalf or under your or your attorneys' employment, direction, and/or control.

2. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry into and to secure information requested therein, please so state, answering such interrogatory to the extent that you are able, and further specify the facts on which you relied to support your contention that you are unable to answer the interrogatory fully and completely. State the knowledge, information, or belief you possess concerning the unanswered portion of such interrogatory and fully detail the acts done and the inquiries made which demonstrate that you have exercised due diligence to secure the requested information.

3. If you contend that any information or document may be withheld upon any claim of privilege, pursuant to Federal Rule of Civil Procedure 26 and other applicable law, identify any such information or document, and with respect to said information or document, state:

(A) For documents: (i) the type of document, e.g., letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other;

(B) For oral communications: (i) the name of the person making the communication and the names of persons present while the communication was made, and, where not apparent, the relationship of the persons present to the person making the communication; (ii) the date and place of communication; and (iii) the general subject matter of the communication.

4. All documents are to be produced that are within your possession or control or within the possession or control of your attorneys, investigators, agents, employees or other representatives of you or your attorneys. If a Discovery Request cannot be answered in full, answer to the extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

5. These Discovery Requests are continuing in nature. You must supplement or correct any response to these Discovery Requests if, after these Discovery Requests are answered for the first time, you learn that in some material respect the response provided is incomplete or incorrect. These Discovery Requests include all documents, materials, things, and information known or available to you, or are in your possession, custody, or control of you, your agents, or your attorneys.

6. Each request for a document or documents to be produced requires production of the document, in its entirety, without abbreviation or expurgation, and without redacting any portion of it.

7. If you object to any Discovery Request on belief that part, but not all, of the Discovery Request is objectionable, so state, and produce the document, material, or thing to you do not object and identify all documents, materials, and things that exist that are not being produced because of the objection.



8. To the extent you assert any claim of privilege, you shall set forth in complete and specific detail the exact privilege being claimed, as well as every fact upon which your claim of privilege is based and such facts as will be sufficient for the Court, upon reviewing your response, to make a full and complete determination whether your privilege claim is valid and applicable. To the extent any privilege is claimed, you shall also produce in response to these Discovery Requests a privilege log that includes: (i) the date of each document, the event, or item claimed to be privileged, (ii) the description of the document, event, or item sufficient that it can be reviewed, and (iii) the identity of every person who had possession of, had access to, or saw the document or item, or who participated in or was present during the event included within the log. The privilege log must also include the subject matter of each document, event, or item without revealing specific information as to which the privilege is asserted. In any event, the privilege log must contain specificity such that the Court will be able to make a full and complete determination whether your claim of privilege is valid and acceptable.

9 More than one paragraph of this request may ask for the same document. The presence of such duplication is not to be interpreted to narrow or limit the normal interpretation placed upon each individual request. Where a document responds to more than one numbered paragraph, only one copy of it need be produced.

10. If any document requested was, but is no longer in your possession or subject to your control or is no longer in existence, state whether it:

- (A) Is missing or lost;
- (B) Has been destroyed;
- (C) Has been transferred, voluntarily or involuntarily, to others and state the identity of those persons to whom it has been transferred;

(D) has been otherwise disposed of, and in each instance, explain the circumstances surrounding such disposition, state the date or approximate date thereof, and the identity of the persons with knowledge of such circumstances; or

(E) Identify the documents that are missing, lost, destroyed, transferred, or otherwise disposed of, by author, date, subject matter, addressee and the number of pages.

11. If you do not clearly understand, or have any questions about the definitions, instructions, or any interrogatory, please contact the undersigned counsel promptly for clarification.

12. You are also directed to supplement all answers, as required under FRCP 26(e).

**Request for Admissions (FRCP 36)**

1. Admit that every religious accommodation approved by the Department of the Air Force was granted for personnel who were at or near the end of their term of service, or who otherwise qualified for an administrative exemption.

RESPONSE:

2. Admit that each document you have produced herewith is authentic and kept in the ordinary course of your business.

RESPONSE:

**Interrogatories (FRCP 33)**

1. Identify each person involved in, or who is answering these Interrogatories.

RESPONSE:

2. Identify the full factual circumstances of each of the religious accommodations to the COVID-19 vaccination, which the Government has granted, including who the accommodation was granted to, what the accommodation request was, what the job

duties were, how long the person had been in the Air or Space Force, and, importantly, whether the person was nearing the end of their term of service or otherwise qualified for an administrative exemption such as terminal leave.

RESPONSE:

3. For each of the named Plaintiffs, identify whether any medical or administrative exemptions were granted to the COVID-19 vaccination mandate for any Air Force personnel in their career field, base, or to persons who have similar duties. If so, identify the full factual circumstances of each such medical or administrative accommodation to the COVID-19 vaccination, including who the accommodation was granted to, what the accommodation request was for and why was it granted, their duty location/base, and what the job duties were.

RESPONSE:

4. Please describe the process used to determine religious accommodations to the vaccination mandate, and the standards the Government has applied generally.

RESPONSE:

5. Please describe the full circumstances, nature, and details, of any directives given to Air Force leaders at the 2021 CORONA conference concerning religious accommodations to the COVID-19 vaccination requirement.

RESPONSE:

6. Please describe the nature and circumstances concerning the call by the Department of the Air Force Reserve Component (AFRC) for qualified court reporters to support upcoming AFR boards due to the AF Active Duty limiting its court reporter support for the Air Force Reserves due to an increase in demand for Active Duty discharge boards relating to the discharge of those who sought religious accommodations, had them denied, and now face separation.

RESPONSE:

7. Please identify all persons with personal knowledge regarding the responses to the preceding Interrogatories.

RESPONSE:

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, \_\_\_\_\_, declare under penalty of perjury that I have read the foregoing Interrogatories, and state that the responses thereto, true and accurate.

Executed on \_\_\_\_\_.

\_\_\_\_\_

**Request for Production of Documents (FRCP 34)**

1. For each religious accommodation request to the COVID-19 vaccination requirement that the Air Force or its agents have granted, produce the full administrative record for each request, including (i) the accommodation request; (ii) the chaplain interview memoranda; (iii) any and all processing memoranda and command recommendations leading to the granting of the request; (iv) the personnel data for the member involved.

RESPONSE:

2. For each medical or administrative religious accommodation request to the COVID-19 vaccination requirement that the Air Force or its agents have granted for any personnel (a) at the same base, or (b) with the same or similar duties as any of the 18 Plaintiffs, produce the full administrative record for each request, including (i) the accommodation request; (ii) any and all processing memoranda leading to the granting of the request; and (iii) the personnel data for the member involved.

RESPONSE:

3. Produce any documents (other than published Department of Defense instructions or published Air Force instructions) that reflect or relate to the process used to determine religious accommodations to the vaccination mandate, and the standards the Government has applied generally.

RESPONSE:

4. Produce any documents (other than published Department of Defense instructions or published Air Force instructions) that reflect or relate to any directives or discussion at the 2021 CORONA conference concerning religious accommodations to the COVID-19 vaccination requirement.

RESPONSE:

5. Produce any documents (other than published Department of Defense instructions or published Air Force instructions) that reflect or relate to the call by the Department of the Air Force for qualified court reporters for the administrative discharge boards relating to the discharge of those who sought religious accommodations, had them denied, and now face separation.

RESPONSE:

6. Produce any documents that reflect or relate to directives or policies (other than published Department of Defense instructions or published Air Force instructions) regarding administrative or punitive measures either taken against or planned to be taken against members with religious accommodations to the COVID-19 vaccination mandate.

RESPONSE:

Respectfully submitted,

/s/ Christopher Wiest  
Christopher Wiest (OH 0077931)  
Chris Wiest, Atty at Law, PLLC  
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**Attorneys for Plaintiff**

#### **CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing by electronic mail and by CM/ECF,  
this \_\_\_ day of May, 2022.

/s/ Christopher Wiest  
Christopher Wiest (OH 0077931)





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

23 March 2022

MEMORANDUM FOR MAJOR PAUL CLEMENT

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 and 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 Air Force Institute of Technology PhD student, there is a compelling government interest for you to receive the vaccine. Specifically, you are required to perform official travel in order to complete the research portion of your program. Due to the nature of your research, it is not practical for you to coordinate virtually. Further, when you return to your primary duties as a nuclear engineer, you may be required to conduct and manage


Exhibit C

research projects and perform other tasks in support of operations and intelligence. An exemption could cause perception of favoritism, eroding good order and discipline. Your personal lack of readiness will impact your ability to deploy at your next assignment, 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 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 your research via telework and you will be required to travel in order to conduct it. Your ability to socially distance while traveling may be limited and 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 your local Chaplain's office.

  
MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:

Member's Unit

Member's Servicing FSS



1st Ind, MAJ PAUL CLEMENT

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 \_\_\_\_\_ (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.

PAUL CLEMENT, Maj, USAF

2d Ind, MAJ PAUL CLEMENT

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.

PAUL CLEMENT, Maj, USAF



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

11 April 2022

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

FROM: Paul A. Clement, Maj, USAF  
AFIT/ENP  
2950 Hobson Way  
Wright-Patterson AFB OH 45433

SUBJECT: Appeal of Decision Regarding Religious Accommodation Request

References: (a) DAFI 52-201, 23 June 2021, *Religious Freedom in the Department of the Air Force*  
(b) AFI 48-110\_IP, 7 September 2021, *Immunization and Chemoprophylaxis for prevention of Infectious Disease*  
(c) H.R.1308, 16 November 1993, *Religious Freedom Restoration Act of 1993*, U.S.C § 2000bb

1. I submitted a religious accommodation request for the Severe Acute Respiratory Syndrome Coronavirus 2 (i.e., SARS-CoV-2, or COVID-19) vaccine, which is based on my sincerely held religious beliefs and moral objection to the use of aborted fetal cells in the production of all the COVID-19 vaccines available in the US.<sup>1</sup> My religious accommodation request (RAR) package has been **denied** by Lieutenant General Marshall B. Webb, Commander of Air Education and Training Command, on 23 March 2022.<sup>2</sup> I received notification of this denial through my chain of command at the Air Force Institute of Technology (AFIT) on Monday, 28 March 2022. This is an appeal written in response to the denial, IAW DAFI 52-201, and submitted within the seven (7) calendar days afforded me by the Air University Detachment 1 Section Commander, Lt Col Don R. Salvatore.

2. First, I greatly appreciate the opportunity to provide a detailed response to Lt Gen Webb's denial of my Immunization Waiver Request (COVID-19) for exemption from the COVID-19 immunization requirement based on my sincere religious beliefs. I am respectfully requesting an appeal for a waiver of the immunization requirements directed by Air Force Instruction (AFI) 48-110\_IP, *Immunization and Chemoprophylaxis for Prevention of Infectious Disease*, to be exempted from receiving any COVID-19 vaccinations that are currently available in the United States. This request is based on my deeply held religiously-formed conscious which conflicts with the requirement.

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<sup>1</sup> See attachments 1, 2, 3, 4, and 5. 1 - Member MFR(Clement, Paul), 28 September 2021; 2 - CC MFR (Clement, Paul), 29 September 2021; 3 - MDG MFR (Clement, Paul), 29 September 2021; 4 - Chaplain MFR (Clement, Paul)001, 5 October 2021; 5 - Statement of Faith MFR (Clement, Paul), 28 September 2021, to review my Religious Accommodation Request Package.

<sup>2</sup> See attachment 6. Decision Regarding Religious Accommodation Request, 23 March 2022.

3. I want to preface that the preparation of this appeal was made under significantly difficult circumstances, taking away time from my current Air Force assignment research responsibilities, and distracting me from my religious practices. My Air Education and Training Command (AETC) chain of command took approximately 5 months (~156 days) from the day I sent my complete COVID-19 Religious Accommodation Request package (18 October 2022), until the date Lt Gen Webb signed the Decision Regarding Religious Accommodation memorandum (23 March 2022), while I am afforded only 7 calendar days. I am currently preparing my PhD prospectus, which requires extensive time conducting literature reviews, drafting multiple chapters of my dissertation, and generating preliminary modeling and simulation results to justify my proposed research plan for the next 18 months of my current assignment. Additionally, and more importantly, during this time of year, the Catholic Church is in the liturgical season of Lent. The liturgical season specifically occurs this year from Ash Wednesday (2 March 2022) through Holy Saturday (16 April 2022). Lent is a penitential time of prayer, fasting, and almsgiving. Generating this appeal has required a considerable amount of time, which would otherwise be used in prayerful and scriptural meditation as part of my genuine desire to make reparations for my sins against our almighty God.

4. I am being placed in the position of choosing between following my faith and obeying our God, or sacrificing my faith to satisfy an Air Force compelling interest (i.e., receiving one of three vaccines directly tied to abortion). Drafting this appeal is necessary because I desire to serve our country as a commissioned officer in the United States Air Force, which is founded on the principles of religious liberty and freedom that are God given. However, I ultimately must serve our God and always obey His laws. My eternal soul will have to account for the actions I commit while alive for such a short, finite period in this very temporary world. I cannot and will not sacrifice my sincerely held beliefs, well-formed conscience, and morals that are grounded in the dogma and doctrine of the Catholic church. The teachings of the catholic church have been the foundation with which to build my life and family upon. They are also complimented and guided by catholic episcopal and laity leaders. Abortion is murder! The Pfizer, Moderna, and J&J vaccines are all tied to abortion. Bishop Schneider sums up my position nicely with his statement from 12 December 2020, “The crime of abortion is so monstrous that any kind of concatenation with this crime, even a very remote one, is immoral and cannot be accepted under any circumstances by a Catholic once he has become fully aware of it”.<sup>3</sup> Therefore, I am respectfully asking you to consider this appeal in its entirety and grant my request for a religious accommodation to the COVID-19 immunization requirement, because receiving any of the currently available COVID-19 vaccines in the U.S., which are all linked to aborted fetal cell lines in the development, manufacture, or testing phase(s) is completely against my sincerely held beliefs. My statement of faith which expands upon what I have mentioned here is included in this appeal.<sup>4</sup> I was interviewed by Chaplain Lt Col John Bateman on 5 October 2021, who recommended “Based on these facts, on the credibility of his explanation, on the sincere convictions of his religious beliefs, and on the firmly held belief that he must follow his well-formed conscience, *I recommend his request go forth for approval*” (emphasis added).<sup>5</sup> Similarly, in the denial memorandum, Lt Gen Webb acknowledge the sincerity of my belief by

<sup>3</sup> Bishop Athanasius Schneider quotes, posted by Keven White. “Bishop Schneider on Covid Vaccines: The Ends Cannot Justify the Means.” Available at: <https://catholiccitizens.org/issues/church-state-relations/93628/bishop-schneider-on-covid-vaccines-the-ends-cannot-justify-the-means/>.

<sup>4</sup> See attachment 5. 5 - Statement of Faith MFR (Clement, Paul), 28 September 2021.

<sup>5</sup> See attachment 4. 4 - Chaplain MFR (Clement, Paul)001, 5 October 2021.

saying “I find that your request, while *sincere*, does not meet the threshold necessary for an exemption” (emphasis added).<sup>6</sup> It is therefore established that I have a sincerely held religious and moral beliefs, which prevents the reception of any of the domestically available COVID-19 vaccines. The reception of these vaccines would substantially burden my conscience and beliefs.

5. I am submitting this appeal under duress as at the time of this writing, I have not been granted any of the denial rationale documents contained within my RAR package. The only document I have at my disposal to make my appeal, to counter the “reasons” preventing approval of my RAR, is the denial letter from Lt Gen Webb. I have not been provided any other additional information, communication or correspondence used to support, justify, and determine the AETC commander’s decision to deny my RAR. The denial rationale documents include but are not limited to recommendations provided by my chain of command, recommendations provided by the Religious Resolution Team, comments and recommendations provided by the functional experts, and comments and recommendations provided by the legal experts. Without these documents, this appeal is made with inadequate references and is starting from a position of disadvantage from the start. I am in the process of making a Privacy Act request for the documents related to the denial of my RAR package. Therefore, I respectfully request that the complete RAR package as well as the documents containing information regarding the threshold necessary for a RAR exemption be sent to me by mail, or email. Furthermore, once I receive this information, along with any information from my Privacy Act request, I request 15 days to amend this current appeal that I am submitting today to ensure my appeal addresses all concerns. This requested additional information and time provides me with a more equitable and fair opportunity in appealing the initial denial decision by the AETC Commander.

