# 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	:	

# RESPONSE TO GOVERNMENT'S BRIEF REGARDING MOTION FOR STAY PENDING APPEAL AND ADMINISTRATIVE STAY

The Government makes certain sweeping arguments that have already been fully briefed, and which this Court has emphatically rejected. Two such arguments are that the Government is likely to succeed on the merits and that class certification was improper. [See, e.g., Doc. 13, Doc. 21; Doc. 27 Doc. 30, Doc. 34; Doc. 46; Doc. 47, Doc. 72]. Consequently, we will not repeat Plaintiffs' rebuttal to all the Government's arguments. However, we note that other Courts have granted class certification on nearly identical claims. *See, e.g. U.S. Navy Seals*, *1-26 v. Biden*, NDTX 4:21-cv-01236, at Doc. 140 (Navy Class); *Colonel Financial Management Officer, et. al. v. Lloyd Austin, et. al.*, MDFL 8:22-cv-1275, at Doc. 229 (entered earlier today, 8/18/2022) (Marine Corps).

We also note that, with the passage of time, the Government's case continues to fall apart. For instance, the CDC recently released several new recommendations and made several statements concerning COVID-19.<sup>1</sup> In particular:

<sup>&</sup>lt;sup>1</sup> See Summary of Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems — United States, August 2022, <u>https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm</u>, (last accessed Aug. 18, 2022).

- 1. The CDC now recognizes the immunity and protection provided to those who have previously recovered from a COVID-19 infection: "The risk for medically significant illness increases with age, disability status, and underlying medical conditions but *is considerably reduced by immunity derived from* vaccination, *previous infection*, or both, as well as timely access to effective biomedical prevention measures and treatments."<sup>2</sup>
- 2. The CDC also now confirms that "[h]igh levels of immunity and availability of effective COVID-19 prevention and management tools have reduced the risk for medically significant illness and death," thus annihilating the Government's argument regarding its allegedly compelling interest to reduce hospitalization and death among service members solely by means of forced vaccination.<sup>3</sup>
- 3. The "[C]DC's COVID-19 prevention recommendations now no longer differentiate based on a person's vaccination status because breakthrough infections occur, though they are generally mild, and persons who have had COVID-19 but are not vaccinated have some degree of protection against severe illness from their previous infection."<sup>4</sup>
- 4. Finally, "[R]eceipt of a primary series alone, in the absence of being up to date with vaccination through receipt of all recommended booster doses, provides minimal protection against infection and transmission."<sup>5</sup>

Thus, the CDC now refutes the Government's allegedly compelling interest in forcing vaccination regardless of prior infection, and its purported inability to accommodate class

- <sup>3</sup> Id.
- <sup>4</sup> Id.
- <sup>5</sup> Id.

 $<sup>^{2}</sup>$  Id.

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 3 of 19 PAGEID #: 4649

members' religious beliefs. In fact, the Government's own declarant, the U.S. Air Force Chief of Immunization Healthcare Division, Defense Health Agency-Public Health directorate, relies entirely on the CDC's recommendations in justifying the Government's "vaccination is the only way" position.<sup>6</sup>

And it's not just the CDC that is factually undermining the Government's untenable position. Its own witnesses are piling on. In U.S. Navy Seals, 1-26 v. Biden, 4:21-cv-01236, the Plaintiffs took the deposition of the Vice Chief of Naval Operations, Admiral Lescher, who testified by way of declaration in the District Court, similar to the Declarations offered by the Government in this case. See Exhibit A.<sup>7</sup> The Declaration of Admiral Lescher was relied on by Justice Kavanaugh in his concurring opinion in Austin v. United States Navy Seals, 142 S. Ct. 1301 (2022), to grant a partial stay. Incredibly (or maybe not so incredibly), Admiral Lescher admitted numerous times that he did not have the personal knowledge to attest to the facts set forth in his prior Declaration, and admitted that significant portions of his Declaration amounted to unsubstantiated speculation. Including, for example, admitting that details regarding the effect COVID-19 had on naval ships was "not generally" within his purview and that he did not speak to individuals with such knowledge before drafting his declaration (Tr. at 22:11–22:20, 23:4–23:6, 23:16–24:1), admitting he was unaware of any combat operations negatively impacted by COVID-19 (Tr. at 33:18-34:8), or stating he was unaware of specific examples of COVID-19 made a medical evacuation more difficult (Tr. at 50:15–51:16). In other words, the passage of time has only demonstrated the wisdom of this Court's decision that the Government cannot meet its very high burden in this case.

<sup>&</sup>lt;sup>6</sup> Exhibit 9, Doc. # 27-10, Declaration of Colonel Tonya Rans.

<sup>&</sup>lt;sup>7</sup> All lettered Exhibits are attached hereto.

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 4 of 19 PAGEID #: 4650

As for the other arguments raised by the Government, they are conditioned upon a strained reading of the plain language of the Court's Order or have otherwise been thoroughly analyzed and rejected by the Court. [Doc. 77]. We address these other arguments below.

#### 1. What this Court ordered and the scope thereof

The injunction, by its terms, only applies to members of the class. Therefore, it only applies to "[a]ll active-duty, active reserve, reserve, national guard, inductees, and appointees of the United States Air Force and Space Force, including but not limited to Air Force Academy Cadets, Air Force Reserve Officer Training Corps (AFROTC) Cadets, Members of the Air Force Reserve Command, and any Airman who has sworn or affirmed the United States Uniformed Services Oath of Office or Enlistment and is currently under command and could be deployed." All of the past tense language within that definition makes clear that individuals must have met the criteria for that definition as of the date of the class modification, July 27, 2022 [Doc. 77]. Moreover, individuals must meet that criteria and must also have further: "(i) submitted a religious accommodation request to the Air Force from the Air Force's COVID-19 vaccination requirement, where the request was submitted or was pending, from September 1, 2021 to the present" (i.e., July 27, 2022, the date of the Order); "(ii) were confirmed as having had a sincerely held religious belief substantially burdened by the Air Force's COVID-19 vaccination requirement by or through Air Force Chaplains; and (iii) either had their requested accommodation denied or have not had action on that request."

Because all class membership requirements are stated in the past tense, including all of the requirements under (i), (ii), and (iii), which had to have been met by the date of the modified class order (i.e. July 27, 2022), there is no open-ended class. The Government is wrong to argue

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 5 of 19 PAGEID #: 4651

otherwise. Simply put, the class is necessarily confined to those who met the class definition as of July 27, 2022. This is a plain reading of the Court's class definition.

Finally, insofar as the restrictions on National Guard are concerned, the application of the injunction is limited to the enforcement of the Secretary of the Air Force's vaccine mandate against those meeting the class definition. It would therefore not apply to any vaccine requirement that was separately imposed by any Governor, State Adjutant General, state legislature, or separate state authority.

After reading the Government's brief, to avoid any ambiguity and to conserve judicial resources, Plaintiffs offered to enter into an Agreed Order with the Government in order to clarify these points related to the class definition and to the National Guard issue. Predictably, the Government declined. *See* Exhibit B. To avoid the Government's strained reading, which is what supports the majority of its argument, the Court should consider entering a further order clarifying the scope of its previous order, so as to avoid the Government making this same, strained argument on appeal. We have tendered such an order. *See* Exhibit D.

# 2. <u>The Government's argument about the "expansion" of the class without briefing,</u> <u>allegations that class-wide relief was legal error, and standing of class members</u>

The Government argues that it was unfair to "expand" the class to "reserves," "inductees," "appointees," and "members of the 54 Air National Guards of the States. . . ." For several reasons, Plaintiffs respectfully disagree. The Government further argues that it did not have the opportunity to brief the expansion issue. It has now had that opportunity. [Doc. 83].

Turning again to this Court's order, this Court certified a class with regard to any active or active reserve member of the Air or Space Force to include Air Force Academy Cadets, Air Force Reserve Officer Training Corps (AFROTC) Cadets, Members of the Air Force Reserve Command,

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 6 of 19 PAGEID #: 4652

and "any Airman who has sworn or affirmed the United States Uniformed Services Oath of Office and is currently under command and could be deployed." (Doc. 72).

However, this language was also limited to personnel "who: (i) submitted a religious accommodation request to the Air Force from the Air Force's COVID-19 vaccination requirement, where the request was submitted or was pending, from September 1, 2021 to the present; (ii) were confirmed as having had a sincerely held religious belief by or through Air Force Chaplains; and (iii) either had their requested accommodation denied or have not had action on that request."

By definition, Air Force ROTC Cadets are not on active duty or active reserves. But they do go through the entire process of religious accommodation processing. So what the Government calls an expansion was actually merely a clarification. Further, it is only by meeting <u>all</u> of this Court's requirements, all of which are stated in the past tense, that places someone within the class. Once again, this includes the requirements at (i), (ii), and (iii).

The Government next argues that Plaintiffs did not have standing to assert this relief [Doc. 83 at pp.5-6] because the Government observes that no Plaintiff is a member of the National Guard, and none were inductees or appointees. But typicality and commonality do not require such a showing. Rather, it is sufficient that all Plaintiffs, like all others in the class, were subject to the same mandate imposed by Secretary Kendall, all going to the same appeal authority, Lt. General Miller, and all were subject to the same systemic discrimination. *Coleman v. GM Acceptance Corp.*, 220 F.R.D. 64, 86-90 (M.D. Tenn. 2004) (explaining that standing is determined with respect to the question of whether the individual Plaintiffs have standing and have been harmed, observing that "where the potential class members cannot be enumerated, attempting to conduct a standing analysis with respect to these unenumerated class members would be impossible," and

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 7 of 19 PAGEID #: 4653

class certification and definitions are appropriate "as long as the challenged policy or practice was generally applicable to the class as a whole").

The Government repeats its argument that RFRA requires individualized consideration. RFRA does require individual consideration. But the fact that the Government implemented a blanket policy of denials for every Air Force and Space Force member, other than those at the end of their term of service, while granting medical and administrative exemptions, rather than actually conducting that case-by-case assessment, as the Court has found [Doc. 47; Doc. 72], and as the Government has admitted in Court, is evidence of a systemic violation warranting systemic relief. [Doc.30-2, Transcript with Government admission about religious accommodations].

#### 3. The Government's argument about inconsistent judicial orders

The Government again argues that class certification here conflicts with other cases and rulings that found that Defendants could substantially burden the religious freedom of service members, and they make the claim that having conflicting rulings is a good thing. [Doc. 83 at pp. 8-9]. Nothing could be further from the truth. First, avoiding conflicting rulings on identical facts and law is generally the point of class actions and certifications. *City of North Royalton v. McKesson Corp. (In re Nat'l Prescription Opiate Litig.)*, 976 F.3d 664, 674 (6th Cir. 2020) ("Rule 23 permits litigation classes primarily for the purposes of aggregating and adjudicating common claims for trial, which can avoid conflicting judgments in individualized proceedings and can more efficiently resolve the claims of the class through a single lawsuit.")

Second, to avoid the risk of inconsistent rulings in other class actions, some courts have excluded from the class persons who bring individual claims. Here, if the Court desired, it could

7

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 8 of 19 PAGEID #: 4654

exclude from the class those who are pursuing individual actions.<sup>8</sup> *Vidal v. Wolf*, 501 F. Supp. 3d 117, 136-137 (NYED 2020). Courts have wide discretion to modify the definition of a class. *Powers v. Hamilton County Pub. Defender Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007) ("district courts have broad discretion to modify class definitions").

But equally, there is no inconsistency. The Government cannot point to a single Court order that requires them to discriminate against the Plaintiffs or the class. The denial of relief, is just that – it imposes no burden or requirement on the Government. The same is true with court orders that direct more limited relief – the Government is not, by such orders, precluded from giving such persons more fulsome relief.

# 4. <u>The Government's argument about the commissioning of officers or enlisting of new</u> <u>service members</u>

Plaintiffs have undertaken significant research on this issue in response to the Government's arguments. While there is no question that the Government and its officials have violated RFRA, not every harm can be remedied. The Government is, unfortunately, correct that *Orloff v. Willoughby*, 345 U.S. 83, 90 (1953), states that "the commissioning of officers in the Army is a matter of discretion within the province of the President as Commander in Chief." We have found other cases beyond those cited by the Government, that state, as a matter of separation of powers, "[w]hatever control courts have exerted over tenure or compensation under an appointment, they have never assumed by any process to control the appointing power either in civilian or military positions." *Dysart v. United States*, 369 F.3d 1303, 1317 (Fed. Cir. 2004).

<sup>&</sup>lt;sup>8</sup> The Court could exclude such individuals from the Class with the following additional language, which would have the effect of giving persons a reasonable opportunity to cease or stay in progress actions: "Excluded from the class is ... or (ii) is deemed to have opted out, by asserting and maintaining a claim as a named or identified plaintiff (and not as a member of a class or a putative class) under RFRA or the First Amendment against the Government in relation to the vaccination mandate, in an action that is still pending on or after September 30, 2022, not inclusive of this action, or actions that are stayed pending final adjudication of this action."

# Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 9 of 19 PAGEID #: 4655

Thus, "the President's decision here whether or not to exercise his appointment power is discretionary, and we hold that the President cannot be compelled to appoint military officers." *Id.* 

Unfortunately, and consistent with our duty of candor to the Court, Plaintiffs believe that this aspect of the injunction must be withdrawn. We have proposed an order that does that.

# 5. <u>The Government's argument about non-party state officials</u>

We have already addressed much of this with clarifying language. Again, we have proposed an order that makes that clarification. At bottom, the Government should not be able to avoid the requirements of RFRA because of the actions of others. If the states want to impose a vaccination requirement and deny religious accommodations to it, so be it. Litigation can be brought in those states over that issue. But in the same vein, the violation here was by these Defendants, who systemically denied Air National Guard members' requests for religious accommodations to the Secretary of the Air Force's requirement. And that should not be permitted.

# 6. The Government's argument about court martial stays is moot

The Government complains the Court has stayed court-martial proceedings, but the Government's own filing admits "they are **not aware** of any ongoing court-martial." [Doc. 79]. Instead, the Government suggests that the Court's order should not apply to approximately 23 administrative proceedings under 10 U.S.C. § 815 (Article 15) underway. [Doc. 79]. They cite *Schlesinger v. Councilman*, 420 U.S. 738, 758 (1975) for the proposition that these administrative disciplinary measures should be permitted to continue, but by its language, (i) *Schlesinger*, 420 U.S. 738 does not apply to non-court martials; and (ii) *Schlesinger*, 420 U.S. 738 merely indicates that proceeding through a court-martial process is not irreparable harm. It does not speak to the

# Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 10 of 19 PAGEID #: 4656

irreparable harm already found by this Court. To deal with this argument by the Government, Plaintiffs withdrew it in the attached order, because, again, it applies to no one.

7. <u>The Government's argument about lack of analysis in the class-wide preliminary</u> <u>injunction</u>

The Government claims the Court's order lacked "analysis." (Doc. 83 at 11). Of course, that views the Order in a vacuum. This Court previously, and quite extensively, considered the issues in this case [Doc. 47; Doc. 72]. Any order must, therefore, be viewed in conjunction with all prior orders touching on the same matter.

# 8. <u>The Government's argument about Novavax</u>

The Government next makes arguments about Novavax. This Court already found that Plaintiffs met their evidentiary burden under RFRA. However, we address the Governments' most recent attempt to argue that they have not substantially burdened Plaintiffs' sincerely held religious beliefs in light of the newest COVID-19 vaccine to receive emergency use authorization, Novavax. Specifically, the Government continues to falsely claim that Novavax is not morally problematic for those who object to vaccines which have a connection to aborted fetal tissue, and they again cite to Novavax's self-serving and false public statements that its product has no connection to aborted fetal tissue. The evidence is clear and admitted by Novavax itself: aborted fetal tissue was used to test its vaccine.<sup>9</sup>

The Government then argues that Novavax will not be religiously objectionable to everyone who has an aborted fetal cell objection. We acknowledge that service members who do not have an objection to vaccines tested on the cell line from an aborted child, and have no other

<sup>&</sup>lt;sup>9</sup> <u>https://wng.org/roundups/pro-lifers-question-novavaxs-fetal-tissue-claim-1655411473</u> (last visited 7/22/2022); <u>https://personhood.org/2022/02/22/yes-novavax-used-hek293-an-aborted-fetal-cell-line/</u> (last visited 7/22/2022); <u>https://www.lifesitenews.com/opinion/novavax-covid-jab-linked-to-aborted-fetal-cells-through-laboratory-testing/</u> (last visited 7/22/2022); see, also, Declarations of Plaintiffs, DE#30-4 through DE#30-20.

# Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 11 of 19 PAGEID #: 4657

religious objection to Novavax, can receive this vaccine without violating their religious beliefs when it is soon available and FDA approved.<sup>10</sup> The Government also fails to recognize that any Plaintiffs and class members who have since gotten a vaccine (like Lts. Ramsperger and McCormick), or will do so as this case progresses, still require ongoing relief to prevent Defendants from punishing them for their past non-compliance due to their religious beliefs. *Ramsek v. Beshear*, 989 F.3d 494, 500 (6<sup>th</sup> Cir. 2021) (declining to find claims moot because of possibility of prosecution for past non-compliance).

Finally, the Government falsely claims that Plaintiffs must provide further evidence that every member of the class had his or her religious beliefs substantially burdened. But this ignores its own dispositive evidence that a Chaplain has already confirmed the sincerity *and* substantial burdening of beliefs of each service member the Court defined as a class member.

# 9. The Government's argument about Exemption Statistics

The Government next (and falsely) claims that exemption statistics support its argument that it is not systemically denying all religious exemptions. However, the Government has admitted in Court that any and all religious exemptions are solely to be given to service members who are at the end of their terms of service. [Doc.30-2, Transcript with Government admission about religious accommodations]. And the Government has come forward with no evidence to refute its prior in-court admission.

# 10. <u>The Government's argument about lack of analysis in the class-wide preliminary</u> <u>injunction</u>

<sup>&</sup>lt;sup>10</sup> As an aside, for those Plaintiffs and class members whose only objection is the connection to aborted fetal cells (which is, admittedly, the vast majority), it is appearing more likely every day that a vaccine may come to market in the next 6 months that will alleviate those concerns. <u>https://ir.ocugen.com/news-releases/news-release-details/ocugen-announces-fda-removes-clinical-hold-phase-23-clinical</u> (last visited 7/22/2022). Thus, and contrary to the misrepresentation contained throughout Defendants' pleadings, Plaintiffs with those specific religious objections truly seek only a temporary exemption.

## Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 12 of 19 PAGEID #: 4658

The Government also falsely claims that the Court's Order lacked analysis on equities and public interest. (Doc. 83 at 15). Once again, that erroneously views the order in a vacuum. This Court previously, and quite extensively, considered the issues in this case [Doc. 47; Doc. 72]. Any order must, therefore, be viewed in conjunction with all prior orders touching on the same matter. In any event, we have, again, proposed an order that does that.

# 11. A stay is not warranted because the Government has failed to meet the stay factors

In order to obtain a stay, Defendants must demonstrate: (1) the likelihood that the party seeking a stay will prevail on the merits of the appeal; (2) the likelihood that the movant will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *See Grutter v. Bollinger*, 247 F.3d 631, 632 (6th Cir. 2001). As it turns out, those are the same factors that warrant the issuance of an injunction in the first place: "(1) the likelihood that the party seeking the stay will prevail on the merits; (2) the likelihood that the moving party will be irreparably harmed; (3) the prospect that others will be harmed by the stay; and (4) the public interest in the stay." *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016); *Dahl v. Bd. of Trs. of Western Mich. Univ.*, 15 F.4th 728 at 736 (6<sup>th</sup> Cir. 2021).

# A. <u>Likelihood of Success on the Merits</u>

Plaintiffs are likely to prevail on the merits, for substantially the same reasons that the Court previously stated in its decision for the original 18 Plaintiffs [Doc. 47]. The class definition, above, demonstrates that every member of the class will necessarily demonstrate both a sincerely held belief, as well as a substantial burdening of that belief. That, then, shifts the burden to the Government to demonstrate that its requirement or order is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C. 2000bb.

The Government argues that statistics have changed and it has granted more religious exemptions since the initial preliminary injunction [Doc. 83], but, again, the Government has admitted in Court that it is only granting these exemptions to those who are at their end-of-service, while granting medical exemptions and administrative exemptions much more widely. [Doc.30-2, Transcript with Government admission about religious accommodations]. And the Government *has not come forward* with any evidence that this admission is no longer the case, even though the Government has the burden. The Government makes much about the Novavax vaccine and a self-serving, hearsay (and Plaintiffs object to this letter under FRE 803), untested letter from the manufacturer [Doc. 83 at pp. 12-13], but Plaintiffs have submitted declarations and evidence that suggests that the ties to aborted fetal tissue in confirmatory testing would likewise raise religious concerns. [Declarations of Plaintiffs, Doc. 30-4 through Doc. 30-20].<sup>11</sup> That said, if the Chaplain who made a determination of sincerity and substantial burden re-evaluates a particular class member in light of a new vaccine, and determines that the belief is no longer substantially burdened, then they would no longer meet the class definition.

Most concerning as evidence of the patent discriminatory treatment at issue, is the Declaration of Major Andrea Corvi [Doc. 53-1], who was granted a medical exemption for pregnancy, but then denied a religious accommodation – no one suggests that her job duties, assignments, or interactions are in any way different – yet the Government accommodated her medical condition, and refused to accommodate her religious belief, both exemptions being temporary in nature. The Plaintiff class has demonstrated a likelihood of success on the merits of their RFRA and First Amendment claims.

<sup>&</sup>lt;sup>11</sup> See, also, <u>https://wng.org/roundups/pro-lifers-question-novavaxs-fetal-tissue-claim-1655411473</u> (last visited 7/22/2022); <u>https://personhood.org/2022/02/22/yes-novavax-used-hek293-an-aborted-fetal-cell-line/</u> (last visited 7/22/2022); <u>https://www.lifesitenews.com/opinion/novavax-covid-jab-linked-to-aborted-fetal-cells-through-laboratory-testing/</u> (last visited 7/22/2022); see, also, Declarations of Plaintiffs, Doc. 30-4 through Doc. 30-20.

# B. <u>Irreparable Harm</u>

While the Government has argued irreparable harm, so have the members of the class, from the loss of their constitutional and statutory rights. Dahl, 15 F.4th 728, 735-736, holds that the loss these constitutional rights for the class are irreparable. We have attached, hereto, the Declaration of Major Pottinger, and we remind the Court of the testimony of Lt. Colonel Stapanon at the Preliminary Injunction hearing: the Air Force is not meeting its pilot or other accession and enlistment goals. [Doc. 45].<sup>12</sup> The suggestion by Lt. General Schneider of irreparable harm because other Air Force members will have to deploy for the less than 2% of the Air and Space Force within the class, is incredible in light of the small percentage at issue, and relies upon the proposition that there are persons who would readily replace members of the class. The testimony at the Preliminary Injunction Hearing by Lt. Colonel Stapanon, which recounted the training pipeline and a lack of fungibility, which only consisted of the Plaintiffs offering testimony, which was subject to adversarial testing by the Government, and in which the Government offered no live testimony to support its case, suggests that this is not the case and not the zero-sum game Defendants make it out to be. The Court should find Lt. Colonel Stapanon's testimony more credible than Lt. General Schneider because his testimony was subjected to and tested on crossexamination. Irreparable harm thus favors the Plaintiff class.<sup>13</sup>

# C. <u>Harm to Others</u>

<sup>&</sup>lt;sup>12</sup> <u>https://www.airforcetimes.com/news/your-air-force/2022/01/21/air-forces-enlisted-recruitment-pipeline-is-drying-up-general-warns/</u> (last visited 8/18/2022).

https://www.nbcnews.com/news/military/every-branch-us-military-struggling-meet-2022-recruiting-goals-officiarcna35078 (last visited 8/18/2022).

<sup>&</sup>lt;sup>13</sup> If the Government would like to offer Lt. General Schneider's testimony at a live hearing, or subject his testimony to cross-examination, similar to that conducted by VCNO Admiral Lescher, who offered a similar declaration that did not withstand cross-examination, the Court should be willing to reconsider his testimony.

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 15 of 19 PAGEID #: 4661

As this Court has already concluded, "... the limited scope of this preliminary injunction will not cause substantial harm to the Air Force because '[Plaintiffs'] religious-based refusal to take a COVID-19 vaccine simply isn't going to halt a nearly fully vaccinated Air Force's mission to provide a ready national defense." *Doster*, --- F. Supp.3d ---, 2022 U.S. Dist. LEXIS 59381 at 48 (SDOH 2022) (*citing Air Force Officer*, --- F. Supp.3d ---, 2022 WL 468799, at \*12 (NDGA 2022)). As in *Dahl*, 15 F.4th 728, 735-736, the harm to others suggested by Defendants appears to be "speculative." Similarly, in *Dahl*, the Sixth Circuit suggested this was the exact case in light of the low percentage of affected Air and Space Force members "does not limit [someone's] exposure to unvaccinated [persons] at large." Notably, too, is the Air and Space Force's ability to conduct its mission prior to the advent of these vaccines, [Declarations of Plaintiffs, Doc. 30-4 through Doc. 30-20], or for months while exemption requests were pending.

# D. <u>Public Interest</u>

Finally, "[p]roper application of the Constitution, moreover, serves the public interest." *Dahl*, 15 F.4th 728 at 736.

A stay is thus not warranted; however, as explained, some clarifications and modifications might be.

# **II.** Defendants do not face an irreparable harm from the preliminary injunction

The Government argues that granting a preliminary injunction to the class would cause harm to Defendants. [Doc. 83, PageID#4583]. Nevertheless, they fail to cite one instance of how the Air and Space Force has been harmed by these same unvaccinated Airmen (now class members) for the past *two years*. Notwithstanding this, for 10, now going on 11, months, these same class members have been unable to travel, attend required schooling, and deploy. Not because they were physically unable to travel or deploy, but because Defendants made the decision

to treat their unvaccinated service members this way once vaccines became available. It is not surprising then that Lt. Gen. Schneider could not cite a single example of this alleged irreparable harm in his declaration.<sup>14</sup> The class he references that would cause this serious endangerment to the Air Force mission accounts for less than 2% of the entire Air and Space Force based on Lt. Gen. Schneider's numbers, spread out over and between hundreds of thousands of other service members.<sup>15</sup> Given that the Air and Space Force has systemically been driving out or coercing religious believers to accede to its vaccination requirement in the face of sincerely held religious beliefs, the actual numbers at this point are likely far less than that.

<sup>&</sup>lt;sup>14</sup> Plaintiffs note that although not needed here, there is a large and growing body of evidence that unvaccinated individuals who have had COVID-19 are far more protected than those who are vaccinated with 1 dose of J&J or 2 doses of an mRNA vaccine. So, it is unsurprising that Lt. Gen. Schneider cannot cite a single example of harm. *See, also, Effects of Previous Infection and Vaccination on Symptomatic Omicron Infections,* New England Journal of Medicine, Altarawneh, et. al., June 15, 2022, <u>https://www.nejm.org/doi/full/10.1056/NEJMoa2203965</u> (last visited 7/25/2022).

*Protection of prior natural infection compared to mRNA vaccination against SARS-CoV-2 infection and severe COVID-19 in Qatar* – "Natural infection was associated with stronger and more durable protection against infection, regardless of the variant, than mRNA primary-series vaccination." <u>https://www.medrxiv.org/content/</u>10.1101/2022.03.17.22272529v1 (last visited 7/25/ 2022).

SARS-CoV-2 Naturally Acquired Immunity vs Vaccine-induce Immunity, Reinfections versus Breakthrough Infections: a Retrospective Cohort Study – "Naturally acquired immunity confers stronger protection against infection and symptomatic disease caused by the Delta variant of SARS-CoV-2, compared to the BNT162b2 two-dose vaccineinduced immunity." <u>https://pubmed.ncbi.nlm.nih.gov/35380632/</u> (last visited 7/25/ 2022).

*Effects of Previous Infection and Vaccination on Symptomatic Omicron Infections* – "The effectiveness of previous infection alone against symptomatic BA.2 infection was 46.1% (95% confidence interval [CI], 39.5 to 51.9). The effectiveness of vaccination with two doses of BNT162b2 and no previous infection was negligible (-1.1%; 95% CI, -7.1 to 4.6), but nearly all persons had received their second dose more than 6 months earlier... Previous infection alone, BNT162b2 vaccination alone, and hybrid immunity all showed strong effectiveness (>70%) against severe, critical, or fatal Covid-19 due to BA.2 infection. Similar results were observed in analyses of effectiveness against BA.1 infection and of vaccination with mRNA-1273." <a href="https://www.nejm.org/doi/pdf/10.1056/NEJM">https://www.nejm.org/doi/pdf/10.1056/NEJM</a> oa2203965?articleTools=true (last visited 7/25/ 2022)

*Duration of immune protection of SARS-Cov-2 natural infection against reinfection in Qatar* – "Effectiveness of primary infection against severe, critical, or fatal COVID-19 reinfection was 97.3% (95% CI: 94.9- 98.6%), irrespective of the variant of primary infection or reinfection, and with no evidence for waning." <u>https://www.medrxiv.org/content/10.1101/2022.07.06.22277306v1.full.pdf</u> (last visited 7/25/ 2022).

<sup>&</sup>lt;sup>15</sup> "Similarly, an injunction expanded to apply to 10,000 or more service members. . ." and "As of March 14, 2022, the Department of the Air Force had approximately 501,00 uniformed Service members - . . ." Doc # 73-1, PAGEID # 4490, 4493.

# Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 17 of 19 PAGEID #: 4663

The Government makes the claim that the members of the class (again, less than 2% of the total force), take up space for others who would get vaccinated. Well, we know that is not true: the military, including the Air and Space Force, is in dire straits from a current recruiting crisis, and has not met its recruiting goals this year.<sup>16</sup> (Declaration Pottinger).

The Government's solution? Separate *more people* in the face of this recruiting crisis. Of course, if one stops to analyze the situation, the Government might find that the systemic religious discrimination it engages in has something to do with its current recruiting crisis.

The Government argues that keeping these members on hand and unvaccinated puts more of a burden on other airmen and guardians. No – the Government's decision not to deploy them does (a decision we do not dispute they have the authority to do). And, again, the Government's suggestion rests upon the faulty premise that these airmen and guardians will be readily replaced. The Court has already seen and taken evidence of pilot shortages and the pipeline to train them that takes years. We have submitted, in connection with this Response, a Declaration from Major Pottinger (one of the Class Representative Plaintiffs). A few days before this Court's preliminary injunction, he was pulled from aeronautical orders and "grounded." (Declaration Pottinger, attached as Exhibit C). That, of course, was well within the operational/deployment exception.<sup>17</sup> But in light of a known severe shortage of pilots, out of necessity his Commander reinstated his flying orders. *Id.* The same is true with everyone in the class – particularly in the face of a recruiting shortage.

<sup>&</sup>lt;sup>16</sup> <u>https://www.nbcnews.com/news/military/every-branch-us-military-struggling-meet-2022-recruiting-goals-officia-rcna35078</u> (last visited 8/18/2022).

<sup>&</sup>lt;sup>17</sup> The Government also argues that the prohibition on them continuing reservists on "no pay, no points," is somehow an operational, assignment, or deployment decision. That is absurd. They can, if they wanted, let those reservists sit at home and collect pay and points, could instead assign them to fold towels at the base gym, could ground them, as they did to Major Pottinger, until they realized they needed him to fly to fill shortages, the decision is strictly theirs.

#### Case: 1:22-cv-00084-MWM Doc #: 85 Filed: 08/18/22 Page: 18 of 19 PAGEID #: 4664

As this Court has already concluded, ". . . the limited scope of this preliminary injunction will not cause substantial harm to the Air Force because '[Plaintiffs'] religious-based refusal to take a COVID-19 vaccine simply isn't going to halt a nearly fully vaccinated Air Force's mission to provide a ready national defense." *Doster v. Kendall*, --- F. Supp.3d ---, 2022 U.S. Dist. LEXIS 59381 at 48 (SDOH 2022) (*citing Air Force Officer v. Austin*, --- F. Supp.3d ---, 2022 WL 468799, at \*12 (NDGA 2022)). The continued preservation of Constitutional rights is always in the public interest and here it is no different. *Dahl v. Bd. of Trs. of Western Mich. Univ.*, 15 F.4th 728 at 736 (6<sup>th</sup> Cir. 2021) ("it is always in the public interest to prevent the violation of a party's constitutional rights.").

# **III.** The balance of harms and public interest support the preliminary injunction

The Government argues that the class-wide preliminary injunction is not supportable under the balance of harms and public interest prongs.

As this Court has already concluded, ". . . the limited scope of this preliminary injunction will not cause substantial harm to the Air Force because '[Plaintiffs'] religious-based refusal to take a COVID-19 vaccine simply isn't going to halt a nearly fully vaccinated Air Force's mission to provide a ready national defense." *Doster*, --- F. Supp.3d ---, 2022 U.S. Dist. LEXIS 59381 at 48 (*citing Austin*, --- F. Supp.3d ---, 2022 WL 468799, at \*12).

# IV. Conclusion

The Government's Motion should be denied, except to the extent we concede certain issues. A proposed order is attached.

Respectfully submitted,

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

/s/Thomas Bruns Thomas Bruns (OH 0051212) Bruns Connell Vollmar Armstrong LLC 4555 Lake Forest Drive, Suite 330 Cincinnati, OH 45242 tbruns@bcvalaw.com 513-312-9890 <u>/s/Aaron Siri</u> Siri Glimstad, LLP Aaron Siri (admitted PHV) Elizabeth A. Brehm (admitted PHV) Wendy Cox (admitted PHV) 200 Park Avenue, 17th Floor New York, NY 10166 (212) 532-1091 (v) (646) 417-5967 (f) aaron@sirillp.com ebrehm@sirillp.com wcox@sirillp.com

# **Attorneys for Plaintiffs**

# **CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing by CM/ECF, this 18 day of August, 2022.

/s/ Christopher Wiest\_\_\_\_\_

No. 22-10077

# In the United States Court of Appeals for the Fifth Circuit

U.S. NAVY SEALS 1-26; U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5; U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1; U.S. NAVY DIVERS 1-3, *Plaintiffs-Appellees*,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States of America; LLOYD AUSTIN, Secretary, U.S. Department of Defense, individually and in his official capacity as United States Secretary of Defense; UNITED STATES DEPARTMENT OF DEFENSE; CARLOS DEL TORO, individually and in his official capacity as United States Secretary of the Navy,

Defendants-Appellants.

On Appeal from the United States District Court for the Northern District of Texas, Fort Worth Division No. 4:21-cv-01236

# MOTION TO SUPPLEMENT THE RECORD

Kelly J. Shackelford Jeffrey C. Mateer Hiram S. Sasser, III David J. Hacker Michael D. Berry Justin Butterfield Jordan E. Pratt Danielle A. Runyan Holly M. Randall FIRST LIBERTY INSTITUTE 2001 W. Plano Pkwy., Ste. 1600 Plano, Texas 75075 Tel: (972) 941-4444 Heather Gebelin Hacker Andrew B. Stephens HACKER STEPHENS LLP 108 Wild Basin Road South Suite 250 Austin, Texas 78746 (512) 399-3022 (phone) heather@hackerstephens.com

Counsel for Plaintiffs-Appellees

Plaintiffs-Appellees hereby move to supplement the record before this Court with the deposition transcript of Admiral William K. Lescher. In support, Plaintiffs-Appellees state as follows:

1. On January 24, 2022, Defendants filed the Declaration of Admiral William Lescher, Vice Chief of Naval Operations (the "Declaration") in support of their Motion for a Partial Stay Pending Appeal. ROA.22-10534.2578-96. In the Declaration, Admiral Lescher makes factual assertions regarding various topics, including the harm the district court's injunction would cause to the Navy, the necessity of the Navy's COVID-19 vaccine mandate, and COVID-19's threat to the Navy. *See generally id*.

2. The Declaration is a key piece of evidence in this case. In fact, when the Supreme Court granted Defendants' Motion for Partial Stay, Justice Kavanaugh cited the Declaration as a reason for granting the partial stay. *Austin v. U. S. Navy Seals 1–26*, 142 S. Ct. 1301, 1302 (2022) (Kavanaugh J., concurring). Defendants also cite the Declaration extensively in their Opening Brief and in their Supplemental Brief and argue the statements made in the Declaration and Admiral Lescher's resulting judgment are entitled to deference. *See* Opening Br. at 35-38; Supp. Br. at 16.

3. Recently uncovered facts illustrate that the Declaration is entitled to no such deference. On June 30, 2022, Plaintiffs deposed Admiral Lescher. During the deposition, Admiral Lescher demonstrated numerous times that he did not have the personal knowledge to attest to the facts set forth in the Declaration and that significant portions of his declaration amount to unsubstantiated speculation. *See,* 

*e.g.*, Mot. Appx. Ex. A (Tr. at 22:11–22:20, 23:4–23:6, 23:16–24:1 (stating details regarding the effect COVID-19 had on naval ships was "not generally" within his purview and that he did not speak to individuals with such knowledge before drafting his declaration));<sup>1</sup>*id.* at 33:18–34:8 (stating he was unaware of any combat operations negatively impacted by COVID-19);<sup>2</sup> *id.* at 50:15–51:16 (stating he was unaware of specific examples of COVID-19 made a medical evacuation more difficult, was contracted through a rebreathing device, or was contracted on a submarine);<sup>3</sup> *id.* at

•••

Q Did you speak with any of those individuals [with knowledge about the ships] prior to or while preparing your -- your declaration concerning this statement or - or any other statements contained herein? A... nothing specific in the context of this declaration.

- <sup>2</sup> Q Okay. Can you identify any combat operations or combat missions that could not be completed successfully as a result of COVID-19?
  A... I believe the most accurate response to that is I'm unaware of any combat failure, as well I'm -- because those type of details and missions would not be under the purview of the vice chief ....
- <sup>3</sup>Q Okay. Do you -- can you identify any Naval Special Warfare missions in which COVID-19 infection prevented a medical evacuation of a Service member?

... A No.

<sup>&</sup>lt;sup>1</sup>Q Do you know how many other ships, other than the 22 you mentioned that currently have COVID cases, were unable to accomplish their mission prior to the vaccine mandate as a result of COVID-19 infections other than ROOSEVELT?

A Again, that type of detail is not generally in the purview of the vice chief.

73:16–73:20 (stating he had not had any discussions with individuals with relevant knowledge regarding missions impacted by COVID-19 prior to signing his declaration);<sup>4</sup> *id.* at 81:19–82:1 (stating he did not review any documents or reports while reviewing and editing his declaration).<sup>5</sup>

4. The district court correctly rejected Defendants' arguments that courts owe blind deference to military commanders on matters implicating the Religious Freedom Restoration Act (RFRA). Admiral Lescher's deposition testimony bolsters

Q Okay. And can you identify any instances in which Service members deployed on a submarine -- Naval Special Warfare Service members deployed on a submarine contracted COVID-19? A I'm unaware.

<sup>5</sup> Q Okay. So you don't recall looking at any -- any documents, reports or other types of information when you were reviewing, editing the draft of your declaration. Is that right? A That's correct.

Q Could you -- can you identify or are you aware of any instances in which COVID-19 made a medical evacuation of a Service member more difficult? A No.

Q Can you identify any instances in which a Naval Special Warfare Service member contracted COVID-19 as a result of using a re-breathing device?

A Again, I would -- that would not be something that I would become aware of, but the answer is no.

<sup>&</sup>lt;sup>4</sup>Q Okay. And so prior to -- prior to executing your declaration, you had not had those conversations about any specific Naval Special Warfare missions that had been impacted by - [COVID?] A Correct.

this conclusion and demonstrates that this Court should not rely upon the Declaration while considering Defendants' appeal, or at minimum, should give it the weight appropriately given to hearsay statements made without personal knowledge. So that the Court may decide the proper weight that it should give to the Declaration in deciding this appeal, this Court should allow Plaintiffs to supplement the record with of the transcript of Admiral Lescher's deposition.

5. Admiral Lescher's deposition testimony will also be helpful to the Court in deciding the legal issues in this appeal: namely, whether the Navy has a compelling interest that justifies the vaccine mandate as applied to religious objectors, and whether the mandate is the least restrictive means available to accomplish that interest. For instance, Admiral Lescher testified at length about his understanding that Religious Accommodation requests should be considered based on detailed individual circumstances and also take into account the recommendation of the commanding officer of the individual requesting accommodation. See, e.g., Mot. Appx. Ex. A (Tr. at 17:13-18:5, 61:19-62:4, 62:17-63:1, 138:11-139:19). This is relevant because as Defendants emphasize in arguing for deference to Lescher's assertions, Admiral Lescher is the "second-highest uniformed officer in the Navy." Opening Br. 35. Admiral Lescher also testified about the Navy's permissive attitude toward individuals at recognized high risk for complications or severe cases of COVID-19, in contrast to its treatment of religious objectors. See, e.g., Mot. Appx. Ex. A (Tr. at 155:14-157:16, 159:1-159:6, 165:7-167:7, 170:18-173:3).

6. Courts have long recognized that they have the authority to permit the appellate record to be supplemented when doing so would be in the interest of

justice. *Gibson v. Blackburn*, 744 F.2d 403, 405 n.3 (5th Cir. 1984); *see also Ross v. Kemp*, 785 F.2d 1467, 1474 (11th Cir. 1986) (recognizing the court's "inherent equitable authority to enlarge the record and consider material that has not been considered by the court below"); *Turk v. United States*, 429 F.2d 1327, 1329 (8th Cir. 1970) (authorizing enlargement of record on appeal with preliminary hearing evidence not presented to trial court if it is "in the interest of justice" to do so); *Gatewood v. United States*, 209 F.2d 789, 792 n. 5 (D.C. Cir. 1953) (considering a transcript of preliminary proceedings which had not been before trial court because it was in interest of both parties and due administration of justice).

7. Courts address requests to supplement an appellate record on a caseby-case basis. *Ross*, 785 F.2d at 1474; *see also Singleton v. Wulff*, 428 U.S. 106, 121 (1976) (stating the "matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases.").

8. Factors courts consider when examining a request for supplementation include whether the supplemental materials contain information that will illuminate an issue before the court and whether remanding the case to the district court for consideration of the additional material would be contrary to both the interests of justice and the efficient use of judicial resources. *See Vital Pharms., Inc. v. Alfieri*, 23 F.4th 1282, 1288 (11th Cir. 2022) (allowing supplementation because the supplemental material illuminated an important issue in the appeal); *Teamsters Loc. Union No. 117 v. Washington Dep't of Corr.*, 789 F.3d 979, 986 (9th Cir. 2015) (allowing supplementation for the limited purpose of confirming harms

acknowledged by a party in general terms during discovery and because a remand would merely prolong the proceedings); *Ross*, 785 F.2d at 1475 (discussing the factors); *see also Gibson*, 744 F.2d at 405 n.3 (permitting supplementation because remanding the case would unnecessarily prolong proceedings and because the evidence confirmed the proper resolution of the case).

9. Here, the interests of justice weigh in favor of allowing supplementation. The preliminary injunction at issue in this interlocutory appeal was partially stayed by the Supreme Court. The important issues in this case show that supplementing the record with this pertinent information will be helpful to the Court. Further, the deposition transcript that Plaintiffs seek to submit to this Court undermines a key piece of evidence that was cited by Justice Kavanaugh as a reason for partially staying the injunction and deferring to high-ranking military officials. *Austin*, 142 S. Ct. at 1302 (Kavanaugh J., concurring). As demonstrated by Admiral Lescher's deposition testimony, the Declaration was largely speculation and factual allegations that were beyond Admiral Lescher's personal knowledge. Illumination of these facts is essential as this Court considers whether the district court's preliminary injunction was an abuse of discretion.

10. Further, remanding the case for the district court to consider this evidence would not be a good use of judicial resources. The district court already rejected the assertions in the Declaration when it denied Defendants' Motion to Stay the Preliminary Injunction. *See* ROA.22-1077.2964-73. Asking the district court to reach this conclusion again with evidence that bolsters the conclusion the court already reached would unnecessarily prolong the resolution of this case. Thus, to aid the Court in deciding the issues pending in this interlocutory appeal and to preserve judicial resources, Plaintiffs request that the record on appeal be supplemented with the transcript from Admiral Lescher's deposition.<sup>6</sup> In the alternative, Plaintiffs request that the Court take judicial notice of the transcript. *See Hall v. City of Houston*, No. 21-20451, 2022 WL 3031306, at \*2 (5th Cir. Aug. 1, 2022) (judicial notice appropriate where facts "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." (quoting Fed. R. Civ. P. 201)).

11. Counsel for Plaintiffs-Appellees conferred with counsel for Defendants-Appellants regarding this Motion and the relief requested. Defendants-Appellants oppose the relief sought by this Motion.

<sup>&</sup>lt;sup>6</sup> Defendants are not prejudiced by this request as they rely on Admiral Lescher's Declaration on appeal, they can respond to any arguments regarding the testimony in their reply brief, and they had an opportunity to make objections and ask questions during Admiral Lescher's deposition. They have also submitted an errata sheet, which is included in the appendix to this motion. *See* Mot. Appx. Ex. C.

# CONCLUSION

For the foregoing reasons, the Court should grant the motion to supplement the record.

Respectfully submitted.

Kelly J. Shackelford Jeffrey C. Mateer Hiram S. Sasser, III David J. Hacker Michael D. Berry Jordan E. Pratt Danielle A. Runyan Ryan Gardner Holly M. Randall FIRST LIBERTY INSTITUTE 2001 W. Plano Pkwy., Ste. 1600 Plano, Texas 75075 Tel: (972) 941-4444 /s/Heather Gebelin Hacker

Heather Gebelin Hacker Andrew B. Stephens HACKER STEPHENS LLP 108 Wild Basin Road South Suite 250 Austin, Texas 78746 (512) 399-3022 (phone) heather@hackerstephens.com

Counsel for Plaintiffs-Appellees

# **CERTIFICATE OF CONFERENCE**

On August 15 and 16, 2022, the undersigned conferred by e-mail with Sarah Clark, counsel for Defendants-Appellants, regarding this Motion. Defendants-Appellants oppose the relief sought on the grounds that the deposition transcript is not a part of the record under Federal Rule of Appellate Procedure 10 but will not file a further response.

> /s/ Heather Gebelin Hacker HEATHER GEBELIN HACKER

# **CERTIFICATE OF SERVICE**

On August 16, 2022, this motion was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1.

/s/ Heather Gebelin Hacker HEATHER GEBELIN HACKER

# **CERTIFICATE OF COMPLIANCE**

This brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1824 words, excluding the parts exempted by Rule 27(a)(2)(B); and (2) the typeface and type style requirements of Rule 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the program used for the word count).

<u>/s/ Heather Gebelin Hacker</u> HEATHER GEBELIN HACKER Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 11 of 325 PAGEID #: 4676

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 12 of 325 PAGEID #: 4677

# APPENDIX

# Exhibit A: Condensed Transcript of Admiral William K. Lescher

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 14 of 325 PAGEID #: 4679

Page 1 1 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS 2 FORT WORTH DIVISION 3 \_\_\_\_\_ U.S. NAVY SEALS 1-3: on behalf of 4 : themselves and all others similarly : 5 situated; U.S. NAVY EXPLOSIVE ORDNANCE : DISPOSAL TECHNICIAN 1, on behalf of : himself and all others similarly : б situated; U.S. NAVY SEALS 4-26; U.S. NAVY SPECIAL WARFARE COMBATANT 7 CRAFT CREWMEN 1-5; and U.S. NAVY 8 DIVERS 1-3, : Case Number: 9 Plaintiffs, : 4:21-cv-01236 10 vs. : 11 LLOYD J. AUSTIN, III, in his official : capacity as Untied States Secretary : 12 of Defense; UNITED STATES DEPARTMENT : OF DEFENSE; CARLOS DEL TORO, in his 13 official capacity as United States Secretary of the Navy, Defendants. 14 \_\_\_\_\_ 15 16 VIDEOTAPED DEPOSITION OF ADMIRAL WILLIAM LESCHER 17 June 30, 2022 DATE: 18 TIME: 8:02 a.m. to 2:44 p.m. LOCATION: Naval Air Systems Command 19 Naval Support Facility 701 South Courthouse Road, Suite 2000 20 Arlington, Virginia 21 22 REPORTED BY: Felicia A. Newland, CSR

	Page 2		Page 4
1	A P P E A R A N C E S	1	CONTENTS
2	On behalf of Plaintiffs:	2	EXAMINATION BY: PAGE
3	ANDREW B. STEPHENS, ESQUIRE	3	Counsel for Plaintiffs 9
4	HEATHER GEBELIN HACKER, ESQUIRE	4	Counsel for Defendants 197
5	Hacker Stephens, LLP	5	Counsel for Plaintiffs 212
6	108 Wild Basin Road South	6	LESCHER DEPOSITION EXHIBITS
7	Suite 250	7	NO. DESCRIPTION PAGE
8	Austin, Texas 78746	8	Exhibit 1 Declaration of William K. Lescher 10
9	andrew@hackerstephens.com	9	Exhibit 2 Amended Notice of Deposition 12
10	heather@hackerstephens.com	10	Exhibit 3 Plaintiffs' First Requests for 79
11	and	11	Production of Documents
12	HOLLY M. RANDALL, ESQUIRE	12	Exhibit 4 Bates Numbers NSW000007803 85
13	MICHAEL D. BERRY, ESQUIRE	13	Exhibit 5 Bates Numbers NSW00007804 86
14	First Liberty Institute	14	Exhibit 6 Bates Numbers NSW00007805 through 7807 88
15	2001 W. Plano Parkway	15	Exhibit 7 Bates Numbers NSW00007813 through 7830 93
16	Suite 1600	16	Exhibit 8 Statement of Admiral William K. Lescher, 103
17	Plano, Texas 75075	17	Vice Chief of Naval Operations Before
18	hrandall@firstliberty.org	18	the House Armed Services Committee
19	mberry@firstliberty.org	19	Subcommittee on Readiness
20		20	Exhibit 9 Notes from the Field 112
21		21	Exhibit 10 U.S. Navy Aircraft Carrier Prevents 118
22		22	Outbreak at Sea in Midst of COVID-19
	Page 3		Page 5
1	A P P E A R A N C E S: (Cont'd)	1	Exhibit 11 Bates Numbers NSW00007831 through 7835 139
2	On behalf of the Defendants:	2	Exhibit 12 Bates Numbers NSW00007808 through 7812 142
3	ANDREW CARMICHAEL, ESQUIRE	3	Exhibit 13 Supreme Court of the United States, 147
4	CATHERINE YANG, ESQUIRE	4	Lloyd J. Austin, III, Secretary of
5	United States Attorney's Office	5	Defense et al. v. U.S. Navy Seals 1-26,
6	Virgina Eastern District	6	et al.
7	2100 Jamieson Avenue		Exhibit 14 Bates Numbers NSW0000043 through 48 152
8	Alexandria, Virginia 22314	8	Exhibit 15 Obesity, Race/Ethnicity, and COVID-19 163
9	catherine.m.yang@usdoj.gov	9	Exhibit 16 DoD Health of the Force 2020 166
10	andrew.e.carmichael@usdoj.gov	10	Exhibit 17 Memorandum for Senior Pentagon 176
11	Also Present:	11	Leadership, Commanders of the Combatant
12	Captain Elizabeth Josephson	12	Commands Defense Agency and DoD Field
13	Commander Eric Osterhues	13	Activity Directors, June 6, 2022 Exhibit 18 NAVADMIN June 22 184
14	Karen Hecker, Esquire	14	Exhibit 18 NAVADMIN June 22 184 Exhibit 19 Fiscal Year 2022 Active Component 190
15	Commander Patrice Hentz	15 16	Exhibit 19 Fiscal Year 2022 Active Component 190 Enlisted Force Management Actions
16	LCDR Will Burroughs	17	(Corrected Copy)
17	Ryan J. Heathcock, Videographer	18	(contend copy)
18			(*Exhibits attached to transcript.)
19		19	( and a set a maseripa)
20		20	
21		21	
22		22	

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 16 of 325 PAGEID #: 4681

1	Page 6		Page 8
1	PROCEEDINGS	1	MR. CARMICHAEL: Andrew Carmichael,
2	* * * * * *	2	DoJ, for the Defendants.
3	VIDEOGRAPHER: Good morning. We are	3	MS. YANG: Catherine Yang, DoJ for
4	on the record. The time is 8:02 a.m. And today's	4	the Defendants.
5	date is Thursday, June the 30th 2022. Please note	5	CAPTAIN JOSEPHSON: Captain Elizabeth
6	that the microphones are sensitive and may pick up	6	Josephson, JAG Corps, United States Navy.
7	whispering and private conversations. Please mute	7	COMMANDER ERIC OSTERHUES: Commander
8	your phones at this time.	8	Eric Osterhues, JAG Corps, United States Navy.
9	Audio and video recording will	9	MS. HECKER: Karen Hecker, DoD,
10	continue to take place until all parties agree to	10	Office of General Counsel.
11	go off the record.	11	COMMANDER PATRICE HENTZ: Commander
12	This begins Media Unit Number 1 in	12	Patrice Hentz, United States Navy.
13	the video-recorded deposition of William Lescher,	13	LCDR WILL BURROUGHS: Lieutenant
14	taken by counsel for the Plaintiff in the matter	14	Commander Will Burroughs, JAG Corps, United States
15	of U.S. Navy SEALs, et al. versus Lloyd Austin.	15	Navy.
16	This case is being filed in the	16	VIDEOGRAPHER: Thank you very much.
17	U.S United States District Court, Northern	17	At this time, will the court
18	District of Texas, Fort Worth Division. The case	18	reporter please swear in the witness?
19	Number is 4:21-CV-012360.	19	(Witness duly sworn.)
20	The location for today's deposition	20	VIDEOGRAPHER: Counsel, you may
21	is the Naval Air Systems Command Washington	21	proceed.
22	Liaison Office, located at 701 South Courthouse	22	****
	Page 7		Page 9
1	Road in Arlington, Virginia.	1	Whereupon,
2	My name is Ryan Heathcock from the	2	ADMIRAL WILLIAM LESCHER
3	firm Veritext Legal Solutions, and I am the		
		3	was called as a witness and, having been first duly
4	videographer. The court reporter today is	3 4	was called as a witness and, having been first duly sworn, was examined and testified as follows:
45	videographer. The court reporter today is Ms. Felicia Newland, also representing Veritext		
		4	sworn, was examined and testified as follows:
5	Ms. Felicia Newland, also representing Veritext	4 5	sworn, was examined and testified as follows: EXAMINATION BY COUNSEL FOR PLAINTIFFS
5 6	Ms. Felicia Newland, also representing Veritext Legal Solutions.	4 5 6	sworn, was examined and testified as follows: EXAMINATION BY COUNSEL FOR PLAINTIFFS BY MR. STEPHENS:
5 6 7	Ms. Felicia Newland, also representing Veritext Legal Solutions. I am not authorized to administer	4 5 6 7	sworn, was examined and testified as follows: EXAMINATION BY COUNSEL FOR PLAINTIFFS BY MR. STEPHENS: Q Good morning, Admiral Lescher.
5 6 7 8	Ms. Felicia Newland, also representing Veritext Legal Solutions. I am not authorized to administer an oath. I am not related to any party in this	4 5 6 7 8	<ul> <li>sworn, was examined and testified as follows:</li> <li>EXAMINATION BY COUNSEL FOR PLAINTIFFS</li> <li>BY MR. STEPHENS:</li> <li>Q Good morning, Admiral Lescher.</li> <li>A Good morning.</li> </ul>
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3 (Pages 6 - 9)

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# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 17 of 325 PAGEID #: 4682

		<b>D</b> 10			D 10
1	in that la	Page 10		0	Page 12
2	III utat ta	I have not.	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	Q that Lask	Okay. And this is the declaration ed about and that you testified you
3	Q	Have you offered a sworn declaration	$\begin{vmatrix} 2\\ 3 \end{vmatrix}$		d in this lawsuit. Is that right?
4	in the la		4	A	That's correct.
5	A	I have.	5	Q	You signed that declaration under
6	Q	Okay. And you understand that you're	6		that correct?
7	-	ay to give a deposition in the lawsuit. Is	7	A	That's correct.
8	that righ		8	Q	I'm going to mark this as Deposition
9	A	Yes.	9	Exhibit 2	
10	Q	Have you been deposed before?	10		 escher Deposition Exhibit Number 2
11	A	I have not.	11		rked for identification.)
12	0	The I'd like to hand you what we	12		STEPHENS:
12		k as Lescher Deposition Exhibit 1, which is	12	Q Q	Okay. Have you seen the document
14		f your declaration.	13	-	en marked as Deposition Exhibit 2 before?
15		escher Deposition Exhibit Number 1	15	A	No, I have not.
16		arked for identification.)	16	Q	Okay. I'll represent to you that
17		STEPHENS:	17		notice of amended notice of deposition
18	0	And while we do that, the court	18		to your counsel, giving notice of the
19		will put the exhibit number on it and hand	19	•	n that's being taken today in the lawsuit
20	you the		20	-	y SEALs 1 through 3 versus Austin. And you
21		Admiral Lescher, in a deposition, you	21		to the side.
22		nd that you're under oath and that you've	22		Turning back to Lescher Deposition
		Page 11			Page 13
1	sworn to	tell the truth. Is that correct?	1	Exhibit 1	, a copy of your declaration, how did you
2	A	That is correct.	2		submit that testimony?
3	Q	And there's no reason sitting here	3		Were you ordered to do so or did you
4	-	at you wouldn't be able to testify	4		n your own to do that?
5		y and honestly in this	5	А	I was not ordered to do so.
6	А	That's correct.	6	Q	Okay.
7	Q	lawsuit?	7		MR. CARMICHAEL: Objection. That's a
8		It's difficult sometimes during a	8		nd question.
9		on, I have a tendency to do it as well, to	9	-	You can answer, sir.
10	-	ersational and interrupt each other. I'll	10		THE WITNESS: Okay. My JAG came to
11		est not to interrupt you. And I would ask	11		epresented that this would be helpful to
12	-	do the same so that the court reporter can	12		rtment's case to continue our vaccine
13	-	be the full question without making a	13	policy.	
14		of that's difficult to follow.	14		STEPHENS:
15		I have no doubt the court reporter	15	Q	Okay. And who specifically from JAG
16		ind us to slow down and not interrupt if we	16	made tha	t request or made that representation to
17		t issue, but the deposition the	17	you?	-
18		on Exhibit 1 that I just handed you, are	18	A	My JAG.
19		iliar that document?	19	Q	Okay.
20	A	Yes.	20	A	Captain Josephson.
	0	And what is it?	01		
21	Q	And what is it?	21	Q	I'm sorry, who was that?
21 22	Q A	It's my declaration to the court.	21 22	Q A	I'm sorry, who was that? Captain Josephson.

4 (Pages 10 - 13)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 18 of 325 PAGEID #: 4683

	Page 14		Page 16
1	Q Had you had any involvement or	1	information that has been provided to me in the
2	knowledge of this lawsuit prior to that time?	2	course of my official duties."
3	A No involvement. Knowledge of it.	3	The second part of that sentence
4	Q Okay. Approximately when were you	4	continues on the top of page 2.
5	asked to provide the declaration testimony in the	5	Do you see that sentence?
6	lawsuit, if you recall?	6	A I do see that.
7	A So the declaration, I see, was	7	Q Is that that statement true and
8	submitted in January of this year. It would have	8	accurate?
9	been in that general time frame.	9	A Yes.
10	Q Okay. And when did you start working	10	Q Okay. As we go through your
11	on the declaration, do you recall?	11	declaration, I'll have a number of questions as to
12	A Again, not a specific date.	12	the information that you relied on in preparing and
13	Q Okay. Did you draft the declaration?	13	as support or evidence for some of the statements
14	A I did not.	14	contained in the declaration.
15	Q Okay. Did you draft any part of the	15	In in the first the second
16	declaration?	16	sentence of paragraph 2 on page 2 of Deposition
17	A Well, to be clear, a draft was	10	Exhibit 1, you you testified and I say
18	provided to me and then I reworked that	18	testified because a declaration is sworn
19	significantly. So I went through it sentence by	10	testimony that you believe the Court's
20	sentence and made significant edits to it.	20	injunction will cause immediate harm to the Navy.
21	Q Okay. Was there one draft or more	20	Do you see that language?
22	than one draft that you exchanged with I assume		A I do see that language.
		- 22	
1	Page 15 the draft came to you from JAG. Is that correct?	1	Page 17 Q How would the Court's injunction
2	A Correct.	2	cause immediate harm to the Navy?
3	MR. CARMICHAEL: Objection as to	3	A Waivers to our medical readiness
4	or that it calls for attorney-client privilege as	4	standards introduce risk because they lower the
5	to what was in the drafts.	5	medical readiness standard. The Navy's approach is
6	BY MR. STEPHENS:	6	to manage that risk on a case-by-case basis and
7	Q I don't want I'm not I don't	7	make specific risk decisions. The preliminary
8	want to ask you any questions or have you answer or	8	injunction takes that away from the Navy, so it
9	tell me any specific the substance of any	9	removes our ability to manage the risk we're
10	specific communications you had with your counsel.	10	exposed to with this virus.
11	My question is: If you recall, how many drafts you	11	Q Prior to the preliminary injunction
12	exchanged back and forth with JAG or with DoJ?	12	being entered by the District Court in this
13	A So there were multiple iterations.	13	lawsuit, did the Navy conduct a case-by-case
14	The draft came to me. I reworked it. I had	14	analysis of the risk associated with each
15	questions, made some changes. And as I said, that	15	individual religious accommodation request
16	occurred at least twice.	16	pertaining to the vaccine?
17	Q Okay. In paragraph 1 of your	17	A Each religious accommodation request,
18	declaration, that's been marked as Deposition	18	yes, is an individual case.
19	Exhibit 1, the bottom of the first page, the last	19	Q Okay. And did the Navy conduct or
20	sentence begins, "The statements made in this	20	you mentioned a case by case
21	declaration are based on my personal knowledge, my	21	A So each case is evaluated on its
	military judgment and experience, and on	22	merits.
22			

5 (Pages 14 - 17)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 19 of 325 PAGEID #: 4684

	Page 18		Page 20
1	Q Okay. So, to your knowledge, were	1	vaccination requirement."
2	each of the religious accommodation requests that	2	How did the injunction affect the
3	were submitted by the class members in this lawsuit	3	Navy's ability to halt the spread of COVID-19?
4	evaluated on a case-by-case basis?	4	A By precluding the Navy from making
5	A That's my understanding.	5	those judgments on a case-by-case basis, it would
6	Q Did you have any role in that	6	provide a blanket ability for unvaccinated
7	analysis?	7	individuals to move into our operational forces.
8	A I did not.	8	Again, exposing us to unmanaged risks.
9	Q And do you know who did?	9	Q Did you make a determination or
10	Do you know who did?	10	review any data or information for purposes of
11	A Again, so the vice chief does not	11	evaluating for of evaluating the degree of that
12	have a role in the religious accommodation process.	12	risk?
13	So I have a general understanding of that process,	13	A The degree of risk presented to the
14	which is the requests go to the immediate commander	14	Navy from COVID, what I use in my experience here,
15	of the 06 level, from there to the bureau to the	15	spans our experience starting with the THEODORE
16	Chief of Naval Personnel to adjudicate it, with the	16	ROOSEVELT carrier and subsequent. So the degree of
17	appeal authority being the Chief of Naval	17	risk in terms of in the Navy experience, what we
18	Operations.	18	saw the impact of COVID on mission and on the
19	Q In the middle of paragraph 2 of your	19	health of our people.
20	declaration, there's a sentence that states, "The	20	Q Other than sorry. Go ahead.
21	Court's injunction directly impacts the Navy's	21	A I was going to say to include the
22	ability to carry out its responsibilities to	22	the deaths of sailors, the hospitalizations of
	Page 19		Page 21
1	protect and maintain the health and safety of our	1	sailors were certainly part of that experience and
2	Force, in particular our ability to halt the spread	2	part of the statement there.
3	of COVID-19 through a mandatory vaccination	3	Q Other than the ROOSEVELT example that
4	requirement."	4	you mentioned and you mentioned that in the
5	Do you see that language?	5	context of impacting the Navy's ability to
6	A I do.	6	accomplish its mission. Is that right?
7	Q What what did you rely on as	7	A Yes.
8	evidence or data or information to support or reach	8	Q Did you do you have other examples
9	that conclusion or that assertion?	9	or did you consider other examples in which
10	A In terms of directly impacting the	10	COVID-19 impacted the Navy's ability to accomplish
11	Navy's ability to carry out its responsibilities,	11	its mission?
12	this is the issue of not the injunction	12	A Yes.
13	precluding the ability of the Navy to examine these	13	Q Okay. And which which missions
14	waivers on a case-by-case basis.	14	or what were those examples other than the
15	If the issue is what information do I	15	ROOSEVELT?
16	deduce that was required to maintain the health and	16	A So at a high level, the Navy tracks
17	safety of our Force, so the Navy has, since the	17	COVID cases per ships. So some of them very
18	onset of COVID, significant experience in the	18	public, MILWAUKEE, PHILIPPINE SEA, many not in the
19	impact of that virus on our Force.	19	public domain. The mission impact as well is not
20	Q So in the second clause of the	20	simply as stark as THEODORE ROOSEVELT coming off
21	sentence it says, "In particular, our ability to	21	mission for 51 days in the WESTPAC. So even today
22	halt the spread of COVID-19 through a mandatory	22	we have 22 ships with COVID cases onboard them and

6 (Pages 18 - 21)

	Page 22		Page 24
1	that that figure fluctuates.	1	context of this declaration.
2	The mitigations through the	2	Q Okay. And and you don't recall
3	most-effective tool of vaccination in concert with	3	any specific examples in which the Navy's missions
4	other other measures, such as isolation, all	4	were impacted as a result of COVID-19 that were
5	of even those elements have an impact on the	5	discussed between you and those individuals other
6	mission that the commander has to work around, as	6	than the ROOSEVELT?
7	those members of the crew are not available. So	7	A There were discussions on mission
8	understanding that context over the course of this	8	impact over the course of the past two years.
9	virus is really the experience I brought to that	9	Q Okay. And do you recall any
10	statement.	10	specifics about what impact COVID had on those
11	Q Do you know how many other ships,	11	missions, and which missions they were?
12	other than the 22 you mentioned that currently have	12	Or I'll follow that up with another
13	COVID cases, were unable to accomplish their	13	question.
14	mission prior to the vaccine mandate as a result of	14	A I can tell you about the types of
15	COVID-19 infections other than ROOSEVELT?	15	impacts. So COVID impacts to turnover requiring
16	A Again, that type of detail is not	16	forces forward to stay deployed longer. There were
17	generally in the purview of the vice chief. So the	17	COVID impacts that required missions to not be
18	vice chief in terms of operational impact would be	18	executed.
19	in the force of employment the combatant commanders	19	Q Okay. And do you know which missions
20	and the naval component commanders. Those mission	20	those were?
21	impacts take place at multiple levels, so the most	21	A In a general nature. So this is
22	public I would be aware of, of course.	22	based on, you know, conversations. So what I
	Page 23		Page 25
1	At other various levels, as a	1	recall is the types of missions and the types of
2	commander changes the scheme of maneuver, changes	2	impacts without the specifics.
3	timelines, makes other mission-impacting decisions	3	Q Okay. Do you recall the name and
4	based on the health of their crew, I would not have	4	you've referred to the ROOSEVELT. That's the name
5	individual awareness across the scope of the Navy	5	of a ship that was impacted. Is that correct?
6	of those impacts.	6	A Right.
7	Q Okay. And you mentioned several	7	Q Do you recall the names of any of the
8	positions within the Navy, individuals who might	8	other ships that were negatively impacted or
9	have knowledge of those impacts. And who would	9	couldn't complete missions as a result of COVID-19?
10	those individuals be?	10	A Yeah. So again, yes, MILWAUKEE, PHIL
11	A So most centrally they would be the	11	SEA, PHILIPPINE SEA would be two others.
12	Naval component commanders. We have NAVEUR, NAVAF,	12	Q Okay. And do you recall how COVID-19
13	NAVCENT. These are the leaders in the Navy that	13	negatively impacted the missions of those two
14	employ the forces, that employ the operational	14	ships?
15	forces.	15	A In a very general way. PHILIPPINE
16	Q Did you speak with any of those	16	SEA, I believe it was in March of '21, in the
17	individuals prior to or while preparing your	17	CENTCOM AOR, area of responsibility, had a COVID
18	your declaration concerning this statement or or	18	outbreak of about, as I recall, 20 sailors out of a
19	any other statements contained herein?	19	crew of about 330, that pulled them off mission
20	A So I interact with the Naval	20	into Bahrain while they worked through that.
21	component commanders periodically. It's an ongoing	21	The USS MILWAUKEE, I believe it was
1			in December of '21, had a COVID outbreak in the