6. The Religious Freedom Restoration Act (RFRA) of 1993 establishes the guidance and details the circumstances in which the government may deny a request for a religious accommodation. Per the RFRA, “the government may burden a person’s exercise of religion only if it demonstrates that application of the burden to the person: (1) furthers a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest”.<sup>7</sup> The DAFI 52-201, 23 June 2021, *Religious Freedom in the Department of the Air Force*, uses RFRA to guide its instruction for Air Force members.

7. 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.” As mentioned earlier, my denial letter from Lt Gen Webb acknowledges that I have a sincerely held belief and claims that “lesser means to accomplish the government’s compelling interest are insufficient”. There are several issues with the denial memorandum that I received from the AETC Commander, Lt Gen Webb. I will spend most of the remainder of this memorandum addressing each and every concern in great detail. I greatly appreciate your time, attention, patience, and understanding as you review each of my concerns addressed in this appeal.

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<sup>6</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022. Lt Gen Webb’s assertion that my beliefs are sincere.

<sup>7</sup> Congress.gov. H.R.1308 – Religious Freedom Restoration Act of 1993. Available at: <https://www.congress.gov/bill/103rd-congress/house-bill/1308>.

8. Before I focus on the first substantiating criteria of the denial letter (i.e., compelling government interest), there is a fundamental misunderstanding and miscommunication in the “threshold necessary for an exemption” that must be addressed. The denial letter claims that my request for a religious accommodation does not “meet the threshold necessary for an exemption”.<sup>8</sup> There are two troubling concerns I have with this statement.

a. First, this is a misinterpretation of the law from the outset of the document. This statement implies that the burden of proof rests upon the individual and not upon the government (i.e., Air Force) in determining whether (or not) to grant a religious accommodation. In short, this notion is incorrect. The RFFA explicitly places the burden of proof upon the government, and not on the individual to prove there is a sufficient reason to burden the individual’s free exercise of religion. Further, the denial memorandum does little to specify the compelling government interest or any other means of accomplishing that interest.

b. Second, this statement tells me there is a threshold that would qualify me for potentially receiving an approved religious accommodation. This is the first time I have heard any mention of a “threshold” that could grant me, or any individual, a religious accommodation to the COVID-19 immunization requirement. Typically, thresholds are very clearly identified and communicated to members of the Air Force. A common, simple, and routinely exercised (pun intended) example of a threshold that is provided to Airmen clearly, in advance, with well-defined and measurable thresholds is the AF Physical Fitness Assessment (PFA). Air Force members are provided verbal and published information regarding the minimum threshold to pass the PFA that is performed annually. The thresholds are published (AFMAN 36-2905, *Air Force Physical Fitness Program*) for all Airmen to review and understand going into their scheduled PFA. During the PFA and right before performing each component of the assessment, the instructions are verbally read aloud while a PFA observer demonstrates the proper thresholds for correctly performing a push-up or sit-up repetition. The physical fitness assessment takers are provided extensive notice, guidance, and instruction on the thresholds of the PFA. The COVID-19 immunization religious accommodation thresholds have not been explicitly and clearly communicated at any time during my religious accommodation request process.

9. Lieutenant General Webb claims that “The Air Force’s compelling government interest outweighs your individual belief and no lesser means satisfy the government’s interest”.<sup>9</sup> This simple statement raises one legal concern and multiple counter points, which I will expand upon.

a. There is little provided or mentioned in the letter that specifically identifies or articulates what “the government interest is”. This statement is very vague and leaves me at a disadvantage to respond adequately to each “compelling interest”. The denial letter persists with “...[AETC] fought through the COVID pandemic by implementing several extreme measures and processes to ensure the health, safety, and welfare of our Airmen”.<sup>10</sup> Assuming the compelling interest is “health, safety, and welfare of Airmen”, these three categorical reasons are very general. The

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<sup>8</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022. Lt Gen Webb stating my request is sincere, but lacks the threshold necessary for an exemption from the COVID-19 immunization requirement.

<sup>9</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022. Lt Gen Webb claims AF compelling government interest outweighs my individual belief and no lesser means satisfy the government interest.

<sup>10</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022. Lt Gen Webb listing extreme measures taken by AETC to ensure health, safety, and welfare of our Airmen.



Religious Freedom Restoration Act precludes the Air Force from relying on broadly formulated interests such as “national security”, “stemming the spread of COVID-19”, and in this case “health, safety, and welfare of Airmen” to overcome or “outweigh” my individual beliefs and compel me to get a domestically available COVID-19 vaccination.

b. Even if the compelling interest were “health, safety, and welfare of Airmen” or some other reason not mentioned in my denial letter, I find it exceptionally concerning that nearly all religious accommodation exemptions are denied, save fewer than two dozen. By comparison, an exorbitant number of administrative and medical exemptions have been granted. Are not the same “health, safety, and welfare of Airman” concerns valid in the denied religious exemption cases, as those in the medical and administrative exemption cases? Contrary to the premise of “lesser means to accomplish the government’s compelling interest are insufficient”, as of 28 March 2022, the Air Force has approved 1,102 (504 active duty, 364 guard, 234 reserve) medical exemptions and 1,407 (41 active duty, 1,200 guard, 166 reserve) administrative exemptions.<sup>11</sup> 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. Additionally, the source for medical and administrative waivers reveals a total force vaccination rate of 96.5%.<sup>12</sup> The Air Force has maintained readiness throughout the entire pandemic and has proven itself capable of defending the country with the approval of over 2,500 medical and administrative waivers; therefore, readiness is achievable under COVID-19 immunization waiver approval, and a religious waiver approval is effectively no different.

c. As mentioned earlier, the government’s compelling interest(s) is/are not explicitly mentioned. My intention in the next few subsections is to present a potentially compelling reason that the Air Force may (or may not) have and provide some data, figures, concerns, comments, and points to for you to review to strongly consider granting my appeal to be grant me a religious exemption to the COVID-19 immunization requirement.

(1) If the government’s compelling interest is in minimizing the number of USAF COVID hospitalizations, the vaccines alone will prove to be less effective than natural immunity. There is a specific dataset available at the Center for Disease Control and Prevention’s (CDC) website, which is provided in Figure 1 (below), as a visual representation of the “Estimated Hazard Rate” (EHR) for different categories of persons.<sup>13</sup> Four categories are identified:

<sup>11</sup> DAF COVID-19 Statistics – March 29, 2022. DAF APPROVED EXEMPTIONS. Published 29 March 2022. Available at: <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/> (last accessed 1542 EDT, 3 April 2022).

<sup>12</sup> DAF COVID-19 Statistics – March 29, 2022. DAF TOTAL STATS. Published 29 March 2022. Available at: <https://www.af.mil/News/Article-Display/Article/2959594/daf-covid-19-statistics-march-29-2022/> (last accessed 1542 EDT, 3 April 2022).

<sup>13</sup> Estimated Hazard Rate Data and Figure created by CDC comparing incident laboratory-confirmed COVID-19-associated hospitalizations among immunologic cohorts defined by vaccination and previous diagnosis histories. CDC Morbidity and Mortality Weekly Report. COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis – California and New York, May-November 2021. Published 28 January

vaccinated and unvaccinated, with and without a prior COVID-19 infection. In the dataset, it is clearly visible that the HER, which is defined as the number of “laboratory-confirmed COVID-19-associated hospitalizations per 100,000 person-days”, is lower for unvaccinated persons who have been infected, than for persons who have only received the vaccine.<sup>14</sup> This suggests that those who have not been infected (regardless of vaccination status) are at a higher risk of hospitalization than those who have previously diagnosed with COVID-19.

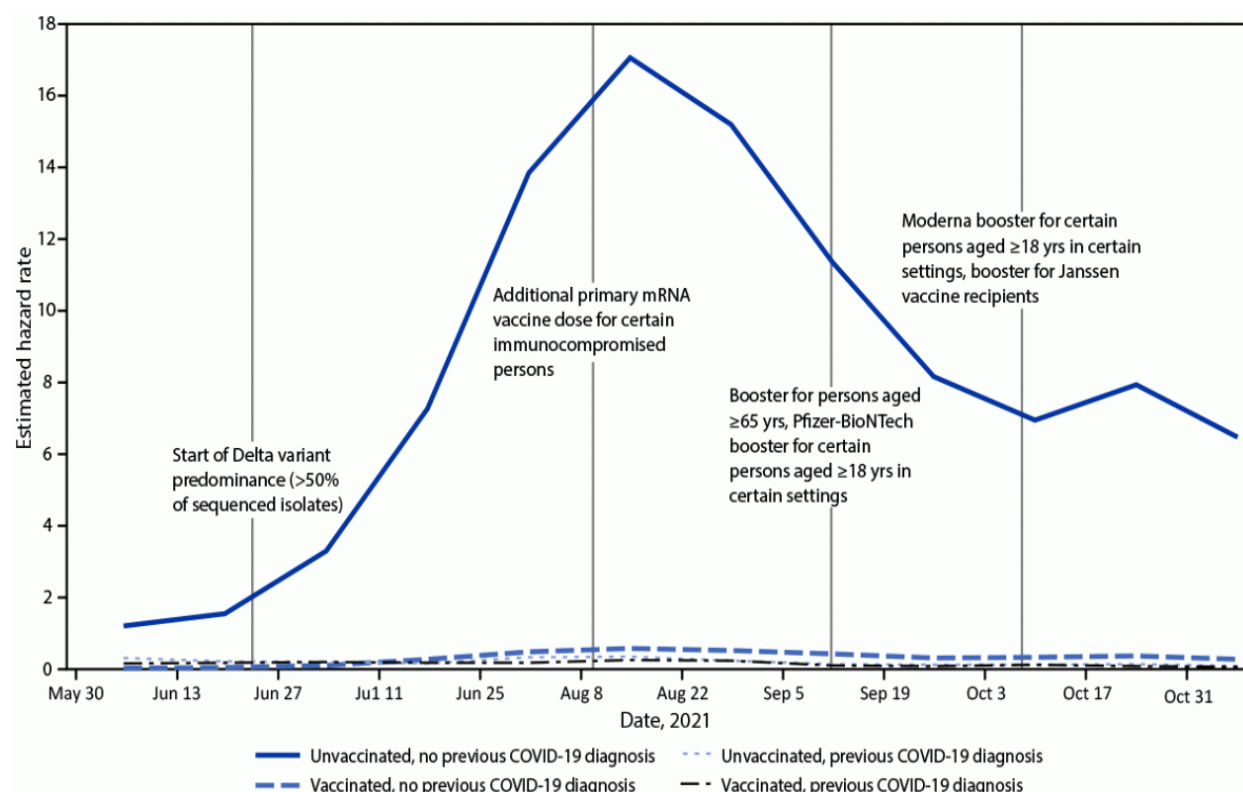


Figure 1. Incident laboratory-confirmed COVID-19-associated hospitalizations among immunologic cohorts defined by vaccination and previous diagnosis histories — California, May 30–November 13, 2021\*,†

\* The SARS-CoV-2 Delta variant exceeded 50% of sequences in U.S. Department of Health and Human Services Region 9 (containing California) during the week of June 26. <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>

† Estimated hazard rate is laboratory-confirmed COVID-19-associated hospitalizations per 100,000 person-days visualized at midpoint of each reporting interval.

The greatest protection appears to be gained by those who have been both infected and vaccinated, however, the difference is almost *negligible*. To wit, the CDC reports “During October 3–16, compared with hospitalization rates among unvaccinated persons without a previous COVID-19 diagnosis, hospitalization rates were 19.8-fold lower (95% CI = 18.2–21.4) among vaccinated persons without a previous COVID-19 diagnosis, 55.3-fold lower (95% CI = 27.3–83.3) among unvaccinated persons with a previous COVID-19 diagnosis, and 57.5-fold

2022. Available at: <https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm> (last accessed 1625 EDT, 3 April 2022).

<sup>14</sup> Definition of Estimated Hazard Rate used by CDC EHR data and figure. CDC Morbidity and Mortality Weekly Report. COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis – California and New York, May–November 2021. Published 28 January 2022. Available at: <https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm> (last accessed 1625 EDT, 3 April 2022).

lower (95% CI = 29.2–85.8) among vaccinated persons with a previous COVID-19 diagnosis”.<sup>15</sup> Is the achievement of a 57.5-fold reduction in my chances of hospitalization versus a 55.3-fold reduction in my chances of hospitalization a compelling government interest sufficient to outweigh my rights under the RFRA? If this is the goal, it appears rather burdensome on my individual religious beliefs to achieve an additional couple-fold reduction. Please note, I received a COVID-19 Antibody Test (SARS-CoV-2 AB IgG), administered by a healthcare provider (Quest Diagnostics), via blood sample collection at 1352 EST on 24 September 2021, resulting in a **positive** test.<sup>16</sup> It is also worthwhile to note, that this data does not account for my age (33 years old), my health (excellent), or my most recent physical fitness assessment (97, Excellent, dated 18 November 2021); all of which further reduce my chances of experiencing death of severe illness from another COVID-19 infection.

(2) If the government’s compelling interest is to “minimize the risk of transmission” of the virus by me to other individuals, there really is not much difference in transmissibility across vaccinated and unvaccinated. Despite my prior infection, it is acknowledged that if I should become reinfected, I may transmit COVID-19 to others. However, vaccination *does not* prevent transmission. On 15 October 2021, the CDC reported on their now archived webpage, fourth bullet under the “What We Know” section, that “If you are fully vaccinated and become infected with the Delta variant, you can spread the virus to others”.<sup>17</sup> Further, regarding vaccinated persons who become infected with COVID-19, “People who get vaccine breakthrough infections can be contagious”.<sup>18</sup> The CDC, thus, reports that the use of the vaccine will not prevent transmission to others. Therefore, if both the vaccinated and the unvaccinated can transmit the disease, the minimization of viral transmission is an *insufficient* reason to deny an individual’s right to religious liberty under the RFRA.

(3) If the government’s compelling interest is “readiness”, then I submit the following statements and information for consideration. The health of the force is a critical component of national security; however, as a healthy 33-year-old with a recent COVID-19 infection, I am ready to answer my nation’s call. Furthermore, as of 3 April 2022, the Air Force agrees with that assessment, based on their Aeromedical Services Information Management System (ASIMS). ASIMS is a web-based application that provides the Air Force the capability to track medical readiness, including immunization data, through a web portal for all personnel both in fixed or deployed facilities. As proof of this claim, I have included two snapshots (Figures 2 & 3, below) of my Individual Medical Readiness (IMR) status, wherein, the Air Force claims that I am fully “ready” without the COVID-19 vaccine. Note, the date these screenshots were taken is visible on the right side of the figures. Additionally, I have been able to perform my duties since arriving at

<sup>15</sup> CDC quantitative and verbal explanation of the COVID-19 cases and hospitalization by vaccination status. CDC Morbidity and Mortality Weekly Report. COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis – California and New York, May-November 2021. Published 28 January 2022. Available at: <https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm> (last accessed 1625 EDT, 3 April 2022).

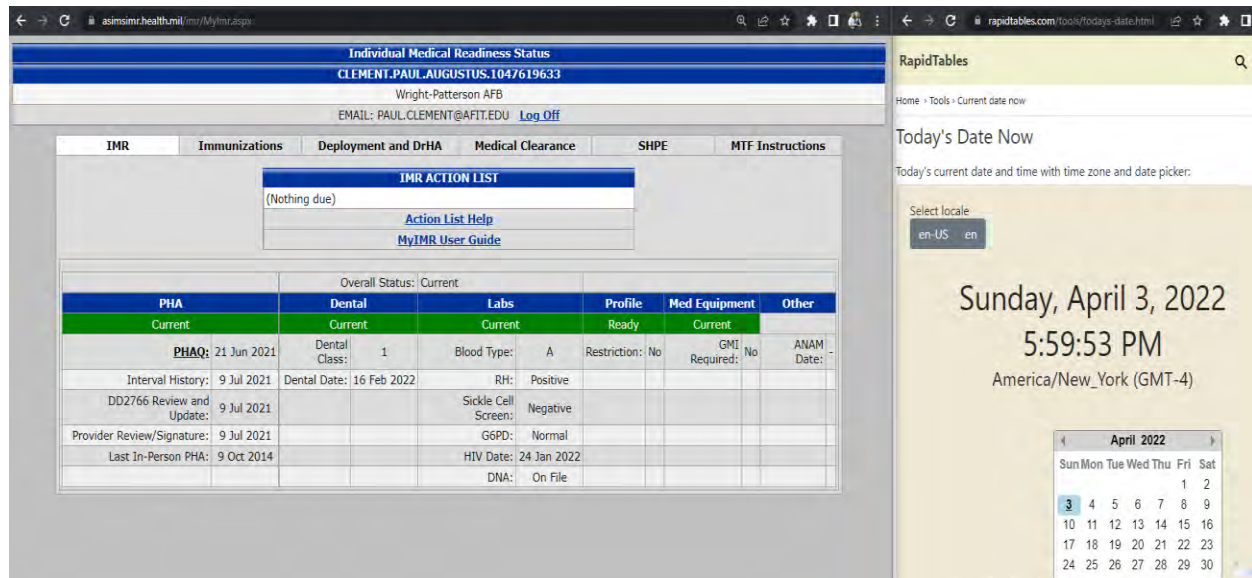
<sup>16</sup> See attachment 7. COVID-19 Antibody Test (SARS-CoV-2 AB IgG) Result - Clement - 2021.09.24\_1352.