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 21 of 325 PAGEID #: 4686

	Page 26		Page 28
1	crew and delayed executing the mission getting	1	SECNAV issued the Navy guidance that same month.
2	underway for a week.	2	Q Okay. So if the Navy by the
3	Q And you I think you just testified	3	Navy's policies pertaining to the mandatory vaccine
4	as to the date. Is it PHILIPPINE SEA? Is that the	4	requirement for COVID-19, there shouldn't be
5	name	5	unvaccinated Service members on any of the 22 ships
6	A It is.	6	that you had mentioned with COVID infections
7	Q of the ship?	7	currently. Is that right?
8	A Yes.	8	MR. CARMICHAEL: Objection as to the
9	Q And what was the date of that mission	9	form.
10	that was impacted?	10	You can go ahead and answer.
11	A So as I recall, it would have been in	11	THE WITNESS: So it's speculation,
12	early '21. I believe it was around the March '21	12	but if the policy is fully in effect right now,
13	time frame.	13	then yes, our policy is not to have unvaccinated
14	Q You testified earlier that there are	14	sailors on operational ships.
15	currently 22 ships with COVID-19 infections or with	15	BY MR. STEPHENS:
16	Service members, I assume onboard, with COVID-19	16	Q Okay. Looking back to paragraph 2 of
17	infections. Is that right?	17	your declaration, there's a sentence that begins in
18	A Yes.	18	the middle of the paragraph, "Unvaccinated or
19	Q And is it your testimony that the	19	partially vaccinated Service members are at higher
20	missions of those 22 ships are being negatively	20	risk to contract COVID-19." Do you see
21	impacted?	21	A Yes.
22	A So, again, with those ships not	22	Q that clause?
	Page 27		Page 29
1	directly in the chain of command under me, I don't	1	What is the basis, your personal
2	have specific insight. My experience is there's no	2	knowledge or the information you relied on, for
3	excess manpower on our ships. So when there's	3	that as support for that statement?
4	COVID cases on our ships and our our experience,	4	A So certainly being exposed to or
5	our learned approach and our standard operating	5	aware of the conversations as we worked through
6	guidance is to go to isolation for five days. That	6	COVID with the Surgeon General and others,
7	pulls people off mission.	7	certainly the Navy experience, you know, the 17
8	And so my experience is that there is	8	sailors that have died of COVID, 16 of them were
9	an impact. It's a manageable impact by virtue of	9	unvaccinated, one was partially vaccinated or the
10	the vaccinations, the isolation, the health	10	hospitalizations of Navy sailors, they skew heavily
10	the vaccinations, the isolation, the health	1.40	;;;;
11	preventive measure, that in aggregate have enabled	11	to the unvaccinated.
11	preventive measure, that in aggregate have enabled	11	to the unvaccinated.
11 12	preventive measure, that in aggregate have enabled us to work through these type of COVID cases	11 12	to the unvaccinated. I saw in Admiral Merz's declaration,
11 12 13	preventive measure, that in aggregate have enabled us to work through these type of COVID cases onboard ships.	11 12 13	to the unvaccinated. I saw in Admiral Merz's declaration, he cited on the order of 600 hospitalizations and
11 12 13 14	preventive measure, that in aggregate have enabled us to work through these type of COVID cases onboard ships. Q Do you know whether there are any	11 12 13 14	to the unvaccinated. I saw in Admiral Merz's declaration, he cited on the order of 600 hospitalizations and 578 or so unvaccinated. That reflects the Navy
11 12 13 14 15	preventive measure, that in aggregate have enabled us to work through these type of COVID cases onboard ships. Q Do you know whether there are any unvaccinated Service members on those on any of	11 12 13 14 15	to the unvaccinated. I saw in Admiral Merz's declaration, he cited on the order of 600 hospitalizations and 578 or so unvaccinated. That reflects the Navy experience.
11 12 13 14 15 16	preventive measure, that in aggregate have enabled us to work through these type of COVID cases onboard ships. Q Do you know whether there are any unvaccinated Service members on those on any of those 22 ships?	11 12 13 14 15 16	to the unvaccinated. I saw in Admiral Merz's declaration, he cited on the order of 600 hospitalizations and 578 or so unvaccinated. That reflects the Navy experience. Q Okay. I want to focus on the
11 12 13 14 15 16 17	preventive measure, that in aggregate have enabled us to work through these type of COVID cases onboard ships. Q Do you know whether there are any unvaccinated Service members on those on any of those 22 ships? A I do not.	11 12 13 14 15 16 17	to the unvaccinated. I saw in Admiral Merz's declaration, he cited on the order of 600 hospitalizations and 578 or so unvaccinated. That reflects the Navy experience. Q Okay. I want to focus on the specific language of that clause where it says, "At
11 12 13 14 15 16 17 18	<ul> <li>preventive measure, that in aggregate have enabled us to work through these type of COVID cases onboard ships.</li> <li>Q Do you know whether there are any unvaccinated Service members on those on any of those 22 ships?</li> <li>A I do not.</li> <li>Q Okay. Do you know the date of the</li> </ul>	11 12 13 14 15 16 17 18	to the unvaccinated. I saw in Admiral Merz's declaration, he cited on the order of 600 hospitalizations and 578 or so unvaccinated. That reflects the Navy experience. Q Okay. I want to focus on the specific language of that clause where it says, "At high risk to contract COVID-19," and distinguish
11 12 13 14 15 16 17 18 19	<ul> <li>preventive measure, that in aggregate have enabled us to work through these type of COVID cases onboard ships.</li> <li>Q Do you know whether there are any unvaccinated Service members on those on any of those 22 ships?</li> <li>A I do not.</li> <li>Q Okay. Do you know the date of the vaccine mandate that's at issue in this lawsuit?</li> </ul>	11 12 13 14 15 16 17 18 19	to the unvaccinated. I saw in Admiral Merz's declaration, he cited on the order of 600 hospitalizations and 578 or so unvaccinated. That reflects the Navy experience. Q Okay. I want to focus on the specific language of that clause where it says, "At high risk to contract COVID-19," and distinguish between contracting COVID-19 versus and whether

8 (Pages 26 - 29)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 22 of 325 PAGEID #: 4687

	Page 30		Page 32
1	A Right.	1	declaration?
2	Q producing severity.	2	A Yeah. For example, the 22 ships was
3	Do you understand?	3	in yesterday's update. I do not review them every
4	A I do.	4	week because I the action often is not under the
5	Q Okay. And so this, as I read it, is	5	direct purview of the vice chief, but they come to
6	addressing whether the COVID-19 vaccine will have	6	me every week and I review them periodically.
7	an impact on risk or likelihood that that	7	Q Do you based on the information
8	sailors would contract COVID-19. Is that right?	8	you've seen since the date of your declaration in
9	A Yes.	9	January of 2022, or since the date you signed your
10	Q Okay. And so the evidence you	10	declaration, have you seen any change in the data
11	mentioned, I believe, it sounded to me pertained to	11	regarding the effectiveness of the COVID vaccine at
12	reducing the impact or severity of infection. Is	12	reducing the risk of contracting the disease?
13	that right?	13	A Your question is have I seen data
14	A Yes.	14	that shows?
15	MR. CARMICHAEL: Admiral	15	Q Any change in the effectiveness of
16	Objection. The it	16	the vaccine at reducing the likelihood of
17	mischaracterizes the statement because the clause	17	contracting COVID or the risk.
18	has an "and" in there.	18	A I think with the Omicron variant,
19	But you can answer the question.	19	that we did see increasing COVID rates in both
20	THE WITNESS: So the Navy experience	20	populations, vaccinated and unvaccinated. And
21	is also that Service members are at a higher risk	21	again, differentially unvaccinated contracting
22	to contract COVID-19. You know, a visual depiction	22	contracting it at a higher rate is my recollection.
	Page 31		Page 33
1	of that would be in the declaration of the fleet	1	Q Do you know at at what higher rate
2	forces, Force medical officer, as I recall. But it	2	or how much of an additional
3	showed the case prevalence between unvaccinated and	3	A I cannot
4	vaccinated in the Navy substantially different.	4	Q risk?
5	And toward the end of '21, as vaccinations came	5	A quantify it for you, but it was a
6	online, you see a strong divergence in case	6	differential.
7	prevalence between unvaccinated and vaccinated	7	Q Do you review CDC data?
8	personnel.	8	A I personally do not have a flag
9	BY MR. STEPHENS:	9	officer, Surgeon General of the Navy that we
10	Q And do you recall what you reviewed	10	that I rely on as the expert to bring that
11	that showed that divergence between vaccinated and	11	perspective into the department.
12	unvaccinated, what type of information?	12	Q Do you have any knowledge of
13	A Yeah. So throughout this time, the	13	information made public by the CDC yesterday
14	Navy has provides regular leadership updates	14	pertaining to the effectiveness of the COVID-19
15	weekly, really an accounting of cases, vaccinated,	15	vaccine of reducing risk of contracting the
16	unvaccinated, hospitalizations. And so it's that	16	disease?
17	body of weekly updates that informed my statement.	17	A I do not.
18	Q Okay. And do you consider those	18	Q Okay. Can you identify any combat
19	weekly updates reliable sources of information?	19	operations or combat missions that could not be
20	A Yes.	20	completed successfully as a result of COVID-19?
21	Q And have you have you continued to	21	A So I'm thinking through some of the
22	review those updates since signing your	22	classified elements here. I believe the most

9 (Pages 30 - 33)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 23 of 325 PAGEID #: 4688

	Page 34		Page 36
1	accurate response to that is I'm unaware of any	1	forces would know that, and that would be the Naval
2	combat failure, as well I'm because those type	2	component commanders.
3	of details and missions would not be under the	3	Q Okay. And who are their what are
4	purview of the vice chief, I'm also unaware of how	4	their names if you or how many are there? Let's
5	accurate that perception is and what other	5	start there.
6	mitigations and risks were accrued to manage for a	6	A So the NAVEUR, Europe is
7	lower medical readiness standard and/or if there	7	Admiral Burke, getting ready to turn it over to
8	was COVID impacts.	8	Admiral Munsch. NAVCENT is the Three Star Fleet
9	Q When you say other methods for	9	Commander of the Fifth Fleet at NAVCENT. PACFLT,
10	mitigating risk of COVID, what what do you mean	10	commander of PACFLT, Admiral Paparo. NAVSOUTH is a
11	by that?	11	Two Star for the Naval commander forces in Southern
12	A So conceptually, if a commander knew	12	Command would be examples of that.
13	that their people were at a higher risk of illness	13	Q Okay. And so those individuals may
14	and developing symptoms that impact their ability,	14	have knowledge of combat operations that that
15	a responsible commander would seek to mitigate that	15	failed as a result of COVID-19 infection, but
16	risk, perhaps by adding people, perhaps by	16	you're not aware of any specific examples?
17	tethering the mission to a shorter range of	17	A Correct.
18	maneuver closer to medical facilities, by adding a	18	MR. CARMICHAEL: Objection, just to
19	footprint to provide medical evacuation capability.	19	vagueness for combat operations. It's never been
20	So the hard choices of a commander is	20	defined.
21	why we make these choices on a local case-by-case	21	BY MR. STEPHENS:
22	basis, because the commander is responsible and	22	Q How would you define combat
1	Page 35 accountable to use all the tools at her or his	1	Page 37 operations, as you use it, in the sentence at the
2	disposal to manage that risk.	2	middle of paragraph 2 of your declaration, the last
3	Q The mitigation measures that that	3	two words of the sentence that begins, "Vaccination
4	could be taken pertaining to COVID-19, is it your	4	begins" or "Fully vaccinated"?
5	testimony that there are measures that can be taken	5	A So combat operations, I would, in
6	to mitigate risk other than vaccination?	6	this sense, characterize as operations in the
7	A Yes. We do that today. We do them	7	context of actively hostile forces, hostile
8	in concert.	8	opposition.
9	Q And back to my question about combat	9	Q Okay. And and using your
10	operations that could not be successfully	10	definition, can you identify a single combat
11	completed. You testified you're not familiar with	11	operation that could not be successfully completed
12	any specific combat operations because that's	12	as a result of COVID-19 infection?
13	within the knowledge or or experience of those	13	A Again, I would be unware. I'm
14	below you in the chain of command. Is that right?	14	unaware of that.
15	A Of the Naval component commanders.	15	Q Okay. Sitting here today, you're not
16	It's not necessarily below in the chain of command.	16	aware of any specific examples.
17	Q Sure. Okay.	17	A Correct.
18	Who specifically would have that	18	Q Is that correct?
19	information or would know whether any such	19	Are you aware that this lawsuit as
20	instances of combat operations failing as a result	20	originally filed involved Naval Special Warfare
	of COVID, whether that has happened?	21	primarily?
21			
21	A Again, the leaders that employ the	22	A Yes.

10 (Pages 34 - 37)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 24 of 325 PAGEID #: 4689

Page 38		Page 40
	1	Q Do you recall those instances
	2	generally or do you know the specifics of those
		missions, we just can't talk about the specifics
		because they're classified?
	5	Does that make sense?
	-	A No, I understand your question.
		But I yes, again, I'm not in the
		chain of command of those missions, and so I
		don't I did not delve into the specifics the
-		specific details; the time, place, launch point,
-		target. I don't have those details.
		Q And you don't recall the time frame?
		A I don't recall.
-		Q Do you recall whether it was pre
		was it before if you recall, before or after
-		-
•		August 30th, 2021? A I don't know.
		Q Okay. Are those questions that
		for Admiral Brown?
		A I'm sorry?
		Q That Admiral Brown said
Q Okay. They in those	22	A Captain Brown.
Page 39		Page 41
	1	Q Captain Brown
	2	A Yes.
Warfare missions, that could not be successfully	3	Q would know the answer to?
completed?	4	A For one of those he would.
A Yes.	5	Q And is it Admiral Merz?
Q Okay. And which missions were those?	6	A It is Admiral Merz.
Or what types let's start with	7	Q And would he know the answer to the
what types of missions	8	specifics the specific the questions about
A Yeah.	9	specific mission impact and the
Q were involved.	10	A Yes.
A I don't believe we can talk about	11	Q specifics of the mission?
specific missions, but the types of missions were	12	A Yes, he would know what you would
impacts to SWCC, Special Warfare Combatant-Craft	13	expect a 7th Fleet commander to know of that
Crew, the team that brings excellent intel that had	14	mission. So I can't speculate in what detail, but
an outbreak that precluded them from doing that.	15	he would know certainly more detail about it.
And impact to a mission with SEALs on a ship where	16	Q Do you recall in the second
the SEALs were impacted by COVID and could not	17	example where there were Navy SEALs deployed on a
execute the mission from the ship.	18	ship who were negatively impacted by COVID-19, do
Q Do you know when the those when	19	you recall what geographic area they were the
Q Do you know when the mose when		
the impact on those missions occurred?	20	ship was deployed?
	20 21	ship was deployed? A I I I'm uncertain. I believe I
	Warfare, are you aware of any Naval Special Warfare missions, combat or otherwise, that could not be successfully completed as a result of COVID-19? A I am generally aware of I've had conversations where I've been made aware of that. Q Okay. What who did you have those conversations with? A Chief of Staff of Naval Spec Warfare, Captain Brown, Admiral Merz, who is now OPNAV on the staff of the Chief of Naval Operations. At the time he was commander of 7th Fleet. There's two examples where conversations had made me aware of that type of mission impact. Q Okay. And in those conversations neither Brown, nor Merz are lawyers in the case, correct? A Are what? Q They're not lawyers involved in the case, right? A They are not lawyers. Q Okay. They in those Page 39 conversations, did they inform you or provide you information about specific missions, Naval Special Warfare missions, that could not be successfully completed? A Yes. Q Okay. And which missions were those? Or what types let's start with what types of missions A Yeah. Q were involved. A I don't believe we can talk about specific missions, but the types of missions were impacts to SWCC, Special Warfare Combatant-Craft Crew, the team that brings excellent intel that had an outbreak that precluded them from doing that. And impact to a mission with SEALs on a ship where	Warfare, are you aware of any Naval Special Warfare missions, combat or otherwise, that could not be3successfully completed as a result of COVID-19?4A I am generally aware of I've had5conversations where I've been made aware of that.6Q Okay. What who did you have those7conversations with?8A Chief of Staff of Naval Spec Warfare,9Captain Brown, Admiral Merz, who is now OPNAV on the staff of the Chief of Naval Operations. At the time he was commander of 7th Fleet. There's two12examples where conversations had made me aware of that type of mission impact.14Q Okay. And in those conversations neither Brown, nor Merz are lawyers in the case, correct?16A They are not lawyers involved in the case, right?20Q Okay. They in those22Varfare missions, that could not be successfully completed?3Q Okay. And which missions were those? Q Okay. And which missions were those?1information about specific missions, Naval Special2Warfare missions, that could not be successfully Q were involved.3A Yeah.93Q were involved.10A I don't believe we can talk about11specific missions, but the types of missions were impacts to SWCC, Special Warfare Combatant-Craft I an outbreak that precluded them from doing that.14An outbreak that precluded them from doing that.14An impact to a mission with SEALs on a ship where15

11 (Pages 38 - 41)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 25 of 325 PAGEID #: 4690

	Page 42		Page 44
1	It would be better to ask Captain Brown.	1	immediate impact to mission execution."
2	Q And the SWCC it's SWCC. Is that	2	Do you see that sentence?
3	correct?	3	A I do.
4	A Correct.	4	Q Okay. Other than what we've
5	Q The SWCC mission that you mentioned.	5	discussed at your deposition so far, what other
6	do you recall where that mission was being	6	direct and immediate impacts on mission execution
7	conducted at the time there was an impact	7	are supported by evidence or information that you
8	negatively for COVID-19?	8	reviewed in preparing this declaration?
9	A That was in the INDOPACOM AOR.	9	A So restricting our ability to sustain
10	That's why Admiral Merz, as the 7th Fleet	10	high medical readiness standards creates a direct
11	commander, was aware of it.	11	and immediate impact in the workarounds that
12	Q Other than those two examples or	12	commanders have to do to control that lower medical
13	conversations you had with Captain Brown and	13	readiness standard.
14	Admiral Merz about specific missions that were	14	Part of the learning of the Navy has
15	negatively impacted by COVID-19, Naval Special	15	been because the vaccinations are the most
16	Warfare Missions, do you recall any others?	16	effective tool. It's enabled the Navy to create a
17	A Any others?	17	more sustainable approach to controlling the virus.
18	Q Any other examples?	18	In 2021, before the vaccine mandate, the Navy used
19	A I do not.	19	very heavy and hard measures to control the risk to
20	Q Okay. Were those combat operations	20	mission and the health of our people.
21	or combat missions if you recall?	21	So we had pre-deployment sequester of
22	A I don't know. It's it's a fair	22	people. We, in terms of preparing units to deploy,
	Page 43		Page 45
1	assumption to say the INDOPACOM one was not, but	1	combined the certification underway period, known
2	the other one, it's possible it was. I don't know.	2	as COMPTUEX, which is typically a four- or six-week
3	Q Okay. Do you know whether it from	3	event, with the deployment.
4	your conversations with Captain Brown and	4	So previous baseline, the baseline we
5	Admiral Merz, the missions were negatively impacted	5	would be able to go to which is more sustainable,
6	by COVID-19, but still successfully completed or	6	is sailors who are departing their family,
7	whether the missions could not be successfully	7	departing their homeport, workup, they do the
8	completed because of COVID-19?	8	certification event, they come back, they interact
9	A I don't have detail on how they	9	with their families, then they deploy. During
10	worked around that impact.	10	deployment, they have port visits to sustain their
11	Q Okay. So you're not familiar with	11	energy, their morale, and then they return.
12	any other mitigation measures or other steps that	12	So direct and immediate impact, if
13	were taken	13	the Navy were forced to go back to those types of
14	A No.	14	measures to control the risk, pre-sequester,
15	Q by those commanders?	15	pre-deployment sequester, COMPTUEX and go, extend
16	A No.	16	the deployments, no port visits, those types of
17	Q Okay. In paragraph 2 of your	17	measures, in my experience, are not sustainable.
18	declaration, the following sentence that begins,	18	And we saw that with the declining retention rates,
19	"Restriction of the Navy's ability to reassign	19	in terms of the quality of the Service over '20
20	unvaccinated personnel in order to mitigate	20	the calendar year '20, '21, and into '22. And we
21	COVID-19 related risks to units preparing to deploy	21	see that, the stress on our people with increased
22	or that are deployed will cause direct and	22	demand for mental health.

12 (Pages 42 - 45)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 26 of 325 PAGEID #: 4691

	Page 46		Page 48
1	So we talked about many of the	1	A No. The Navy could require that
2	measures a commander can do to address essentially	2	individual to pre-deployment sequester. During
3	the higher risk of COVID in the Force. And I'll	3	pre-deployment sequester, typically, in my
4	highlight what the Navy did before the vaccine	4	experience, they're not doing their work. So
5	mandate as impacts to the Force for sure.	5	they're not interacting with the rest of the crew
6	Q So you you called these heavy and	6	who's not sequestered.
7	hard measures. And you had mentioned, by my	7	Q And what would the time period be for
8	account, two two examples, pre-deployment,	8	the pre-deployment sequester?
9	sequester, and then I think you called it COMPTUEX.	9	A So the Navy experience over that, as
10	Is that right?	10	I recall, evolved. My best recollection is that
11	A Yeah, COMPTUEX and go.	11	the pre-deployment sequesters were on the order of
12	Q And	12	14 days.
13	A The third would be with an	13	Q Were the were these measures, the
14	unvaccinated crew, who are more likely to contract	14	four that you mentioned, effective at mitigating
15	COVID, and when contracting it, more likely then to	15	COVID-19 risks pre-vaccine, pre-August 30, 2021?
16	spread it to the crew. The measure in 2021,	16	A So our experience was that those
17	pre-vaccine, was very few, if any, port visits.	17	heavy, hard measures enabled the Navy to continue
18	MR. CARMICHAEL: I'll object just	18	to execute the mission. We reallocated the risk
19	as in addition to that third one, there was also	19	elsewhere in a way that's not sustainable. So
20	a measure of longer deployment times.	20	we essentially those measures fell heavily on
21	BY MR. STEPHENS:	21	the backs of our people to pre-deploy sequester,
22	Q Are those measures that could be	22	COMPTUEX and go, up to ten-month deployments, up to
	Page 47		Page 49
1	employed now for individual Service members who are	1	200 days without a port visit. The port visits you
2	unvaccinated?	2	would get during this time frame were frequently
3	A Can you explain more of your	3	tied up to a pier and stay on the pier.
4	question?	4	Q Is the Navy still employing any of
5	Q Sure.	5	those measures or has the Navy continued to employ
6	If a Service member were to be	6	any of those measures after October 30th, 2021?
7	granted a religious accommodation, providing an	7	A With the use of the most effective
8	exemption from the COVID-19 vaccine, and could	8	tool, the vaccines, the measures that the Navy
9	the Navy apply these measures to that individual,	9	continues to apply are local health protective
10	say, pre-deployment without negatively impacting	10	measures to include, based on the status of the
11	the mission as a whole?	11	crew in terms of boosters, whether to mask when
12	A I think those those measures, A,	12	first getting underway, cleanliness, cleaning the
13	clearly would impact the mission and the	13	surfaces periodically, isolating when becoming
14	individual; and, B, those measures are not all	14	when testing positive.
15	executable on an individual basis.	15	The ability to do port visits has
16	Q Okay. Let's start with the first,	16	returned and improved, that also requires host
17	pre-deployment to sequester. If an individual	17	country approval where they check the vaccination
18	Service member were given a religious accommodation	18	status of the crew. That's my understanding.
19	exemption from the COVID-19 vaccination	19	Q Did you consult with the Secretary of
20	requirement, could the Navy require pre-deployment	20	Defense regarding the Secretary's determination
21	sequester of that individual without impacting the	21	that COVID-19 vaccination mandatory COVID-19
22	overall mission?	22	vaccination was necessary to protect the health and

13 (Pages 46 - 49)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 27 of 325 PAGEID #: 4692

	Page 50		Page 52
1	readiness military readiness of the Force?	1	Naval component commanders at the three-star level
2	A I did not talk to Secretary Austin.	2	typically, or if there was elements where the
3	Q Do you know or have any personal	3	down-echelon commander at the 06 or 05 level
4	knowledge of whether Secretary Austin spoke with	4	mitigated, but I expect my speculation would be
5	any other anyone else at the Navy prior to	5	NAVSPEC Warfare would know. And Captain Brown, as
6	making that determination?	6	the chief of staff, would likely be to know.
7	A I I'm unaware of that.	7	Q Approximately I had asked you
8	Q Okay. And you didn't have any	8	questions about could you identify specific
9	communications with the Secretary of Defense	9	missions that were impacted or negatively impacted
10	pertaining to that determination?	10	as a result of COVID-19. And I had asked questions
11	A I did not.	11	in particular about pre-August 30th, 2021.
12	Q Okay. Written or e-mails or phone	12	Do you recall that?
13	conversations?	13	Pre-August August 30th, 2021, I
14	A No.	14	had asked you a series of questions
15	Q Okay. Do you can you identify any	15	A Right.
16	Naval Special Warfare missions in which COVID-19	16	Q about any can you identify any
17	infection prevented a medical evacuation of a	17	missions that were negatively impacted as a result
18	Service member?	18	of COVID-19 infections.
19	A Prevented a medical evacuation?	19	Do you know approximately how many
20	Q Yes.	20	missions, using your definition you referred to
21	A No.	21	missions in your declaration are conducted each
22	Q Could you can you identify or are	22	year by the Navy?
	Page 51		Page 53
1	you aware of any instances in which COVID-19 made a	1	A It'd be thousands.
2	medical evacuation of a Service member more	2	Q Approximately how many thousands?
3	difficult?	3	Hundreds of thousands or
4	A No.	4	MR. CARMICHAEL: Objection. Calls
5	Q Can you identify any instances in	5	for speculation.
6	which a Naval Special Warfare Service member	6	You can answer the question.
7	contracted COVID-19 as a result of using a	7	THE WITNESS: In the context, so a
8	re-breathing device?	8	mission could be executing a flight, it could be a
9	A Again, I would that would not be	9	mission. You're talking I mean, again, it's
10	something that I would become aware of, but the	10	speculation. You're talking tens of thousands of
11	answer is no.	11	missions.
12	Q Okay. And can you identify any	12	BY MR. STEPHENS:
13	instances in which Service members deployed on a	13	Q Okay. And I'm asking you as you use
14	submarine Naval Special Warfare Service members	14	it in your declaration.
15	deployed on a submarine contracted COVID-19?	15	A Right.
16	A I'm unaware.	16	Q There's a discussion about missions
17	Q Okay. Are those if if that had	17	and accomplishing certain missions, and I'm trying
18	occurred, is that something that Captain Brown or	18	to understand what the scope is of the Navy's
19	Admiral Merz would know? It would be within their	19	missions. I mean, how many are we talking about
20	area of oversight?	20	here each year.
21	A It's something that I believe the	21	A Right.
22	operational commander would know. So, again, the	22	Q And it sounds like it's tens of

14 (Pages 50 - 53)

	Page 54		Page 56
1	thousands?	1	Navy as to whether exemptions from the vaccine
2	A The other point that I would cite	2	mandate should or should not be granted?
3	that's relevant to that so our conversation	3	A Because the lens we're looking at is
4	thread is is strongly in the rear-view mirror in	4	a broader conflict, a higher-scale conflict. So
5	terms of what type of missions. It's worth noting	5	again, it puts a strong premium on having the full
6	that the types of missions that the Department of	6	Force medically ready.
7	Defense and the Navy are executing are changing	7	Q Do you know whether, or have you
8	strongly as we shift to from two decades of	8	considered, any evidence or information as to
9	primarily fighting the shore against violent	9	whether the vaccine requirement may be negatively
10	extremists, which is a fight that will still	10	impacting the Navy's retention of sailors?
11	continue, but at a lesser pace.	11	A What was the first part of the
12	And our competition context right now	12	question again?
13	is shifting strongly to a strategic competition, to	13	Q Do you have any knowledge or have you
14	a higher level of war against the peer economy, a	14	considered any information concerning whether the
15	peer threat. So that's certainly part of the lens	15	vaccine requirement the COVID-19 vaccine
16	that I brought here as well.	16	requirement is having a negative impact on the
17	It's not simply in the context of	17	Navy's retention of sailors?
18	SPEC Warfare of both the emergent missions that	18	A I have not seen any data on that.
19	they have to be prepared to do in the violent	19	Q And do you know or have you
20	extremist context and the rotational missions	20	considered any information or data concerning
21	they've largely done in the Central Command AOR.	21	whether the COVID-19 vaccine mandate is negatively
22	There's a much heavier expectation if	22	affecting the Navy's ability to recruit new
	Page 55		Page 57
1	conflict breaks out in the Western Pacific on a	1	sailors?
2	different context in a higher capacity flow that's	2	A No information on that.
3	relevant to this conversation as well.	3	Q Okay. Have you had any discussions
4	Q And how would how would it	4	with anyone concerning the affect of the COVID-19
5	change how is it relevant to the opinions or the	5	vaccine mandate on recruiting?
6	assertions you've made here as to the vaccine	6	A I have not had conversations about
7			11 I have not had conversations about
	requirement?	7	it.
8	A It's a different mission set.	7 8	
8			it.
	A It's a different mission set.	8	it. Q Okay. And have you had any
9	<ul><li>A It's a different mission set.</li><li>Q And how so?</li></ul>	8 9	it. Q Okay. And have you had any conversations about whether the COVID-19 vaccine
9 10	<ul><li>A It's a different mission set.</li><li>Q And how so?</li><li>A So with over the course of the</li></ul>	8 9 10	it. Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability
9 10 11	<ul><li>A It's a different mission set.</li><li>Q And how so?</li><li>A So with over the course of the</li><li>last two decades, the mission focus was heavily on</li></ul>	8 9 10 11	it. Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors?
9 10 11 12	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> </ul>	8 9 10 11 12	it. Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors? A No specific conversations on that.
9 10 11 12 13	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> <li>Afghanistan, and more broadly in that AOR.</li> </ul>	8 9 10 11 12 13	<ul> <li>it.</li> <li>Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors?</li> <li>A No specific conversations on that.</li> <li>Q Okay. Do you recall any general</li> </ul>
9 10 11 12 13 14	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> <li>Afghanistan, and more broadly in that AOR.</li> <li>Admiral Howard, the commander of NAVSPEC Warfare,</li> </ul>	8 9 10 11 12 13 14	<ul> <li>it.</li> <li>Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors?</li> <li>A No specific conversations on that.</li> <li>Q Okay. Do you recall any general conversations?</li> </ul>
9 10 11 12 13 14 15	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> <li>Afghanistan, and more broadly in that AOR.</li> <li>Admiral Howard, the commander of NAVSPEC Warfare,</li> <li>is shifting the structure of NAVSPEC Warfare from</li> </ul>	8 9 10 11 12 13 14 15	it. Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors? A No specific conversations on that. Q Okay. Do you recall any general conversations? A I I believe there are yes, I
9 10 11 12 13 14 15 16	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> <li>Afghanistan, and more broadly in that AOR.</li> <li>Admiral Howard, the commander of NAVSPEC Warfare,</li> <li>is shifting the structure of NAVSPEC Warfare from</li> <li>what it has historically been to address the key</li> </ul>	8 9 10 11 12 13 14 15 16	<ul> <li>it.</li> <li>Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors?</li> <li>A No specific conversations on that.</li> <li>Q Okay. Do you recall any general conversations?</li> <li>A I I believe there are yes, I vaguely recall general conversations about that.</li> </ul>
<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> </ul>	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> <li>Afghanistan, and more broadly in that AOR.</li> <li>Admiral Howard, the commander of NAVSPEC Warfare,</li> <li>is shifting the structure of NAVSPEC Warfare from</li> <li>what it has historically been to address the key</li> <li>capacity to do that, but to address a different</li> </ul>	8 9 10 11 12 13 14 15 16 17	<ul> <li>it.</li> <li>Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors?</li> <li>A No specific conversations on that.</li> <li>Q Okay. Do you recall any general conversations?</li> <li>A I I believe there are yes, I vaguely recall general conversations about that.</li> <li>Q Do you know whether any unvaccinated</li> </ul>
9 10 11 12 13 14 15 16 17 18	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> <li>Afghanistan, and more broadly in that AOR.</li> <li>Admiral Howard, the commander of NAVSPEC Warfare,</li> <li>is shifting the structure of NAVSPEC Warfare from</li> <li>what it has historically been to address the key</li> <li>capacity to do that, but to address a different</li> <li>mission set, which is high-end warfare in a</li> </ul>	8 9 10 11 12 13 14 15 16 17 18	<ul> <li>it.</li> <li>Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors?</li> <li>A No specific conversations on that.</li> <li>Q Okay. Do you recall any general conversations?</li> <li>A I I believe there are yes, I vaguely recall general conversations about that.</li> <li>Q Do you know whether any unvaccinated Navy SEALs have been deployed on missions since</li> </ul>
<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ul>	<ul> <li>A It's a different mission set.</li> <li>Q And how so?</li> <li>A So with over the course of the</li> <li>last two decades, the mission focus was heavily on</li> <li>fighting violent extremists in Iraq and</li> <li>Afghanistan, and more broadly in that AOR.</li> <li>Admiral Howard, the commander of NAVSPEC Warfare,</li> <li>is shifting the structure of NAVSPEC Warfare from</li> <li>what it has historically been to address the key</li> <li>capacity to do that, but to address a different</li> <li>mission set, which is high-end warfare in a</li> <li>different theater.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>it.</li> <li>Q Okay. And have you had any conversations about whether the COVID-19 vaccine mandate is negatively affecting the Navy's ability to retain sailors?</li> <li>A No specific conversations on that.</li> <li>Q Okay. Do you recall any general conversations?</li> <li>A I I believe there are yes, I vaguely recall general conversations about that.</li> <li>Q Do you know whether any unvaccinated Navy SEALs have been deployed on missions since August 30th, 2021?</li> </ul>

15 (Pages 54 - 57)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 29 of 325 PAGEID #: 4694

	Page 58		Page 60
1	deployed or had deployed on a mission after	1	approach? And my understanding is there's not.
2	August 30th, 2021, would you expect to see an	2	And then your question was, are there
3	increase in the incidence rate of COVID-19 within	3	different mitigation approaches based on the basis
4	Naval Special Warfare?	4	of your vaccination waiver? And, again, that's not
5	MR. CARMICHAEL: Objection. Improper	5	directly in my purview as vice chief, but my
6	hypothetical that makes several unstated	6	understanding, again, is that there is not.
7	assumptions.	7	Q Why why do you why, if you
8	You can answer the question.	8	know, does the Navy allow medical and
9	THE WITNESS: Could you restate the	9	administrative exemptions from the COVID-19 vaccine
10	question?	10	requirement?
11	BY MR. STEPHENS:	11	A The the overarching principle is
12	Q If an if an if unvaccinated	12	to make those cases weigh those decisions on an
13	Navy SEALs had been deployed or have been deployed	13	individual basis and and grant that waiver when
14	on missions since August 30th, 2021, after the	14	the from a risk perspective, that benefit
15	vaccine mandate, would you expect to see a higher	15	outweighs the cost. So I believe some of the
16	incidence rate of COVID-19 infections in	16	administrative examples would be if somebody is
17	individuals deployed on those missions?	17	separating or retiring soon, then that cost benefit
18	A I would expect that they if that	18	risk calculus might suggest a waiver.
19	were the case hypothetically, I would expect that	19	Certainly if there's been a reaction
20	they were deploying and accepting a lower medical	20	to a vaccine dose, if there's medical underlying
21	readiness standard. And I would then expect them	21	conditions, if there's pregnancy, all of those
22	to the commander to design mitigations to	22	elements are basically and in this specific
	Page 59		Page 61
1	counter that risk.	1	case, what's the risk to the Operational Force?
2	So it might either manifest, if that	2	What's the risk and the benefit to the individual?
3	were done poorly, as increased COVID or it might	3	I would say another general principle
4	manifest as increased mission risks they took or it	4	is the Navy, in my experience, supports the
5	might manifest as risks they pushed elsewhere for	5	individual in religious accommodations, whether
6	people to compensate for the reduced medical	6	it's beards, headwear, et cetera, and supports the
7	standard.	7	individual in general. And where the hard choices
8	Q Does the Navy use other mitigation	8	get made is when the individual benefit and right
9	measures with respect to Service members who	9	now starts to impact the unit, other people's
10	receive a medical or administrative exemption from	10	health in this case, or unit mission execution.
11	the COVID-19 vaccine requirement?	11	Q In the examples that you gave, you
12	A I don't understand the question. Do	12	mentioned that the analysis, at least as you
13	they use different standards for?	13	understand it, is is to consider on an
14	Q Different mitigation measures to	14	individual basis or an individualized assessment of
15	address the risk that would arise from granting a	15	whether the risk outweighs the cost. Is that
16	medical or administrative exemption to a to a	16	right?
17	Service member from the COVID-19 vaccine	17	A That's the general risk management
18	requirement.	18	principle.
19	A So I believe your question is	19	Q Okay. And those are in those are
20	regardless of the basis for a waiver for the	20	all, as you understand it, individualized
21	vaccine, when it comes to determining medical	21	assessments?
22	readiness to the standard, is there a different	22	A It's a case-by-case assessment.