<sup>17</sup> CDC. When You’ve Been Fully Vaccinated. Last updated 15 October 2021. Available at: [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated\\_archived.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated_archived.html) (last accessed 1743 EDT, 3 April 2022).

<sup>18</sup> CDC. The Possibility of COVID-19 after Vaccination: Breakthrough Infections. Last updated 17 December 2021. Available at: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (lase accessed 1746 EDT, 3 April 2022).



my current duty station (AFIT) in August 2020 without a COVID-19 vaccine. This demonstrates the fact that I can indeed serve my country effectively without the COVID-19 vaccine.



**Individual Medical Readiness Status**  
 CLEMENT.PAUL.AUGUSTUS.1047619633  
 Wright-Patterson AFB  
 EMAIL: PAUL.CLEMENT@AFIT.EDU Log Off

**IMR** Immunizations Deployment and DrHA Medical Clearance SHPE MTF Instructions

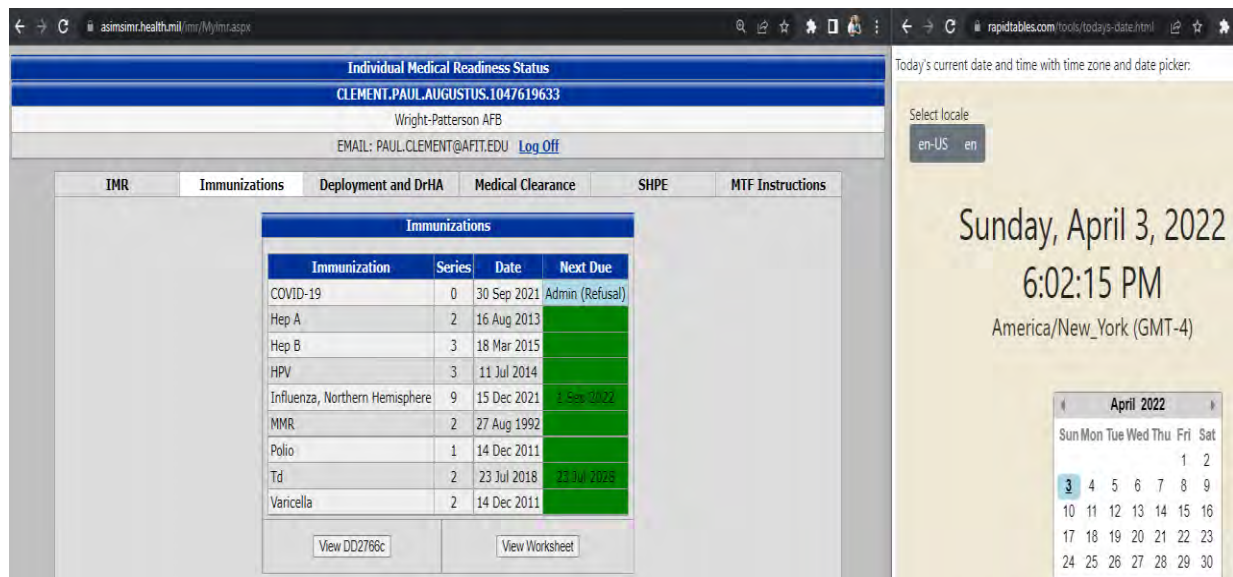
**IMR ACTION LIST**  
 (Nothing due)  
[Action List Help](#)  
[MyIMR User Guide](#)

Overall Status: Current

PHA	Dental	Labs	Profile	Med Equipment	Other
Current	Current	Current	Ready	Current	
PHAQ: 21 Jun 2021	Dental Class: 1	Blood Type: A	Restriction: No	GMI Required: No	ANAM Date:
Interval History: 9 Jul 2021	Dental Date: 16 Feb 2022	RH: Positive			
DD2766 Review and Update: 9 Jul 2021		Sickle Cell Screen: Negative			
Provider Review/Signature: 9 Jul 2021		G6PD: Normal			
Last In-Person PHA: 9 Oct 2014		HIV Date: 24 Jan 2022			
		DNA: On File			

**RapidTables**  
 Home > Tools > Current date now  
 Today's Date Now  
 Today's current date and time with time zone and date picker:  
 Select locale  
 en-US en  
 Sunday, April 3, 2022  
 5:59:53 PM  
 America/New\_York (GMT-4)  
 April 2022  
 Sun Mon Tue Wed Thu Fri Sat  
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

Figure 2. My Individual Medical Readiness (IMR) Status – IMR tab, indicating “ready” with nothing due and all “current” green status indicators. This was taken at 1759 EDT, 3 April 2022.



**Individual Medical Readiness Status**  
 CLEMENT.PAUL.AUGUSTUS.1047619633  
 Wright-Patterson AFB  
 EMAIL: PAUL.CLEMENT@AFIT.EDU Log Off

**IMR** Immunizations Deployment and DrHA Medical Clearance SHPE MTF Instructions

**Immunizations**

Immunization	Series	Date	Next Due
COVID-19	0	30 Sep 2021	Admin (Refusal)
Hep A	2	16 Aug 2013	
Hep B	3	18 Mar 2015	
HPV	3	11 Jul 2014	
Influenza, Northern Hemisphere	9	15 Dec 2021	3 Sep 2022
MMR	2	27 Aug 1992	
Polio	1	14 Dec 2011	
Td	2	23 Jul 2018	23 Jul 2023
Varicella	2	14 Dec 2011	

[View DD2766c](#) [View Worksheet](#)

**RapidTables**  
 Today's current date and time with time zone and date picker:  
 Select locale  
 en-US en  
 Sunday, April 3, 2022  
 6:02:15 PM  
 America/New\_York (GMT-4)  
 April 2022  
 Sun Mon Tue Wed Thu Fri Sat  
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

Figure 3. My individual Medical Readiness (IMR) Status – Immunizations tab, indicating nothing due with all green status indicators, except for the COVID-19 immunization listed as blue “Admin (Refusal)”. This was taken at 1802 EDT, 3 April 2022.

(4) Over the last 18 months, AETC has taken several measures to reduce the spread of COVID-19 to protect its members and those we work with and around. The claim is made by Lt Gen Webb that “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”.<sup>19</sup> In light of the

<sup>19</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022. Lt Gen Webb stating the posture of

rapidly changing nature of the SARS CoV-2 virus, the ability of the COVID-19 vaccines to bring about the changes suggested by Lt Gen Webb are debatable. I have provided a chart (Figure 4, below) which show the number of COVID deaths (left axis, red) and cases (right axis, orange) in the United States as reported by the CDC.<sup>20</sup> Furthermore, the Air Force Institute of Technology is located in Area B of Wright-Patterson AFB, which is in Montgomery County Ohio – I also have lived in this county while stationed at WPAFB. In addition to the overall US cases and deaths, I have provided two charts (below) which show the number the cases & deaths (Figure 5) and hospitalizations (Figure 6) in Montgomery County, Ohio to provide a sense of the localized pandemic numbers. It is vital to note that the Pfizer vaccine was the first authorized by the FDA in December 2020.<sup>21</sup>

Daily Trends in Number of Deaths and 7-Day Cumulative Incidence Rate of COVID-19 Cases in The United States Reported to CDC, per 100,000 population.

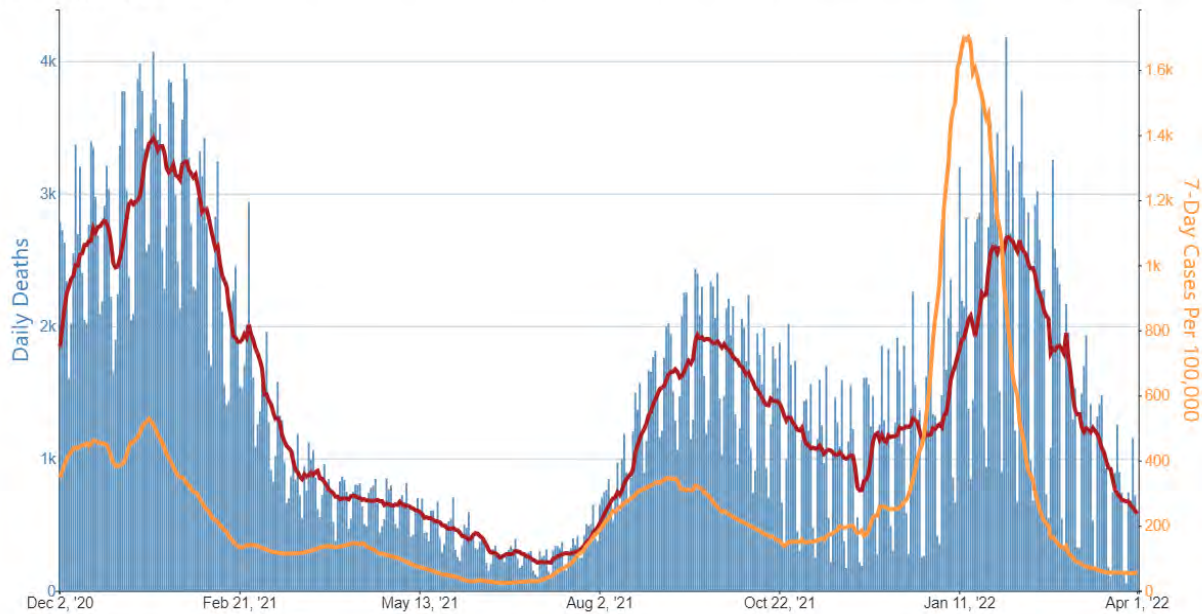


Figure 4. Daily Trends in Number of Deaths and 7-Day Cumulative Incidence Rate of COVID-19 Cases in The United States Reported to CDC, per 100,000 population from 2 December 2020 through 1 April 2022

drastic measures were remained until after vaccinations became available and administered, and only then did our pandemic numbers decrease.

<sup>20</sup> CDC Covid Data Tracker. Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory. Updates daily by 8 pm ET. [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailydeaths\\_7daycasesper100k](https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_7daycasesper100k) (last accessed 1942 EDT 3 April 2022).

<sup>21</sup> FDA News Release. FDA Approves First COVID-19 Vaccine. For Immediate Release on 23 August 2021. Available at: <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine> (last accessed 1924 EDT, 3 April 2022).

## Cases &amp; Deaths in Montgomery County, Ohio



Figure 5. COVID-19 Cases & Deaths in Montgomery County, Ohio from 2 December 2020 through 2 April 2022.

## Hospitalizations in Montgomery County, Ohio

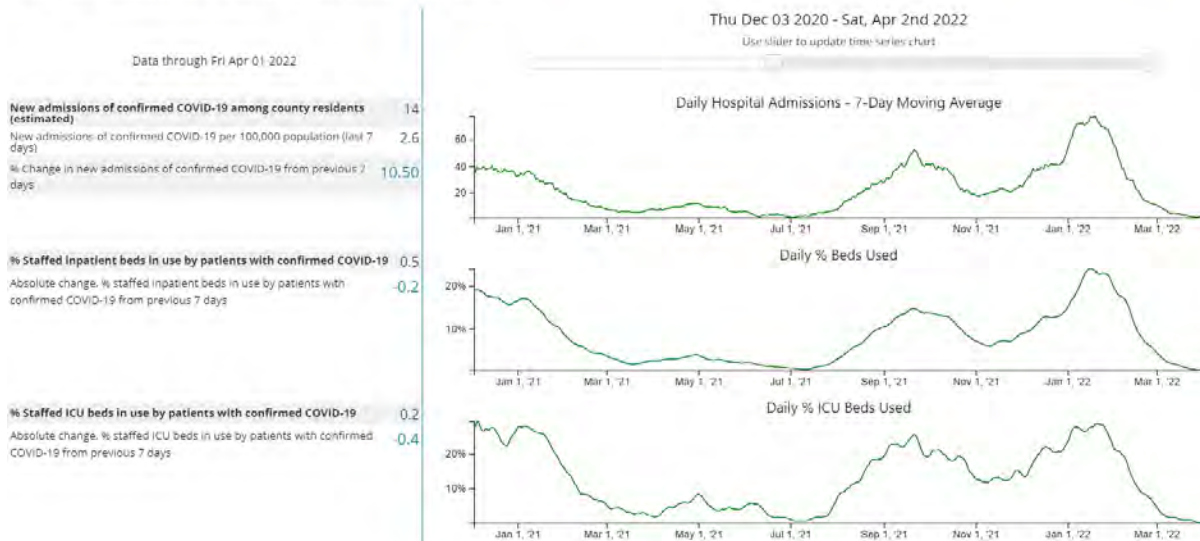


Figure 6. COVID-19 Hospitalizations in Montgomery County, Ohio from 2 December 2020 through 2 April 2022.

While COVID cases and deaths were seen to decrease within months of initial vaccine proliferation, the vaccines were unable to prevent massive surges in both deaths, overall cases, and hospitalizations as seen in Aug-Oct 2021 and Jan-Feb 2022. Thus, demonstrating that US COVID-19 cases, hospitalizations, and deaths are not as strongly associated with vaccination as implied by Lt Gen Webb's denial memorandum.

(5) If the government compelling interest is "required traveling" and it is "not practical to coordinate virtually" as part of my current Air Force assignment duties, then I have a few anecdotes and statements to provide. Lieutenant General Webb asserts "In your particular

position as and Air Force Institute of Technology PhD student, there is a compelling government interest for you to receive the vaccine. Specifically, you are required to perform official travel in order to complete the research portion of your program. Due to the nature of your research, it is not practical for you to coordinate virtually”.<sup>22</sup> I have been at AFIT since August 2020 and I have not once been required to travel in an official capacity to complete any classes or research portion of my degree. I admit that travel could make certain aspects of my research *easier* to perform; however, easier is not “required”. My nuclear engineering research (i.e., ground shock, modeling & simulation) has been performed on AFIT campus or from home. I can access the software I need through my government issued laptop (or personal laptop) using the software locally installed or by means of virtual desktop interface (VDI). Additionally, any classified material can be accessed via appropriate and sufficient AFIT campus resources/systems that I have (or can) obtain access to. I have found it very practical to coordinate research related correspondence, meetings, and conference calls by virtual means. As research continues the submission of papers, presentations, or data to conferences does not necessarily require me to travel to provide or present. Many conferences have offered virtual presentations. Additionally, conferences provide alternate options for presenting the research without the researcher or a physical presentation (e.g., posters, technical papers, articles, pre-recorded audio/video presentations). The Air Force has a long-standing history of innovation through the remarkable men and women who push the boundaries to achieve what are perceived as impossible or unsurmountable goals. If the COVID-19 pandemic has taught us anything, it is that we can push the boundaries, overcome obstacles, and accomplish the mission in new ways by applying new technology and leveraging strong convictions, especially for things as simple as travel and breaking the group think of “that’s how we have always done it”.

(6) My religious accommodation request denial memorandum claims that without the COVID vaccine “...when you return to your primary duties as a nuclear engineer, you may be required to conduct and manage research projects and perform other tasks in support of operations and intelligence. Your personal lack of readiness will impact your ability to deploy at your next assignment, perform temporary duties away from your home station, and be transferred overseas”.<sup>23</sup> Notwithstanding the discussion in section 9.c.(3) (above), that by US Air Forces’ own ASIMS IMR status indication that “I am ready”, this is a topic which is still worthwhile to explore. Many options are available for deployments, including CONUS deployments and deployments to nations which do not require COVID vaccines. For example, at the time of this writing, numerous allied countries already admit unvaccinated defense personnel. Guidance changes rapidly, so specific examples are not provided, however, deployment to one of these countries is feasible. Additionally, the notion of my theoretical future deployment (I am not currently scheduled for a deployment and do not reasonably foresee one in the near future) is legally insufficient to deny my religious accommodation request. It is clearly stated in DAFI 52-201 that “Commanders may only impose limits on such expressions when there is a real (not theoretical) adverse impact on military readiness, unit cohesion, good order and discipline, health or safety of the member or the unit”.<sup>24</sup> I currently have no scheduled deployment; therefore, it is

<sup>22</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022. Lt Gen Webb claims I am required to perform official travel and to do research and impractical to coordinate research virtually.