16 (Pages 58 - 61)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 30 of 325 PAGEID #: 4695

	Page 62		Page 64
1	Q Case by case.	1	August 30th of 2021, and the submission of
2	And so you look at the specific	2	religious accommodation requests by Service
3	individual's job duties, their unit, their the	3	members, Admiral Nowell I may be mispronouncing
4	missions they are involved in. Is that correct?	4	it but Admiral Nowell was
5	A Again, so I'm not in I can talk in	5	A Yes.
6	general approaches.	6	Q in charge of the process for
7	Q Sure.	7	evaluating those, ultimately responsible?
8	A I'm not involved in that process,	8	A Admiral Nowell was the adjudication
9	either in the initial or the appeal, so I can't	9	authority.
10	speak with more specificity about what other	10	Q Okay. And you you said that
11	factors they might be using.	11	Admiral Nowell has retired?
12	Q Okay. But as you understand it, an	12	A He has.
13	individualized assessment for medical or other	13	Q Do you know where he's working now or
14	administrative exemptions from COVID-19, it is	14	if he has taken another job?
15	it's conducted on an individualized basis?	15	A I don't. He literally retired two
16	A Correct.	16	weeks ago, I believe.
17	Q Okay. And do you know or do you have	17	MR. CARMICHAEL: Andrew, I generally
18	any understanding of whether the Service members	18	like to not to take breaks at 90 minutes, if
19	who submitted religious accommodation requests for	19	that's okay.
20	the COVID-19 vaccine were given the same type of	20	MR. STEPHENS: That's fine.
21	individualized review or individualized assessment?	21	MR. CARMICHAEL: We're like 15
22	A It's my understanding, they are	22	minutes away, so I just wanted to
	Page 63		Page 65
1	individual assessments.	1	MR. STEPHENS: However you want to do
2	Q Okay. Are you aware of any directive	2	it, that's fine.
3	or communication to individuals involved in that	3	BY MR. STEPHENS:
4	process informing them that all religious	4	Q On page 8 of your declaration, and
5	accommodation requests should be denied?	5	it's paragraph 11, we're looking at declaration
6	A NT-		
7	A No.	6	exhibit or Deposition Exhibit 1, there are a
'	Q Okay. Are you familiar with any	6 7	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph.
8	Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated		exhibit or Deposition Exhibit 1, there are a
	Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious	7	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do.
8	Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests?	7 8	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or
8 9 10 11	<ul><li>Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests?</li><li>A So I'm aware of a discussion about a</li></ul>	7 8 9 10 11	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from?
8 9 10	Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests? A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the	7 8 9 10 11 12	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint
8 9 10 11 12 13	Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests? A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the details.	7 8 9 10 11 12 13	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force.
8 9 10 11 12 13 14	Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests? A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the details. Q And who is N1 or	7 8 9 10 11 12 13 14	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force. Q Okay. Before I ask some more
8 9 10 11 12 13 14 15	Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests? A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the details. Q And who is N1 or A Chief of Naval Personnel.	7 8 9 10 11 12 13 14 15	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force. Q Okay. Before I ask some more questions about this data, I want to go back to the
8 9 10 11 12 13 14 15 16	<ul> <li>Q Okay. Are you familiar with any</li> <li>protocol or procedure that the Navy has promulgated</li> <li>for purposes of conducting a review of religious</li> <li>accommodation requests?</li> <li>A So I'm aware of a discussion about a</li> <li>checklist that N1 uses. I am not familiar with the</li> <li>details.</li> <li>Q And who is N1 or</li> <li>A Chief of Naval Personnel.</li> <li>Q Okay. And is that Admiral Nowell?</li> </ul>	7 8 9 10 11 12 13 14 15 16	<ul> <li>exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that?</li> <li>A I do.</li> <li>Q Did you calculate these numbers or where did you where did these numbers come from?</li> <li>A These numbers came from the Joint</li> <li>Staff Surgeon for the Military Force.</li> <li>Q Okay. Before I ask some more questions about this data, I want to go back to the religious accommodation questions I had. And ask</li> </ul>
8 9 10 11 12 13 14 15 16 17	<ul> <li>Q Okay. Are you familiar with any</li> <li>protocol or procedure that the Navy has promulgated</li> <li>for purposes of conducting a review of religious</li> <li>accommotation requests?</li> <li>A So I'm aware of a discussion about a</li> <li>checklist that N1 uses. I am not familiar with the</li> <li>details.</li> <li>Q And who is N1 or</li> <li>A Chief of Naval Personnel.</li> <li>Q Okay. And is that Admiral Nowell?</li> <li>A It was Admiral Nowell until a few</li> </ul>	7 8 9 10 11 12 13 14 15 16 17	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force. Q Okay. Before I ask some more questions about this data, I want to go back to the religious accommodation questions I had. And ask you if you learned that religious accommodation
8 9 10 11 12 13 14 15 16 17 18	<ul> <li>Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests?</li> <li>A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the details.</li> <li>Q And who is N1 or</li> <li>A Chief of Naval Personnel.</li> <li>Q Okay. And is that Admiral Nowell?</li> <li>A It was Admiral Nowell until a few weeks ago and he retired. And it's now</li> </ul>	7 8 9 10 11 12 13 14 15 16 17 18	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force. Q Okay. Before I ask some more questions about this data, I want to go back to the religious accommodation questions I had. And ask you if you learned that religious accommodation requests were not being given individualized
8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests?</li> <li>A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the details.</li> <li>Q And who is N1 or</li> <li>A Chief of Naval Personnel.</li> <li>Q Okay. And is that Admiral Nowell?</li> <li>A It was Admiral Nowell until a few weeks ago and he retired. And it's now Admiral Cheeseman.</li> </ul>	7 8 9 10 11 12 13 14 15 16 17 18 19	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force. Q Okay. Before I ask some more questions about this data, I want to go back to the religious accommodation questions I had. And ask you if you learned that religious accommodation requests were not being given individualized consideration or an individualized assessment or
8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests?</li> <li>A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the details.</li> <li>Q And who is N1 or</li> <li>A Chief of Naval Personnel.</li> <li>Q Okay. And is that Admiral Nowell?</li> <li>A It was Admiral Nowell until a few weeks ago and he retired. And it's now Admiral Cheeseman.</li> <li>Q Okay. And so at the time when</li> </ul>	7 8 9 10 11 12 13 14 15 16 17 18 19 20	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force. Q Okay. Before I ask some more questions about this data, I want to go back to the religious accommodation questions I had. And ask you if you learned that religious accommodation requests were not being given individualized consideration or an individualized assessment or case-by-case assessment, I think was the term that
8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>Q Okay. Are you familiar with any protocol or procedure that the Navy has promulgated for purposes of conducting a review of religious accommodation requests?</li> <li>A So I'm aware of a discussion about a checklist that N1 uses. I am not familiar with the details.</li> <li>Q And who is N1 or</li> <li>A Chief of Naval Personnel.</li> <li>Q Okay. And is that Admiral Nowell?</li> <li>A It was Admiral Nowell until a few weeks ago and he retired. And it's now Admiral Cheeseman.</li> </ul>	7 8 9 10 11 12 13 14 15 16 17 18 19	exhibit or Deposition Exhibit 1, there are a number of statistics cited in this paragraph. Do you see that? A I do. Q Did you calculate these numbers or where did you where did these numbers come from? A These numbers came from the Joint Staff Surgeon for the Military Force. Q Okay. Before I ask some more questions about this data, I want to go back to the religious accommodation questions I had. And ask you if you learned that religious accommodation requests were not being given individualized consideration or an individualized assessment or

17 (Pages 62 - 65)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 31 of 325 PAGEID #: 4696

	Page 66		Page 68
1	Q Okay. Why not?	1	and accurate based on your personal knowledge?
2	A The fundamental principle that I've	2	A I cannot.
3	used throughout my 42 years, I make these type of	3	Q Okay. And as you understand it,
4	risk decisions, particularly when and these	4	these are statements by the joint staff surgeon.
5	it's not constrained to just religious	5	Is that right?
6	accommodation. Whenever we make decisions where	6	A As I understand it, correct.
7	we're weighing the rights and the interests of the	7	Q Okay.
8	individual against the broader imperative of a unit	8	MR. STEPHENS: Okay. Drew, do you
9	mission, those always have to be done on a	9	want to just go ahead and take a break? I can
10	case-by-case basis in my experience.	10	probably streamline some questioning.
11	Q All right. Back on turning back	11	MR. CARMICHAEL: Sure.
12	to page 8 of your declaration, paragraph 11, the	12	VIDEOGRAPHER: We are going off the
13	statistics that I had referenced, did you you	13	record. The time is 9:21 a.m. This concludes
14	testified that these came from who?	14	Media Unit Number 1. Thank you.
15	A The joint staff surgeon.	15	(Recess from 9:21 a.m. to 9:40 a.m.)
16	Q Okay. And who is the joint staff	16	VIDEOGRAPHER: We are back on the
17	surgeon?	17	record. The time is 9:40 a.m. And this begins
18	A I don't know their name.	18	Media Unit Number 2.
19	Q Okay. And did you request these	19	Counsel, you may proceed.
20	statistics from the joint staff surgeon?	20	BY MR. STEPHENS:
21	A These statistics, I recall, were part	21	Q Admiral Lescher, you understand that
22	of the initial draft that I reviewed.	22	you're still under oath, correct?
	Page 67		Page 69
1	Q Okay. Did you do anything to verify	1	A I do.
2	the accuracy of the statistics?	2	Q Before the break, I had asked you
3	A I asked the source.	3	questions about individualized assessments, do you
4	Q Okay. And what was the source?	4	recall that, of religious and other types of
5	A The joint staff surgeon.	5	exemption requests for COVID-19 vaccine?
6	Q Okay. And do you know what	6	A Right.
7	who's that's an individual, correct?	7	Q Do you recall that?
8	A That's right.	8	A Case by case, sure.
9	Q And do you know what the source was	9	Q In your testimony, I believe that
10	for the joint staff surgeon, the underlying data or	10	that you said, and correct me if I'm wrong, that
11	information?	11	that the commanders would be in the best position
12	A I don't.	12	to make those types of risk assessments. Is
13	Q Okay. So that's not something that	13	that is that right?
14	you reviewed?	14	A It depends on what type of risk
15	That's not something that you	15	assessment we're talking about. So specifically in
16	reviewed	16	the context of religious accommodations?
17	A Correct.	17	Q Yes. Or or in the context of a
18	Q the underlying data or	18	medical exemption from a vaccine requirement.
19	information?	19	A Right.
20	A Correct.	20	So the concept of a central
21	Q Okay. And so you can't testify or	21	adjudication, as the Navy has put in place for
22	or can you testify that these calculations are true	22	religious accommodations, is to bring consistency

18 (Pages 66 - 69)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 32 of 325 PAGEID #: 4697

	Page 70		Page 72
1	to those determinations. So the commander starts	1	local commander also sees the risk of introducing
2	the process with the individual, and then the	2	COVID into a crew in the maintenance phase as
3	ultimate decision is done with a consolidated	3	unacceptable. But contextually, that's how I think
4	decision authority.	4	those conversations and those decisions would be
5	Q Do you know of any religious	5	made.
6	accommodation requests that have been recommended	6	Q Okay. And and you haven't been
7	for approval by commanders?	7	involved I think you've testified to this, but
8	A Again, not being in that process, I	8	you weren't and have not been involved in any of
9	do not.	9	that those conversations pertaining to approval
10	Q Okay. Do you know on what basis	10	or denial of any religious accommodation requests
11	if you were to review a religious accommodation	11	for COVID-19 vaccine mandate?
12	request and a commander were to recommend approval	12	A Correct.
13	of that request, what what types of factors	13	Q Okay. You had testified earlier that
14	would you look to to determine whether you would	14	Captain Brown and Admiral Merz were the individuals
15	also approve it or reach a different conclusion	15	that you had spoken with and received information
16	that it should be denied?	16	about Naval Special Warfare missions that could not
17	A So, hypothetically speaking, I always	17	be completed as a result of COVID-19 infections.
18	would go to the standard first; what are the	18	Do you recall that?
19	standards? What are the guidance? In this case, I	19	A That were impacted.
20	believe the legal standard is compelling interest,	20	Q Okay. Impacted, but well, do you
21	and is the most effective tool. In terms of	21	know whether those missions were still successfully
22	weighing a request that was favorably endorsed by	22	completed?
	Page 71		Page 73
1	the commander, I believe I would then look at that	1	A So I think, as I recall, that's the
2	broader standard.	2	question you asked
3	The commander may have a local	3	Q Right.
4	perspective in terms of a specific unit. Say, for	4	A and so no, I don't have that
5	example, the commander was on a ship who was	5	awareness of the detail of was there a workaround;
6	undergoing depo maintenance, not deploying any time	6	was it delayed, but executed. I don't know that
7	soon, a commander might be inclined to say as	7	either.
8	the commander makes that local risk benefit	8	Q Do you recall when you talked to
9	judgment we talked about, that the benefit to the	9	Captain Brown approximately when you talked to
10	individual outweighs the mission risk that the	10	Captain Brown about that mission?
11	commander sees. At the consolidated level, it's	11	A I do. Really in part of the
12	possible that that individual in my case, I	12	preparation for this deposition, I talked to
13	would look more broadly.	13	Admiral Merz as the Navy headquarters staff lead on
14	And the question would be in that	14	COVID. And I talked to Captain Brown. And Captain
15	that type of context maybe a limited duration	15	Brown, I had a conversation with yesterday.
16	religious accommodation that recognizes the fact	16	Q Okay. And so prior to prior to
17	that the risk calculus changes as that local	17	executing your declaration, you had not had those
18	context changes, as that ship comes out of depo	18	conversations about any specific Naval Special
19	maintenance back into a more operational posture	19	Warfare missions that had been impacted by
20	for deploying with other countries, with other	20	A Correct.
21	members. That might be a different calculus.	21	Q COVID?
22	On the other hand, it's possible the	22	Okay. How long did you speak with

19 (Pages 70 - 73)

	Page 74		Page 76
1	Captain Brown?	1	A Yes.
2	It was this week?	2	Q Okay. And what was the nature of
3	A Yes.	3	those conversations?
4	Q And how long did you speak with him?	4	A So I recall having conversations with
5	A I would estimate ten minutes.	5	the Navy chief of chaplains about spiritual health
6	Q Was it a phone call or a meeting?	6	and the role of spiritual health in sailor
7	A Phone call.	7	resiliency.
8	Q Okay. And and how long did you	8	Q When when was that conversation?
9	speak with Admiral Merz?	9	A More than one. When I talk to the
10	A So I speak to Admiral Merz pretty	10	chief of chaplains, that's always an element that
11	regularly. In this context, I estimate it was 25	11	we talk about. The chief of chaplains turned over
12	minutes.	12	fairly recently, so the new chief of chaplains and
13	Q And did you you didn't speak with	13	I talked about this, I don't know, maybe two months
14	Admiral Merz before executing your declaration	14	ago, a month and a half, two months, ago. And with
15	about this specific issue or question of Naval	15	his predecessor, you know, periodically,
16	Special Warfare missions that had been negatively	16	episodically before that.
17	impacted or adversely impacted by COVID-19?	17	Q Okay. And you what was who is
18	A Right, correct.	18	the current chief of chaplains?
19	Q Okay. In your testimony concerning	19	A Admiral Todd.
20	mitigation measures that were taken pre-vaccine for	20	Q Emmett Todd?
21	purposes of mitigating the effects of of	21	A Admiral Todd.
22	COVID-19 on the Navy's ability to accomplish its	22	Q Admiral?
	Page 75		Page 77
1	missions, you mentioned that certain measures were	1	A Yeah.
2	hard on sailors. Is that correct?	2	Q And who was the predecessor?
3	A Correct.	3	A Scott.
4	Q And so that's something that it	4	Q In those conversations, did the chief
5	seems, at least to me, that that you care about,	5	of chaplains or either of the chiefs of chaplains
6	the impact on your individual sailors on their	6	express their concern about the impact a denial of
7	lives, on their families, and how it the Navy's	7	religious accommodations would have on on
8	policies or practices will affect them. Is that	8	sailors?
9	fair to say?	9	A Those conversations were very much in
10	A Yes.	10	the context of what we've talked about here, which
11	Q Okay. And with respect to Service	11	is we recognize spiritual health is something we
12	members who submitted religious accommodation	12	strive to develop, mature, to support. It's many
13	requests, do you have any reason to doubt the	13	of the programs that the chief of chaplains works.
14	sincerity of their religious beliefs underlying	14	When it comes to COVID, then
15	those requests?	15	essentially that rough judgment calculus we talked
16	A I do not.	16	about is at what point does the benefit to the
17	Q Okay. And have you considered or had	17	individual of a religious accommodation become
18	any discussions with other Naval leadership,	18	outweighed by the risk of personal health to others
19	anyone anyone else in Naval leadership, about	19	who don't get a choice about whether they deploy
20	the impact a denial of a religious accommodation	20	and the risk to the mission. So it was it was
21	request would have on a on a sailor who has	21	in that context.
22	sincere religious beliefs?	22	Q And in your experience or in your

20 (Pages 74 - 77)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 34 of 325 PAGEID #: 4699

	Page 78		Page 80
1	judgment, at what level does that risk become	1	MR. STEPHENS: Thank you.
2	unacceptable or does the risk outweigh	2	BY MR. STEPHENS:
3	A So, again, I would expect those	3	Q Admiral Lescher, is this a document
4	typically case by case. But as an exemplar, in the	4	that you've seen before?
5	operational force in the context a strategic	5	A It is not.
6	context that we're in today of being prepared to	6	Q It's not.
7	deter not a small adversary in the 5th fleet, but a	7	I'll represent to you that this was
8	large adversary and being prepared, if deterrence	8	a is a request for production served by the
9	fails, to deploy rapidly into a fight, that medical	9	Plaintiffs counsel on the Defendants requesting
10	readiness standard is what prevails.	10	certain documents.
11	Q Would the medical readiness standard	11	And if you would turn to page 6 of
12	prevail if by denying religious accommodation	12	Deposition Exhibit 3, there are four specific
13	requests, the Navy was experiencing retention	13	requests on or four requests on page 6 and then
14	issues or sailors were leaving the Navy as a result	14	there's a fifth on page 7. And then on page 8 is
15	of that decision?	15	the date that this was served on Defendants'
16	A Yes. And the principle there would	16	counsel.
17	be the Navy has high medical readinesses standards	17	I believe I understood your testimony
18	to come into the Navy for specifically that	18	to be that this document was not provided to you or
19	purpose. And there's no doubt that the high	10	you don't recall it being provided to you?
20	medical readiness standards to come into the Navy	20	
20	-	20	-
	cause less people to come into the Navy than would	21	Q Okay. Were you requested by your
22	otherwise.	22	counsel to provide documents in response to any
1	Page 79 But the concept is because we operate	1	Page 81 discovery requests?
2	in high-risk, harsh, unforgiving environments,	2	A I don't recall being asked to do
3	bringing people into the Navy who can't meet those	3	that.
4	medical readiness standards, it's not purposeful to	4	Q Okay. Did you collect or compile any
5	the to the mission.	5	documents, e-mails, notes, other types of documents
6	Q Are there certain other requirements	6	for purposes of responding to any discovery in this
7	for entering the Navy that the Navy has waived	7	case?
8	recently for purposes of addressing recruitment and	8	A So it looks like this is discovery
9	retention concerns?	9	specifically in drafting or preparing the
10	A I'm not familiar with any.	10	declaration.
10	Q Do you know whether there the Navy	11	Q Correct.
12	still requires a high school diploma?	12	A So I believe Captain Josephson and I
12	A I I don't know. You know, the	12	talked about this perhaps. I mean, that would be
13	based on the type of rating that one is going to,	13	my supposition. And and then in doing the
15	there's different levels of education and score on	15	declaration, my best recollection is I was just
16	the entry exam. And I don't have the detail to	16	working off the draft. I don't recall studying,
17	know if there are any that where a GED would be	17	reaching out to other coordination to do the
18	sufficient.	18	declaration.
19	MR. STEPHENS: Mark this as Lescher	19	Q Okay. So you don't recall looking at
20	Deposition Exhibit 3.	20	any any documents, reports or other types of
21 22	(Lescher Deposition Exhibit Number 3	21	information when you were reviewing, editing the
	marked for identification.)	22	draft of your declaration. Is that right?

21 (Pages 78 - 81)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 35 of 325 PAGEID #: 4700

	Page 82		Page 84
1	A That's correct.	1	Q Okay. And who is she?
2	Q Okay. And do you recall having	2	Is that your assistant or
3	any any communications other than with counsel	3	A It's Captain Josephson.
4	about the substance of the declaration, e-mails or	4	Q Okay. Okay.
5	phone calls?	5	Okay. And do you know an individual,
6	A I don't. My best recollection is,	6	Darse Crandall?
7	you know, it came to me. I thought it needed work,	7	A I know Admiral Crandall, the Navy
8	but the perspective I brought was my experience and	8	JAG.
9	just, you know, from being aware of these issues.	9	Q Okay. And was Admiral Crandall
10	I'm largely talking to as what's written in the	10	involved in your declaration or in communications
11	declaration. I don't recall reaching outside my	11	or discussions about the substance of your
12	office at the time of the declaration.	12	declaration with you?
13	So that's my best recollection, that	13	A I don't ever recall talking to him
14	the draft came, iterated on it a couple of times,	14	about it. I I would imagine that he
15	and that was that.	15	participated in the draft that I received, but
16	Q Okay. So is it fair to say that	16	that's speculation.
17	that any documents that your counsel produced to us	17	Q Okay. You don't recall a meeting on
18	in response to these requests were not documents	18	January 12th with Admiral Crandall about your
19	that you provided to your counsel?	19	declaration?
20	A Correct.	20	A I don't.
21	Q Okay.	21	Q Okay. I'll show you a document.
22	A Well, again, this is going back some	22	
	Page 83		Page 85
1	time. Yeah, there was nothing that I would have	1	(Lescher Deposition Exhibit Number 4
2	time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that	2	(Lescher Deposition Exhibit Number 4 marked for identification.)
23	time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some	2 3	(Lescher Deposition Exhibit Number 4 marked for identification.) BY MR. STEPHENS:
2 3 4	time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.	2 3 4	<ul><li>(Lescher Deposition Exhibit Number 4 marked for identification.)</li><li>BY MR. STEPHENS:</li><li>Q I've handed you a document marked as</li></ul>
2 3 4 5	time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself. Q Okay. Do you recall having any	2 3 4 5	(Lescher Deposition Exhibit Number 4 marked for identification.) BY MR. STEPHENS: Q I've handed you a document marked as Lescher Declaration Exhibit 4, which was produced
2 3 4 5 6	<ul> <li>time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.</li> <li>Q Okay. Do you recall having any any meetings with anyone about the substance of</li> </ul>	2 3 4 5 6	<ul> <li>(Lescher Deposition Exhibit Number 4 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I've handed you a document marked as</li> <li>Lescher Declaration Exhibit 4, which was produced</li> <li>in response to the Plaintiffs' First Request for</li> </ul>
2 3 4 5 6 7	<ul> <li>time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.</li> <li>Q Okay. Do you recall having any any meetings with anyone about the substance of your declaration prior to executing the</li> </ul>	2 3 4 5 6 7	<ul> <li>(Lescher Deposition Exhibit Number 4 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I've handed you a document marked as</li> <li>Lescher Declaration Exhibit 4, which was produced</li> <li>in response to the Plaintiffs' First Request for</li> <li>Production. And it is Bates stamped NSW00007803.</li> </ul>
2 3 4 5 6 7 8	<ul> <li>time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.</li> <li>Q Okay. Do you recall having any any meetings with anyone about the substance of your declaration prior to executing the declaration?</li> </ul>	2 3 4 5 6 7 8	<ul> <li>(Lescher Deposition Exhibit Number 4 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I've handed you a document marked as</li> <li>Lescher Declaration Exhibit 4, which was produced in response to the Plaintiffs' First Request for</li> <li>Production. And it is Bates stamped NSW00007803. Do you have that document?</li> </ul>
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2 3 4 5 6 7 8 9 10 11	<ul> <li>time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.</li> <li>Q Okay. Do you recall having any any meetings with anyone about the substance of your declaration prior to executing the declaration?</li> <li>A I don't recall those.</li> <li>Q Okay. How do you you typically keep your schedule?</li> </ul>	2 3 4 5 6 7 8 9 10 11	<ul> <li>(Lescher Deposition Exhibit Number 4 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I've handed you a document marked as</li> <li>Lescher Declaration Exhibit 4, which was produced in response to the Plaintiffs' First Request for</li> <li>Production. And it is Bates stamped NSW00007803. Do you have that document?</li> <li>A I do.</li> <li>Q Okay. Do you know what this document</li> <li>is?</li> </ul>
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	<ul> <li>time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.</li> <li>Q Okay. Do you recall having any any meetings with anyone about the substance of your declaration prior to executing the declaration?</li> <li>A I don't recall those.</li> <li>Q Okay. How do you you typically keep your schedule?</li> <li>Do you use an Outlook calendar or A Yes.</li> <li>Q And and did you produce to counsel any calendar records that you recall pertaining to the declaration about meetings or phone calls?</li> <li>A Well, she has access to them. My</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	<ul> <li>(Lescher Deposition Exhibit Number 4 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I've handed you a document marked as</li> <li>Lescher Declaration Exhibit 4, which was produced in response to the Plaintiffs' First Request for</li> <li>Production. And it is Bates stamped NSW00007803.</li> <li>Do you have that document?</li> <li>A I do.</li> <li>Q Okay. Do you know what this document</li> <li>is?</li> <li>A It looks like an Outlook calendar</li> <li>invite</li> <li>Q Okay.</li> <li>A or calendar entry is the format.</li> <li>Q Okay. And is this the subject of</li> <li>this document, it appears to me to say, "MTG</li> </ul>
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<ul> <li>time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.</li> <li>Q Okay. Do you recall having any any meetings with anyone about the substance of your declaration prior to executing the declaration?</li> <li>A I don't recall those.</li> <li>Q Okay. How do you you typically keep your schedule?</li> <li>Do you use an Outlook calendar or A Yes.</li> <li>Q And and did you produce to counsel any calendar records that you recall pertaining to the declaration about meetings or phone calls?</li> <li>A Well, she has access to them. My recollection is and typically in these type of</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	<pre>(Lescher Deposition Exhibit Number 4 marked for identification.) BY MR. STEPHENS: Q I've handed you a document marked as Lescher Declaration Exhibit 4, which was produced in response to the Plaintiffs' First Request for Production. And it is Bates stamped NSW00007803. Do you have that document? A I do. Q Okay. Do you know what this document is? A It looks like an Outlook calendar invite Q Okay. A or calendar entry is the format. Q Okay. And is this the subject of this document, it appears to me to say, "MTG with/OJAG." Do you see that?</pre>
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>time. Yeah, there was nothing that I would have pulled that I used. It's not inconceivable that I just don't recall, that if she gave me some references as well as the draft itself.</li> <li>Q Okay. Do you recall having any any meetings with anyone about the substance of your declaration prior to executing the declaration?</li> <li>A I don't recall those.</li> <li>Q Okay. How do you you typically keep your schedule?</li> <li>Do you use an Outlook calendar or A Yes.</li> <li>Q And and did you produce to counsel any calendar records that you recall pertaining to the declaration about meetings or phone calls?</li> <li>A Well, she has access to them. My recollection is and typically in these type of</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<pre>(Lescher Deposition Exhibit Number 4 marked for identification.) BY MR. STEPHENS: Q I've handed you a document marked as Lescher Declaration Exhibit 4, which was produced in response to the Plaintiffs' First Request for Production. And it is Bates stamped NSW00007803. Do you have that document? A I do. Q Okay. Do you know what this document is? A It looks like an Outlook calendar invite Q Okay. A or calendar entry is the format. Q Okay. And is this the subject of this document, it appears to me to say, "MTG with/OJAG." Do you see that?</pre>
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22 (Pages 82 - 85)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 36 of 325 PAGEID #: 4701

	Page 86		Page 88
1	Q And the location is 4E642?	1	A I must note this is kind of quirky in
2	A Yes.	2	that it was sent apparently six months after the
3	Q Do you know what that is?	3	meeting. I don't know what to make of that.
4	A That's my office.	4	Q Right. I didn't either, that's why I
5	Q Okay. And that's at the Pentagon.	5	wanted to raise the question
6	Is that right?	6	A Yeah.
7	A Correct.	7	Q because if and you didn't
8	Q Okay. Do you know you don't know	8	recall the meeting on the 12th, so it seemed odd to
9	if this meeting ever happened. Is that right?	9	me as well.
10	A I don't yeah, I don't recall.	10	A Yeah.
11	Q Okay.	11	(Lescher Deposition Exhibit Number 6
12	(Lescher Deposition Exhibit Number 5	12	marked for identification.)
13	marked for identification.)	13	BY MR. STEPHENS:
14	BY MR. STEPHENS:	14	Q Admiral Lescher, I've handed you a
15	Q I have handed you a document marked	15	document that's been marked as Lescher Deposition
16	as Lescher Deposition Exhibit 5, Bates stamped	16	Exhibit 6, Bates stamped NSW00007805.
17	NSW00007804. Do you have that document?	17	Do you have that document?
18	A I do.	18	A I do.
19	Q And in this document and if you	19	Q And do you recognize or recall this
20	could look at Deposition Exhibit 4, this is	20	document?
21	you're looking at 5 now, with with the prior	21	A I recognize this type of document. I
22	Exhibit 4. Do you recall this document or seeing	22	don't recall this specific one.
	Page 87		Page 89
1	this document before?	1	Q Okay. On the fourth line of the
2	A I don't.	2	there are a number of e-mail addresses listed in
3	Q And in the second part at the top of	3	the "To" field on the first page. On the fourth
4	the page, "Sent 6/16/2022." Do you see that in	4	line, it it has your last name, comma, first
5	Exhibit 5?	5	name, and then your your title.
6	A I do.	6	Do you see that?
7	Q Okay. Do you know what that means or	7	A Yes.
8	what the significance of when this invite was sent?	8	Q Okay. And so does that indicate to
9	A Yeah, I I haven't seen this format	9	you that this is an e-mail that you received?
	hafana hartit anna ann ta indianta that an	10	
10	before, but it appears to indicate that on	10	A Yeah, that would indicate that that
10 11	June 16th of '22 that a meeting with OJAG was	11	
		-	
11	June 16th of '22 that a meeting with OJAG was	11	was an e-mail that would have come to my in-box
11 12	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled.	11 12	was an e-mail that would have come to my in-box Q Right.
11 12 13	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled. Q And when was it scheduled for?	11 12 13	was an e-mail that would have come to my in-box Q Right. And who is Bruce Gillingham, the
11 12 13 14	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled. Q And when was it scheduled for? A It shows here as 1600 on January 12th	11 12 13 14	was an e-mail that would have come to my in-box Q Right. And who is Bruce Gillingham, the sender of this e-mail?
11 12 13 14 15	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled. Q And when was it scheduled for? A It shows here as 1600 on January 12th of 2022.	11 12 13 14 15	<ul> <li>was an e-mail that would have come to my in-box</li> <li>Q Right.</li> <li>And who is Bruce Gillingham, the</li> <li>sender of this e-mail?</li> <li>A He's the surgeon general of the Navy.</li> </ul>
11 12 13 14 15 16	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled. Q And when was it scheduled for? A It shows here as 1600 on January 12th of 2022. Q Do you recall sending this calendar	11 12 13 14 15 16	<ul> <li>was an e-mail that would have come to my in-box</li> <li>Q Right.</li> <li>And who is Bruce Gillingham, the</li> <li>sender of this e-mail?</li> <li>A He's the surgeon general of the Navy.</li> <li>Q Okay. In your testimony before the</li> </ul>
11 12 13 14 15 16 17	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled. Q And when was it scheduled for? A It shows here as 1600 on January 12th of 2022. Q Do you recall sending this calendar invite?	11 12 13 14 15 16 17	<ul> <li>was an e-mail that would have come to my in-box</li> <li>Q Right.</li> <li>And who is Bruce Gillingham, the</li> <li>sender of this e-mail?</li> <li>A He's the surgeon general of the Navy.</li> <li>Q Okay. In your testimony before the</li> <li>break this morning, you had mentioned that you</li> <li>periodically will receive certain reports with</li> </ul>
11 12 13 14 15 16 17 18	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled. Q And when was it scheduled for? A It shows here as 1600 on January 12th of 2022. Q Do you recall sending this calendar invite? A No. I did I would I don't send	11 12 13 14 15 16 17 18	<ul> <li>was an e-mail that would have come to my in-box</li> <li>Q Right.</li> <li>And who is Bruce Gillingham, the</li> <li>sender of this e-mail?</li> <li>A He's the surgeon general of the Navy.</li> <li>Q Okay. In your testimony before the</li> <li>break this morning, you had mentioned that you</li> <li>periodically will receive certain reports with</li> </ul>
11 12 13 14 15 16 17 18 19	June 16th of '22 that a meeting with OJAG was scheduled or tentatively scheduled. Q And when was it scheduled for? A It shows here as 1600 on January 12th of 2022. Q Do you recall sending this calendar invite? A No. I did I would I don't send calendar invites. My office, my scheduler, you	11 12 13 14 15 16 17 18 19	<ul> <li>was an e-mail that would have come to my in-box</li> <li>Q Right.</li> <li>And who is Bruce Gillingham, the</li> <li>sender of this e-mail?</li> <li>A He's the surgeon general of the Navy.</li> <li>Q Okay. In your testimony before the</li> <li>break this morning, you had mentioned that you</li> <li>periodically will receive certain reports with</li> <li>medical-related information pertinent to the Navy</li> </ul>

23 (Pages 86 - 89)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 37 of 325 PAGEID #: 4702

	Page 90		Page 92
1	you're referring to?	1	Operations and Plans. That's Admiral Merz, who's
2	A It's not. The e-mail I was referring	2	the Navy of NAV staff COVID lead.
3	to in that case is the weekly battle watch update	3	Q And does it contain information
4	that, as I recall, come from the N3, N5, the	4	that's classified or confidential?
5	operations and plans deputy chief of naval	5	A It does.
6	operations. And that is really provides all the	6	Q Okay.
7	leaders a snapshot of trends in terms of active	7	A That's that's an e-mail that's
8	cases, resolved cases, hospitalizations, to include	8	resident on the secret network.
9	prevalence on ships, the figure I cited for you.	9	Q Okay. Does does an e-mail is
10	Q You called that document, "The Weekly	10	it called SIPR?
11	Battle Force Update." Is that right?	11	A SIPR.
12	A The document I believe is titled just	12	Q Are all communications that are sent
13	"Weekly COVID Update."	13	on SIPR classified?
14	Q And and that's something that you	14	A No.
15	considered and relied on as data or evidence to	15	Q Okay. And who receives the
16	support some of the assertions in your declaration?	16	A Just to amplify that, I mean the vast
17	A That's so again, those come out	17	majority are. It's unusual for unclassified
18	weekly. Episodically, I am able to review them,	18	traffic to be on the SIPR.
19	but over that accumulative awareness over time	19	Q Okay. And the "Weekly COVID Update,"
20	influenced my experience, my my declaration.	20	do you know who receives that
21	Q Okay. And you said they're weekly.	21	A It's a
22	Do they come out consistently every week and you	22	Q besides yourself?
	Page 91		Page 93
1	review those every week?	1	A It's a pretty large shop group.
2	A They come out every week. I do not	2	It's you know, conceptually it wouldn't be
3	review them every week.	3	it's not this address group, but it's probably
4	Q Right.	4	about that size.
5	The e-mail that I handed you that's	5	Q And and the e-mail is sent to you
6	been marked as Deposition Exhibit 6, is this	6	from do you know who sends it to you?
7	something that it has a number of attachments it	7	Is it Admiral Merz?
8	looks like on the on the first page of the	8	A I believe it's the BattleWatch
9	e-mail. Do you review what's sent to you in the	9	Center.
10	body of these types of e-mails and attached or do	10	Q Okay.
11	you focus primarily on the weekly COVID report or	11	A The Navy has a BattleWatch. So it's
12	the battle force update?	12	either so, again, it's residence in the
13	A The latter.	13	headquarter staff. Likely N3, N5, of which the
14	Q Okay. Do you know who compiles or	14	Battlewatch Center worked for.
15	prepares or drafts the do you call it the	15	Q Okay.
16	"Weekly Battle Force Update"?	16	(Lescher Deposition Exhibit Number 7
17	A The "Weekly COVID Update."	17	marked for identification.)
18	Q The "Weekly COVID Update."	18	BY MR. STEPHENS:
	The "Weekly COVID Update," do you	19	Q Admiral Lescher, I've handed you a
19	5 1 5	1	
19 20	know who prepares or drafts that?	20	document that's been marked as Lescher Deposition
		20 21	document that's been marked as Lescher Deposition Exhibit 7, and it's Bates Stamped NSW00007813

24 (Pages 90 - 93)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 38 of 325 PAGEID #: 4703

1	Page 94		Page 96
1	Do you have that document in front of	1	When executed, the surgeon general is not
2	you?	2	necessarily always there. Although, typically he
3	A I do.	3	or his rep would be. So that's that cadence.
4	Q And is this a document that you are	4	Q Okay. Do you recall an OPNAV meeting
5	familiar with?	5	occurring on or around January 14th, 2022?
6	A I believe this is a document that was	6	A I don't have a specific recollection
7	part of the I've seen a document like this that	7	of that.
8	was part of my preparation binder, one of multiple	8	Q Okay. Do you recall an OPNAV meeting
9	tabs for the declaration.	9	in which on or around January 14th, 2022, in
10	Q For the deposition or for the	10	which the surgeon general advised at the meeting
11	declaration?	11	that vaccine effectiveness was 64 percent?
12	A Oh, I'm sorry, for the deposition.	12	A No, I don't recall a specific figure.
13	Q Okay. So so this was something	13	I do recall the surgeon general speaking at those
14	that you reviewed in preparation for the	14	meetings about the and I don't recall if this is
15	deposition, but not something that you recall	15	specifically in the context of Omicron or if this
16	seeing or relying on well, seeing before you	16	predates it, but conveying information about what
17	executed your declaration?	17	we're seeing in terms of effectiveness against
18	A That's correct. I misspoke. So	18	evolving variants as part of those conversations.
19	basically I saw this in the past few days.	19	Q And was the nature of what the
20	Q Okay. And it's not something that	20	surgeon general was discussing or advising on the
21	you relied on for purposes of the statements and	21	new variants that the vaccine was more or less
22	the opinions offered in your declaration?	22	effective at preventing incidents of of COVID-19
	Page 95		Page 97
1	A That's correct.	1	vaccination?
2	Q Okay. Are you familiar generally	2	A I recall the general entered that
3	with, you know, what this type of document is? The	3	
4			conversation being
	Naval Medical it's titled the "Naval Medical	4	conversation being MR. CARMICHAEL: Objection. Vague.
5	Naval Medical it's titled the "Naval Medical Intelligence Report."		-
5		4	MR. CARMICHAEL: Objection. Vague.
	Intelligence Report."	45	MR. CARMICHAEL: Objection. Vague. I just think you might have
6	Intelligence Report." A I'm not. So I have not been a	4 5 6	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said
6 7	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this	4 5 6 7	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something
6 7 8	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my	4 5 6 7 8	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so
6 7 8 9	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my attention is we have either weekly or biweekly, we	4 5 6 7 8 9	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so MR. STEPHENS: That's what I get for
6 7 8 9 10	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my attention is we have either weekly or biweekly, we call them OPNAV syncs, or synchronization events.	4 5 6 7 8 9 10	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so MR. STEPHENS: That's what I get for reading ahead.
6 7 8 9 10 11	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my attention is we have either weekly or biweekly, we call them OPNAV syncs, or synchronization events. We go around the people in that	4 5 7 8 9 10 11	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so MR. STEPHENS: That's what I get for reading ahead. BY MR. STEPHENS:
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6 7 8 9 10 11 12 13 14	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my attention is we have either weekly or biweekly, we call them OPNAV syncs, or synchronization events. We go around the people in that meeting. And the surgeon general or his rep is one of them, and typically in a fairly succinct fashion, he or his rep would, when newsworthy,	4 5 6 7 8 9 10 11 12 13 14	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so MR. STEPHENS: That's what I get for reading ahead. BY MR. STEPHENS: Q Do you recall the nature of the surgeon general's discussion, whether it involved information concerning vaccines becoming more or
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6 7 8 9 10 11 12 13 14 15 16	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my attention is we have either weekly or biweekly, we call them OPNAV syncs, or synchronization events. We go around the people in that meeting. And the surgeon general or his rep is one of them, and typically in a fairly succinct fashion, he or his rep would, when newsworthy, update, I think, the type of trends that appears are being talked about in this document.	4 5 6 7 8 9 10 11 12 13 14 15 16	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so MR. STEPHENS: That's what I get for reading ahead. BY MR. STEPHENS: Q Do you recall the nature of the surgeon general's discussion, whether it involved information concerning vaccines becoming more or less effective as a result of the newer strains of COVID-19?
6 7 8 9 10 11 12 13 14 15 16 17	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my attention is we have either weekly or biweekly, we call them OPNAV syncs, or synchronization events. We go around the people in that meeting. And the surgeon general or his rep is one of them, and typically in a fairly succinct fashion, he or his rep would, when newsworthy, update, I think, the type of trends that appears are being talked about in this document. Q How often are the OPNAV meetings	4 5 6 7 8 9 10 11 12 13 14 15 16 17	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so MR. STEPHENS: That's what I get for reading ahead. BY MR. STEPHENS: Q Do you recall the nature of the surgeon general's discussion, whether it involved information concerning vaccines becoming more or less effective as a result of the newer strains of COVID-19? A So, as I recall, the the thread of
6 7 8 9 10 11 12 13 14 15 16 17 18	Intelligence Report." A I'm not. So I have not been a consumer of this type of document. The way this type of longer-term medical trends would come to my attention is we have either weekly or biweekly, we call them OPNAV syncs, or synchronization events. We go around the people in that meeting. And the surgeon general or his rep is one of them, and typically in a fairly succinct fashion, he or his rep would, when newsworthy, update, I think, the type of trends that appears are being talked about in this document. Q How often are the OPNAV meetings where the surgeon general would provide an update of the issues that are reflected in this type of document?	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	MR. CARMICHAEL: Objection. Vague. I just think you might have misspoke on your question because you said vaccination preventing vaccination or something like that. And so MR. STEPHENS: That's what I get for reading ahead. BY MR. STEPHENS: Q Do you recall the nature of the surgeon general's discussion, whether it involved information concerning vaccines becoming more or less effective as a result of the newer strains of COVID-19? A So, as I recall, the the thread of those type of conversations were had two
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25 (Pages 94 - 97)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 39 of 325 PAGEID #: 4704

	Page 98		Page 100
1	vaccinated and unvaccinated people in terms of the	1	and safety of our Force, in particular our ability
2	case rate and the severity of the cases.	2	to halt the spread of COVID-19 through a mandatory
3	So with so basically with both	3	vaccination requirement."
4	populations increasing, increasing differentially	4	At what level of effectiveness would
5	in terms of prevalence and consequence is my best	5	you determine that the vaccine is not halting the
6	recollection of how those conversations transpired.	6	spread of COVID
7	Q On page on the first page of	7	MR. CARMICHAEL: Objection. Calls
8	Deposition Exhibit 7, in the paragraph the first	8	for
9	paragraph under executive well, first, the date	9	BY MR. STEPHENS:
10	is January 14th, 2022, that was before your the	10	Q within the Navy?
11	date you executed your declaration. Is that right?	11	MR. CARMICHAEL: Objection. Calls
12	A Correct.	12	for speculation.
13	Q In that first paragraph, the second	13	You can answer the question.
14	to the last sentence says, "Vaccines have an	14	THE WITNESS: So you'd like me to
15	overall effectiveness of 64 percent."	15	provide an estimate of what level of COVID
16	Do you see that?	16	effectiveness would halt the spread?
17	A Yes.	17	I mean, my short answer is, I'm not
18	Q And that's not something you recall	18	a medical expert
19	being informed of at that time?	19	BY MR. STEPHENS:
20	A I was not.	20	Q Right.
21	Q Okay. If you had been informed of	21	A and would very much have that type
22	that prior to executing your declaration, would you	22	of conversation with the surgeon general and and
	Page 99		Page 101
1	have changed any of the statements in your	1	our medical experts.
2	declaration pertaining to the vaccine mandate and	2	Q And you testified that the vaccine
3	its effectiveness at preventing COVID-19, the	3	mandate or the vaccination is the most effective
4	spread of COVID-19, within the Navy population?	4	tool.
5	A No. Based on the medical updates	5	A Yes.
6	that we talked about, our experience shows it's	6	Q Is that right?
7	still clearly the most effective available	7	A Yes.
8	medication. And while the overall effectiveness	8	Q Is that do you is that is
9	data shows here and I don't know how that number	9	that another way of saying it's the least
10	has changed over time from January of 2022 the	10	restrictive means?
11	relative effectiveness in terms of prevalence, and	11	Have you heard the term "least
12	in particular of controlling the severity of the	12	restrictive means"?
13	cases, is makes it compelling and makes it the	13	A I have.
14	most effective tool we have.	14	So I think it's an element of least
15	Q Turning back to Deposition Exhibit 1,	15	restrictive. Because it's so effective, it's for
16	on page 2, which is that's a copy of your	16	sure an element, in my view, of the least
17	declaration. On page 2, in paragraph 2, halfway	17	restrictive.
	well, a third of the way down in that paragraph,	18	Q Okay. If the effectiveness of the
18			-
18 19	there's a sentence that said and we talked about	19	vaccine at preventing COVID-19 infections were
	there's a sentence that said and we talked about this earlier "The injunction directly impacts	19 20	vaccine at preventing COVID-19 infections were 16 percent, would you still believe that it is
19			16 percent, would you still believe that it is the vaccine is effective at stopping the spread of

26 (Pages 98 - 101)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 40 of 325 PAGEID #: 4705

	Page 102		Page 104
1	MR. CARMICHAEL: Objection. Calls	1	It does not have a Bates number. It was not
2	for speculation. Improper hypothetical with	2	produced in discovery.
3	unstated assumptions.	3	Do you have that document?
4	You can answer the question.	4	A I have Exhibit 8.
5	THE WITNESS: I believe the COVID	5	Q Okay. And the title of that document
6	vaccine that decreased the prevalence of COVID at	6	on the first page is, "Statement of Admiral William
7	that type of rate, but still provided substantial	7	K. Lescher, Vice Chief of Naval Operations Before
8	Force health benefits, in terms of mitigating the	8	the House Armed Services Committee, Subcommittee o
9	severity, yes, would would still be an	9	Readiness on Learning from and Preventing Future
10	effective the most effective tool.	10	Training Mishaps, March 23rd, 2021."
11	What we see on the ships, so the 22	11	Do you see that?
12	ships today, they're able to manage these cases	12	A I do.
13	that do emerge because the because of the	13	Q Okay. I'd like you to look at the
14	they're not having to hospitalize people, they're	14	first page well, is this a statement that you
15	not having to evacuate people.	15	gave to Congress to the House Armed Services
16	BY MR. STEPHENS:	16	Committee?
17	Q Is it also fair to say that on those	17	A It appears to be the written
18	ships vaccination is not preventing COVID-19	18	statement for this March 23rd hearing.
19	infections?	19	Q Okay. So you you submitted this
20	A Yes, that's fair to say.	20	statement in writing to the committee?
21	Q Okay.	21	A Yes.
22	A It's it's not preventing all	22	Q Okay. And
	Page 103		Page 105
1	infections, which really highlights the risk of	1	MR. CARMICHAEL: I I do want to do
2	introducing unvaccinated people into that crew.	2	an objection. Maybe this will get it cleared up.
3	Q I'm sorry. Say that again.	3	There's no page numbers or any indication that this
4	A I said it just highlights the risk	4	is the entire document, but maybe it'll get cleared
5	that the commander is evaluating when unvaccinated	5	up.
6	individuals come into a crew, where the even the	6	BY MR. STEPHENS:
7	vaccinated crew is still susceptible to infection.	7	Q Admiral Lescher, on page well, on
8	Q Do you know of any instances on ships	8	the first page following the title page let
9	in which there have been COVID-19 infections among	9	me let me start over.
10	only vaccinated members Service members on that	10	The first page, it says March 23rd,
11	ship, but but not among the unvaccinated members	11	2021. Do you see that, the very the cover
12	of that ship?	12	page
13	A I'm not familiar with a case like	13	A Yes.
14	that. The MILWAUKEE is an example we talked about	14	Q of the document?
15	where the crew was 100 percent vaccinated and had a	15	And as of in March as of
16	mission impact with an outbreak.	16	March 23rd, 2021, the Navy had been dealing with
17	Q Okay.	17	COVID-19 for over a year. Is that or
18	(Lescher Deposition Exhibit Number 8	18	approximately a year?
19	marked for identification.)	19	A About a year.
20	BY MR. STEPHENS:	20	Q About a year.
21	Q Admiral Lescher, I've handed you a	21	Okay. So at the time of this of
22	document that's marked as Lescher Exhibit Number 8.	22	giving this statement to Congress or to the House

27 (Pages 102 - 105)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 41 of 325 PAGEID #: 4706

	Page 106		Page 108
1	Armed Services Committee, you had you and others	1	A Right. It's exactly the context we
2	in the Navy had experienced a year of how to	2	touched on briefly before. The Navy was mission
3	accomplish the missions, deal with COVID-19.	3	focused and executed the mission, and you can tell
4	Fair to say?	4	even from the statements in here in ways that were
5	A Yes.	5	very hard on our people.
6	Q Okay. On on the following page,	6	Q Okay. The Navy was able to
7	in the second paragraph it says, "Our nation	7	accomplish its missions successfully, as you told
8	requires a Navy that is ready to deploy globally in	8	Congress, despite COVID despite COVID-19 and
9	defense of U.S. interests. 2020 provided a strong	9	before a COVID-19 vaccine mandate or vaccine
10	example of how the U.S. Navy is executing that	10	even existed. Is that right?
11	imperative.	11	A The Navy executed these missions at
12	"While large portions of world	12	this pace in 2020.
13	activity were curtailed with the pandemic, the	13	Q Okay. Did you
14	Navy's operational tempo continued at a high pace,	14	A So highlighted here, you know what
15	highlighted by eight major Carrier Strike Group and	15	missions were impacted, what missions didn't get
16	Expeditionary Strike Group deployments.	16	executed.
17	"In 2020, Naval Aviation flew over	17	Q Did you inform Congress or the House
18	700,000 flight hours and Navy Afloat forces amassed	18	Armed Services Committee, or any other committee of
19	over 23,000 total steaming days. In a number of	19	Congress, at any time of the Navy's missions that
20	instances, U.S. Naval Forces deployments were	20	you said were negatively impacted by COVID-19?
21	extended to support high priority Secretary of	21	A I don't recall in the context either
22	Defense tasking.	22	of this hearing or in the interactions with the
	Page 107		Page 109
1	"One such unit, the USS NIMITZ (CVN	1	professional staff if we talked about it.
2	68) Carrier Strike Group returned last month from	2	Clearly at the time frame that's
3	the longest aircraft carrier deployment in modern	3	stated here, they would have been well aware of the
4	history."	4	very high profile events on THEODORE ROOSEVELT,
5	Is that did I read that correctly?	5	and and, of course, there were interactions with
6	A You did.	6	the Congress and the oversight committees about
7	Q And that was part of your statement	7	that.
8	that you gave to the subcommittee House Armed	8	And in terms of the broader issues, I
9	Services Committee on March 21st, 2021?	9	do know I recall talking about the impact on our
10	A Yes.	10	people. This is something that congressional
11	Q And that was a true statement at	11	committees rightfully strongly focus on in terms of
12	time, correct?	12	the deployment lengths, again, that are talked
13	A Yes.	13	about in this the uncertainty they're dealing
14	Q Okay. In that statement, you made no	14	with in terms of the phrase here, "A number of
15	mention of COVID-19. Is that correct?	15	instances of extended deployments due to the
16	A There's no mention of COVID-19 in	16	dynamic nature of Secretary of Defense tasking."
17	here right now, yes.	17	So I mean it clearly was in the
18	Q Okay. So is it fair to say that your	18	context of the conversations with the committees.
19	characterization of 2020 and the Navy's performance	19	Q You mentioned the ROOSEVELT, and I
20	during 2020, at least, suggests that the Navy was	20	had asked you earlier about another example of a
21	able to accomplish its missions despite the impact	21	a ship with a COVID outbreak.
22	of COVID-19?	22	Do you do you recall a Navy ship

28 (Pages 106 - 109)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 42 of 325 PAGEID #: 4707

	Page 110		Page 112
1	in July 2021 that where the Service members	1	other deployments of ships that successfully
2	deployed on that ship, 98 percent were vaccinated	2	mitigated or any instances where a ship was
3	and only the vaccinated Service members were	3	carried out its mission with zero cases of
4	allowed onshore, and there was a COVID outbreak.	4	COVID-19?
5	The Navy determined however that patient zero was a	5	A So there's a couple of ways to think
6	fully-vaccinated Service member and that of the 22	6	through that question. Do you mean am I aware of
7	infected Service members, all were fully	7	any cases of where a ship's mission was a full
8	vaccinated?	8	deployment that executed with zero cases of COVID?
9	MR. CARMICHAEL: Objection. Facts	9	It's that's not a figure I I track.
10	not in evidence and yeah, facts not in evidence.	10	Q Okay.
11	But you can answer the question.	11	A And so typically the way we monitor
12	THE WITNESS: I don't recall those	12	this is across the Force, which ships have active
13	details.	13	COVID cases and and how that how those are
14	BY MR. STEPHENS:	14	trending. So yeah, I don't have a I'm not aware
15	Q Okay. Did you review any information	15	of what you just asked.
16	or reports from the U.S. Department of Health and	16	(Lescher Deposition Exhibit Number 9
17	Human Services or CDC?	17	marked for identification.)
18	A No.	18	BY MR. STEPHENS:
19	Q Okay. Are you aware of the Navy	19	Q I've handled you a document that's
20	providing any information regarding COVID-19	20	been marked as Lescher Deposition Exhibit 9. It
21	infections within the Navy to CDC or the Department	21	does not have a Bates number. It's not something
22	of Health and Human Services?	22	that was produced in discovery.
	Page 111		Page 113
1	A I'm not aware of of that process.	1	At at the bottom of the page, do
2	Q Okay. Would you consider the Health	2	you see where it says U.S. Department of Health and
3	and Human Services and CDC a reliable source of	3	Human Services
4	information pertaining to COVID-19 infection?	4	A Uh-huh.
5	A I have no reason to question it. The	5	Q Center for Disease Control and
6	source I use is our medical experts and the surgeon	6	Prevention?
7	general and the Department of Defense.	7	A Uh-huh.
8	Q Okay. And that's the that's what	8	Q Okay. And the title of this is of
9	you mentioned before, it's the Battlewatch Group,	9	this document at the top it says, "Morbidity"
10	Weekly COVID Update, and then your meetings with	10	at the very top, "Morbidity and Mortality Weekly
11	the surgeon general	11	Report."
12	A Right.	12	Do you see that?
13	Q primarily?	13	A Uh-huh.
14	A Primarily.	14	Q And below that the title of the of
15	Q And and are there any other	15	the journal article is, "Outbreak of COVID-19 Among
16	sources that you would consider?	16 17	a Highly Vaccinated Population Aboard a U.S. Navy
17	Not with respect to your declaration,	17	Ship After a Port Visit, Iceland, July 2021." A Uh-huh.
18 19	just generally for your knowledge of the COVID-19		
20	situation within the Navy. A Those are the two primary sources.	19 20	Q And is this something that you've seen before?
20		20	A No.
21			
21 22	Q Okay. Are you familiar with you mentioned the ROOSEVELT. Are you familiar with any		Q Okay. Are you familiar with this

29 (Pages 110 - 113)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 43 of 325 PAGEID #: 4708

	Page 114		Page 116
1	ship's deployment and the COVID outbreak involving	1	A Yeah. So again, the report says the
2	this ship?	2	outbreak in this environment suggests that high
3	A So I'm going to take	3	vaccination rates, in combination with the other
4	Q Sure, you can take time to	4	prevention measures, can substantially reduce the
5	A a few moments to read it.	5	spread despite the high transmissibility.
6	Q Yeah, that's fine.	6	Q Does this article change your opinion
7	A Yeah.	7	that unvaccinated Service members or crew members
8	Okay.	8	on this sailors on this deployment were
9	Q Okay. So you've had a chance to	9	detrimental or could be detrimental to the mission?
10	review the document	10	A It does not.
11	A Yes.	11	Q Okay. Why?
12	Q marked as Deposition Exhibit 9?	12	A Well, I'll highlight the sentence
13	Would would this example and the	13	that says, "Among the 22 infected personnel, all
14	deployment of the ship and the facts discussed in	14	were fully vaccinated. No patients required
15	this Health and Human Services CDC article change	15	hospitalization or supplemental oxygen and no
16	your opinion that the COVID-19 vaccine is effective	16	deaths occurred."
17	to prevent the spread of COVID on ships deployed	17	So I don't know if the in the tiny
18	Navy ships that have been deployed?	18	fraction of the crew that was unvaccinated,
19	A No, it would not.	19	2 percent, serendipitously didn't happen to have
20	Q Okay. And that's despite the fact	20	close contact. But our experience shows if they
21	that it had a 98 percent vaccination rate,	21	had, that we could not with the some confidence
22	according to this article?	22	make the assumption that they would not have
	Page 115		Page 117
1	A Well, I would highlight the article	1	required hospitalization, supplementation oxygen or
2	says, "Vaccination, in combination with other	2	death.
3	prevention strategies, resulted in a much lower	3	Q Were were the unvaccinated Service
4	attack rate of COVID."	4	members who were on this ship at the time of the
5	Q Okay. And all of the infections, at	5	COVID-19 infections detrimental to this mission,
6	least according to this article, on that ship were	6	the mission of this ship?
7	among vaccinated individuals. Is that right?	7	MR. CARMICHAEL: Objection.
8	A Yes.	8	Speculation. Lack of foundation.
9	Q Okay. And there were other measures	9	THE WITNESS: The unvaccinated
10	taken on that ship to prevent further spread. Is	10	members on this ship decreased the medical
11	that right?	11	readiness of the ship. They presented a risk if
12	A Correct.	12	they had been a close contact and in this case had
13	Q And there was no spread among	13	become infected with the Delta variant.
14	spread of COVID-19 or no reported COVID-19	14	The data is clear, they would have
15	infections among any unvaccinated sailors deployed	15	been at a higher risk of more severe symptoms and
16	on that ship, right?	16	at a higher risk of hospitalization. They're
17	A I don't recall if it says in here	17	also at a higher risk of death based on the Navy
18	whether any of the unvaccinated were close	18	experience.
19	contacts.	19	MR. STEPHENS: Okay. Objection.
20	Q Okay. So perhaps then on this	20	Nonresponsive.
21	deployment they were able to maintain social	21	BY MR. STEPHENS:
	distancing among Service members on that ship?	22	Q My question is: Did that happen?

30 (Pages 114 - 117)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 44 of 325 PAGEID #: 4709

	Page 118		Page 120
1	Not what could have happened, but	1	A I have not.
2	what actually happened on this ship.	2	Q Okay. If you'd like to take the time
3	MR. CARMICHAEL: Objection.	3	to read it, I do have a couple of questions about
4	BY MR. STEPHENS:	4	this, about the facts discussed in this article as
5	Q Were the unvaccinated Service members	5	well.
6	detrimental to this ship accomplishing its mission?	6	A Yeah, please.
7	MR. CARMICHAEL: Objection. Lack of	7	Okay.
8	foundation. He just said he doesn't recall this	8	Q Okay. Admiral Lescher, you've had a
9	this incident, so his knowledge is coming from this	9	chance to review the document that's marked as
10	article.	10	Lescher Deposition Exhibit 10. Is that right?
11	But you can answer the question.	11	A I have.
12	THE WITNESS: The unvaccinated the	12	Q And it is from a journal, Military
13	small 2 percent of this crew that was unvaccinated	13	Medicine, or at least that's what it indicates at
14	presented a higher risk of becoming severely	14	the top of the page, the first page, 178.
15	symptomatic. And if you're saying in this specific	15	Do you see that?
16	vignette in Reykjavik, Iceland in in July 2021,	16	A I do.
17	looking in the review view mirror, did that happen?	17	Q And it's the title of this is
18	The answer is no.	18	"U.S. Navy Aircraft Carrier Prevents Outbreak at
19	(Lescher Deposition Exhibit Number 10	19	Sea in Midst of COVID-19." Do you see that?
20	marked for identification.)	20	A I do.
21	BY MR. STEPHENS:	21	Q And the author is CDR Veronica E.
22	Q Okay. Admiral Lescher, I have handed	22	Bigornia. Do you see that?
	Page 119		Page 121
1	you a document marked as Deposition Exhibit 10.	1	A I do.
2	And it's from a journal, Military Medicine. Are	2	Q What is what does CDR stand for?
3	you familiar with that journal?	3	A Commander is her rank.
4	A I'm not.	4	Q Commander.
5	Q Okay. This was not produced in	5	Do you know Commander Bigornia?
6	MR. CARMICHAEL: Just a	6	A I do not.
7	MR. STEPHENS: Go ahead.	7	Q Okay. And according to this article,
8	MR. CARMICHAEL: Yeah, I would jus	t 8	she was the senior medical officer on the USS HARRY
9	make a note for the record that what is produced	9	S. TRUMAN, which was deployed from Norfolk,
10	what was handed appears to be pages 178 through	10	Virginia in November of 2019 with a crew of 5,461
11	180, and not the prior pages or any latter pages.	11	personnel. Is that
12	But you can go ahead and ask your question.	12	A Yes.
13	THE WITNESS: I'm sorry, what was the	13	Q right?
14	question?	14	Okay.
15	BY MR. STEPHENS:	15	A She's referring to the Strike Group,
16	Q The question was whether you were	16	which is TRUMAN, and as shown below, it includes a
17	familiar with the journal, Military Medicine. And	17	destroyer squadron and an embarked carrier wing.
18	I think your answer was no?	18	Q Okay. Multiple ships?
19	A No.	19	A Yes.
1	Q And this is not a document that was	20	Q Okay. And the crew between the
20			
20 21	produced to us in discovery. And I have you	21	multiple ships was 5,461 personnel. Is that right?