<sup>23</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022. Lt Gen Webb claims difficulty deploying due to my personal lack of readiness.

<sup>24</sup> See reference (a). DAFI 52-201, 23 June 2021, *Religious Freedom in the Department of the Air Force*. Available at: [https://static.e-publishing.af.mil/production/1/af\\_hc/publication/dafi52-201/dafi52-201.pdf](https://static.e-publishing.af.mil/production/1/af_hc/publication/dafi52-201/dafi52-201.pdf)



an invalid argument to say that I must receive the COVID-19 vaccine because I *may* deploy again someday in the future, and that deployment may require inoculation against COVID-19. Furthermore, I have a projected graduation date of September 2023, as such I *do not* have my next assignment determined. If the Air Force Personnel Center (AFPC) has not slated me for my next assignment how could Lt Gen Webb know what my duties, deployments, TDYs, and other requirements are? Again, all *theoretical* and not real adverse impacts on military readiness at this point in time. Let the next assignment Major Command (MAJCOM) commander make the determination based on the duties of the *actualized* next duty assignment. Similar arguments apply to temporary duty (TDY) travel, although, continental United State (CONUS) TDY travel is daily becoming more and more possible. Finally, under current AFIT Standard Operating Procedures, unvaccinated personnel can perform official TDY travel via the making a request to the SECAF.

(7) If the government's compelling interest is "good order and discipline of the force", in that regard, I cannot imagine a more detrimental course of action than broadly denying religious accommodation requests; both from myself and from my similarly situated peers. To tell subordinates that their sincerely held religious accommodation cannot be honored, contrary to the Religious Freedom Restoration Act and the First Amendment of the United States' Constitution, cannot have anything but poor outcomes upon the morale, good order, and discipline of the Air Force.

10. Many lesser means are available to meet the government's interest. I will present a few ideas, points, and thoughts for your consideration on lesser means to achieve the same, or very similar, goals as that of receiving the COVID-19 vaccine.

a. I am willing to take an assignment where fulltime telework is possible. I am willing to wear a mask, as according to the CDC, masks have been demonstrated to have significant efficacy in reducing the spread of COVID-19.<sup>25</sup> I am willing to participate in routine COVID-19 testing and temperature checks. In fact, weekly COVID-19 PCR testing for the unvaccinated was instituted on 4 January 2022 by the AU Detachment 1 Commander, Colonel Paul Harmer, as part of the standard operating procedures (SOP). These measures were in effect at AFIT until the CDC provided a new COVID Community Level tool in February/March 2022.<sup>26</sup> This new tool changed how the COVID threat in a community was assessed, and shortly after implementation the new metrics warranted WPAFB Installation Commander to declare a "Low Threat" status. In short order he removed the weekly testing and mask requirement at AFIT. Therefore, without the COVID-19 vaccination, I can continue to serve.

b. Natural immunity, itself could also be considered to meet the government's interests.

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<sup>25</sup> CDC. Morbidity and Mortality Weekly Report. Effectiveness of Face Mask or Respirator Use in Indoor Public Settings for Prevention of SARS-CoV-2 Infection – California, February-December 2021. Published 11 February 2022. Available at: <https://www.cdc.gov/mmwr/volumes/71/wr/mm7106e1.htm> (last accessed 1208 EDT 4 April 2022)

<sup>26</sup> CDC. COVID-19. COVID-19 Community Levels. Updated on 24 March 2022. Available at: [https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fmore%2Faboutcovidcountycheck%2Findex.html](https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fmore%2Faboutcovidcountycheck%2Findex.html) (last accessed 1220 EDT, 4 April 2022).

(1) As I mentioned earlier, I had a prior infection of SARS-CoV-2, and have made a full recovery from it.<sup>27</sup> As such, I have an immune response that is superior to the vaccine mediated immune response according to the CDC<sup>28</sup>, studies published on PubMed Central<sup>29</sup> and Medscape<sup>30</sup>, and a report from the National Public Radio.<sup>31</sup> Furthermore, there are over 150 independent research studies affirming naturally acquired immunity to COVID-19.<sup>32</sup> By recovering from a previous exposure to a variant of SARS-CoV-2, I am equally and 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.

(2) Dr. Anthony Fauci of the National Institute of Allergy and Infectious Diseases (NIAID) said in an interview on 23 March 2022, “When you look at the cases they do not appear to be any more severe [than Omicron] and they do not appear to evade immune responses either from vaccine or **prior infection**,” (emphasis added).<sup>33</sup> Dr. Fauci’s statement affirms the prior conclusion drawn by the CDC “Before Delta became the predominant variant in June, case rates

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<sup>27</sup> See attachment 7. COVID-19 Antibody Test (SARS-CoV-2 AB IgG) Result - Clement - 2021.09.24\_1352.

<sup>28</sup> CDC. Morbidity and Mortality Weekly Report. COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis — California and New York, May–November 2021. States “persons who survived a previous infection had lower case rates than persons who were vaccinated alone.” Available at: <https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm> (last accessed 1239 EDT, 4 April 2022).

<sup>29</sup> NIH. Equivalency of Protection From Natural Immunity in COVID-19 Recovered Versus Fully Vaccinated Persons: A Systematic Review and Pooled Analysis. 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.” Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8627252/> (last accessed 1243 EDT, 4 April 2022).

NIH. Efficacy of Natural Immunity against SARS-CoV-2 Reinfection with the Beta Variant – PubMed. 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. Available at: <https://pubmed.ncbi.nlm.nih.gov/34910864/> (last accessed 1244 EDT, 4 April 2022).

<sup>30</sup> 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. (last accessed 1246 EDT, 4 April 2022).

<sup>31</sup> 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. Available at: <https://www.npr.org/sections/goatsandsoda/2022/02/07/1057245449/the-future-of-the-pandemic-is-looking-clearer-as-we-learn-more-about-infection> (last accessed 1247 EDT, 4 April 2022).

<sup>32</sup> See attachment 8. 150 Studies Affirming Natural Immunity, 17 October 2021.

<sup>33</sup> Barrett, Eamon. ‘This virus has fooled us before’: Here’s how Fauci predicts stealth Omicron will spread across the U.S. Available at: <https://fortune.com/2022/03/24/fauci-stealth-omicron-surge-vaccine-restrictions/> (last accessed 1230 EDT, 4 April 2022).

were higher among persons who survived a previous infection than persons who were vaccinated alone. **By early October, persons who survived a previous infection had lower case rates than persons who were vaccinated alone**” (emphasis added), indicating that natural immunity can provide similar if not greater, lasting protection than vaccination alone.<sup>34</sup>

11. I respectfully dispute the overall summary assertion by Lt Gen Webb that “Lesser means to accomplish the government’s compelling interest are insufficient. You cannot accomplish your research via telework and you will be required to travel in order to conduct it. Your ability to socially distance while travelling may be limited and mask wear alone is an insufficient intervention”.<sup>35</sup> I have already refuted much of this in the above content, but to quickly summarize:

a. I have suggested very many reasonable lesser means that the Air Force has used prior/post vaccine availability to include: natural immunity, weekly testing, and mask wear. Some of these are not even required since the implementation of the CDC Community Level metrics and assessment.

b. I **can** accomplish my research via telework, because I have been able to since my arrival at AFIT in August 2020. There are many online resources for literature searching. Files, data, reports, and other documents that are unclassified but have additional safeguarding requirements (e.g., Controlled Unclassified Information (CUI), limited distribution markings, etc.) can be sent to me securely via DoD SAFE or encrypted email to my official air force address. I have **not been** required to travel in order to conduct my research, to date. My research advisor and research committee members have never mentioned or hinted at any requirement for me to travel to complete research. While it *may* make some things easier, it is **not** required.

c. Every travel opportunity by its nature is unique. Blanketly stating “ability to socially distance while traveling may be limited” is over-reaching and posing a reasonable, but hypothetical situation. Pre/post COVID-19 tests could accurately inform my hazard to others when traveling. Additionally, I have taken leave on several occasions in the past and was able to do my research from home, attend necessary research meetings via MS Teams, and adhere to the AFIT SOPs, which included a quarantining for 5 consecutive days after arriving back home. Travel has **not** been required for my research and has **not** impacted my research thus far, and I do not foresee that status changing going forward. Finally, addressing “mask wear alone is an insufficient intervention”. That may be true, but I have offered many other preventative measures that I believe to be sufficient (testing, quarantining, teleworking).

12. Ongoing litigation in Federal Court,<sup>36</sup> particularly in the case *Navy Seal I v. Austin*,<sup>37</sup> has found that multiple branches of the military have failed to meet the standards set by the Religious

<sup>34</sup> CDC quantitative and verbal explanation of the COVID-19 cases and hospitalization by vaccination status. CDC Morbidity and Mortality Weekly Report. COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis – California and New York, May-November 2021. Published 28 January 2022. Available at: <https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm> (last accessed 1625 EDT, 3 April 2022).

<sup>35</sup> See attachment 6. Religious Accommodation Request Denial, 23 March 2022.

<sup>36</sup> See attachment 9. Search Request & Litigation Hold Memo listed 23 lawsuits as of 31 Jan 2022.

<sup>37</sup> Liberty Counsel. *Navy Seal I v Austin*, 18 February 2022. Preliminary Injunction and Order by US District Judge, Steven D. Merryday. Available at: <https://lc.org/PDFs/Attachments2PRsLAs/2022/021822DODPL.pdf> (last accessed 1506 EDT, 8 April 2022).

Freedom Restoration Act (RFRA). As I mentioned earlier, it is the burden of the DOD to accommodate a servicemember 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. I have provided my responses to these above and provide some other relevant information that the courts have mentioned and ruled on in current cases. According to Judge Steven Merryday’s injunctive order on 18 February 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.”<sup>38</sup> 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 un-questionably 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.

13. As you may or may not be aware, I am a named plaintiff in *Hunter Doster, et. al. v Hon. Frank Kendall, et. al.*<sup>39</sup> We filed the claim due to our concern for our religious liberty being violated in our requests for religious accommodation to the COVID-19 immunization requirement by means of and approved religious exemption. As the complaint states “This action involves the systematic effort of the Defendants, and those who report to them, to flagrantly violate federal law, and specifically the Religious Freedom and Restoration Act, 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4 (“RFRA”), in a concerted and deliberate effort to violate the rights of members of the Air and Space Force.”<sup>40</sup> On 31 March 2022, Judge Matthew W. McFarland ordered a preliminary injunction for all named plaintiffs on the *Hunter Doster, et. al. v Hon. Frank Kendall, et. al.*<sup>41</sup> While the court’s orders, see bullet VIII. CONCLUSION (pgs. 39-41)<sup>42</sup> are of great importance, I wanted to draw your attention to bullet V. PRELIMINARY INJUNCTION FACTORS (pgs 21-35), as many of the factors considered by the court are part of my appeal letter (mentioned above). I especially encourage you to review the following that directly support a few of my critical points in this appeal request:

a. Item V.A.1. Religious Freedom Restoration Act<sup>43</sup> (pgs. 23-29). The contents of this section are of great importance to this appeal specifically:

(1) V.A.1.b. Compelling Interests. Judge McFarland states “Therefore, because Defendants [Hon. Frank Kendall, et. al.] fail to demonstrate a compelling interest supporting the

<sup>38</sup> Liberty Counsel. Navy Seal 1 v Austin, 18 February 2022. Preliminary Injunction and Order by US District Judge, Steven D. Merryday. Available at: <https://lc.org/PDFs/Attachments2PRsLAs/2022/021822DODPI.pdf> (last accessed 1506 EDT, 8 April 2022).

<sup>39</sup> See attachment 10. Hunter Doster, et. al. v Hon. Frank Kendal, et. al., Complaint & Injunction, 16 February 2022.

<sup>40</sup> See attachment 10. Hunter Doster, et. al. v Hon. Frank Kendal, et. al., Complaint & Injunction, 16 February 2022.

<sup>41</sup> See attachment 11. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.

“Order granting in part and denying in part plaintiffs’ motion for preliminary injunction (Doc. 13) and issuing a preliminary injunction.” Note, attachment 11 only provides portions specifically quoted in this appeal for you to read and review. The complete document is available via Liberty Counsel’s website. Accessible at:

<https://lc.org/040422OrderDostervKendall.pdf> (last accessed on 1603 EDT, 8 April 2022).

<sup>42</sup> See attachment 11. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.

<sup>43</sup> See attachment 13. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.



specific denial of Plaintiffs' [Hunter Doster, et. al.] exemptions, Defendants have **failed to establish a compelling interest** for substantially burdening Plaintiffs' sincerely held religious beliefs." (emphasis added).<sup>44</sup>

(2) V.A.1.c. Least Restrictive Means. Judge McFarland states "Because the Air Force has willingly and freely granted administrative and medical exemptions but refuses to grant virtually all religious exemptions, this **Court finds that the Air Force has not satisfied the least-restrictive-means standard**" (emphasis added).<sup>45</sup> Judge McFarland continues, "Accordingly, Plaintiffs [Hunter Doster, et. al.] established that the Air Force's COVID-19 vaccination mandate is a substantial burden on Plaintiffs' sincerely held religious beliefs. Defendants [Hon. Frank Kendall, et. al.] **failed to establish a compelling interest as to the specific Plaintiffs before the Court to justify the mandate**, and, even if they did, Defendants **failed to establish that the mandate satisfied the least-restrictive-means standard**" (emphasis added).<sup>46</sup>

b. Item V.A.2. Free Exercise Clause<sup>47</sup> (pgs. 30-33). The contents of this section are of great importance to this appeal as they address the item Free Exercise Clause of the First Amendment of the United States Constitution. Judge McFarland quickly summarizes the arguments and finds in favor of the plaintiffs' arguments; "Defendants [Hon. Frank Kendall, et. al.] argue that the Air Force's COVID-19 vaccination mandate is a "neutral law of general applicability" and, thus, need only survive rational basis review. (Def. Resp. in Opp., Doc. 27, Pg. ID 1547.) Plaintiffs [Hunter Doster, et. al.], on the other hand, argue that the vaccination mandate is neither neutral nor generally applicable and, thus, must survive strict scrutiny, which they argue it cannot. And, **Plaintiffs are correct**" (emphasis added).<sup>48</sup>

14. The most recent class of AFIT graduates celebrated their graduation on 24 March 2022. The Secretary of the Air Force, Frank Kendall, provided some remarks to the graduates. Two remarks he made stood out to me and other AFIT students that are in a similar situation (i.e., requesting religious exemption to the COVID-19 vaccine). "We are at an inflection point in history, and you will be on the leading edge of freedom and democracy's struggle over authoritarianism".<sup>49</sup> He later continued "Don't be the yes-person who changes when I change, and nods when I nod".<sup>50</sup> Taking in these words and trying to understand how to effectively observe what is around us and apply these words to current situations left many of us who are requesting the religious accommodation wondering if these words will be heeded or fall on deaf ears. The words of Secretary Kendall should resound loudly in the ears of military leaders when considering religious accommodations and appeals. I genuinely seek nothing more than to be permitted to protect my conscience while I honorably serve in the United States Air Force. Our organization has greatly benefited from the presence of independent thinkers and those with the courage, conviction, and moral fortitude to stand up for what they firmly believe is right and just.

<sup>44</sup> See attachment 13. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.

<sup>45</sup> See attachment 13. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.

<sup>46</sup> See attachment 11. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.

<sup>47</sup> See attachment 11. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.

<sup>48</sup> See attachment 11. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022.

<sup>49</sup> YouTube. 2022 AFIT Graduation | Welcomed more than 200 AFIT Graduates. Available at:

[https://www.youtube.com/watch?v=mc2\\_d3YCYdU](https://www.youtube.com/watch?v=mc2_d3YCYdU) (last accessed 1331 EDT, 4 April 2022).

<sup>50</sup> YouTube. 2022 AFIT Graduation | Welcomed more than 200 AFIT Graduates. Available at:

[https://www.youtube.com/watch?v=mc2\\_d3YCYdU](https://www.youtube.com/watch?v=mc2_d3YCYdU) (last accessed 1331 EDT, 4 April 2022).