31 (Pages 118 - 121)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 45 of 325 PAGEID #: 4710

	Page 122		Page 124
1	Q Okay. And the deployment, at least	1	a strike group that employed mitigation measures,
2	according to her account, it led the striker	2	and as a result of those mitigation measures,
3	left November 2019, left Norfolk, Virgina. Is that	3	reported zero cases of COVID-19 infection?
4	right?	4	A In the context of their the
5	A Correct.	5	situation, Commander Bigornia implemented strong
6	Q And it returned home June of 2020?	6	strong countermeasures. It's noteworthy that she
7	A Yes.	7	refers to them as "heroic efforts" on page 180.
8	Q And at the time it returned home in	8	"Heroic efforts were given to the prevention of an
9	June of 2020, it there had been reported zero	9	outbreak at sea."
10	cases of Coronavirus on any of the ships that were	10	Q Is that sorry, go ahead.
11	part of that strike group?	11	A It's admirable. But it gets to my
12	A Correct.	12	point on the type of measures that were taken in
13	Q All right. And this was you	13	the 2020 time frame were heavy and hard and
14	mentioned the ROOSEVELT as an example of a ship	14	affected strongly the quality of Service that a
15	being deployed and having a being negatively	15	in my experience is not an enduring approach. So
16	impacted by COVID-19. Is that correct?	16	we would not expect, as a matter of routine,
17	A Uh-huh.	17	deployments from here in perpetuity to have heroic
18	Q And the ROOSEVELT was around what	18	measures needed to be taken.
19	time, do you recall?	19	Q And on the for the USS TRUMAN
20	A So she first saw her COVID cases, as	20	Carrier Striker that's discussed here, are you
21	I recall, in the March '20 time frame.	21	are you assuming or suggesting that you have some
22	Q The ROOSEVELT?	22	knowledge of these mitigation measures that were
	Page 123		Page 125
1	A The ROOSEVELT, correct.	1	taken having a negative impact on the sailors who
2	Q Okay. So this was on or around the	2	were part of this deployment?
3	same time. This was a separate strike group that	3	A Yes. Well, I'm saying what I read
4	was deployed at least for a period of the time when	4	here, stopping all port visits from March on, even
5	the ROOSEVELT was	5	things as local as the essential personnel flying
6	A Yeah, no, I mean no, this is a	6	aboard to keep the the ship ready, the the
7	strike group that deployed pre-pandemic.	7	aircrew will basically be given box lunches in
8	Q Right.	8	their aircraft, the pre-embark quarantine, other
9	And it remained deployed, at least	9	elements, they're the right kind of measures for
10	for a period of time in which the ROOSEVELT was	10	sure. But yes, those type of kind of measures
11	also deployed. Is that right?	11	impact quality of Service.
12	A Correct.	12	Q Okay. And what do you mean by
13	Again, the the document clearly	13	"quality of Service"?
14	states that once COVID received pandemic status in	14	A I mean the quality of life onboard
15	that time frame in March, they did no more port	15	ship.
16	visits.	16	Q Okay.
17	Q And	17	A The stress of serving in operational
18	A This is an example of a strike group	18	units forward.
19	that deployed pre-pandemic, and then in the	19	Q Do you think that the quality of life
20	pandemic, cut off all port visits and controlled	20	or stress of serving for a Navy Service member
21	exposure that way.	21	would be negatively affected if that Service member
22	Q Is it also so is it an example of	22	has a very strong religious belief and is denied a

32 (Pages 122 - 125)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 46 of 325 PAGEID #: 4711

	Page 126		Page 128
1	religious accommodation for the COVID-19 vaccine?	1	initiate, oversee an investigation of the chain of
2	A I believe that affects their	2	command's actions that were involved with that
3	spiritual health.	3	outbreak?
4	Q Okay. And would spiritual health	4	A I did not. I was not yet VCNO.
5	also be something that would affect quality of	5	Q Okay. And you so you became VCNO
6	Service on a on a ship or within the Navy more	6	in
7	broadly?	7	A End of May of '20.
8	A That would be a factor, yes.	8	Q Okay. So after that investigation
9	Q Okay.	9	was completed or after it had been initiated?
10	MR. CARMICHAEL: We've been going	10	A After it was completed.
11	about 85 minutes.	11	Q Okay. Are are you familiar with
12	MR. STEPHENS: Okay. Do you want to	12	that investigation?
13	do a break?	13	A I'm generally familiar with it,
14	MR. CARMICHAEL: Yeah. I mean I'm	14	not
15	usually at 90 minutes, but that's	15	Q Okay.
16	MR. STEPHENS: Yeah, that's fine, we	16	A not the details.
17	can do one.	17	Q And what do you know about that
18	MR. CARMICHAEL: Do you want to do	18	the the findings from that investigation?
19	one now?	19	A Can you be more specific?
20	MR. STEPHENS: Yeah, we'll take a	20	Q Sure. Sure.
21	break.	21	You said you were generally familiar
22	VIDEOGRAPHER: We are going off the	22	with the investigation. Do you know are you
	Page 127		Page 129
1	record. The time is 11:04 a.m. This concludes	1	familiar with any of the findings that came out of
2	Media Unit Number 2. Thank you.	2	that investigation or anything more specific than
3	(Recess from 11:04 a.m. to 11:22 a.m.)	3	just that
4	VIDEOGRAPHER: We are back on the	4	A Yes.
5	record. The time is 11:22 a.m. And this is the	5	Q an investigation occurred?
6	beginning of Media Unit Number 3.	6	A So I'm most familiar with the
7	Counsel, you may proceed.	7	
			judgments that the CNO made regarding the Navy's
8	BY MR. STEPHENS:	8	response to it, both at the strike group commander
9	BY MR. STEPHENS: Q Admiral Lescher, you understand that	8 9	response to it, both at the strike group commander and the ship's CO level.
9 10	BY MR. STEPHENS: Q Admiral Lescher, you understand that you're still under oath, correct?	8 9 10	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're
9 10 11	BY MR. STEPHENS: Q Admiral Lescher, you understand that you're still under oath, correct? A I do.	8 9 10 11	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're familiar with decisions that were made as a result
9 10 11 12	BY MR. STEPHENS: Q Admiral Lescher, you understand that you're still under oath, correct? A I do. Q Did you you mentioned the	8 9 10 11 12	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation
9 10 11 12 13	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that</li> <li>you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred</li> </ul>	8 9 10 11 12 13	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation A Right.
9 10 11 12 13 14	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that</li> <li>you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred</li> <li>on the ROOSEVELT deployment several times in your</li> </ul>	8 9 10 11 12 13 14	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation A Right. Q but not the specific findings or
9 10 11 12 13 14 15	BY MR. STEPHENS: Q Admiral Lescher, you understand that you're still under oath, correct? A I do. Q Did you you mentioned the ROOSEVELT and the COVID-19 infections that occurred on the ROOSEVELT deployment several times in your testimony today.	8 9 10 11 12 13 14 15	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation A Right. Q but not the specific findings or underlying analysis or investigation that
9 10 11 12 13 14 15 16	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that</li> <li>you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred</li> <li>on the ROOSEVELT deployment several times in your</li> <li>testimony today.</li> <li>A I'm sorry, the what?</li> </ul>	8 9 10 11 12 13 14 15 16	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation A Right. Q but not the specific findings or underlying analysis or investigation that A Not
<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> </ul>	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that</li> <li>you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred</li> <li>on the ROOSEVELT deployment several times in your</li> <li>testimony today.</li> <li>A I'm sorry, the what?</li> <li>Q The ROOSEVELT.</li> </ul>	8 9 10 11 12 13 14 15 16 17	response to it, both at the strike group commander and the ship's CO level. Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation A Right. Q but not the specific findings or underlying analysis or investigation that A Not Q was conducted?
<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> </ul>	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that</li> <li>you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred</li> <li>on the ROOSEVELT deployment several times in your</li> <li>testimony today.</li> <li>A I'm sorry, the what?</li> <li>Q The ROOSEVELT.</li> <li>A Yeah, the March '20?</li> </ul>	8 9 10 11 12 13 14 15 16 17 18	<ul> <li>response to it, both at the strike group commander and the ship's CO level.</li> <li>Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation</li> <li>A Right.</li> <li>Q but not the specific findings or underlying analysis or investigation that</li> <li>A Not</li> <li>Q was conducted?</li> <li>A Not in detail.</li> </ul>
<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ul>	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred on the ROOSEVELT deployment several times in your testimony today.</li> <li>A I'm sorry, the what?</li> <li>Q The ROOSEVELT.</li> <li>A Yeah, the March '20?</li> <li>Q Correct?</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>response to it, both at the strike group commander and the ship's CO level.</li> <li>Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation</li> <li>A Right.</li> <li>Q but not the specific findings or underlying analysis or investigation that</li> <li>A Not</li> <li>Q was conducted?</li> <li>A Not in detail.</li> <li>Q Okay. Have you read any reports</li> </ul>
<ol> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> </ol>	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that</li> <li>you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred</li> <li>on the ROOSEVELT deployment several times in your</li> <li>testimony today.</li> <li>A I'm sorry, the what?</li> <li>Q The ROOSEVELT.</li> <li>A Yeah, the March '20?</li> <li>Q Correct?</li> <li>A Yeah.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>response to it, both at the strike group commander and the ship's CO level.</li> <li>Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation</li> <li>A Right.</li> <li>Q but not the specific findings or underlying analysis or investigation that</li> <li>A Not</li> <li>Q was conducted?</li> <li>A Not in detail.</li> <li>Q Okay. Have you read any reports discussing that investigation that you recall?</li> </ul>
<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ul>	<ul> <li>BY MR. STEPHENS:</li> <li>Q Admiral Lescher, you understand that you're still under oath, correct?</li> <li>A I do.</li> <li>Q Did you you mentioned the</li> <li>ROOSEVELT and the COVID-19 infections that occurred on the ROOSEVELT deployment several times in your testimony today.</li> <li>A I'm sorry, the what?</li> <li>Q The ROOSEVELT.</li> <li>A Yeah, the March '20?</li> <li>Q Correct?</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>response to it, both at the strike group commander and the ship's CO level.</li> <li>Q Oh, okay. So you're so you're familiar with decisions that were made as a result of that or based on that investigation</li> <li>A Right.</li> <li>Q but not the specific findings or underlying analysis or investigation that</li> <li>A Not</li> <li>Q was conducted?</li> <li>A Not in detail.</li> <li>Q Okay. Have you read any reports</li> </ul>

33 (Pages 126 - 129)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 47 of 325 PAGEID #: 4712

	Page 130		Page 132
1	any reports by RAND Corporation?	1	A I believe you characterized severity
2	A I'm sure I have, but very	2	by number of deaths, number of hospitalizations,
3	infrequently.	3	number of medevacs, number of significant symptoms.
4	Q Okay. Is is RAND Corporation	4	Although, those would degrade the readiness of an
5	does RAND Corporation, is it a contractor with	5	operational unit as those individuals work to
6	with the Navy in certain circumstances?	6	recover.
7	A I believe they're a Federally Funded	7	Q If there were no differential in the
8	Research and Development Agency at the RDC. The	8	number of deaths between unvaccinated and
9	primary the primary Navy FFRDC is Center for	9	vaccinated Service members, would that change your
10	Navy Analysis, so that's who we more commonly work	10	opinion?
11	with. Infrequently, I I can remember seeing	11	A So the next level of severity I would
12	RAND products. I'm sure it's I'm sure the Navy	12	look at is number of hospitalizations. And I think
13	entities contract with them, but not you know,	13	the same principle applies. That significant
14	not frequently.	14	adverse event to any individual to be hospitalized
15	Q Okay. You've mentioned a few times	15	for a disease like this, and even if those even
16	in your testimony that there is a differential	16	if there's incremental advantage to prevent the
17	between vaccinated Service members and unvaccinated	17	hospitalization or death, then I think that's a
18	Service members in terms of the number of cases and	18	compelling use of of the vaccination.
19	the and also the severity of those cases.	19	Q Okay. And if there were no so
20	A Yes.	20	then if there were no differential between
21	Q And is there if there were	21	unvaccinated and vaccinated Service members with
22	were were very small or if there were little	22	respect to hospitalizations as a result of
	Page 131		Page 133
1	differential between unvaccinated and vaccinated,	1	COVID-19, would that change your opinion?
2	would that change your opinions as to requiring the	2	MR. CARMICHAEL: Objection. Calls
3	vaccine or the vaccine mandate?	3	for speculation and hypothetical. It includes
4	MR. CARMICHAEL: Objection. Calls	4	unstated assumptions.
5	for speculation. Hypothetical, has unstated	5	You can you can answer the
6	assumptions.	6	question.
7	You can answer the question.	7	THE WITNESS: The commander's
8	THE WITNESS: If there was a small	8	perspective, I would bring to that. So then I
9	differential rate in prevalence of death, then the	9	would go to the next level of consequence, which
10	answer's no. It's still a high consequence, so the	10	is, what's the degree of the severity of symptoms
11	fact that there's incremental difference is still	11	as they're able to remain in the unit. And so now
12	significant.	12	we're talking we're not talking about the risk
13	BY MR. STEPHENS:	13	of spreading, we're simply talking about the risk
14	Q Okay. And how would you measure	14	of how severe a manifestation an individual has.
15	severity of cases I think you had mentioned	15	And so we this you know,
16	severity or in discussing, you know, that being	16	there's no hard-and-fast numbers there, but this
17	one of the measures of effectiveness of vaccine.	17	would be the judgment of the commander. If
18	A Right.	18	there's an ability to differentially decrease the
19	Q Is severity in your by you by	19	severity of symptoms so that a crewmember who is
20	your estimation, do you consider that in terms of	20	pulled off to isolate was able to do that for a
21	of number of deaths or is there some other measure	21	shorter period or could, with other
		1	

34 (Pages 130 - 133)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 48 of 325 PAGEID #: 4713

	Page 134		Page 136
1	then I think that would be considered.	1	difference in between the vaccinated and the
2	BY MR. STEPHENS:	2	unvaccinated population in terms of protection
3	Q Have you reviewed or are you familiar	3	against severity or protection in terms of
4	with any data or analysis of the differential	4	prevalence, then I believe that would conceptually
5	between vaccinated and unvaccinated Service members	5	change the conversation.
6	and those types of symptoms that require someone	6	BY MR. STEPHENS:
7	to, for example, be removed from that job, the	7	Q And so is there some degree of
8	third category you said you'd look at?	8	differential or some level of differential between
9	A Yeah. I'm familiar with the	9	the two that would that would at which point
10	differential that does sound familiar with the	10	your opinions as to the necessity of the mandate
11	differential hospitalizations. On your question, I	11	would change or is it that any differential between
12	have not seen the data. And that's, again, where I	12	vaccinated and unvaccinated is enough?
13	rely on the medical professionals who have	13	MR. CARMICHAEL: Objection. Calls
14	conveyed. But there are differences in severity of	14	for speculation.
15	symptoms between vaccinated and unvaccinated	15	You can answer the question.
16	people.	16	THE WITNESS: Any differential in
17	Q Okay. And if there were no	17	death, any differential in hospitalization, I
18	differential with respect to the symptoms for	18	believe would be compelling. The consequence of
19	vaccinated and unvaccinated individuals for	19	that differential if those are the same and now
20	COVID-19, then would your opinions change on the	20	we're talking about mission impact due to members
21	vaccine mandate?	21	isolating and not being available, weighing that
22	MR. CARMICHAEL: Objection. Calls	22	again so we're weighing again impact to other
	Page 135		Page 137
1	for speculation. And the assumption contains	1	people's health from having an unvaccinated person,
2	unstated assumptions.	2	impact to the unit, impact to the mission versus
3	You can answer the question,	3	the spiritual health of the individual, then, as
4	Admiral.	4	Delta as Delta death, Delta hospitalization go
5	THE WITNESS: I believe the judgment	5	away and we're now just talking about Delta mission
6	of operational impact at that point so you're	6	impact for symptoms, then you then you have
7	saying there's no between vaccinated and	7	then I think you have to have a conversation on the
8	unvaccinated, assuming hypothetically that there	8	merits of each case. What's the context by which I
9	was no difference in magnitude of illness, then the	9	would be taking and accepting an increased
10	value proposition in the vaccine to the commander	10	likelihood of members being more impacted and
11	becomes, "Is there a differential in spread and the	11	coming off mission?
12	likelihood to get it?" And if obviously one gets	12	And, again, to your point, if that
13	it, they're more likely to spread it to the crew.	13	difference went away, then what's the consequence
14	BY MR. STEPHENS:	14	of a greater spread if that exist, in terms of
15	Q And if there were no differential,	15	people who test positive now having to isolate
16	then your opinion would or would not change as to	16	and come off task in the unit?
17	the necessity of a mandate?	17	BY MR. STEPHENS:
18	MR. CARMICHAEL: Same objection.	18	Q Would would you consider in that
19	Calls for speculation, hypothetical, and contains	19	analysis the impact of a negative impact on
20	unstated assumptions.	20	Force retention from the vaccine mandate?
21	You can answer the question.	21	A I think the the way I would think
22	THE WITNESS: If there were no	22	through that, members that are retained that cannot

35 (Pages 134 - 137)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 49 of 325 PAGEID #: 4714

	Page 138		Page 140
1	serve in operational units is not a strong it's	1	BY MR. STEPHENS:
2	not a strong proposition. That's why these medical	2	Q Admiral Lescher, I've handed you a
3	readiness standards exist, so that the people that	3	document marked as Deposition Exhibit 11. It was
4	we have are able to contribute.	4	produced in discovery by the Defendants by
5	And that's essentially why we are	5	Defense Counsel, and is Bates stamped NSW00007831
6	retaining the Force, for them to we retain we	6	through 7835.
7	retain people in our Force who meet many different	7	Do you have that document in front of
8	types of standards so that they can effectively	8	you?
9	contribute in high-risk, harsh environments that	9	A 7831, yes, I have in front of me.
10	the the Naval Force operates in.	10	Oh, and 32, 33, 34, and 35.
11	Q And so is it is it your position	11	Q Okay. Is this a document that you're
12	that there is no accommodation that could be	12	familiar with or that you've seen before?
13	provided to individuals seeking a religious	13	A It is not.
14	exemption from the COVID-19 vaccine mandate?	14	Q Okay. Do you know what this document
15	A No.	15	is?
16	Q Why not?	16	A If you'd give me a moment and let me
17	A Why not?	17	take a look at it.
18	Q That that is your opinion or that	18	Q Sure.
19	is not your opinion?	19	A Okay.
20	A I think religious accommodations,	20	Q This is not something that you've
21	again with that not being directly under my	21	seen before. Is that right?
22	purview, but we talked about there's a a	22	A That's correct.
	Page 139		Page 141
1	judgment to be made, spiritual health of the	1	Q Okay. It's not something you've then
2	individual versus the health risk to that	2	considered in preparing your declaration?
3	individual's shipmates and the performance of the	3	A Correct.
4	unit. And that's the that's the judgment that	4	Q Is this a document that would be
5	has to be made on a case-by-case basis.	5	useful to you in making a determination an
6	Q Okay. And if you were making that	6	individualized determination of the risk associated
7	judgment, would you expect that there would be zero	7	with allowing an a religious exemption for an
8	religious accommodations or religious exemption	8	individual Service member?
9	requests approved	9	A So before answering that, I just want
10	MR. CARMICHAEL: Objection. Calls	10	to highlight again, that's not my role. I'm
11	for	11	starting to get a little uncomfortable with
12	BY MR. STEPHENS:	12	answering those hypotheticals because were that my
13	Q that were truly an individualized	13	role, I would study that pretty hard. I would
14	assessment?	14	inform myself in a more detailed way than than
15	MR. CARMICHAEL: Objection. Calls	15	this situation here.
16	for speculation.	16	Q Okay. So you would consider, for
17	THE WITNESS: I believe your question	17	example, things like incidents rate incident
18	is hypothetically would I expect all the cases to	18	rate in certain areas where an individual might be
19	resolve the same way? No.	19	deployed. You'd familiarize yourself with this
20	(Lescher Deposition Exhibit Number 11	20	kind of information?
21	marked for identification.)	21	A I think that's fair.
22		22	Q Okay.

36 (Pages 138 - 141)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 50 of 325 PAGEID #: 4715

	Page 142		Page 144
1	(Lescher Deposition Exhibit Number 12	1	these, and seen these, but it seems to me a
2	marked for identification.)	2	judgment that would be made is: What's the impact
3	BY MR. STEPHENS:	3	to the unit? What's the risk? Is the unit fixed
4	Q Admiral Lescher, I've handed you a	4	geographically in a very dynamic COVID environment?
5	document marked as Lescher Deposition Exhibit 12,	5	How you know, how dynamic are these trends? How
6	Bates stamped NSW000007808 through 7812.	6	long, given those elements, would that religious
7	Do you have that document in front of	7	accommodation make sense?
8	you?	8	Those seem, to me, to be part of the
9	A I do.	9	contours, I think heavily caveated, I haven't
10	Q And you've had a chance to review	10	really prepared to do that work so
11	that today?	11	Q Right.
12	A I just looked at it, yes.	12	A I think the other thing that I would
13	Q And you had not seen that or had you	13	like to highlight on that is that type of local
14	seen that before reviewing it at your deposition	14	context becomes increasingly less relevant if the
15	just now?	15	unit or the individual is expected to be worldwide
16	A I have not seen it before.	16	deployable. So that local context obviously is
17	Q Okay. So it was produced in response	17	very ephemeral and subject to change and subject to
18	to our request for documents from the Defendants	18	world events. And so if we're talking about
19	and produced to us by Defendants' counsel.	19	operational units that are maneuver units that
20	Is this this is similar to the	20	deploy, then that local context becomes not very
21	prior document that was marked as Deposition	21	significant in my perspective.
22	Exhibit 11. It and I have similar questions.	22	Q Does the Navy require certain
	Page 143		Page 145
1	Is this a document that you would	1	vaccinations only for Service members who are
2	consider or would want to consider if you were in	2	deployed to different geographic regions of the
3	the position of making individualized assessments	3	world?
4	as to whether a religious accommodation should be	4	A It's my understanding the answer is
5	granted or denied?	5	yes.
6	MR. CARMICHAEL: Objection. Calls	6	Q Okay. And so at least in the context
7	for speculation. I think Admiral Lescher has	7	of some vaccines that the Navy requires, the Navy
8	already made clear that he's not involved in that	8	does take into account the risk associated with
9	particular process and does not do these religious	9	deployment to certain geographic regions. Is that
10	accommodations.	10	right?
11	But you can answer the question,	11	A Yes.
12	Admiral.	12	Q Okay. And so the hypothetically,
13	THE WITNESS: I think the this is	13	the Navy could make the same analysis or analyze
14	going to be the context that would be an element	14	the same risk with respect to COVID-19 vaccine and
15	that would be considered.	15	deployment?
16	BY MR. STEPHENS:	16	MR. CARMICHAEL: Objection. Calls
17	Q And is that because, at least based	17	for same same objection, that it
18	on your review of this document today, it indicates	18	calls for speculation. And Admiral Lescher is not
19	that there are different risks as with the prior	19	involved in the these particular religious
20	document, Exhibit 11, there are different risks	20	exemptions.
1		01	
21	associated with different geographic areas?	21	THE WITNESS: The judgment there, it

37 (Pages 142 - 145)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 51 of 325 PAGEID #: 4716

	Page 146		Page 148
1	certain are we that this member will be deployed	1	of the third sentence of the last paragraph, it
2	to, and confined to, that region versus being	2	says, "As Admiral William Lescher, Vice Chief of
3	worldwide deployable.	3	Naval Operations, explained, quote, Sending ships
4	The examples you cite are typically	4	into combat without maximizing the crew's odds of
5	additive vaccines on top of the worldwide medical		success, such as would be the case with ship
6	readiness standard. So when there's a local	6	deficiencies in ordnance, radar, working weapons or
7	condition with a local endemic, that's typically,	7	the means to reliably accomplish the mission is
8	I believe, where you would see additional	8	dereliction of duty. The same applies to ordering
9	vaccinations that are required to control for	9	unvaccinated personnel into an environment in which
10	that risk, but it doesn't eliminate the	10	they endanger their lives, the lives of others and
11	foundational vaccinations which are required to	11	compromise accomplishment of essential missions."
12	be worldwide deployable since both the Navy and		Do you see that language?
13	Marine Corps are expeditiously Forces and	13	A Yes.
14	Forces and readiness.	14	Q And that language comes from your
15	MR. STEPHENS: All right. Why don't	15	declaration, the declaration that is marked as
16	we take a lunch break. How long do you all want	?16	Exhibit 1. Is that correct?
17	Let's go off the record.	17	A It does.
18	VIDEOGRAPHER: We are going off the	e 18	Q Okay. The second sentence that I
19	record. The time is 11:53 a.m. This also	19	read, that says, "The same applies to ordering
20	concludes Media Unit Number 3. Thank you.	20	unvaccinated personnel into an environment in which
21	(Recess from 11:53 a.m. to 12:33 p.m.)	21	they endanger their lives, the lives of others, and
22	VIDEOGRAPHER: We are back on the	22	compromise accomplishment of essential missions."
	Page 147		Page 149
1	record. This is the beginning of Media Unit Number	1	
	0 0	1	Would the same apply to ordering
2	4. The time is 12:33 p.m.	2	Would the same apply to ordering Service members with increased risk of severe
2 3			
	4. The time is 12:33 p.m.	2	Service members with increased risk of severe
3	4. The time is 12:33 p.m. Counsel, you may proceed.	2 3	Service members with increased risk of severe illness from COVID-19 into an into a deployment?
3 4	<ul><li>4. The time is 12:33 p.m. Counsel, you may proceed.</li><li>BY MR. STEPHENS:</li></ul>	2 3 4	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the
3 4 5	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You</li> </ul>	2 3 4 5	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question.
3 4 5 6	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> </ul>	2 3 4 5 6	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure.
3 4 5 6 7	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> </ul>	2 3 4 5 6 7	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from
3 4 5 6 7 8	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that we will mark as Deposition Exhibit 13.</li> </ul>	2 3 4 5 6 7 8	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting that ordering individuals who are unvaccinated into
3 4 5 6 7 8 9	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that</li> </ul>	2 3 4 5 6 7 8 9	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting
3 4 5 6 7 8 9 10	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that we will mark as Deposition Exhibit 13. (Lescher Deposition Exhibit Number 13)</li> </ul>	2 3 4 5 6 7 8 9 10	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting that ordering individuals who are unvaccinated into an environment, such as on a deployment for example, would be a dereliction of duty because it
3 4 5 6 7 8 9 10 11	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that we will mark as Deposition Exhibit 13. (Lescher Deposition Exhibit Number 13 marked for identification.)</li> <li>BY MR. STEPHENS:</li> </ul>	2 3 4 5 6 7 8 9 10 11	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting that ordering individuals who are unvaccinated into an environment, such as on a deployment for example, would be a dereliction of duty because it presents some additional degree of risk.
3 4 5 6 7 8 9 10 11 12 13	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that we will mark as Deposition Exhibit 13. (Lescher Deposition Exhibit 13. marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I'll represent to you that this a</li> </ul>	2 3 4 5 6 7 8 9 10 11 12	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting that ordering individuals who are unvaccinated into an environment, such as on a deployment for example, would be a dereliction of duty because it
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3 4 5 6 7 8 9 10 11 12 13 14 15	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that we will mark as Deposition Exhibit 13. (Lescher Deposition Exhibit 13. (Lescher Deposition Exhibit Number 13 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I'll represent to you that this a Deposition Exhibit 13 is a copy of the Supreme Court opinion on the Defendants' motion for partial</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting that ordering individuals who are unvaccinated into an environment, such as on a deployment for example, would be a dereliction of duty because it presents some additional degree of risk. Is that fair to say? A Yes. Q Okay. Would the same be true if
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that we will mark as Deposition Exhibit 13. (Lescher Deposition Exhibit 13. (Lescher Deposition Exhibit Number 13 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I'll represent to you that this a Deposition Exhibit 13 is a copy of the Supreme Court opinion on the Defendants' motion for partial stay in this case.</li> <li>Have you seen this document before?</li> <li>A Tve seen excerpts of this document, not the whole document.</li> <li>Q Okay. The excerpt that I would like</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting that ordering individuals who are unvaccinated into an environment, such as on a deployment for example, would be a dereliction of duty because it presents some additional degree of risk. Is that fair to say? A Yes. Q Okay. Would the same be true if with respect to ordering individuals on to into a deployment who are at high risk of severe illness from COVID-19? MR. CARMICHAEL: Objection. Calls for speculation. And calls for a hypothetical,
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>4. The time is 12:33 p.m. Counsel, you may proceed.</li> <li>BY MR. STEPHENS:</li> <li>Q Good afternoon, Admiral Lescher. You understand that you're still under oath, correct?</li> <li>A Yes.</li> <li>Q I'm going to hand you a document that we will mark as Deposition Exhibit 13. (Lescher Deposition Exhibit 13. (Lescher Deposition Exhibit Number 13 marked for identification.)</li> <li>BY MR. STEPHENS:</li> <li>Q I'll represent to you that this a Deposition Exhibit 13 is a copy of the Supreme Court opinion on the Defendants' motion for partial stay in this case.</li> <li>Have you seen this document before?</li> <li>A I've seen excerpts of this document, not the whole document.</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Service members with increased risk of severe illness from COVID-19 into an into a deployment? A I'm not sure I understand the question. Q Sure. So so you so the language from your declaration that's quoted here is suggesting that ordering individuals who are unvaccinated into an environment, such as on a deployment for example, would be a dereliction of duty because it presents some additional degree of risk. Is that fair to say? A Yes. Q Okay. Would the same be true if with respect to ordering individuals on to into a deployment who are at high risk of severe illness from COVID-19? MR. CARMICHAEL: Objection. Calls

38 (Pages 146 - 149)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 52 of 325 PAGEID #: 4717

	Page 150		Page 152
1	THE WITNESS: Okay.	1	location, then it's my expectation those
2	So let me work to that answer just	2	conversations would take place with a medical
3	as I would think through it. So what I am	3	professional to make a case based on a
4	clearly saying here is when confronted with a	4	judgment based on the specifics as opposed to
5	level of risk that is manifested in dead sailors,	5	generalities.
6	hospitalized sailors, for leaders not to use the	6	BY MR. STEPHENS:
7	most effective available tool to a known	7	Q Okay. And so it would be within, for
8	avoidable risk is the issue I'm highlighting	8	example, the discretion of the commander in
9	here.	9	consultation with a medical expert?
10	Your question is, does it apply to	10	A Meeting specified medical readiness
11	deployments? And I think conceptually it's	11	standards would not be at the discretion. If we're
12	similar, but it's obviously the judgment to be	12	talking about a a level of conversation above
13	made on the specifics. But where we left off	13	and beyond medical standards, then I think that's
14	before lunch, for example, where combatant	14	correct.
15	commanders require additional vaccines if a	15	Q Okay. I'll hand you a document that
16	member is being deployed to an area with an	16	we'll mark as Exhibit 14.
17	endemic or a local increased threat to health is	17	(Lescher Deposition Exhibit Number 14
18	the same concept.	18	marked for identification.)
19	BY MR. STEPHENS:	19	BY MR. STEPHENS:
20	Q Okay. And are there certain	20	Q Admiral Lescher, I've handed you a
21	individual Navy Service members who are at a higher	21	document that we've marked as Lescher Deposition
22	risk of severe COVID-19 symptoms than other Navy	22	Exhibit 14, which was produced in response to
	Page 151		Page 153
1	Service members if they contract the disease?	1	Plaintiffs' discovery request, and is Bates stamped
2	A I'm not a medical expert, but I	2	NSW00000043 through 48.
3	believe that's a true statement. I believe there's	3	Do you have that document in front of
4	other factors.	4	you?
5	Q Okay. So if there are such	5	A I do.
6	individuals who are at higher risk of severe	6	Okay.
7	symptoms in the event that they contract COVID-19,	7	Q You've had a chance to review the
8	would you support deploying those higher-risk	8	document that's marked as Deposition Exhibit 14.
9	individuals despite the risk that exists from	9	Is that correct?
10	COVID-19 and the higher risk those individuals	10	A Yes.
11	face?	11	Q And this is what is this document?
12	MR. CARMICHAEL: Objection.	12	A This is the Navy's Standard Operating
13	Speculation. Calls for hypothetical, unstated	13	Guidance Version 5 of January of this year.
14	assumptions and lack of foundation.	14	Q Okay. And what is a NAVADMIN?
15	THE WITNESS: Yeah, there's quite	15	A It's a type of message that
16	there's quite a lack of detail there. But I	16	essentially goes Navy wide, broadly distributed.
17	support deploying individuals that meet our medical	17	Q Okay. And who issues NAVADMINs?
18	readiness standards. And I believe our medical	18	A They can be issued from generally
	readiness standards are designed to specifically	19	senior flag officers. This one by Admiral Merz,
19	readiness standards are designed to specifically		<b>C i</b>
19 20	address that issue.	20	Deputy Chief of Naval Operations.
		20 21	

39 (Pages 150 - 153)

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 53 of 325 PAGEID #: 4718

	Page 154		Page 156
1	A The very last line, paragraph ten on	1	at the discretion of the commander?
2	page 48.	2	A Right. So on a case-by-case basis,
3	Q And what date was this issued?	3	the commander is advised by medical providers and
4	A The date time group is 15 January of	4	is reported up echelon, can make those type of
5	'22.	5	decisions.
6	Q And your declaration you signed on	6	Q Okay.
7	January 19th, 2022. Is that correct?	7	MR. CARMICHAEL: Just objection to
8	A Correct.	8	misstating misstating the document. It says
9	Q So this document was this NAVADMIN	9	"vaccinated high-risk personnel."
10	was issued and distributed to the Navy prior to you	10	BY MR. STEPHENS:
11	executing your declaration?	11	Q In paragraph 7.d on the third page
12	A Yes.	12	of what page is it it's Bates stamped
13	Q Had you reviewed this document prior	13	NSW00000046, paragraph 7.d. Do you see that
14	to signing your declaration?	14	paragraph?
15	A So I don't recall specifically	15	A I'm sorry, 7 "B" or "D"?
16	whether I did or not.	16	Q "D" as in dog.
17	Q Okay. Did you have any input or role	17	A I do see that.
18	in the in the substance of this NAVADMIN?	18	Q "Vaccinated high-risk personnel: The
19	A No.	19	decision to operate and deploy with vaccinated
20	Q Do you typically review NAVADMINs	20	high-risk personnel rests with the commander, as
21	before they are, I'll say, issued or distributed	21	advised by medical providers, who must report
22	Navy-wide?	22	intentions to their immediate superior in command
	Page 155		Page 157
1	A I typically do not.	1	(ISIC). High-risk personnel shall be PCR viral
2	Q Okay. Who has who would be	2	tested within three days of embarking."
3	responsible for reviewing this NAVADMIN before it	3	Is that did I read that correctly?
4	was sent out by Admiral Merz?	4	A Yes.
5	A I think that varies, but I recall	5	Q And so the provision of this NAVADMIN
6	seeing e-mails where Navy, typically a Three-Star,	6	that I was asking about, I was referring to this
7	who's getting ready to release a NAVADMIN, will	7	this paragraph.
8	send an e-mail saying, "Hey, in the upcoming	8	And is it correct that this paragraph
9	period, I expect to release this NAVADMIN."	9	allows high-risk personnel to be operational and
10	And as I recall, those are generally	10	deployed as long as they're vaccinated, if approved
11	directed to CNO, is my recollection. It may be	11	by the commander?
12	a a broader shop group. They certainly I see	12	A On a case-by-case basis, inconsistent
13	them, or they come into my my in-box.	13	with what you read, the commander is advised by
14	Q This NAVADMIN allows for operations	14	their medical provider, and as reported up echelon,
15	and deployment of high-risk personnel.	15	can make those decisions as per this standard
15	A It	16	operating guidance.
15		17	Q Okay. And the Navy does not allow
	Q Is that correct?		
16	<ul><li>Q Is that correct?</li><li>A It stipulates a process by which</li></ul>	18	unvaccinated personnel to be operational or
16 17		18 19	unvaccinated personnel to be operational or deployed even if the commander even if that
16 17 18	A It stipulates a process by which		
16 17 18 19	A It stipulates a process by which those type of decisions can be made.	19	deployed even if the commander even if that

40 (Pages 154 - 157)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 54 of 325 PAGEID #: 4719

	Page 158		Page 160
1	A I believe there's a stipulation where	1	Q Okay. If you look at the page at
2	Naval component commanders can make that decision.	2	Deposition Exhibit 14, the page that is
3	I'm not 100 percent sure.	3	NSW000000044, paragraph 4.c.
4	Q And what component or what	4	A I'm sorry, what document are we
5	circumstances are you referring to?	5	looking at?
6	Do you know the specifics of that?	6	Q Exhibit 14
7	A So	7	A Yeah.
8	Q Or any more details of that?	8	Q the one that's the NAVADMIN.
9	A Standard operation guidance talks	9	A Okay.
10	about operational Forces and the requirement that	10	Q And the last two digits of the Bates
11	100 percent of the operational Forces be	11	Number are 44. And it's paragraph 4.c.
12	vaccinated.	12	A Uh-huh.
13	I believe, if I recall correctly,	13	Q It provides a definition of high-risk
14	that there's a stipulation where a Naval component	14	personnel. Do you see that?
15	commander essentially can make a determination	15	A Yes.
16	where it found compelling on a case-by-case basis.	16	Q And that paragraph says, "High-risk
17	Q Is that in in do you know the	17	personnel: Those individuals designated by a
18	guidance or the NAVADMIN or or where that would	18	medical provider who meet the CDC criteria for
19	be?	19	increased risk of severe illness. Qualifying
20	A I believe that's in Standard	20	conditions are included on the CDC website."
21	Operating Guidance 6.0, the one that follows this	21	Do you see that?
22	one.	22	A Yes.
	Page 159		Page 161
1	Q Okay. And so looking at 7.d, is it	1	Q Okay. So for purposes of of this
2	fair to say that that commanders have discretion	2	NAVADMIN, high-risk personnel are those personnel
3	with the advice of medical providers to deploy	3	who are at severe risk of COVID-19 illness as
4	and/or deem operational a high a vaccinated	4	defined by the CDC. Is that right?
5	high-risk individual	5	A It doesn't say COVID, it says
6	A Yes.	6	Q Or or of of severe illness?
7	Q Service member?	7	A "Who meets CDC criteria for increased
8	A Yes.	8	risk of severe illness," correct.
9	Q Okay. And what percentage,	9	Q Okay. And so you said it doesn't say
10	approximately, if you know, of Navy Service members	10	COVID. Are you saying that it somehow excludes
11	are high-risk personnel?	11	individuals who are at severe risk of illness from
12	A I don't know.	12	COVID?
13	Q Do you know what qualifies as high	13	A No. I'm just saying
14	as a who qualifies or would would indicate	14	Q Okay.
15	that someone is within that definition of a	15	A it says increased risk of severe
16	high-risk personnel?	16	illness.
17	A At a very general level, I believe	17	Q Sure. Okay.
18	there's certain medical conditions or history of	18	All right. And so that definition of
19	medical conditions that conceptually would place	19	high-risk personnel is is is incorporated
20	one in a high-risk status. But, again, that's	20	and and used in paragraph 7.d
21	that's not in the vice chief's purview to review or	21	A Right.
22	make those decisions, so I'm not strongly familiar.	22	Q the paragraph that allows

41 (Pages 158 - 161)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 55 of 325 PAGEID #: 4720

	Page 162		Page 164
1	commander's discretion to deploy his-risk	1	Q Do you recall that?
2	personnel	2	Okay. And here at Exhibit 15 is a
3	A Vaccinated.	3	document from the CDC, that the middle of the first
4	Q or vaccinated or vaccinated	4	page states, bullet first bullet point, "Having
5	with advice of	5	obesity increases the risk of severe illness from
6	MR. CARMICHAEL: Objection.	6	COVID-19. People who are overweight may also be at
7	BY MR. STEPHENS:	7	increased risk."
8	Q medical providers?	8	And then the next bullet point says,
9	MR. CARMICHAEL: Objection. Lack of	9	"Having obesity may triple the risk of
10	foundation.	10	hospitalization due to a COVID-19 infection."
11	You can answer the question.	11	Do you see that?
12	THE WITNESS: Yes, that's that's	12	A I do.
13	what	13	Q And so does that indicate to you that
14	BY MR. STEPHENS:	14	within the definition of high-risk personnel would
15	Q Okay.	15	be individuals who are who are obese?
16	A is in paragraph 7.d.	16	A Yes.
17	Q Okay. And and you don't know	17	MR. CARMICHAEL: Objection. Lack of
18	approximately what percentage of Navy personnel are	18	foundation that this that this is specifically
19	high risk, I believe you already said that you	19	that 4 paragraph 4.c of of Deposition Exhibit
20	didn't know that, correct?	20	14 is referring to this document.
21	A Correct.	21	You can answer the question.
22		22	
	Page 163		Page 165
1	(Lescher Deposition Exhibit Number 15	1	BY MR. STEPHENS:
2	marked for identification.)	2	Q Do you do you dispute that
3	BY MR. STEPHENS:	3	individuals who have obesity are at higher risk
4	Q Turning to now a document that we'll	4	severe illness from COVID-19?
5	now mark as Lescher Deposition Exhibit 15.	5	A I'm not medically qualified to make
6	A Okay.	6	the determination. I don't dispute Exhibit 15.
7	Q Okay. Have you had a chance to	7	Q Okay. And so the the paragraph we
8	review the document that's marked as Lescher	8	looked at, 7.d, vaccinated high-risk personnel in
	Deposition Exhibit 15?	9	Exhibit 14, it would allow the deployment of obese
9	-		
9 10	A I have.	10	Service members who were vaccinated despite the
9 10 11	<ul><li>A I have.</li><li>Q Okay. I'll represent to you it is a</li></ul>	11	Service members who were vaccinated despite the risk of a higher risk of severe illness from
9 10 11 12	<ul><li>A I have.</li><li>Q Okay. I'll represent to you it is a document from Center for Disease Control and</li></ul>	11 12	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders
9 10 11 12 13	A I have. Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC.	11 12 13	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual
9 10 11 12 13 14	A I have. Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC. Do you see that at the top of the	11 12 13 14	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser?
9 10 11 12 13 14 15	A I have. Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC. Do you see that at the top of the page?	11 12 13 14 15	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser? A Yes. So yeah, precisely that, on
9 10 11 12 13 14 15 16	A I have. Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC. Do you see that at the top of the page? A Yes.	11 12 13 14 15 16	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser? A Yes. So yeah, precisely that, on a case-by-case basis, as I read the guidance, in
9 10 11 12 13 14 15 16 17	<ul> <li>A I have.</li> <li>Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC.</li> <li>Do you see that at the top of the page?</li> <li>A Yes.</li> <li>Q Okay. And the CDC is looking back</li> </ul>	11 12 13 14 15 16 17	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser? A Yes. So yeah, precisely that, on a case-by-case basis, as I read the guidance, in consultation with the individual and the medical
9 10 11 12 13 14 15 16 17 18	<ul> <li>A I have.</li> <li>Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC.</li> <li>Do you see that at the top of the page?</li> <li>A Yes.</li> <li>Q Okay. And the CDC is looking back at Lescher Deposition 14, and in paragraph 4.c,</li> </ul>	11 12 13 14 15 16 17 18	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser? A Yes. So yeah, precisely that, on a case-by-case basis, as I read the guidance, in consultation with the individual and the medical provider, to to make that determination.
9 10 11 12 13 14 15 16 17 18 19	<ul> <li>A I have.</li> <li>Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC.</li> <li>Do you see that at the top of the page?</li> <li>A Yes.</li> <li>Q Okay. And the CDC is looking back at Lescher Deposition 14, and in paragraph 4.c, that defined high-risk personnel, it references,</li> </ul>	11 12 13 14 15 16 17 18 19	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser? A Yes. So yeah, precisely that, on a case-by-case basis, as I read the guidance, in consultation with the individual and the medical provider, to to make that determination. Q Okay. Are you aware that
9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>A I have.</li> <li>Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC.</li> <li>Do you see that at the top of the page?</li> <li>A Yes.</li> <li>Q Okay. And the CDC is looking back at Lescher Deposition 14, and in paragraph 4.c, that defined high-risk personnel, it references, "CDC Criteria for Increased Risk of Severe"</li> </ul>	11 12 13 14 15 16 17 18 19 20	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser? A Yes. So yeah, precisely that, on a case-by-case basis, as I read the guidance, in consultation with the individual and the medical provider, to to make that determination. Q Okay. Are you aware that approximately 25 percent of the Navy is obese?
9 10 11 12 13 14 15 16 17 18 19	<ul> <li>A I have.</li> <li>Q Okay. I'll represent to you it is a document from Center for Disease Control and Prevention, or the CDC.</li> <li>Do you see that at the top of the page?</li> <li>A Yes.</li> <li>Q Okay. And the CDC is looking back at Lescher Deposition 14, and in paragraph 4.c, that defined high-risk personnel, it references,</li> </ul>	11 12 13 14 15 16 17 18 19	Service members who were vaccinated despite the risk of a higher risk of severe illness from COVID-19 for such individuals if the commanders exercise their discretion to deploy such individual in consult consultation with a medical adviser? A Yes. So yeah, precisely that, on a case-by-case basis, as I read the guidance, in consultation with the individual and the medical provider, to to make that determination. Q Okay. Are you aware that

42 (Pages 162 - 165)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 56 of 325 PAGEID #: 4721

	Page 166		Page 168
1	You can answer the question.	1	A I do think that it's dynamic. You
2	THE WITNESS: I was not I was not	2	know, one of the impacts of COVID was, in terms of
3	aware of that specific statistic, but I was aware	3	access to gyms and facilities, that we saw at our
4	that it's generally on that order.	4	shore installations. But yeah, I'm I'm always
5	BY MR. STEPHENS:	5	interested in the source and and the timing, so
6	Q Approximately a quarter of the Navy	6	
7	is is identified as obese?	7	Q Well, it's a 2020 report, and so, you
8	A (Moving head up and down.)	8	know, it
9	Q And so approximately a quarter, or	9	A Yeah, I
10	25 percent, of the Navy would fall within the	10	Q The obesity percentage presented in
11	A Can I ask you the I'm sorry. Can	11	this document, DoD, Health of Force for 2020, it
12	I ask you the source of that?	12	states 25 percent of the Navy falls within that
13	Q Sure.	13	high-risk
14	(Lescher Deposition Exhibit Number 16	14	A Yeah, point taken.
15	marked for identification.)	15	Q category. And it may be slightly
16	BY MR. STEPHENS:	16	higher or lower than that now. Is that is that
17	Q I can point you to	17	fair to say?
18	A Yeah.	18	A It's central, yeah.
19	Q save us time to page 33 of the	19	Q That's higher, at least according to
20	document that's been marked as Deposition Exhibit	20	this report, than any of the other branches in the
20	16, which is a Service profile of the Navy.	21	military. Is that right?
22	And in particular under the the	22	A That's what I saw. Well, I saw it at
	Page 167		Page 169
1	first chart middle of the page there's a measure of	1	the high end of the DoD range, so I didn't look at
2	obesity percent and then Navy value.	2	the other services, but it makes sense.
3	Do you see that?	3	Q Okay. And then under on page 33
4	A I do.	4	where it says, "Additional Information," it
5	Q And that value, it says 25 percent	5	explains that obesity can contribute to certain
6	A It seems odd that it's outside the	6	health conditions. Is that right?
7	DoD range, but I I do see that figure.	7	A Yes.
8	Q Okay. And this this document	8	Q Okay. So at least according to this
9	are you familiar with this document, "Health of the	9	DoD report, that's marked as Deposition Exhibit 16,
10	Force"?	10	and then looking to Deposition Exhibit 14 and 15 as
10	A No.	10	well, is it is it fair to say that approximately
		11	
12 13	So this is a 2020 document? Do you have what was the date of the data?	12	25 percent of the Navy is at high risk of severe illness from COVID-19 infection?
14	•	14 15	MR. CARMICHAEL: Objection. Lack of foundation. Calls for approximation
15	page that on page 33 in the footnote the the		foundation. Calls for speculation.
16	Footnote A, it says, "Number as of June 2020." So	16	You can answer the question.
17	presumably it's, you know, at some point after June	17	THE WITNESS: So based on the thread
18	of 2020, but I don't know the specific date of this	18	of the CDC, highlighting that obesity increases the
19	document.	19	risk of severe illness from COVID and the data on
20	Would you would you do you	20	the demographics of the Navy Force, and the
21	do you ask because you believe there's been some	21	paragraph 4 supposition that the CDC criteria for
22	change in the percentage?	22	increased risk of severe illness is that what

43 (Pages 166 - 169)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 57 of 325 PAGEID #: 4722

	Page 170		Page 172
1	Exhibit 15 says?	1	this position of allowing for this decision
2	Yeah, it does, "Having obesity	2	A I do.
3	increases the risk of severe illness from	3	Q to allow?
4	COVID-19." Yeah, I follow that thread.	4	Why do you agree with that?
5	BY MR. STEPHENS:	5	A Because it permits the commander to
6	Q Okay. And so then it would follow	6	make risk decisions in the specific context of a
7	from that by looking at paragraph 7 7.d of the	7	case-by-case person, which I think I think we've
8	NAVADMIN, that 25 percent of the Navy is at high	8	talked earlier today, that's the that's the
9	risk of severe illness from COVID-19, despite being	9	approach that the Navy that the Navy brings,
10	vaccinated or unvaccinated, they're at high risk of	10	accept risk when the benefit outweighs the cost,
11	severe illness and that	11	don't accept unnecessary risk, make risk decisions
12	MR. CARMICHAEL: Objection. Lack of	12	at the proper level. So it's very consistent with
13	foundation.	13	that approach.
14	You can answer the question.	14	As a hypothetical or as a vignette to
15	MR. STEPHENS: I haven't asked the	15	illuminate this, I would imagine a commander
16	question, yet.	16	talking to a medical provider and characterizing
17	BY MR. STEPHENS:	17	the risk: How obese is this individual? Are there
18	Q Is it fair to say that based on	18	other factors? What are mitigations if the choice
19	Exhibits 14, 15, and 16, looking at paragraph 17	19	is made to operate and deploy with a vaccinated
20	of of Exhibit 14, that 25 percent of the Navy is	20	high-risk person? What are the other mitigations
21	at high risk of severe illness from COVID-19; yet,	21	that come into play, in terms of physical activity,
22	paragraph 7.d of the NAVADMIN, in Exhibit 14,	22	diet, exposure, all of those elements?
	Page 171		Page 173
1	allows commander's discretion to make operational	1	Those were all elements on how a
2	and deploy such individuals as long as they're	2	specific case, it seems to me, would be determined
3	vaccinated based on the commander's judgment with	3	in this context.
4	advice from medical providers?	4	Q And in the context of a religious
5	A That's correct.	5	accommodation or request for a religious
6	Q Okay. And the Navy has no such	6	accommodation or exemption from the COVID-19
7	policy that you're aware of allowing commander's	7	vaccine, should those same factors apply and/or
8	discretion with respect to unvaccinated personnel	8	same approach be applied?
9	or Service members who are not at high risk?	9	A Again, not the purview of the vice
10	A So referring to my earlier statement,	10	chief, so we're starting to get into a hypothetical
11	I believe that there's a provision for Naval	11	again. I haven't grounded myself in the guidance
12	component commanders to make that judgment. As 7.d	12	and the standards for that. The the same
13	is written, this applies to vaccinated high-risk	13	approach should be applied as it should be done on
14	personnel only.	14	a case-by-case basis.
15	Q And do you agree with the Navy's	15	Q Okay. Would you support a policy or
16	decision to allow operations and deployment of	16	a decision to deploy an HIV-positive Navy SEAL on a
17	vaccinated high-risk personnel knowing that	17	mission, for example, to kill or capture a a
18	approximately 25 percent of the Navy fall into the	18	high-value individual?
19	category of being at risk of severe illness from	19	MR. CARMICHAEL: Objection. Lack of
20	COVID-19?	20	foundation. And hypothetical as unstated
21	A What was your question?	21	assumptions.
22	Q Do you do you do you agree with	22	You can answer.

44 (Pages 170 - 173)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 58 of 325 PAGEID #: 4723

	Page 174		Page 176
1	THE WITNESS: The very direct answer	1	A Unless the medical advice is such
2	is I'm not medically qualified to to make that	2	that that the record the understanding of the
3	decision. I'm trying to imagine by what parameters	3	illness is such that it doesn't require a case by
4	I would evaluate that. And it's I don't have	4	case. You know, we you know, let's use an
5	the medical background to offer an informed opinion	5	extreme, the common cold doesn't require a a
6	on that.	6	case-by-case judgment.
7	BY MR. STEPHENS:	7	So I just don't know the medical
8	Q What would you look to to make that	8	impact determination on HIV to say where it falls
9	determination, of of whether an HIV-positive,	9	in that spectrum of increasing risk of death,
10	for example, Navy SEAL should be deployed on a	10	hospitalization, and mission impact.
11	mission on such a mission?	11	Q Okay. I'll hand you a document that
12	A Yeah, I think they're quite similar	12	we'll mark as Deposition Exhibit 17.
13	to the factors here in some respect: What's the	13	(Lescher Deposition Exhibit Number 17
14	risk of illness? What's the risk of trans medical	14	marked for identification.)
15	readiness? What's the risk what's the increased	15	BY MR. STEPHENS:
16	risk of requiring a medical evacuation?	16	Q And while she's marking that, I'll
17	So without understanding all of the	17	ask you a follow-up question.
18	parameters of where that illness is now, it's	18	Do you know whether Navy SEALs or
19	fundamentally from a commander's perspective, are	19	other members of Naval Special Warfare have to do
20	there elements first of all, is that is that	20	blood transfusions in the field?
21	a deviation from our medical readiness standards	21	A I would expect that that is something
22	that essentially is driving us to accept a lower	22	that would be required.
	Page 175		Page 177
1	readiness standard? And then the commander has to	1	Q Okay. Is it something that could
2	go through the the this evaluation.	2	happen or that you're aware of occurring?
3	Does you know, I think you said in	3	A By the nature of their mission, I
4	the context of a SEAL Team. So you're talking	4	believe that's it could happen.
5	teams of four or fewer people. If that condition	5	Q Okay.
6	represents increased susceptibility to becoming	6	A Okay.
7	ill, to to require medical evacuation, that	7	Q Okay. You've been provided a
8	forces a commander to accept a completely different	8	document that's marked as Lescher Deposition
9	risk calculus, when of one of four members has a	9	Exhibit 17. Do you have that in front of you and
10	higher risk of pitching out of a fight. And that	10	have you had a chance to review it?
11	can change mission design, that can shift risk to	11	A Yes and yes.
12	support elements. I think that's how I would	12	Q And have you seen it before today?
13	think through that.	13	A I have not.
14	Q So so fundamentally it sounds	14	Q Okay. Do you know what this document
15	similar to your to your discussion of the	15	is or what it indicates to be to you after having
16	individualized assessment that would be involved in	16	reviewed it?
17	determining a deployment of of a high-risk	17	A Yes. It looks to a policy change on
18	individual, as we talked about, with respect to	18	this topic.
	COVID-19, that individual has obesity, the	19	Q Okay. The subject is, "Policy
19			
19 20	commanders would evaluate the specific	20	Regarding Human Immunodeficiency Virus-Positive
		20 21	Regarding Human Immunodeficiency Virus-Positive Personnel Within the Armed Forces." Is that right?

45 (Pages 174 - 177)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 59 of 325 PAGEID #: 4724

Page 178		Page 180
Q And it's from well, it's dated	1	MR. CARMICHAEL: Objection.
June 6, 2022. Is that right?	2	Misstates the document. And that it also says,
A Yes.	3	"Solely on the basis of the HIV-positive status."
Q And then who issued this policy?	4	You can answer.
	5	THE WITNESS: I'm sorry. Highlight
Q And who did it who was it sent to	6	that again. Where is that?
or who does it at least indicate on its face it was	7	MR. CARMICHAEL: I'm just stating
sent to?	8	THE WITNESS: I see what you're
A So it says, "Memo for Senior Pentagon	9	saying.
	10	MR. CARMICHAEL: I'm just doing the
-	11	whole sentence.
Directors."	12	THE WITNESS: I got it.
O Okay. But you don't recall this		MR. CARMICHAEL: Reading the whole
		sentence.
A No.	15	THE WITNESS: "No restrictions apply
	-	to deployability solely on the bases of HIV
-	-	status," correct.
		BY MR. STEPHENS:
-	-	Q It's true, at least to your
		knowledge, is it true that unvaccinated soldiers
-		are being discharged solely because of their
		vaccination status?
		Page 181
-	1	A Yes.
	2	Q Okay. And the part of the first
-		sentence that your counsel highlighted for you,
	4	does that have any impact on limitation on the
	5	statement in the first part of the paragraph that
-	6	says, "There will be no restrictions applied to
,	7	their deployability"?
	8	MR. CARMICHAEL: Objection. Lack of
	9	foundation.
	10	You can answer the question.
	11	BY MR. STEPHENS:
	12	Q The first part of the sentence says,
-	13	"Individuals who have been identified as
	14	HIV-positive, are asymptomatic and who have
	15	clinically confirmed undetectable viral load will
	16	have no restrictions applied to their
-	17	deployability."
their HIV-positive status. Is that right?	18	A On that basis, on the basis of that
	19	condition.
A Uh-huh.		
	20	
	<ul> <li>Q And it's from well, it's dated</li> <li>June 6, 2022. Is that right?</li> <li>A Yes.</li> <li>Q And then who issued this policy?</li> <li>A Secretary of Defense.</li> <li>Q And who did it who was it sent to</li> <li>or who does it at least indicate on its face it was sent to?</li> <li>A So it says, "Memo for Senior Pentagon</li> <li>Leadership, Commanders of the Combatant Commands and Defense Agency and DoD Field Activity</li> <li>Directors."</li> <li>Q Okay. But you don't recall this</li> <li>being distributed to you?</li> <li>A No.</li> <li>Q Okay. The second sentence of the</li> <li>first paragraph the second and third sentence say, "Individuals who have been identified as</li> <li>HIV-positive are asymptomatic, and who have</li> <li>clinically confirmed undetectable viral load</li> <li>hereinafter, quote, covered personnel, end quote, will have no restrictions applied to their</li> <li>Page 179</li> <li>deployability or to their ability to commission</li> <li>while a Service member solely on the basis of their</li> <li>HIV-positive status. Nor will such individuals be</li> <li>discharged or separated solely on the basis of</li> <li>their HIV-positive status."</li> <li>Do you see that?</li> <li>A I do.</li> <li>Q And so in light of this being a a</li> <li>memorandum from Lloyd Austin, the Secretary of</li> <li>Defense, is it fair to say that that's a new policy</li> <li>of the Department of Defense, which would include</li> <li>the Navy?</li> <li>A Yes, I would think so.</li> <li>Q Okay. And so as part of this policy,</li> <li>it its individual such individuals</li> <li>HIV-positive individuals states that it cannot be</li> <li>discharged or separately solely on the basis of</li> </ul>	QAnd it's from well, it's dated1June 6, 2022. Is that right?2AYes.3QAnd then who issued this policy?4ASecretary of Defense.5QAnd who did it who was it sent to6or who does it at least indicate on its face it was7sent to?8ASo it says, "Memo for Senior Pentagon9Leadership, Commanders of the Combatant Commands10and Defense Agency and DoD Field Activity11Directors."12QOkay. But you don't recall this13being distributed to you?14ANo.15QOkay. The second and third sentence17say, "Individuals who have been identified as18HIV-positive are asymptomatic, and who have19clinically confirmed undetectable viral load20hereinafter, quote, covered personnel, end quote,21will have no restrictions applied to their22Do you see that?6AI do.7QAnd so in light of this being a a8memorandum from Lloyd Austin, the Secretary of9Defense, is it fair to say that that's a new policy10of the Department of Defense, which would include11the Navy?1213QAnd so in spart of this policy,14their HIV-positive individuals states that it cannot be16discharged or separatel solely on the basis of their16

46 (Pages 178 - 181)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 60 of 325 PAGEID #: 4725

1	Page 182		Page 184
1	Q how you read it?	1	A Correct.
2	A Yes.	2	Q Did anyone consult with you about
3	Q Okay. And so does that does that	3	this policy before it was issued in any way?
4	mean to you that there can be some other basis for	4	A No.
5	restricting them that has to do with their HIV	5	Q Do you agree with the policy?
6	status?	6	A As I'm still scanning this here, how
7	MR. CARMICHAEL: Objection. Lack of	7	I would interpret this policy is these are
8	foundation.	8	individuals that essentially have no virus in them,
9	BY MR. STEPHENS:	9	but they test positive based on undetectable
10	Q Or that their HIV status cannot be	10	residual virus. I think it's noteworthy that for
11	considered at all?	11	both accessions and retentions, it says these
12	MR. CARMICHAEL: Just hold on,	12	covered personnel will be evaluated on a
13	Admiral.	13	case-by-case basis. So that feature, we've talked
14	Objection to lack of foundation.	14	about in the context of high risk, medical waivers,
15	The Admiral said this is the first time that he	15	elsewhere. I think it's important in that it lets
16	had seen the policy and has not been briefed on	16	local understanding specific conditions be applied
17	the meaning of the policy.	17	on a case-by-case basis. So it seems a reasonable
18	But you answer the question.	18	approach to me.
19	THE WITNESS: Yeah. So I'll take a	19	(Lescher Deposition Exhibit Number 18
20	stab at the question. Typically, I would get	20	marked for identification.)
21	look to get educated further on other elements.	21	THE WITNESS: Okay.
22	But I believe your question was, would a reader	22	
	Page 183		Page 185
1			
1	interpret this to mean I'm sorry, say the	1	BY MR. STEPHENS:
2	question	1 2	BY MR. STEPHENS: Q Admiral Lescher, I've handed you a
2	question	2	Q Admiral Lescher, I've handed you a
23	question BY MR. STEPHENS:	2 3	Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition
2 3 4	question BY MR. STEPHENS: Q Or would you would you interpret	2 3 4	Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18.
2 3 4 5	question BY MR. STEPHENS: Q Or would you would you interpret it to mean?	2 3 4 5	Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18. And have you seen this document
2 3 4 5 6	<pre>question BY MR. STEPHENS:     Q Or would you would you interpret it to mean?     A To mean what?</pre>	2 3 4 5 6	Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18. And have you seen this document before today?
2 3 4 5 6 7	<pre>question BY MR. STEPHENS:     Q Or would you would you interpret it to mean?     A To mean what?     Q That that HIV positive HIV</pre>	2 3 4 5 6 7	Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18. And have you seen this document before today? A I have not.
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2 3 4 5 6 7 8 9 10 11 12 13 14	<ul> <li>question</li> <li>BY MR. STEPHENS: <ul> <li>Q Or would you would you interpret</li> <li>it to mean?</li> <li>A To mean what?</li> <li>Q That that HIV positive HIV</li> </ul> </li> <li>status can be considered as one factor in determining deployability?</li> <li>A Well, this based on this, you</li> <li>know, the emergent reading appears to say to me is that within the Department of Defense, Services</li> <li>will not make deployability go/no-go decisions for covered individuals based solely on the fact that</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14	<ul> <li>Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18.</li> <li>And have you seen this document before today?</li> <li>A I have not.</li> <li>Q What does it appear to be to you?</li> <li>A It is a NAVADMIN released by the</li> <li>Chief of Naval personnel on 28 June, so Tuesday of this week. And its subject is, "Active Component Active Duty Enlisted Force Management Actions."</li> <li>And yeah, that's its topic.</li> <li>Q Okay. What does Force management</li> </ul>
2 3 4 5 6 7 8 9 10 11 12 13 14 15	<pre>question BY MR. STEPHENS: Q Or would you would you interpret it to mean? A To mean what? Q That that HIV positive HIV status can be considered as one factor in determining deployability? A Well, this based on this, you know, the emergent reading appears to say to me is that within the Department of Defense, Services will not make deployability go/no-go decisions for covered individuals based solely on the fact that while they have an undetectable viral load, they</pre>	2 3 4 5 6 7 8 9 10 11 12 13 14 15	<ul> <li>Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18.</li> <li>And have you seen this document before today?</li> <li>A I have not.</li> <li>Q What does it appear to be to you?</li> <li>A It is a NAVADMIN released by the Chief of Naval personnel on 28 June, so Tuesday of this week. And its subject is, "Active Component Active Duty Enlisted Force Management Actions." And yeah, that's its topic.</li> <li>Q Okay. What does Force management policy generally involve? What</li> </ul>
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<ul> <li>question</li> <li>BY MR. STEPHENS:</li> <li>Q Or would you would you interpret it to mean?</li> <li>A To mean what?</li> <li>Q That that HIV positive HIV status can be considered as one factor in determining deployability?</li> <li>A Well, this based on this, you</li> <li>know, the emergent reading appears to say to me is that within the Department of Defense, Services</li> <li>will not make deployability go/no-go decisions for covered individuals based solely on the fact that while they have an undetectable viral load, they test they pop positive on HIV test.</li> <li>Q Okay. And and because I you</li> <li>had no involvement or role in developing this</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	<ul> <li>Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18.</li> <li>And have you seen this document before today?</li> <li>A I have not.</li> <li>Q What does it appear to be to you?</li> <li>A It is a NAVADMIN released by the Chief of Naval personnel on 28 June, so Tuesday of this week. And its subject is, "Active Component Active Duty Enlisted Force Management Actions." And yeah, that's its topic.</li> <li>Q Okay. What does Force management si that?</li> <li>A So how we size and shape the personnel, our sailors and officers, so Force</li> </ul>
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>question</li> <li>BY MR. STEPHENS:</li> <li>Q Or would you would you interpret it to mean?</li> <li>A To mean what?</li> <li>Q That that HIV positive HIV status can be considered as one factor in determining deployability?</li> <li>A Well, this based on this, you know, the emergent reading appears to say to me is that within the Department of Defense, Services will not make deployability go/no-go decisions for covered individuals based solely on the fact that while they have an undetectable viral load, they test they pop positive on HIV test.</li> <li>Q Okay. And and because I you had no involvement or role in developing this policy. Is that correct?</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18.</li> <li>And have you seen this document before today?</li> <li>A I have not.</li> <li>Q What does it appear to be to you?</li> <li>A It is a NAVADMIN released by the Chief of Naval personnel on 28 June, so Tuesday of this week. And its subject is, "Active Component Active Duty Enlisted Force Management Actions." And yeah, that's its topic.</li> <li>Q Okay. What does Force management policy or personnel policy generally involve? What is that?</li> <li>A So how we size and shape the personnel, our sailors and officers, so Force management. You can see the the dynamics here</li> </ul>
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>question</li> <li>BY MR. STEPHENS:</li> <li>Q Or would you would you interpret it to mean?</li> <li>A To mean what?</li> <li>Q That that HIV positive HIV status can be considered as one factor in determining deployability?</li> <li>A Well, this based on this, you know, the emergent reading appears to say to me is that within the Department of Defense, Services will not make deployability go/no-go decisions for covered individuals based solely on the fact that while they have an undetectable viral load, they test they pop positive on HIV test.</li> <li>Q Okay. And and because I you had no involvement or role in developing this policy. Is that correct?</li> <li>A That's correct.</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	<ul> <li>Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18.</li> <li>And have you seen this document before today?</li> <li>A I have not.</li> <li>Q What does it appear to be to you?</li> <li>A It is a NAVADMIN released by the Chief of Naval personnel on 28 June, so Tuesday of this week. And its subject is, "Active Component Active Duty Enlisted Force Management Actions." And yeah, that's its topic.</li> <li>Q Okay. What does Force management policy or personnel policy generally involve? What is that?</li> <li>A So how we size and shape the personnel, our sailors and officers, so Force management. You can see the the dynamics here in terms of keeping the size of the Navy where we</li> </ul>
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>question</li> <li>BY MR. STEPHENS:</li> <li>Q Or would you would you interpret it to mean?</li> <li>A To mean what?</li> <li>Q That that HIV positive HIV status can be considered as one factor in determining deployability?</li> <li>A Well, this based on this, you know, the emergent reading appears to say to me is that within the Department of Defense, Services will not make deployability go/no-go decisions for covered individuals based solely on the fact that while they have an undetectable viral load, they test they pop positive on HIV test.</li> <li>Q Okay. And and because I you had no involvement or role in developing this policy. Is that correct?</li> </ul>	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<ul> <li>Q Admiral Lescher, I've handed you a document that's been marked Lescher Deposition Exhibit 18.</li> <li>And have you seen this document before today?</li> <li>A I have not.</li> <li>Q What does it appear to be to you?</li> <li>A It is a NAVADMIN released by the Chief of Naval personnel on 28 June, so Tuesday of this week. And its subject is, "Active Component Active Duty Enlisted Force Management Actions." And yeah, that's its topic.</li> <li>Q Okay. What does Force management policy or personnel policy generally involve? What is that?</li> <li>A So how we size and shape the personnel, our sailors and officers, so Force management. You can see the the dynamics here</li> </ul>