13. I have been praying daily over the past year, and will continue to pray, for God's will to be done concerning my (and all others') religious accommodation request(s) and appeal(s). I will continue, without fail, to offer the Most Holy Rosary<sup>51</sup> of the Most Blessed Virgin Mary, the *Theotokos* ("Mother of God" or "God-bearer"); seeking her intercession for all parties involved to act in good-faith concerning these matters. *Maria, Mater Dei, ora pro nobis!* I have complete faith in our God, whatever the outcome, I trust in Him. *Credo in Deum!*

14. Questions may be directed to the undersigned, Maj Paul Augustus Clement, via AFIT email [paul.clement@afit.edu](mailto:paul.clement@afit.edu), or NIPR email [paul.clement.1@us.af.mil](mailto:paul.clement.1@us.af.mil), by phone at 717-387-1082.

PAUL A. CLEMENT, Maj, USAF  
PhD Scholar, AFIT/ENP

11 Attachments:

1. 1 - Member MFR (Clement, Paul), 28 September 2021
2. 2 - CC MFR (Clement, Paul), 29 September 2021
3. 3 - MDG MFR (Clement, Paul), 29 September 2021
4. 4 - Chaplain MFR (Clement, Paul), 5 October 2021
5. 5 - Statement of Faith MFR (Clement, Paul), 28 September 2021
6. Religious Accommodation Request Denial, 23 March 2022
7. COVID-19 Antibody Test (SARS-CoV-2 AB IgG) Result – Clement, 24 September 2021
8. 150 Studies Affirming Natural Immunity, 17 October 2021
9. Search Request & Litigation Hold Memo Listed 23 Lawsuits, 31 January 2022
10. Hunter Doster, et. al. v Hon. Frank Kendal, et. al., Complaint & Injunction, 16 February 2022
11. Hunter Doster, et. al. v Hon. Frank Kendall, et. al., Order-Prelim Injunction, 31 March 2022

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<sup>51</sup> The Holy Rosary | History of the Rosary. Available at: <https://www.theholynosary.org/rosaryhistory> (last accessed 1658 EDT, 8 April 2022). How to Pray the Rosary Available at: <https://www.theholynosary.org/howtoprayrosary> (last *prayed* at 2030 EDT, 10 April 2022).



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

29 March 2022

**MEMORANDUM FOR SECOND LIEUTENANT BRETT MARTIN**

**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 and 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 Air Force Institute of Technology (AFIT) student who will graduate soon, there is a compelling government interest for you to receive the vaccine. Specifically, your role requires face-to-face engagement with other Airmen. An exemption will create the perception of favoritism while in school and at your new duty location, eroding good order and discipline. Unit cohesion will be negatively impacted due to your inability to

participate in group assignments or projects as well as disrupt workflows at your follow-on assignment. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas in your follow on assignment. Even if you are permitted to travel on official orders with an exemption, you will be subject to longer restriction of movement and isolation. Finally, failure to receive the vaccine increases the risk to your own health and safety as well as that of those around you.

Lesser means to accomplish the Government's compelling interest are insufficient. Attending AFIT virtually will not be as effective as attending in person and will prevent you from engaging in important developmental exercises. Further, your ability to develop as an Airman will be limited because you will be unable to mentor or be mentored if you must remain socially distanced from your co-workers and leadership. 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 your local Chaplain's office.



MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:

Member's Unit

Member's Servicing FSS



1st Ind, 2D LT BRETT MARTIN

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 04 APR 22 (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.

  
BRETT MARTIN, 2d Lt, USAF

2d Ind, 2D LT BRETT MARTIN

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.

BRETT MARTIN, 2d Lt, USAF



**DEPARTMENT OF THE AIR FORCE  
AIR FORCE MATERIEL COMMAND (AFMC)**

6 April 2022

MEMORANDUM FOR AF/SG (Lt Gen Robert I. Miller)

FROM: Brett M. Martin, 2d Lt, USAF  
711 HPW/RHWC  
2210 8<sup>th</sup> Street, Bldg. 146  
Wright-Patterson AFB OH 45433

SUBJECT: Appeal of Religious Accommodation Request for Immunization

Reference: (a) AFI 48-110\_IP 7 September 2021, *Immunizations and Chemoprophylaxis for prevention of Infectious Disease*  
(b) DAFI 52-102 23 June 2021, *Religious Freedom in the Department of the Air Force*

Sir:

1. I respectfully request an appeal for a waiver of the immunization requirements directed by Air Force Instruction (AFI) 48-110\_IP, *Immunizations and Chemoprophylaxis for Prevention of Infectious Disease*, to be exempt from receiving any COVID-19 Vaccinations. This request is based on my sincerely held religious and personal beliefs, which conflict with the requirement.
  - a) My DOD ID number is 1462465510
  - b) My Specialty Code is 62E1C
  - c) My unit of assignment is 711 HPW/RHWC
  - d) My faith group of preference is Born-Again Christian
2. This request is an appeal in response to the denial of my religious accommodation request for the COVID-19 Immunization mandate and is based on the burden this vaccine will cause on the ability to exercise my religious beliefs as a Born-Again Christian. I am a Christian, and I believe that Jesus Christ died on the cross to redeem my soul, and in so doing so, established a new covenant between God and man. This new covenant, outlined in the Old and New Testament of the Bible, established many moral and spiritual principles that I must live by as a follower of Christ. Two foundational components of this New Covenant are that all life is created by God and is therefore sacred and that I am the Temple of the Lord because God's Spirit, The Holy Spirit, dwells in me. Due to these bedrock principles of my faith, I cannot in good conscience take the currently available COVID-19 Vaccinations because of their ties with aborted fetal tissue. I believe abortion is evil, and I have been charged by God to stand up against any evil such as abortion.

God charges me to take care of my temple, so the ability to control what goes in and out of my body is essential to the practice of my beliefs. I cannot allow myself to benefit from an abortion. I understand that every vaccine currently on the market involves the use of these fetal cells either in testing, or production. Therefore, receiving these immunizations will severely burden the ability to exercise my beliefs. In short, the COVID-19 immunization mandate does not allow me to freely and openly worship my God with my life and body (see Attachment 1). Although my denial affirms my beliefs are sincerely held (see Attachments 2 and 3), the request was denied due to military readiness, good order and discipline, and health and safety. I was not aware of the use of fetal cell lines in the research and development of vaccines until I experienced issues following a previous vaccination I received for influenza. While it is true that I received vaccines in the past, Hebrews 10:26 makes it clear that sinning after being given the knowledge of the truth is irredeemable.

3. The denial (Attachment 2) states, “First, the Air Force’s compelling government interest outweighs your individual belief and no lesser means satisfy the government’s interest.” Contrary to this premise, as of 03 January 2022, the Air Force has approved 1,792 medical waivers and 2,177 administrative waivers. This statistic demonstrates the Air Force can achieve the compelling government interests with approved COVID-19 Immunization waivers. This same document reveals a total force vaccination rate of 95.6%. Therefore, readiness is achievable under a COVID-19 Immunization waiver approval.
4. As reflected in attachment 4, I have previously been infected with COVID-19, and, as a consequence, have documented antibodies. Existing and emerging medical literature suggests robust and potentially long-lasting natural immunity from these types of infections and with these antibodies.<sup>1</sup> If requested, I would be happy to obtain a follow up antibody test to demonstrate current antibodies and immunity. And, while I understand a preference for vaccination, and wish that there were current vaccines available that were consistent with my beliefs, the prior infection and natural immunity does suggest meeting the interests proffered by the Air Force for the vaccination mandate.
5. 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.” By granting medical and administrative exemptions, the Air Force demonstrates there is a less restrictive means other than denial of my requested accommodation to accommodate my sincerely held beliefs.
6. Even a temporary approval, for as long as I am able to demonstrate current antibodies, is less restrictive than denial. By granting temporary exemptions due to pregnancy or recent COVID infection (which itself recognizes that concept of natural immunity), the

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<sup>1</sup> <https://www.nejm.org/doi/full/10.1056/NEJMc2110300> (last visited 1/14/2022); Recent press releases from the European Medicines Agency (EMA) suggests concern over the need for multiple boosters, and recent research showing omicron infection conferring natural immunity, <https://www.rfi.fr/en/europe/20220112-omicron-could-offer-natural-covid-immunity-without-need-for-boosters-says-ema> (last visited 1/14/2022).

Air Force demonstrates it can achieve the government compelling interests with temporary exemptions.

7. The denial states, “In your particular position, Masters Student at Air Force Institute of Technology, you will soon complete your coursework and will be transferring to the Air Force Research Laboratory where you will be required to interact with staff in-person. As such, there is a compelling government interest for you to receive the vaccine.” While at AFIT, I was non-deployable and all classes and research were achievable virtually, so a least restrictive means would include a temporary exemption approval until I was no longer at AFIT. Since then, I have been reassigned to 711 HPW/RHWC where a supermajority of the work is performed remotely. Under my current circumstances, a least restrictive means should allow for telework. In demonstrating temporary exemptions for medical reasons, the Air Force is able to achieve its interest with a temporary exemption in this case. Therefore, at a minimum a temporary exemption for my tenure at my current assignment is less restrictive than a denial.
8. The DAFI 52-201 Section 2.7 states, “If after thorough analysis of the above factors, the religious accommodation of Airmen or Guardian cannot be met, administrative actions that may be considered include reassignment, reclassification...”. In demonstrating readiness is achievable at AFIT during this time, and that it would similarly be achievable at AFRL, the least restrictive means would include reassignment or reclassification to a work environment such as AFIT or AFRL where readiness was achievable under COVID restrictions. Also, the fluidity of the COVID situation provides evidence for a potential future solution to achieve readiness while at AFRL. There are new remedies being developed which may satisfy my religious beliefs and meet the Air Force’s stated interests. Therefore, a new solution to better achieve military readiness may soon arise, so a temporary approval would be another means to achieve the least restrictive accommodation for my religious beliefs.
9. The denial states, “An exemption will create the perception of favoritism, detracting from good order and discipline.” In demonstrating the 1,792 medical waivers and 2,177 administrative waivers, the Air Force has demonstrated that there is no perception of favoritism at work, and further shows good order and discipline is achievable with COVID-19 Immunization waivers. One might also observe that there is no statutory (or Constitutional) protections regarding these administrative or medical waivers, but such protections do exist for religious waivers. And the blanket denial of every religious waiver submitted so far, with the granting of medical and religious waivers, can easily be argued to be hostility towards religion.
10. The denial states, “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 and good order and discipline of the force, and is unsustainable as the long-term solution.” Over a year after the vaccines were made available to the public and with over 97 % of the Active-Duty Air Force Vaccinated, Wright-Patterson AFB where my previous and current duty stations (AFIT then AFRL) are, were until semi-recently under HPCON Delta with 15 % capacity. The move to HPCON Delta following a 97% vaccination rate shows the high vaccination status does not improve the COVID Protocols implemented over the pandemic. This exemption request should be approved under least restrictive means because the vaccine has not improved the COVID workplace operating procedures.

11. The denial states, “Finally, failure to receive the vaccine increases the risk to your personal health and safety and that of those around you.” As previously documented, I have natural immunity from the COVID virus (See attachment 4). The rise of the omicron variant shows that transmission among the vaccinated are frequent. Given I have natural immunity and the vaccinated spread the virus considerably and the transmission of the virus among vaccinated has increased with new variants and this trend is likely to continue, I am no more a risk to those around me than those with the COVID-19 vaccination.
12. The denial states, “Lesser means to accomplish the government’s compelling interest are insufficient. You cannot achieve your duty objectives at the Air Force Research Laboratory via telework or social distancing. As a junior officer, hands-on supervision and guidance from your leadership is also necessary for your professional development. Further, your ability to lead and mentor subordinates is not as effective if you must interact virtually or while remaining socially distanced.” While at AFIT, I accomplished the Air Force’s mission as a junior grade officer. I have received and provided effective supervision and guidance in my duty. Others, who are not students, have successfully provided everything necessary for professional development virtually or with social distancing. In addition, my current assignment operates largely on a telework basis, even after the transition to HPCON Bravo, with speculation among those with supervisory roles that this mode of work may be permanent. Therefore, the least restrictive means to accommodate my exemption could simply be to grant the requested accommodation.

BRETT M MARTIN, 2D LT, USAF  
Software Engineer, 711 HPW/RHWC

4 Attachments:

1. Religious Accommodation Request
2. Exemption Denial

3. Chaplain Recommendation
4. Antibody Test



**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](mailto:aetc.hc@us.af.mil).



MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:  
Member's Unit  
Member's Servicing FSS





**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 1524223925. 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 20 May 1998 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 references<sup>1</sup>. 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 matters<sup>2</sup>. 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.”<sup>3</sup> 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.<sup>4</sup> 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)<sup>5</sup>, studies published on PubMed Central<sup>6</sup> and Medscape<sup>7</sup>, and a report from the National Public Radio.<sup>8</sup> Furthermore, there are over 150 independent research studies affirming naturally acquired immunity to COVID-19.<sup>9</sup> 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."<sup>10</sup> 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.<sup>11</sup> 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 CDC<sup>12</sup> and a study published in the New England Journal of Medicine,<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup> In the third study Montgomery et al. showed myocarditis has been noted to occur in “previously healthy military patients” after mRNA vaccination.<sup>16</sup> Furthermore, there are close to 1000 peer-reviewed studies on adverse effects from receiving COVID-19 vaccines.<sup>17</sup> 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 Central<sup>18</sup>, 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 Medicine<sup>19</sup> 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"<sup>20</sup> 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),<sup>21</sup> 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.<sup>22</sup> 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,"<sup>23</sup> 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,<sup>24</sup> particularly in the case *Navy Seal 1 v. Austin*,<sup>25</sup> 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.”<sup>34</sup> 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 un-questionably 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](mailto: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

<sup>1</sup> See attachment 1. Chaplain Interview

<sup>2</sup> See attachment 2. Letter From Father Frank Pavone

<sup>3</sup> See attachment 3. Religious Accommodation Request Denial

<sup>4</sup> See attachment 4. COVID-19 Lab Results

<sup>5</sup> [\(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.”

<sup>6</sup> [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.

<sup>7</sup> 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.

<sup>8</sup> [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.

<sup>9</sup> See attachment 5. 150 Studies Affirming Natural Immunity

<sup>10</sup> [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”

<sup>11</sup> See attachment 6. DAF COVID-19 Statistics 1 March 2022

- <sup>12</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html>
- <sup>13</sup> <https://www.nejm.org/doi/full/10.1056/NEJMoa2109730>
- <sup>14</sup> <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787361>
- <sup>15</sup> [Myocarditis Cases Reported After mRNA-Based COVID-19 Vaccination in the US From December 2020 to August 2021 | Cardiology | JAMA | JAMA Network](#)
- <sup>16</sup> [Myocarditis Following Immunization With mRNA COVID-19 Vaccines in Members of the US Military | Cardiology | JAMA Cardiology | JAMA Network](#)
- <sup>17</sup> See attachment 7. Studies of Adverse Effects Following Vaccines
- <sup>18</sup> <https://pubmed.ncbi.nlm.nih.gov/28479213/>
- <sup>19</sup> <https://journals.asm.org/doi/epub/10.1128/mSphere.00056-21>
- <sup>20</sup> [Frontiers | Antibody Dependent Enhancement Due to Original Antigenic Sin and the Development of SARS | Immunology \(frontiersin.org\)](#)
- <sup>21</sup> 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.
- <sup>22</sup> [New COVID-19 vaccine that covers Omicron ‘will be ready in March,’ Pfizer CEO says \(yahoo.com\)](#)
- <sup>23</sup> See attachment 8. DoD Project Salus Effectiveness Report
- <sup>24</sup> See attachment 9. Search Request & Litigation Hold Memo listed 23 lawsuits
- <sup>25</sup> See attachment 10. Navy Seal 1 v Austin



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

**APR 09 2022**



**MEMORANDUM FOR SECOND LIEUTENANT CONNOR P. MCCORMICK**

**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 present duty assignment requires intermittent to frequent contact with others and is not fully achievable via telework or with adequate distancing. In addition, your required in-person meeting attendance includes prolonged, intermittent contact with multiple individuals. Your student status also requires frequent contact and immersion with multiple individuals, which would significantly impact training accomplishment if you, your instructors, or your fellow trainees were exposed or actively infected. 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. Masking, social distancing, and testing mitigate risk but not as effectively as vaccination in combination with additional measures determined by local spread. 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 with questions or concerns.

A handwritten signature in blue ink that reads "Robert I. Miller".

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





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

**MAR 18 2022**

**MEMORANDUM FOR MAJOR PATRICK POTTINGER**

**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 present duty assignment requires time in and around the confined spaces of aircraft as well as frequent contact with others, and these duties are not fully achievable via telework or with adequate distancing. Your instructor role also requires frequent contact and immersion with multiple individuals, which would significantly impact training accomplishment if you, your trainees, or your fellow instructors were exposed or actively infected. 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 with questions or concerns.

A handwritten signature in dark ink, reading "Robert I. Miller", is positioned above the printed name and title.

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





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

29 March 2022

MEMORANDUM FOR SECOND LIEUTENANT ALEX RAMSPERGER

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 and 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 Air Force Institute of Technology (AFIT) Masters student, there is a compelling government interest for you to receive the vaccine. Specifically, your role requires face-to-face engagement with other students. An exemption will create the perception of favoritism, eroding good order and discipline. Unit cohesion will be negatively impacted due to your inability to participate in group projects with other students. Your personal lack of

readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas in your follow on assignment. Even if you are permitted to travel on official orders with an exemption, you will be subject to longer restriction of movement and isolation. Finally, failure to receive the vaccine increases the risk to your own health and safety and that of those around you.

Lesser means to accomplish the government's compelling interest are insufficient. Attending AFIT virtually will not be as effective as attending in person and will prevent you from engaging in important developmental exercises. Further, you will be unable to participate in certain leadership activities if you must remain socially distanced from your peers. 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 your local Chaplain's office.

  
MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:  
Member's Unit  
Member's Servicing FSS

1st Ind, 2D LT ALEX RAMSPERGER

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 \_\_\_\_\_ (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.

ALEX RAMSPERGER, 2d Lt, USAF

2d Ind, 2D LT ALEX RAMSPERGER

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.

ALEX RAMSPERGER, 2d Lt, USAF





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

29 March 2022

MEMORANDUM FOR SECOND LIEUTENANT ALEX RAMSPERGER

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 and 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 Air Force Institute of Technology (AFIT) Masters student, there is a compelling government interest for you to receive the vaccine. Specifically, your role requires face-to-face engagement with other students. An exemption will create the perception of favoritism, eroding good order and discipline. Unit cohesion will be negatively impacted due to your inability to participate in group projects with other students. Your personal lack of

readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas in your follow on assignment. Even if you are permitted to travel on official orders with an exemption, you will be subject to longer restriction of movement and isolation. Finally, failure to receive the vaccine increases the risk to your own health and safety and that of those around you.

Lesser means to accomplish the government's compelling interest are insufficient. Attending AFIT virtually will not be as effective as attending in person and will prevent you from engaging in important developmental exercises. Further, you will be unable to participate in certain leadership activities if you must remain socially distanced from your peers. 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 your local Chaplain's office.

  
MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:  
Member's Unit  
Member's Servicing FSS

1st Ind, 2D LT ALEX RAMSPERGER

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 31 Mar 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.



ALEX RAMSPERGER, 2d Lt, USAF

2d Ind, 2D LT ALEX RAMSPERGER

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

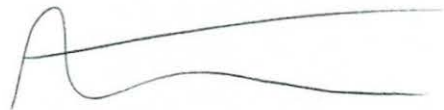
Five calendar days have elapsed since I received AETC/CC's decision denying my request for a religious based exemption from the COVID-19 vaccine. I have chosen to:

       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.

  X   Appeal this decision in writing on 5 Apr 2022 (date) to the Air Force Surgeon General.

       Refuse to comply with this order.



ALEX RAMSPERGER, 2d Lt, USAF





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

5 April 2022

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

FROM: SECOND LIEUTENANT ALEX M. RAMSPERGER  
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 sincerely held religious beliefs, which conflict with the requirement. My DoD ID number is 1538112743. My Specialty Code is 92S0.

2. My initial request is based on my sincerely held belief that I had a personal conversation with God in which He instructed me to deny vaccination against the COVID-19 virus. The Lord assured me that I would be protected. To go against God's instructions would lead to eternal suffering of my soul. In my initial religious accommodation request, I attached several Bible verses related to the obedience to God.<sup>1</sup> Chaplain Maj Ingram conducted my chaplain interview and found that my beliefs were sincere.<sup>2</sup> Furthermore, Lt Gen Webb confirms my beliefs are sincere as written in my denial letter. The denial of my religious accommodation is only due to military readiness, good order and discipline, and health and safety.

3. 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."<sup>3</sup> I respectfully dispute this assertion as there are many effective lesser means available.

a. I was infected with SARS-CoV-2 in January 2022 and have made a full recovery from the incident.<sup>4</sup> I would like to state from personal experience that infection was very mild, and I was completely capable to continue working if it weren't for the COVID restrictions in place. I did

not lose smell or taste; on top of that I felt fully normal in just three days. The only symptoms I had were a scratchy throat and slight fatigue. 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)<sup>5</sup>, studies published on PubMed Central<sup>6</sup> and Medscape<sup>7</sup>, and a report from the National Public Radio.<sup>8</sup> Furthermore, there are over 150 independent research studies affirming naturally acquired immunity to COVID-19.<sup>9</sup> By recovering from previous exposure 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, “we have already demonstrated last year that we are fully capable of operating in a COVID environment.”<sup>10</sup> 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 15 March 2022, the Air Force has approved 1,164 medical waivers and 1,500 administrative waivers.<sup>11</sup> 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 “previous 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 96.4%. 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.

4. 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 CDC<sup>12</sup> and a study published in the New England Journal of Medicine,<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup> In the third study Montgomery et al. showed myocarditis has been noted to occur in “previously healthy military patients” after mRNA vaccination.<sup>16</sup> Furthermore, there are close to 1000 peer-reviewed studies on adverse effects from receiving COVID-19 vaccines.<sup>17</sup> 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 Central<sup>18</sup>, 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 Medicine<sup>19</sup> 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 hereby 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"<sup>20</sup> 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.

5. My denial letter states that "despite 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),<sup>21</sup> 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.<sup>22</sup> 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,”<sup>23</sup> 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.

6. 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.

7. 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?

8. Ongoing litigation in Federal Court,<sup>24</sup> particularly in the case *Navy Seal 1 v. Austin*,<sup>25</sup> 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.”<sup>34</sup> 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.

9. If you have any questions or concerns, the point of contact for this request is the undersigned with a cell phone (602) 908-5328 or email [alex.ramsperger@afit.edu](mailto:alex.ramsperger@afit.edu).

ALEX M. RAMSPERGER, 2d Lt, USAF  
MS Student, AFIT/ENY-S

10 Attachments:

1. Religious Accommodation Request
2. Chaplain Interview
3. Religious Accommodation Denial
4. COVID-19 Lab Results
5. 150 Studies Affirming Natural Immunity
6. DAF COVID-19 Statistics 15 March 2022
7. Search Request & Litigation Hold Memo listed 23 lawsuits
8. Navy Seal 1 v Austin

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<sup>1</sup> See attachment 1. Religious Accommodation Request

<sup>2</sup> See attachment 2. Chaplain Interview

<sup>3</sup> See attachment 3. Religious Accommodation Denial

<sup>4</sup> See attachment 4. COVID-19 Lab Results

<sup>5</sup> ([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.”



<sup>6</sup> [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.

<sup>7</sup> 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.

<sup>8</sup> [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.

<sup>9</sup> See attachment 5. 150 Studies Affirming Natural Immunity

<sup>10</sup> [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”

<sup>11</sup> See attachment 6. DAF COVID-19 Statistics 15 March 2022

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

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

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

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

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

<sup>17</sup> [https://budbromley.files.wordpress.com/2022/02/updated\\_peer\\_reviewed\\_medical\\_papers\\_submitted\\_to\\_various\\_medical.pdf](https://budbromley.files.wordpress.com/2022/02/updated_peer_reviewed_medical_papers_submitted_to_various_medical.pdf)

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

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

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

<sup>21</sup> 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.

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

<sup>23</sup> [https://dreddynd.files.wordpress.com/2021/10/salus\\_humetrix\\_ve\\_study\\_2021\\_09\\_28-2.pdf](https://dreddynd.files.wordpress.com/2021/10/salus_humetrix_ve_study_2021_09_28-2.pdf)

<sup>24</sup> See attachment 7. Search Request & Litigation Hold Memo listed 23 lawsuits

<sup>25</sup> See attachment 8. Navy Seal 1 v Austin



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

MAR 13 2022

MEMORANDUM FOR MAJOR DANIEL REINEKE

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 present duty assignment requires intermittent to frequent contact with others and is not fully achievable via telework or with adequate distancing. Your instructor role also requires frequent contact and immersion with multiple individuals, which would significantly impact training accomplishment if you, your trainees, or your fellow instructors were exposed or actively infected. 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 with questions or concerns.

A handwritten signature in cursive script, reading "Robert I. Miller", is positioned above the printed name and title.

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





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

29 March 2022

MEMORANDUM FOR CAPTAIN BENJAMIN RINALDI

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 and 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 Air Force Institute of Technology (AFIT) Masters student who will graduate soon, there is a compelling government interest for you to receive the vaccine. Specifically, your role requires face-to-face engagement with other Airmen. An exemption will create the perception of favoritism while in school and at your new duty location, eroding good order and discipline. Unit cohesion will be negatively impacted due to your inability to

physically participate in group projects with fellow students as well as disrupting work flows at your follow-on assignment. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas in your follow on assignment. Even if you are permitted to travel on official orders with an exemption, you will be subject to longer restriction of movement and isolation. Finally, failure to receive the vaccine increases the risk to your own health and safety and that of those around you.

Lesser means to accomplish the Government's compelling interest are insufficient. Attending AFIT virtually will not be as effective as attending in person and will prevent you from engaging in important developmental exercises. Further, your ability to develop as a future leader will be limited because you will be unable to mentor subordinates or be mentored by your leadership if you must remain socially distanced from them. 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 your local Chaplain's office.



MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:  
Member's Unit  
Member's Servicing FSS

1st Ind, CAPT BENJAMIN RINALDI

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 \_\_\_\_\_ (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.

BENJAMIN RINALDI, Capt, USAF

2d Ind, CAPT BENJAMIN RINALDI

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.

BENJAMIN RINALDI, Capt, USAF





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

04 April 2022

MEMORANDUM FOR AF/SG

FROM: Capt Benjamin L. Rinaldi, AFIT/ENP

SUBJECT: Appeal of Denied COVID-19 Vaccination Religious Accommodation Request

1. I have submitted a request for a religious accommodation for the currently available and approved Severe Acute Respiratory Syndrome Coronavirus 2 (also known as SARS-CoV-2, or COVID-19) vaccine, which is based on my religious and moral objection to the use of aborted fetal cells in the production of all the COVID-19 vaccines available in the US [1]. Lt Gen Webb, AETC/CC, denied my request on 29 March 2022. I received notification of the denial on 31 March 2022. This is an appeal written IAW DAFI 52-201.
2. My Religious Accommodation Request which explains my sincerely held religious beliefs is attached [2]. I object on religious and moral grounds to the use of aborted fetal cells in all current domestically available COVID-19 vaccines. The act of receiving this vaccine is morally unacceptable to me because of its direct link to the evil of abortion. I was interviewed by Chaplain Ingram at WPAFB on 28 September 2021 who recommended that my religious accommodation be approved based on "the overwhelming presence of sincerely held religious beliefs in opposition to the COVID-19 vaccine" [3]. Similarly, in the denial memorandum, Lt Gen Webb acknowledged the sincerity of my belief by saying, "I find that your request, while sincere, does not meet the threshold necessary for an exemption" [4]. It has, therefore been established that I have a sincerely held religious and moral belief which prevents the reception of any of the domestically available COVID-19 vaccines. The reception of these vaccines would produce a significant burden upon those beliefs. Given my twice verified, deeply held belief, consider the words of the Secretary of the Air Force (SECAF) Frank Kendall, as he addressed the Air Force Institute of Technology (AFIT) graduating class on 24 March 2022: "Don't be the yes-person who changes when I change, and nods when I nod" [5]. We, as Airmen, are thus charged by the SECAF to stand up for what we firmly believe is right and to be a force for freedom in defense of our Nation.
3. The Religious Freedom Restoration Act (RFRA) is the law which details the circumstances in which the government may deny a request for a religious accommodation. Per the RFRA, "the government may burden a person's exercise of religion only if it demonstrates that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest" [6]. Given that the USAF has granted, and continues to grant, 1,102 administrative and 1,407 medical exemptions (as of 29 March 2022) [7], it cannot be said that there is no way to accommodate my belief by granting me a temporary exemption.





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

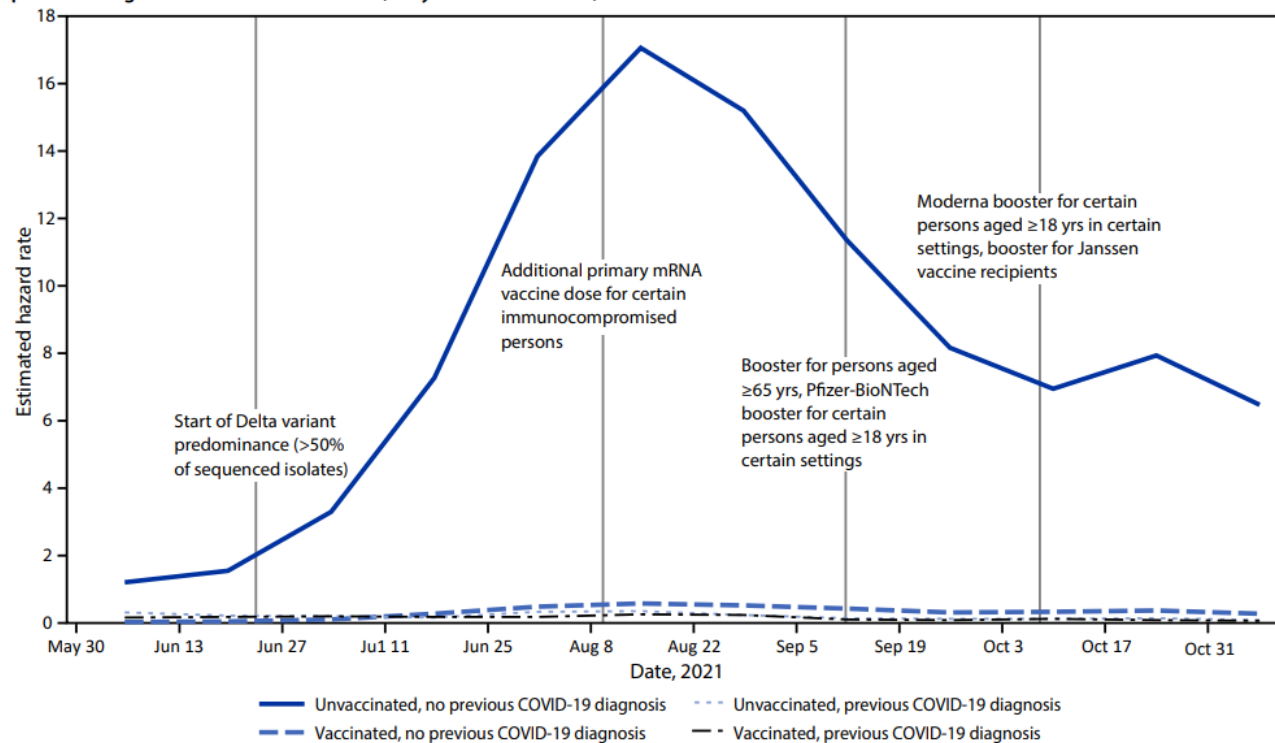
4. Lt Gen Webb's denial memorandum contains numerous issues. Most problematically, it claims that my request for a religious accommodation does not "meet the threshold necessary for an exemption" [4]. Webb misinterprets the law from the outset of the document by implying that the burden of proof rests upon the individual and not upon the Government in determining whether or not to grant a religious accommodation. This is incorrect. The RFRA explicitly places the burden of proof upon the Government, and not the individual to prove there is a sufficient reason to burden the individual's free exercise of religion. Webb does little to specify the compelling government interest or any other means of accomplishing that interest. Additionally, Lt Gen Webb never identifies the threshold that would qualify me or a similarly situated Airman for an approved religious accommodation. These considerations will be addressed.

5. Lt Gen Webb claims that "the Air Force's compelling government interest outweighs your individual belief and no lesser means satisfy the government's interest" [4]. However, he does not specifically identify exactly what the Government interest is. If the Government interest is in minimizing the number of USAF COVID hospitalizations, vaccines alone are less effective than natural immunity. Indeed, there is a specific dataset available on [cdc.gov](https://www.cdc.gov) which is presented below (see Figure 1), displaying the "Estimated hazard rate" [8] (EHR) for different categories of persons. Four categories are identified: vaccinated and unvaccinated, with and without a prior COVID-19 infection. In the dataset, it is clearly visible that the EHR, which is the number of "laboratory-confirmed COVID-19-associated hospitalizations per 100,000 person-days" [8], is lower for unvaccinated persons who have been infected, than for persons who have only received the vaccine [8]. This suggests that those who have not been infected (regardless of vaccination status) are at higher risk of hospitalization than those who have previously diagnosed with COVID-19. Granted, the greatest protection is for those who have been both previously infected and vaccinated, however, the difference is almost **negligible**. To wit, the Centers for Disease Control and Prevention (CDC) reports "During October 3–16, compared with hospitalization rates among unvaccinated persons without a previous COVID-19 diagnosis, hospitalization rates were 19.8-fold lower (95% CI = 18.2–21.4) among vaccinated persons without a previous COVID-19 diagnosis, 55.3-fold lower (95% CI = 27.3–83.3) among unvaccinated persons with a previous COVID-19 diagnosis, and 57.5-fold lower (95% CI = 29.2–85.8) among vaccinated persons with a previous COVID-19 diagnosis" [8]. These data raise two important questions. First, who really needs to be protected from COVID-19? Based on the data, those who have been vaccinated with no prior COVID infection are significantly more vulnerable than anyone who has had a prior infection. Second, **is the achievement of a 57.5-fold reduction in my chances of hospitalization versus a 55.3-fold reduction in my chances of hospitalization a compelling government interest sufficient to trample my rights protected under the RFRA?** Please note, that I received the polymerase chain reaction (PCR) test for COVID-19, administered by a healthcare provider and tested positive, January 16-17, 2022 [9]. Additionally, this data does not account for my age (32 years) or my health (excellent), both of which further reduce my chances of experiencing death or severe illness should I become reinfected with SARS-CoV-2.



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

**FIGURE. Incident laboratory-confirmed COVID-19–associated hospitalizations among immunologic cohorts defined by vaccination and previous diagnosis histories — California, May 30–November 13, 2021<sup>\*,†</sup>**



<sup>\*</sup> The SARS-CoV-2 Delta variant exceeded 50% of sequences in U.S. Department of Health and Human Services Region 9 (containing California) during the week of June 26. <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>

<sup>†</sup> Estimated hazard rate is laboratory-confirmed COVID-19-associated hospitalizations per 100,000 person-days visualized at midpoint of each reporting interval.

Figure 1. EHR for four categories of persons, unvaccinated with no prior infection, vaccinated with no prior infection, unvaccinated with a prior infection, and vaccinated with a prior infection.

6. Perhaps minimizing the risk of transmission is the motivation for denying my religious accommodation. Despite my prior infection, it is acknowledged that if I should become reinfected, I may transmit COVID-19 to others. However, vaccination also does not prevent transmission. The CDC reported 15 Oct 2021 on their now archived webpage that “If you are fully vaccinated and become infected with the Delta variant, you can spread the virus to others” [10]. Further, regarding vaccinated persons who become infected with COVID-19, “People who get vaccine breakthrough infections can be contagious” [11]. The CDC, thus, reports that the use of the vaccine will not prevent transmission to others. Therefore, if both the vaccinated and the unvaccinated can transmit the disease, can marginally diminishing the likelihood of viral transmission be sufficient reason to trample on an individual’s right to religious liberty under the RFRA?

7. The “readiness” argument is frequently cited as a reason that military members should be compelled to receive the COVID-19 vaccine. Indeed, the health of the force is a critical component of national security. However, as a healthy, 32-year-old with a recent COVID-19 infection, I am ready to answer my nation’s call immediately and have done so throughout the entire COVID-19 emergency. Furthermore, as of 13 Feb 2022, the USAF agrees with that assessment. As proof of this claim, I have included two snapshots (Figures 2 and 3 below) of my Individual Medical



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

Readiness (IMR) status, wherein, the USAF claims that I am fully “ready” without the COVID-19 vaccine. The date these snapshots were taken (3 April 2022) is visible in the bottom right corner of the Figures. Additionally, I was able to perform my duties and graduate on time from the Air Force Institute of Technology (AFIT) without a COVID-19 vaccine. This demonstrates the fact that I can serve my country as I have throughout the entire pandemic.

Individual Medical Readiness Status						
RINALDI, BENJAMIN LURE 1368166711						
Wright-Patterson AFB						
EMAIL: BENJAMIN.RINALDI.1@US.AF.MIL <a href="#">Log Off</a>						
IMR	Immunizations	Grounding Mgmt	Deployment and ORHA	Medical Clearance	SHPE	MTF Instructions
<div>IMR ACTION LIST</div> <div>(Nothing due)</div> <div><a href="#">Action List Help</a></div> <div><a href="#">MyIMR User Guide</a></div>						
Overall Status: Current						
PHIA	Dental	Labs	Profile	Med Equipment	Other	
Current	Current	Current	Ready	Current		
PHIAQ: 25 Feb 2022	Dental Class: 1	Blood Type: A	Restriction: No	GMI Required: Yes	ANAM Date: -	
Interval History: 7 Mar 2022	Dental Date: 13 Dec 2021	RH: Positive		GMI Issued: 25 Jan 2018		
DD2766 Review and Update: 7 Mar 2022		Sickle Cell Screen: Negative		GMI Type: HSO		
Provider Review/Signature: 7 Mar 2022		OSPO: Normal				
Last In-Person PHIA: 7 Mar 2022		HIV Date: 16 Jul 2021				
		DNA: On File				

Figure 2. IMR snapshot 4/3/2022 (1/2).



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

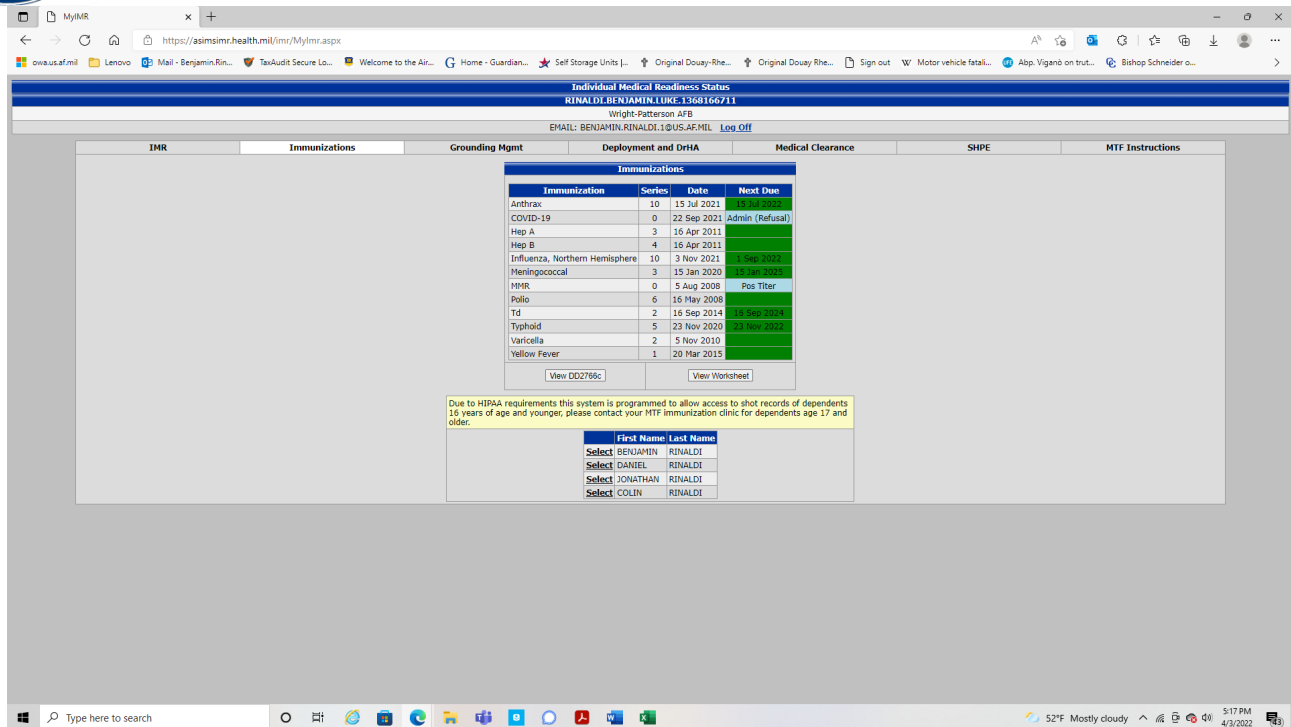


Figure 3. IMR snapshot 4/3/2022 (2/2).

8. My religious accommodation request denial memorandum claims that without the COVID-19 vaccine I will have difficulty deploying due to my “personal lack of readiness” [4]. Notwithstanding the above discussion, that by the definition of the USAF I *am* ready, this is a topic which is still worthwhile to explore. Many options are available for deployments, including CONUS deployments and deployments to nations which do not require COVID-19 vaccination. For example, at the time of this writing, numerous allied countries already admit unvaccinated defense personnel. Guidance domestically and abroad changes rapidly, so specific examples are not provided, however, deployment to one of these countries is feasible. Additionally, the notion of my *theoretical* future deployment (I am not currently scheduled for a deployment and do not foresee one in the near future) is insufficient by USAF regulation to deny my religious accommodation request, thereby eroding my rights protected under the Constitution and the RFRA. DAFI 52-201 clearly states that “Commanders may only impose limits on such expressions when there is a real (not theoretical) adverse impact on military readiness, unit cohesion, good order and discipline, health or safety of the member or the unit” [12]. Since I currently have no scheduled deployment, it is an invalid argument to say that I must receive the COVID-19 vaccine because I *may* deploy again someday, and that deployment *may* require inoculation against COVID-19. Similar arguments apply to TDY travel, although, CONUS TDY travel is daily becoming more and more possible.

9. I want to note that I am requesting a *temporary* exemption and accommodation only. With numerous ethical vaccines (i.e., vaccines that are not developed, manufactured, or tested with aborted fetal cell lines) currently in various stages of use and development worldwide, it is only a matter of time until ethically-produced COVID-19 vaccines are available in the United States. Thus, I am seeking a temporary exemption only for as long as it takes to obtain Food and Drug



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Administration (FDA) approval and availability for a vaccine consistent with my beliefs. Turning back to General Webb's denial, since I am not currently projected to deploy, providing me a temporary accommodation until FDA approval for an ethical vaccine is likely to meet the Air Force's interests, while not compromising my sincerely held beliefs.

10. In recent months, AETC has taken several measures to reduce the spread of COVID-19. Lt Gen Webb claims that "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" [4]. In light of the rapidly changing nature of the SARS CoV-2 virus, the ability of the COVID-19 vaccines to bring about the changes suggested by Lt Gen Webb are not supported by the available data. Figures 4 and 5 are provided below which show the number of COVID cases and deaths as reported by the CDC [13-14]. The Pfizer vaccine was the first COVID-19 vaccine authorized for experimental use by the FDA in Dec 2020 [15]. While COVID cases and deaths were seen to decrease within months of initial vaccine proliferation, the vaccines were unable to prevent massive surges in both deaths and overall cases as seen in late 2021 and early 2022. It is thus demonstrated that the prevention of US COVID-19 cases and deaths are not as strongly associated with vaccination as implied by Lt Gen Webb's denial memorandum.

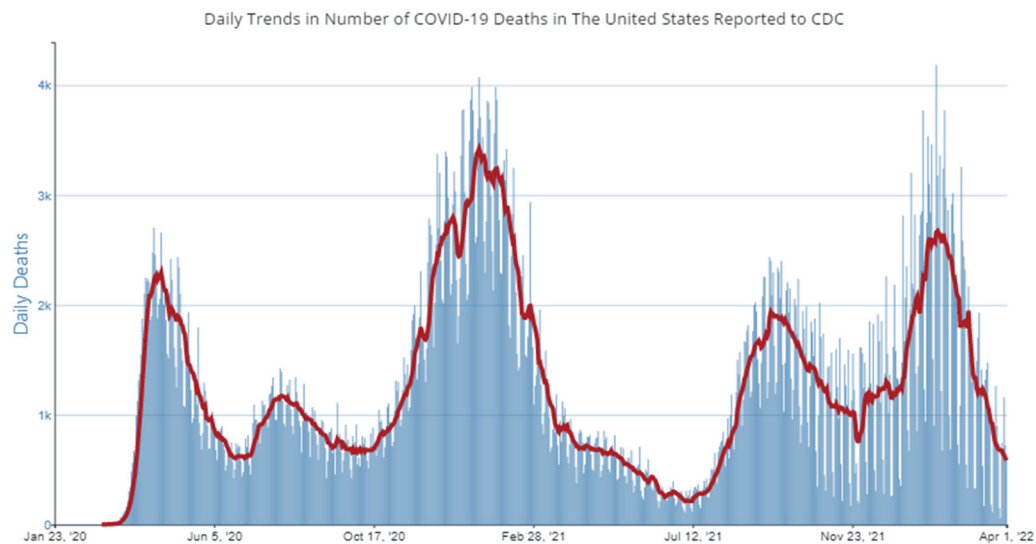


Figure 4. US daily COVID-19 Deaths as reported to the CDC. Information accessed 4/3/2022.



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

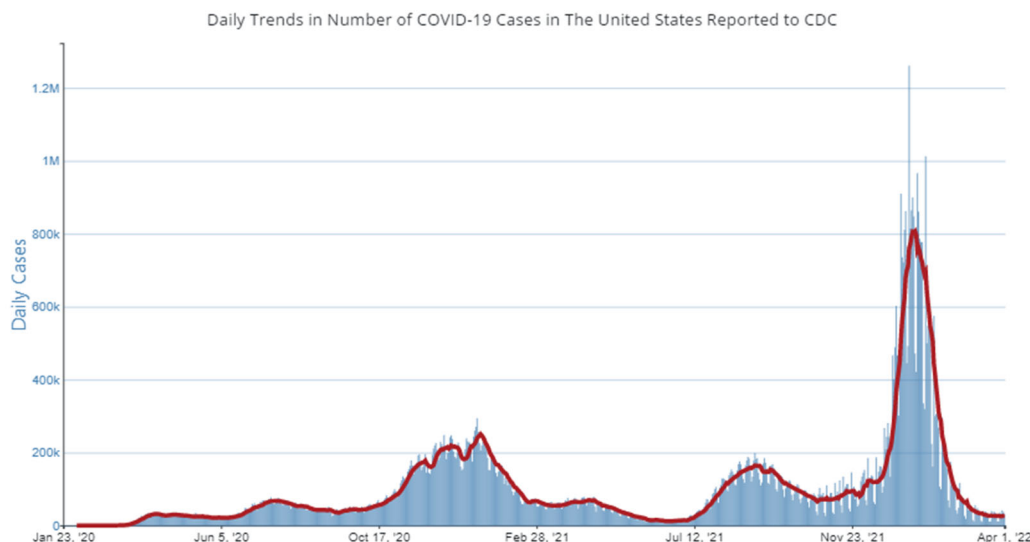


Figure 5. US daily COVID-19 cases as reported to the CDC. Information accessed 4/3/2022.

11. Good order and discipline of the force could certainly be considered a compelling government interest. In that regard, I cannot imagine a more detrimental course of action than denying religious accommodation requests and thereby truncating the Constitution, the RFRA, and their protections to citizens which we uphold and protect. To tell subordinates that their sincerely held religious beliefs cannot be accommodated, contrary to the RFRA and the First Amendment, cannot have anything but poor outcomes upon the morale, good order, and discipline of the Air Force. Indeed, this throws into question the whole principle of supporting and defending the Constitution according to our own Oath of Office!

12. Many lesser means are available to meet the Government's interest. I am willing to wear a mask, as according to the CDC, masks have been demonstrated to have some efficacy in reducing the spread of COVID-19 [16]. I am willing to participate in routine COVID-19 testing and temperature checks. I am willing to take an assignment (to include retraining in another career field) where fulltime telework is possible. In fact, since graduating from AFIT, I have been actively involved in the Engineering Physics Department (AFIT/ENP) pursuing research opportunities of interest to AFIT and the DoD. This demonstrates that without COVID-19 vaccination, I can continue to serve, even if it means retraining into another career field. Furthermore, natural immunity could also be considered to meet the Government's requirements. Dr. Anthony Fauci of the National Institute of Allergy and Infectious Diseases (NIAID) said in a recent interview, "When you look at the cases they do not appear to be any more severe [than Omicron] and they do not appear to evade immune responses either from vaccine **or prior infection**," [17, emphasis added]. Dr. Fauci's statement affirms the prior conclusion drawn by the CDC "Before Delta became the predominant variant in June, case rates were higher among persons who survived a previous infection than persons who were vaccinated alone. **By early October, persons who survived a previous infection had lower case rates than persons who were vaccinated alone**" [8, emphasis added], indicating that natural immunity can provide comparable if not greater, lasting protection





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than vaccination alone. Similarly, in November 2021, *The Lancet*, a widely acclaimed medical journal, recognized the efficacy of natural immunity by stating, “Although longer follow-up studies are needed, clinicians should remain optimistic regarding the protective effect of recovery from previous infection. **Community immunity to control the SARS-CoV-2 epidemic can be reached with the acquired immunity due to either previous infection or vaccination.** Acquired immunity from vaccination is certainly much safer and preferred. Given the evidence of immunity from previous SARS-CoV-2 infection, however, **policy makers should consider recovery from previous SARS-CoV-2 infection equal to immunity from vaccination for purposes related to entry to public events, businesses, and the workplace, or travel requirements**” [18, emphasis added]. Thus, natural immunity, which I have acquired by a professionally-diagnosed COVID-19 infection [9], is recognized by the NIAID [17], the CDC [8], and the international medical community [18], to have significant efficacy against the SARS-CoV-2 virus which should satisfy the Government’s interest of inoculating military members against COVID-19.

13. Lt Gen Webb further asserts that as a graduate student at AFIT, I must be vaccinated against COVID-19 because my “role requires face-to-face engagement with other Airmen” [4]. He further states, “Unit cohesion will be negatively impacted due to your inability to physically participate in group projects with fellow students as well as disrupting work flows at your follow-on assignment” [4]. In my opinion, unit cohesion was unaffected by my vaccination status, and while at AFIT. I regularly attended class in person, performed group laboratory experiments, physically attended weekly meetings, etc. without disruption due to my vaccination status. Moreover, it is unreasonable to claim that I will disrupt “work flows” at my “follow-on assignment” since I have not been *given* an assignment. I graduated from AFIT 24 March 2022 and as indicated above, I am currently continuing my research at AFIT/ENP until I receive an assignment. I am in a unique position which will be particularly easy for the USAF to accommodate, since I am essentially between assignments and am willing to retrain into a different career field if this appeal is granted.

14. “We are at an inflection point in history, and you will be on the leading edge of freedom and democracy’s struggle over authoritarianism” [5]. These words, also spoken by the SECAF in his graduation speech on 24 March 2022, should resound loudly in the ears of military leaders when considering religious accommodations and appeals. I seek nothing more than to be permitted to abide by US law under the Constitution and the RFRA while protecting my own conscience during my honorable service in the USAF. The Air Force is an organization that benefits greatly from the presence of independent thinkers and those with the courage to stand up for what they firmly believe is right. It is with these considerations in mind that I appeal my religious accommodation request denial.

15. Questions may be directed to the undersigned, Capt Benjamin Rinaldi, at [Benjamin.Rinaldi@afit.edu](mailto:Benjamin.Rinaldi@afit.edu).



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BENJAMIN L. RINALDI, Capt, USAF  
AFIT/ENP

Attachments:

1. References
2. Religious Accommodation Request
3. Record of Interview by Chaplain Ingram
4. Religious Accommodation Request Denial Memorandum
5. Positive COVID-19 PCR Test



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AIR UNIVERSITY (AETC)**

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16. Effectiveness of Face Mask or Respirator Use in Indoor Public Settings for Prevention of SARS-CoV-2 Infection — California, February–December 2021  
<https://www.cdc.gov/mmwr/volumes/71/wr/mm7106e1.htm>
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**DEPARTMENT OF THE AIR FORCE  
AIR UNIVERSITY (AETC)**

14 September 2021

MEMORANDUM FOR AU Det 1/CC

FROM: Capt Benjamin L. Rinaldi, AFIT/ENP

SUBJECT: Statement of Religious Faith, In Regards to COVID-19 Vaccination

1. I, Capt Benjamin Rinaldi, am a faithful Catholic and a parishioner at Emmanuel Parish in Dayton, OH. I am a son of a devout Catholic family. I regularly participate in the Church, having received the Sacraments of Baptism, Reconciliation, the Eucharist, Confirmation, and I am happily married in the Catholic Church. I frequently attend Mass (at least weekly) and often receive the sacraments of Reconciliation and the Eucharist, regularly contribute financially to the Church and Catholic charities. I have four children, all of whom have been Baptized into the Catholic Faith and am happily married to a practicing Roman Catholic. My faith is a deeply integral part of my life and has always helped me in good times and in bad.
2. The Catholic Church teaches that the act of abortion constitutes a grave moral evil. According to the Catechism of the Catholic Church, "Since the first century the Church has affirmed the moral evil of every procured abortion" [1]. Furthermore, the manufacturing, distribution, and use of vaccines and other medical products derived from aborted fetal tissues represent cooperation with the evil of the abortion [2], which itself is a grave moral evil.
3. It is recognized by the USAF that all three COVID-19 vaccines available to US consumers have a connection with material derived from aborted fetal cells [3]. The Johnson and Johnson vaccine used aborted fetal cells in many stages of production to include manufacturing while the Pfizer and Moderna vaccines used them in research phases [3].
4. While many notable Catholic clergy have publicly endorsed the COVID vaccines including Pope Francis [4], there is disagreement among Catholic leadership regarding the use of vaccines which involve research, testing, or production that utilized the remains of aborted fetuses. Bishop Strickland of Tyler, Texas writes to his diocese, "I urge you to reject any vaccine that uses the remains of aborted children in research, testing, development, or production" [5]. Additionally, Bishop Schneider of Astana, Kazakhstan says "The crime of abortion is so monstrous that any kind of concatenation with this crime, even a very remote one, is immoral and cannot be accepted under any circumstances by a Catholic once he has become fully aware of it" [6]. Additionally, he cites St. Pope John Paul II's teaching that the defense of the right to life must be conducted with "maximum determination," [7] while reception of a vaccine which is manufactured with aborted fetal cells falls short of this goal and is unacceptable to Catholics [6]. Cardinal Raymond Burke, of the Sovereign Military Order of Malta said in May of 2020, "With regard to vaccination, it must be clear that it is never morally justified to develop a vaccine through the use of the cell lines of



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

aborted fetuses. The thought of the introduction of such a vaccine into one's body is rightly abhorrent" [8].

5. Over the last decade, I have grown in my faith significantly and particularly in the last year I have delved much farther into Catholicism and my conscience sides with the leaders in the Catholic Church who voice opposition to vaccines produced using aborted fetal tissue. Again, the Catechism of the Catholic Church states, "The end does not justify the means," [1] i.e., the good intention of protecting health through vaccination cannot justify an act which is morally evil. Furthermore, vaccines in the past have received significantly less publicity, making it much more difficult to discern if a vaccine has been ethically produced. However, the COVID vaccines have received enormous amounts of media attention, to include the distribution of information pertaining to their production methods, rendering it virtually impossible to remain ignorant of the origins of the COVID vaccines.

6. I have, in the past, received unethically produced vaccines. These vaccines include, but are not limited to MMR, polio, varicella, and hepatitis A. I received some of these injections as a child and was not responsible for my own healthcare decisions. Others, I received as a young adult either preparing for enrollment at the Air Force Academy or as a cadet. During this time, the ethics of vaccine production were not foremost on my mind. Furthermore, at the time, I did not question church leaders who only weakly denounce or even approve [4] of vaccines which are produced using aborted fetal cells. However, my faith has evolved significantly in recent years and I reject the indiscriminate use and unabashed acceptance of vaccines produced in this manner (I do not condemn those who receive them, nor do I totally reject their use, but I would only consider the reception of such a vaccine under very grave circumstances and only on a case-by-case basis).

7. I understand that there may be grave circumstances which permit the use of vaccines produced with aborted fetal cells. This opinion is consistent with Catholic teaching as illustrated by the Pontifical Academy for Life and the National Catholic Bioethics Center (NCBC) [2, 9]. However, I believe these circumstances must be viewed as exceptions, and in my particular situation, the reception of the available COVID vaccines would be in gross violation of my conscience, as the NCBC affirms that "Even in the face of a devastating pandemic, it is not ethical to engage in moral evil for the sake of good motives or hoped-for results" [9]. Indeed, the NCBC calls on all Christians to "renew our witness to the sanctity of human life and our determination to end the use of abortion-derived cell lines" [9].

8. I am open to receiving any vaccine produced without the use of aborted fetal cells. If any such vaccines become available to US consumers or military members, I would not hesitate to receive such a vaccine. However, reception of any of the vaccines available (Pfizer, Moderna, and Johnson and Johnson) would be in gross violation of my religiously-formed conscience and I respectfully request for the military to accommodate this belief.

9. Questions may be directed to Capt Benjamin Rinaldi, at [Benjamin.Rinaldi@afit.edu](mailto:Benjamin.Rinaldi@afit.edu).





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

RINALDI.BEN  
JAMIN.LUKE.1368166711  
1368166711  
BENJAMIN L. RINALDI  
AFIT/ENP  
Capt, USAF

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Attachment:  
References



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

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**DEPARTMENT OF THE AIR FORCE**  
HEADQUARTERS 88TH AIR BASE WING (AFMC)  
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

28 September 2021

MEMORANDUM FOR AETC/CC

FROM: Chaplain, Major Krista D. Ingram

SUBJECT: Religious Accommodation Request for Capt Benjamin L. Rinaldi

1. On Tuesday, 28 September, 2021, I spoke with Capt Rinaldi to discuss his religious accommodation request for exemption from the USAF COVID-19 vaccination requirements.
2. Capt Rinaldi is a devout Roman Catholic who, together with his family, actively participates in the life of his local parish. His faith and beliefs were nurtured from an early age, and over his lifetime he has received the Sacraments of Baptism, Reconciliation, the Eucharist, Confirmation, and Marriage. In keeping with the tenets of Roman Catholicism, Capt Rinaldi is vehemently opposed to the practice of abortion and the use of fetal stem cells. As such, he has a moral obligation to refuse the COVID-19 vaccine.
3. As Capt Rinaldi's faith has grown stronger over the years, so has his rejection of unethically produced vaccines. Neither Capt Rinaldi nor his wife is vaccinated against COVID-19, nor do they intend to vaccinate their four children. While previously unaware that a variety of other medical products are brought to market utilizing fetal stem cells, Capt and Mrs. Rinaldi plan to research the development and production of other pharmaceuticals and vaccines to avoid those that are not in keeping with their beliefs.
4. Current vaccination requirements place a substantial burden on Capt Rinaldi's free exercise of religion by requiring him to participate in an activity prohibited by his sincerely held beliefs; by receiving the COVID-19 vaccine he is "cooperating with evil" in support of abortion.
5. Capt Rinaldi's sincerely held religious beliefs are not sufficiently burdened by either the current federal guidelines for continued mask wear or routine COVID testing, and he is amenable to either or both options. He also supports a COVID-19 vaccine free of fetal stem cell utilization.
6. I recommend granting Capt Rinaldi's religious accommodation request due to the overwhelming presence of sincerely held religious beliefs in opposition to the COVID-19 vaccine.
7. If you have any questions please contact me at krista.ingram.1@us.af.mil or 937-904-0524.

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KRISTA D. INGRAM, Ch, Maj, USAF  
Branch Chief, 88 ABW/HC



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

29 March 2022

MEMORANDUM FOR CAPTAIN BENJAMIN RINALDI

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 and 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 Air Force Institute of Technology (AFIT) Masters student who will graduate soon, there is a compelling government interest for you to receive the vaccine. Specifically, your role requires face-to-face engagement with other Airmen. An exemption will create the perception of favoritism while in school and at your new duty location, eroding good order and discipline. Unit cohesion will be negatively impacted due to your inability to



physically participate in group projects with fellow students as well as disrupting work flows at your follow-on assignment. Your personal lack of readiness will impact your ability to deploy, perform temporary duties away from your home station, and be transferred overseas in your follow on assignment. Even if you are permitted to travel on official orders with an exemption, you will be subject to longer restriction of movement and isolation. Finally, failure to receive the vaccine increases the risk to your own health and safety and that of those around you.

Lesser means to accomplish the Government's compelling interest are insufficient. Attending AFIT virtually will not be as effective as attending in person and will prevent you from engaging in important developmental exercises. Further, your ability to develop as a future leader will be limited because you will be unable to mentor subordinates or be mentored by your leadership if you must remain socially distanced from them. 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 your local Chaplain's office.



MARSHALL B. WEBB  
Lieutenant General, USAF  
Commander

cc:  
Member's Unit  
Member's Servicing FSS



1st Ind, CAPT BENJAMIN RINALDI

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 \_\_\_\_\_ (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.

BENJAMIN RINALDI, Capt, USAF

2d Ind, CAPT BENJAMIN RINALDI

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.

BENJAMIN RINALDI, Capt, USAF

Name: Benjamin Rinaldi | DOB: 10/19/1989 | MRN: E2695521 | PCP: PHYSICIAN NONE

## SARS-COV-2 PCR SCREENING - Details

### Comments from the Doctor's Office

Your COVID test is positive.

As you may know most everyone with COVID feels ill for several days but usually recovers with time, rest, fluids, good nutrition and symptomatic treatments like otc cough meds, Tylenol, etc.. Antibiotics do not treat COVID.

It is important to self-quarantine and try and not expose others for 10 days after the onset of symptoms or from the date of the test - this quarantine could be decreased to as few as 5 days after symptoms began if no symptoms remain, your fever has been gone for 24 hours at that time and you are very strict at wearing your mask around others at all times for the full 10 day time period. You should inform your work or school and follow their guidance on return policies. You may get contacted by a health official for contact tracing and it is reasonable to inform others that you may have had close non-masked contact with in the day or 2 before your symptoms started (close contact/exposure is <6 feet for more than 15 minutes or unmasked with close respiratory droplet exposure or sharing eating/drinking utensils or direct physical/intimate contact). Very close contacts like this may be advised to quarantine for 14 days and should reach out to their regular doctor or clinic for specific advice for their health.

You can get a pulse ox machine at local pharmacies to measure your oxygen level - if you are below 92% despite good deep breaths you should reach out for more advice and if feeling poorly with this - please go to the ER for evaluation. If you are ill with worsening shortness of breath, chest pain, trouble thinking clearly or unable to keep any fluids or food down - then please go to the ER, wearing a mask. Please call your regular provider/clinic or MyChart them if you have other questions. There are some treatments available for certain higher risk individuals early in COVID and oral medicines are being developed for these types of higher risk patients as well. Your regular provider/clinic can discuss this and other treatment options with you in more detail, as they know you best. Most Primary Care offices do have the ability to do TeleHealth to check in and care for you virtually. Remember to keep to yourself, mask, wash your hands well and clean high touch areas while you recover and report to the ER if you are doing very poorly.

### Study Result

#### Narrative

SARS-CoV-2 RNA detected by the real-time RT-PCR Lyra assay. This assay was developed and its performance characteristics determined by Kettering Medical Center Laboratory. This test has not been FDA cleared or approved. This test has been authorized by FDA under an Emergency Use Authorization (EUA).

Negative results do not preclude SARS-CoV-2 infection and should not be used as the sole basis for treatment or other

patient management decisions. Optimum specimen types and timing for peak viral levels during infections caused by SARS-CoV-2 have not been determined. Clinical correlation is always recommended.

## Component Results

Component	Your Value	Standard Range	Flag
SARS-CoV-2 RNA	<b>Your Value Positive</b>	<i>Standard Range Negative</i>	<b>Flag A</b>

## General Information

Ordered by Sarah Jane Neal, APRN-CNP

Collected on 01/16/2022 4:51 PM from Nasopharyngeal Swab (Swab)

Resulted on 01/17/2022 5:54 AM

Result Status: Final result

This test result has been released by an automatic process.



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

APR 19 2022



MEMORANDUM FOR LIEUTENANT COLONEL EDWARD J. STAPANON III

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 present duty assignment requires intermittent to frequent contact with others and is not fully achievable via telework or with adequate distancing. Your instructor role also requires frequent contact and immersion with multiple individuals, which would significantly impact training accomplishment if you, your trainees, or your fellow instructors were exposed or actively infected. 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. Masking, social distancing, and testing mitigate risk but not as effectively as vaccination in combination with additional measures determined by local spread. 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 with questions or concerns.

A handwritten signature in blue ink that reads "Robert I. Miller".

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