47 (Pages 182 - 185)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 61 of 325 PAGEID #: 4726

1	Page 186		Page 188
1	well. You know, I'm looking at at page 2, where	1	"Due to the uncertainty," it says, "As the Navy
2	it talks about filling sea duty, critical	2	shifts into a new environment of sustainment,
3	operational billets, sea duty billets, sea duty	3	retention of every capable Sailor will be critical
4	incentive pay. So a combination of the proper size	4	to the operational readiness of the of the
5	and the proper shape of billets is what it appears	5	Navy."
6	to be targeted for upon first read.	6	Do you see that?
7	Q And so there were in this on	7	A Yes.
8	the first page of Deposition Exhibit 18, there's a	8	Q What what does that mean, it
9	sentence that says, "Due to the uncertainty	9	shifts an environment of sustainment?
10	regarding COVID-19 Pandemic vaccination losses in	10	A Yeah. So it refers to the trajectory
11	the recruiting environment, where competition for	11	and the size of the Navy. Right. So it's simply
12	talent is especially tough, the Navy is opening the	12	saying the Navy is shifting really from a recent
13	aperture for additional FM personnel policy levers	13	trend of shedding some capacity to now sustaining
14	to retain Sailors."	14	level-loading.
15	Do you see that language?	15	And that's going to require us to
16	A Yes.	16	have a strong focus on sizing and shaping the
17	Q And and does that what does	17	enlisted Force to be able to to man those ships
18	that mean, or what what does "opening the	18	and and other units in the Navy.
19	aperture" mean?	19	Q And the last sentence in in
20	A So it lists a series of actions, or	20	paragraph 1, "This requires retention of the right
21	at least separation, so sailors who had requested	21	talent at a time of uncertainty to ensure
22	to separate prior to essentially their Service	22	sustainment of the Force."
	Page 187		Page 189
1	obligation. So it's saying, hey, we're no longer	1	Do you see that?
2	going to permit that. For voluntary extension	2	A Yes.
3	opportunity, for offering, again, in a very focused	3	
4			Q Okay. What is the time of
+	way sailors who desire to delay separation or	4	uncertainty?
5	way sailors who desire to delay separation or retirement either due to higher tenure or other	45	
			uncertainty?
5	retirement either due to higher tenure or other	5	uncertainty? A So I would interpret that to talk
5 6	retirement either due to higher tenure or other elements.	5 6	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at
5 6 7	retirement either due to higher tenure or other elements. So the sentence "opening to aperture"	5 6 7	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the
5 6 7 8	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this	5 6 7 8	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command
5 6 7 8 9	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing	5 6 7 8 9	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific,
5 6 7 8 9 10	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing certain policies to permit that.	5 6 7 8 9 10	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific, and the significant tensions over Taiwan, put it in
5 6 7 8 9 10 11	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing certain policies to permit that. Q Okay. And and in part that was	5 6 7 8 9 10 11	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific, and the significant tensions over Taiwan, put it in the context of one of uncertainty.
5 6 7 8 9 10 11 12	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing certain policies to permit that. Q Okay. And and in part that was that is, in part, addressing losses well, it	5 6 7 8 9 10 11 12	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific, and the significant tensions over Taiwan, put it in the context of one of uncertainty. Q The prior sentence that we we
5 6 7 8 9 10 11 12 13	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing certain policies to permit that. Q Okay. And and in part that was that is, in part, addressing losses well, it says "COVID-19 Pandemic vaccination losses," that	5 6 7 8 9 10 11 12 13	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific, and the significant tensions over Taiwan, put it in the context of one of uncertainty. Q The prior sentence that we we started with that talks about that begins the
5 6 7 8 9 10 11 12 13 14	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing certain policies to permit that. Q Okay. And and in part that was that is, in part, addressing losses well, it says "COVID-19 Pandemic vaccination losses," that means losses of of sailors?	5 6 7 8 9 10 11 12 13 14	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific, and the significant tensions over Taiwan, put it in the context of one of uncertainty. Q The prior sentence that we we started with that talks about that begins the prior sentence says, "Due to the uncertainty
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5 6 7 8 9 10 11 12 13 14 15 16 17	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing certain policies to permit that. Q Okay. And and in part that was that is, in part, addressing losses well, it says "COVID-19 Pandemic vaccination losses," that means losses of of sailors? A Yeah. It says, "Due to the uncertainty," regarding, you know, the pace, the magnitude of sailors leaving the Navy early. The	5 6 7 8 9 10 11 12 13 14 15 16 17	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific, and the significant tensions over Taiwan, put it in the context of one of uncertainty. Q The prior sentence that we we started with that talks about that begins the prior sentence says, "Due to the uncertainty regarding COVID-19 Pandemic vaccination," do you think that the reference to uncertainty in the following sentence is is not is different,
5 6 7 8 9 10 11 12 13 14 15 16 17 18	retirement either due to higher tenure or other elements. So the sentence "opening to aperture" means to get the proper size and shape of, in this case, our active enlisted force are changing certain policies to permit that. Q Okay. And and in part that was that is, in part, addressing losses well, it says "COVID-19 Pandemic vaccination losses," that means losses of of sailors? A Yeah. It says, "Due to the uncertainty," regarding, you know, the pace, the magnitude of sailors leaving the Navy early. The combination of that and the recruiting environment,	5 6 7 8 9 10 11 12 13 14 15 16 17 18	uncertainty? A So I would interpret that to talk about the world context. Obviously you look at Central Command AOR, with the actions of Iran, the issues going on there, look at the European Command theater with Ukraine, and you look at Indo-Pacific, and the significant tensions over Taiwan, put it in the context of one of uncertainty. Q The prior sentence that we we started with that talks about that begins the prior sentence says, "Due to the uncertainty regarding COVID-19 Pandemic vaccination," do you think that the reference to uncertainty in the following sentence is is not is different, it's not referring to uncertainty associated with
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48 (Pages 186 - 189)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 62 of 325 PAGEID #: 4727

	Page 190		Page 192
1	Admiral.	1	Q Do you see that?
2	THE WITNESS: To me, it's a different	2	Had you had you seen this document
3	nuance. The second sentence talks about a time of	3	before today?
4	uncertainty, the first one talks to a specific	4	A No.
5	uncertainty. I mean	5	Q Okay. Does that indicate to you
6	BY MR. STEPHENS:	6	or will the Navy sometimes issue a corrected copy
7	Q I understand.	7	of a NAVADMIN changing changing certain
8	A Yeah.	8	language?
9	Q I'm going to hand you a document	9	A I've seen obviously, I've seen
10	marked as we'll mark as Number 19.	10	corrected-copy messages before. I can't
11	(Lescher Deposition Exhibit Number 19	11	specifically recall a corrected copy of a NAVADMIN,
12	marked for identification.)	12	but it it wouldn't be wildly unusual, I suppose.
13	THE WITNESS: Thank you.	13	Q Okay. And so this NAVADMIN, at least
14	MR. CARMICHAEL: Thank you.	14	as it indicates, it has the same number, 142-22, as
15	THE WITNESS: Okay.	15	the prior document, Exhibit 18, 142-22?
16	MR. CARMICHAEL: Just real quick,	16	A Right.
17	Admiral, before you get asked a question, I just	17	And having not seen these, so my
18	want to put on the record that the Prosecution	18	understanding is Exhibit 18 was transmitted to the
19	Exhibit 18, the NAVADMIN, we just we just pulled	19	fleet NAVADMIN, and then Exhibit 19, was even
20	it up and it looks like it's a slightly different	20	though they have the same date and time group at
21	version than this. So maybe it was changed since	21	the top, was subsequently submitted as a corrected
22	you last printed it.	22	copy?
	Page 191		Page 193
1	BY MR. STEPHENS:	1	Q Okay.
2	Q I've handed you a document marked as	2	A No, that's my question.
3	Lescher Deposition Exhibit 19. Do you have that in	3	Q I I don't know I don't know if
4	front of you?	4	it was if it was sent. I know that this says
5	A I do.	5	"corrected copy."
6	Q And that's the document that you just	6	A Okay.
7	read reviewed?	7	Q And so I have questions for you about
8	A (Moving head up and down.)	8	that. And the NAVADMIN number is the same. And
	Q At the top of the document marked as	9	most of the substance is is the same, it appears
9			
9 10	Exhibit 19 well, let's look at the where	10	to me.
	Exhibit 19 well, let's look at the where do you see about halfway down the first page it	10 11	
10			to me.
10 11	do you see about halfway down the first page it	11	to me. A Yeah, I notice there's different
10 11 12	do you see about halfway down the first page it says, "NAVADMIN 142-22"? A Yes. Q Okay. And then turning back to the	11 12	to me. A Yeah, I notice there's different references, and to your point, some different
10 11 12 13	do you see about halfway down the first page it says, "NAVADMIN 142-22"? A Yes.	11 12 13	to me. A Yeah, I notice there's different references, and to your point, some different wording.
10 11 12 13 14	do you see about halfway down the first page it says, "NAVADMIN 142-22"? A Yes. Q Okay. And then turning back to the	11 12 13 14	to me. A Yeah, I notice there's different references, and to your point, some different wording. Q Right.
10 11 12 13 14 15	do you see about halfway down the first page it says, "NAVADMIN 142-22"? A Yes. Q Okay. And then turning back to the prior exhibit, Exhibit 18, that's the same NAVADMIN	11 12 13 14 15	to me. A Yeah, I notice there's different references, and to your point, some different wording. Q Right. And so looking to Exhibit 18 the
10 11 12 13 14 15 16	do you see about halfway down the first page it says, "NAVADMIN 142-22"? A Yes. Q Okay. And then turning back to the prior exhibit, Exhibit 18, that's the same NAVADMIN number.	11 12 13 14 15 16	to me. A Yeah, I notice there's different references, and to your point, some different wording. Q Right. And so looking to Exhibit 18 the language we were discussing in Exhibit 18 was in
10 11 12 13 14 15 16 17	do you see about halfway down the first page it says, "NAVADMIN 142-22"? A Yes. Q Okay. And then turning back to the prior exhibit, Exhibit 18, that's the same NAVADMIN number. A Right.	11 12 13 14 15 16 17	to me. A Yeah, I notice there's different references, and to your point, some different wording. Q Right. And so looking to Exhibit 18 the language we were discussing in Exhibit 18 was in paragraph 1 about, "Due to the uncertainty regarding COVID-19 Pandemic vaccination losses" A Uh-huh.
10 11 12 13 14 15 16 17 18	<ul> <li>do you see about halfway down the first page it</li> <li>says, "NAVADMIN 142-22"?</li> <li>A Yes.</li> <li>Q Okay. And then turning back to the</li> <li>prior exhibit, Exhibit 18, that's the same NAVADMIN</li> <li>number.</li> <li>A Right.</li> <li>Q Is that right?</li> <li>A Correct.</li> <li>Q And then Exhibit 19, the title it</li> </ul>	11 12 13 14 15 16 17 18	to me. A Yeah, I notice there's different references, and to your point, some different wording. Q Right. And so looking to Exhibit 18 the language we were discussing in Exhibit 18 was in paragraph 1 about, "Due to the uncertainty regarding COVID-19 Pandemic vaccination losses" A Uh-huh. Q "and the recruiting environment
10 11 12 13 14 15 16 17 18 19	do you see about halfway down the first page it says, "NAVADMIN 142-22"? A Yes. Q Okay. And then turning back to the prior exhibit, Exhibit 18, that's the same NAVADMIN number. A Right. Q Is that right? A Correct.	11 12 13 14 15 16 17 18 19	to me. A Yeah, I notice there's different references, and to your point, some different wording. Q Right. And so looking to Exhibit 18 the language we were discussing in Exhibit 18 was in paragraph 1 about, "Due to the uncertainty regarding COVID-19 Pandemic vaccination losses" A Uh-huh.

49 (Pages 190 - 193)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 63 of 325 PAGEID #: 4728

	Page 194		Page 196
1	personnel policy levers to retain sailors."	1	Q Okay. And the NAVADMIN you're
2	Do you recall that?	2	referring to is what is is facilitating their
3	A Yes.	3	separation how?
4	Q And that's reflected in	4	A If I recall correctly, and I believe
5	A Right.	5	I saw a NAVADMIN that outlined the path to withdraw
6	Q Exhibit 18, NAVADMIN 142-22.	6	from the class to this is what you were
7	And then looking at Exhibit 19,	7	referring to to then be able to voluntarily exit
8	NAVADMIN 142-22, which has the heading, "Corrected	18	the Navy, which they're precluded to as a member of
9	Copy," that language is not in this document.	9	the class.
10	A Correct.	10	Q And and why do you believe they're
11	Q Is that correct?	11	precluded to as a member of the class?
12	A (Moving head up and down.)	12	MR. CARMICHAEL: Objection. Lack of
13	Q Do you know approximately how far the	13	foundation.
14	Navy is falling short in filling billets that the	14	Go ahead and answer the question.
15	Navy has determined need to be filled?	15	THE WITNESS: So not again, not
16	A Yeah, we discussed frequently a	16	having been involved in that discussion, it's my
17	measure called gaps at sea, gaps of operational	17	inference based on the publication of that
18	billets at sea. And my last understanding of that	18	NAVADMIN. It seems to me and, again, I I've
19	figure was that it was in the order of 7,000 gaps	19	glanced at that NAVADMIN fairly quickly. There
20	at sea. That's out of a billet based on the order	20	would be no purpose for it if a member could simply
21	of 148 or 149,000 billets.	21	opt out of the Navy while in the class.
22	MR. STEPHENS: Okay. Drew, why don't	22	
	Page 195		Page 197
1	we take a quick break. I think I'm almost done.	1	BY MR. STEPHENS:
2	MR. CARMICHAEL: Okay.	2	Q And based on what we've discussed
3	VIDEOGRAPHER: We are going off the	3	today, or has anything we've discussed today or the
4	record. This concludes Media Unit Number 4. The	4	information in the documents that you've seen today
5	time is 1:58 p.m.	5	made you change your mind as to any of the
6	(Recess from 1:58 p.m. to 2:14 p.m.)	6	statements in your declaration?
7	VIDEOGRAPHER: We are back on the	7	A No.
8	record. This is the beginning of Media Unit Number	8	Q And so if you were to submit that
9	5. The time is 2:14 p.m.	9	declaration today, you wouldn't change anything?
10	Counsel, you may proceed.	10	A No.
11	BY MR. STEPHENS:	11	MR. STEPHENS: I'll pass the witness.
12	Q Good afternoon, Admiral Lescher. You	12	MR. CARMICHAEL: Okay.
13	understand that you're still under oath, correct?	13	EXAMINATION BY COUNSEL FOR DEFENDANTS
14	A Yes.	14	BY MR. CARMICHAEL:
15	Q Are you aware that some class	15	Q Thank you, Admiral Lescher. I'm
16	members Plaintiff class members in this case are	16	going to ask a few questions.
17	choosing to be involuntarily separated rather than	17	Could you give a brief summary of
18	waiting for this lawsuit to conclude?	18	your the billets that you have had in your
19	A I am familiar with the NAVADMIN that	19	42-year career, at least starting from graduation
1	Admiral Cheeseman said that basically facilitates	20	from the Naval Academy on.
20			
20 21	that, yes. I'm unaware of any specific members who	21	A Okay. Briefly. So after graduating

50 (Pages 194 - 197)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 64 of 325 PAGEID #: 4729

	Page 198		Page 200
1	operational tour was a helicopter squadron that	1	the Expeditionary Strike Group 5, Expeditionary
2	deploys on small ships worldwide. Deployed to	2	Strike Group 4 deployed in Bahrain. Commander Task
3	South America, deployed to the Middle East.	3	Force 5-1, Commander Task Force 5-9. This is a
4	Deployed to submarine finding, I guess the Soviet	4	strike group and task force that oversee all the
5	Union. From there, I went to a program that's a	5	expeditionary forces in 5th fleets. So the
6	cooperative degree program, where I spent one year	6	Amphibious Ready Group, a large deck amphib with
7	at Naval Postgraduate School, one year at Test	7	employes harriers, ospreys, skid aircraft. Marine
8	Pilot School, designated as test pilot. And did	8	component of about 4,000 and special warfare
9	three years of developmental test at the Naval Yard	9	elements that we served with and operated from the
10	Test Center. Those are both performance and	10	ESG ships in that time frame.
11	mission system testing.	11	From there, I I think I left
12	From there I returned to the	12	out from there I also served as the director of
12	Operational Force and assigned to another	12	the Navy Operations Division in the Office of
13	helicopter squadron that deploys on small ships	13	Budget. And also served as the deputy director for
15	worldwide. Deployed for Desert Storm, to the	14	resources and allocation in the Joint Staff. Came
15	CENTCOM AOR. And returned and was squadron	16	back, was the Navy budget officer, making decisions
17	maintenance officer. I ran the largest department	17	about supporting the fleets realtime.
17	in the squad.	17	From Navy budget officer to a
19	Following that department tour, I	10	Three-Star position as the deputy chief of Naval
20	went to a Civilian Business School. From there, I	20	Operations for Integration and Capability
20	went to the Pentagon to do resource allocation,	20	Resources, basically assigned to size and shape the
$\begin{vmatrix} 21\\22 \end{vmatrix}$	decisions in space and electronic warfare. From	21	future of the Navy. And from that position to the
22		22	
1	Page 199 there I screened for a command. Was executive	1	Page 201 Vice Chief of Naval Operations.
2	officer and then commanding officer of a helicopter	2	Q Admiral, you were you mentioned
3	squadron that deploys detachments on small ships.	3	you were a helicopter pilot. In that position, did
4	From there I went to become the	4	you ever perform medical evacuation?
5	executive officer of the USS Inchon, Mine	5	A I did.
6	Countermeasures Command and Control Ship Aviation	6	Q What goes into a medical evacuation?
7	Capable. From that assignment, I became commanding	7	
	Capable. 110in that assignment, 1 became commanding	, <i>'</i>	A Generally in my experience they're
	officer for the second time of the Elect	8	A Generally, in my experience, they're
8	officer for the second time of the Fleet Replacement Squadron, the squadron that trains all	8	emergent based on a developing medical condition or
9	Replacement Squadron, the squadron that trains all	9	emergent based on a developing medical condition or a specific incident of of trauma. In the case
9 10	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that	9 10	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of
9 10 11	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system.	9 10 11	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's
9 10 11 12	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of	9 10 11 12	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty
9 10 11 12 13	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees	9 10 11 12 13	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy
9 10 11 12 13 14	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying	9 10 11 12 13 14	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical
9 10 11 12 13 14 15	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying aircraft worldwide on the on small ships,	9 10 11 12 13 14 15	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical capacity, so we task others to step up and and
9 10 11 12 13 14 15 16	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying aircraft worldwide on the on small ships, destroyers and frigates in the Navy.	<ol> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> </ol>	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical capacity, so we task others to step up and and address that.
9 10 11 12 13 14 15 16 17	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying aircraft worldwide on the on small ships, destroyers and frigates in the Navy. From commodore to D.C., Office of	<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> </ul>	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical capacity, so we task others to step up and and address that. So one specific example that comes to
9 10 11 12 13 14 15 16 17 18	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying aircraft worldwide on the on small ships, destroyers and frigates in the Navy. From commodore to D.C., Office of Secretary of Defense doing liaison work. I led the	<ol> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> </ol>	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical capacity, so we task others to step up and and address that. So one specific example that comes to mind a sailor aboard USS ELROD, where I was the
<ol> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ol>	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying aircraft worldwide on the on small ships, destroyers and frigates in the Navy. From commodore to D.C., Office of Secretary of Defense doing liaison work. I led the shop that did appropriations liaison with the	<ol> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ol>	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical capacity, so we task others to step up and and address that. So one specific example that comes to mind a sailor aboard USS ELROD, where I was the lieutenant commander in charge of the helicopter
<ol> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> </ol>	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying aircraft worldwide on the on small ships, destroyers and frigates in the Navy. From commodore to D.C., Office of Secretary of Defense doing liaison work. I led the shop that did appropriations liaison with the Congressional Appropriation Committees. From	<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> </ul>	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical capacity, so we task others to step up and and address that. So one specific example that comes to mind a sailor aboard USS ELROD, where I was the lieutenant commander in charge of the helicopter detachment, required an emergent medical
9 10 11 12 13 14 15 16 17 18 19	Replacement Squadron, the squadron that trains all Seahawk pilots and aircrewmen on how to fly that weapon system. From there I became the commodore of the Helicopter Maritime Strike Wing, which oversees five squadrons that do that mission. Deploying aircraft worldwide on the on small ships, destroyers and frigates in the Navy. From commodore to D.C., Office of Secretary of Defense doing liaison work. I led the shop that did appropriations liaison with the	<ol> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ol>	emergent based on a developing medical condition or a specific incident of of trauma. In the case of operating, as I did, I did the vast majority of my operational flying on very small ships. It's typically we would have one independent duty corpsman, not a doctor aboard. So it's fairly easy to exceed the capability of the onboard medical capacity, so we task others to step up and and address that. So one specific example that comes to mind a sailor aboard USS ELROD, where I was the lieutenant commander in charge of the helicopter

51 (Pages 198 - 201)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 65 of 325 PAGEID #: 4730

	Page 202		Page 204
1	state poor weather, but obviously the medical	1	whole time in Bahrain. So headquartered in
2	urgency required us to accept some risks.	2	Bahrain, but my ships were across the AOR. And
3	We took off. Transported the patient	3	I I would, you know, balance my time between
4	over a hundred-plus miles to a big deck aircraft	4	operating on the ships and operating do doing
5	carrier, which had the facilities to do it. For	5	key leader engagement with leaders in the in the
6	operational reasons, required to return back to	6	region.
7	home base ship. And when we went got there, the	7	This was just post-Benghazi, so we
8	weather was such that the ship could not operate	8	were doing both direct action missions in support
9	within side the recovery envelope. And once we	9	of the fight with the SEAL Teams, and we were also
10	were ashore, we recovered outside the recovery	10	quite active in preparing, and in some cases
11	envelope. So it was an element of high-risk	11	staging, for an embassy reinforcement and
12	profile one might expect to execute those type of	12	evacuation missions. So there was travel to talk
13	missions.	12	to the ambassadors. It was those types of those
13	Q What are the risks involved in	13	types of conditions.
15	landing outside of the outside of the window, I	14	Q Can you explain your current role as
15	guess the winds and seas?	15	the vice vice chief of Naval Operations?
17	Is that what that is?	10	A Yeah. The Service vice chiefs,
18	A Yeah. The recovery envelopes are	17	oftentimes the civilian kind of decoding of that
	• •	18	-
19	defined by test pilots to control the pitch and		position is associated with being a chief operating
20	roll of the ship and the wind velocity so that you	20	officer. So the vice chief is very much focused on
21	don't exceed the limits of the helicopter. And so	21	ensuring the Service can organize, train, and equip
22	when one is forced to operate outside the envelope,	22	Forces, which then flow forward and are employed
	Page 203		Page 205
1	that every one of those envelopes is developed	1	operationally by Naval component commanders and the
2	by a test pilot, and it means that in the test	2	combatant commanders.
3	pilot's judgment, you're at very low margin for	3	So the vice chief role is not
4	damaging or crashing the aircraft.	4	directly associated with employing the Forces, the
5	Q And you mentioned that you were	5	vice chief role is more focused on how we generate
6	commanded an expeditionary strike group. Did that	6	that readiness through this cycle as well as
7	expeditionary strike group have a Naval Special	7	there's a strong focus on a longer-term look at the
8	Warfare component?	8	Navy of how we size and shape the force for the
9	A During the expeditionary strike group	9	competitive environment we see, what type of ships
10	tour, I had three ARG MEUs rotationally come	10	we buy, aircraft, and the acquisition element as
11	through that worked for me. They reported to me as	11	well.
12	their operational commander. And in the number of	12	Q In that role do you rely on
13	cases Navy SPEC Warfare personnel came aboard and	13	individual commanders below you?
14	operated from my ships to conduct missions, an	14	A Yes.
15	assortment of missions.	15	Q Do you trust the individual
16	Q And how long how long were you an	16	commanders below you?
17	expeditionary strike group commander?	17	A Yes.
1.10	A From 2012 to 2013. Just just	18	Q Do you have any reason to doubt any
18			
19	about a little over a year.	19	information that those commanders provided you was
19 20	Q And did you deploy during that	20	not accurate?
19			

52 (Pages 202 - 205)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 66 of 325 PAGEID #: 4731

	Page 206		Page 208
1	below you important to you?	1	the past, where you spend a specific amount of time
2	A It's essential. Those commanders are	2	with the family and then you deploy, which is seen
3	selected based on their proven ability to speak	3	as a milestone event.
4	truth and to deliver trustworthy representations of	4	Our system is typically deployed on
5	what they see.	5	the order of seven months and then you would
6	Q I want to talk a little bit about	6	return. Again, the baseline is during those seven
7	some of the measures that you discussed earlier,	7	months, our practice had been no more than every 60
8	the the pre-vaccine measures that you had called	8	days or so to have a port visit. Again, to have
9	hard measures.	9	the crew, you know, recover mentally, physically,
10	Can you describe a little bit what	10	in a port, you know, see the world and then come
11	COMPTUEX and go means?	11	back out and start sprinting again.
12	A So that again, the COMPTUEX is a	12	What changed in 2020 was those
13	certifying event for a strike group typically. And	13	episodic touches back to family, whatever, were
14	it's high end because it's a certification events,	14	taken away. So COMPTUEX and go was preceded with a
15	as our Forces and strike groups progress from what	15	pre-deployment sequester, then into this multi-week
16	we call the maintenance phase, so after a long	16	certification high-end exercise, and then just keep
17	deployment, they'll go into heavy maintenance,	17	going, just go deploy from there. So not
18	designed to be on the order of six months or so.	18	pre-overseas movement, not back with the family.
19	And then once they come out of	19	Longer deployments, as we talked
20	maintenance, they start progressing through basic	20	about in the example earlier today, I believe it
21	and intermediate training. So increasing levels of	21	was the HARRY S. TRUMAN that once they they
22	sophistication, coordination, working together, all	22	deployed pre-pandemic, but once they hit pandemic,
	Page 207		Page 209
1	being tested on their abilities to deliver lethal	1	their port visits stopped. And so we saw that that
2	effects while staying in a high state of readiness.	2	was not uncommon where port visits I think it
3	From the basic and integrated phase,	3	was Admiral Merz said in his declaration, 160 up to
4	then it goes to the advanced phase, which	4	200 days underway without port visits. And then
5	culminates with this COMPTUEX exercise, which is	5	not infrequently those ports visits were pure
6	essentially a practice fight against a high-end	6	carrier, anchor out, take a boat to the pier and
7	adversary. So it's all about shooting ordnance,	7	your and your liberty is in a sandbox out on the
8	high uptempo. And proving again that that strike	8	pier.
9	group can be certified as a lethal and ready Force.	9	So those are measures that enabled
10	So a change that we talked about was	10	the Navy to meet mission at a critical time in
11	over the course of this progression, coming out of	11	2020. There was a lot going on in the world. But
12	the maintenance phase, which is long hours, fixing	12	that was harsh on our people. And as you might
13	the ship, maintaining the ship, into a basic phase,	13	imagine, all of those elements are stressing. And
14	underway, out and back, developing proficiency to	14	so to include the protective measures we were
15	an intermediate phase to an integrated phase and	15	taking onboard ship, in terms of being masked up,
16	certification.	16	social distancing the best we can.
17	You're increasing the tempo of being	17	So that is where we saw that wear and
18	away from home. So for sailors with family, even	18	tear on our people manifest, with the declining
19	single sailors, it's stressful as you spend more	19	retention over '20, '21, and '22. And a real
20	and more time away. But you get those times back	20	growth in the request for access to mental health
21	to reconnect with the family. There's typically a	21	assistance, counseling, and support.
22	pre-overseas movement phase, is what we've had in	22	Q Does does combining COMPTUEX and

53 (Pages 206 - 209)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 67 of 325 PAGEID #: 4732

	Page 210		Page 212
1	deployment, does that does that result in	1	the ships, critical mission essential crew.
2	additional operational risk to the Navy or to the	2	The carrier onboard delivery aircraft
3	unit, or can it?	3	flying out to the aircraft carrier, touching down,
4	A The incremental so, again, we	4	get a box lunch, eat in the cockpit or on the
5	talked about, as you do these heavy, hard-to-do,	5	flight deck and then, you know, get out of here.
6	measures, we we were allocating risk in a	6	So all of those elements are just, you know, small
7	different way. So to control the risk of COVID,	7	vignettes of how the Navy adapted and learned to
8	which was seen as clearly a pressing risk, a known	8	control COVID, but in ways that were hard on the
9	risk, a risk that we mitigated with these elements,	9	people.
10	we reallocated the risk with increased stress on	10	Q For any of these for these
11	our Force.	11	measures, I guess the extended port visits, the
12	So you're saying does that manifest	12	extended deployment, pre-deployment COMPTUEX and
13	as an operational risk? It it can be seen that	13	go, do they decrease the chance that somebody who
14	way in the sense that our people would you know,	14	gets COVID will get severely ill?
15	who are operating, you know, flying tactical jets	15	A Those countermeasures will not
16	on and off carriers and they haven't been in port	16	control the severity of the illness.
17	for 200 days, I mean, we manage that closely, we're	17	MR. CARMICHAEL: I don't have any
18	paying attention to their you know, their	18	further questions.
19	condition, are they getting proper rest, et cetera.	19	EXAMINATION BY COUNSEL FOR PLAINTIFFS
20	But it's safe to say that that	20	BY MR. STEPHENS:
21	overall hard-extended deployments, the reason	21	Q Admiral Lescher, Mr. Carmichael asked
22	that's not the norm is because we recognize it's	22	you a question or a series of questions about
	Page 211		Page 213
1	not sustainable and it can create specific elements	1	your experience as a helicopter pilot in conducting
2	of risk.	2	a medevac.
3	Q Can it lead to additional fatigue for	3	Do you recall that?
4	the crew?	4	A I do.
5	A If not properly managed, it can	5	Q When was the last time that you were
6	fatigue the crew. And even and then, of course,	6	personally involved with a medevac?
7	there's limits within the ability of the commander	7	A It would be that instance.
8	to manage that. And so that's why we we work	8	Q And and when was that?
9	that very close.	9	A So that was during Desert Storm.
10	Q Can extending deployments or	10	That was early '90s.
11	combining deployments with COMPTUEX, can that	11	Q Okay. And when was the last time
12	can that put additional strain on the ships itself	12	that you worked with a SEAL Team or a Naval Special
	and the equipment?	13	Warfare Team on a deployment?
13	and the equipment.		A Operationally it would have been in
13 14	A Yes. We typically do voyage repairs	14	ri operationally it would have been in
		14 15	2013.
14	A Yes. We typically do voyage repairs		
14 15	A Yes. We typically do voyage repairs during deployment. We pull in, we would have	15	2013.
14 15 16	A Yes. We typically do voyage repairs during deployment. We pull in, we would have technicians come aboard. We would have host	15 16	2013. Q Okay. If if the Navy wins this
14 15 16 17	A Yes. We typically do voyage repairs during deployment. We pull in, we would have technicians come aboard. We would have host country maintenance folks do work in certain cases.	15 16 17	2013. Q Okay. If if the Navy wins this lawsuit, the result could be would be that
14 15 16 17 18	A Yes. We typically do voyage repairs during deployment. We pull in, we would have technicians come aboard. We would have host country maintenance folks do work in certain cases. And during that time frame, much of that was	15 16 17 18	2013. Q Okay. If if the Navy wins this lawsuit, the result could be would be that around 4,000 otherwise qualified members of the
14 15 16 17 18 19	A Yes. We typically do voyage repairs during deployment. We pull in, we would have technicians come aboard. We would have host country maintenance folks do work in certain cases. And during that time frame, much of that was constrained.	15 16 17 18 19	2013. Q Okay. If if the Navy wins this lawsuit, the result could be would be that around 4,000 otherwise qualified members of the class would be terminated from the Navy. And based

54 (Pages 210 - 213)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 68 of 325 PAGEID #: 4733

1	Page 214		Page 216
1	training, and equipping the Forces, would you	1	assumptions.
	consider that an acceptable loss to the Navy?	2	You can answer the question,
3	MR. CARMICHAEL: Just objection real	3	Admiral.
	quick that it's not certain that every member of	4	THE WITNESS: So it seems like quite
	the class would would get separated.	5	an outlier scenario, but I get conceptually the
6	You can answer the question.	6	point you're making. If 80 percent of that
7	THE WITNESS: That would be a hard	7	population did not meet standard, then I believe an
8	loss for the Navy. The you know, as I was	8	action we would look at for 80 percent not meeting
	looking again at the the last two NAVADMINs that	9	standard is: What's the underlying reason for
	we talked about, it highlights a point that we had	10	that? What are the root causes that lead to a
	discussed earlier, which is clearly inferred in	11	standard we've had for decades? And now I have 80
	both the original message and the corrected copy,	12	percent of this subset of the Force that can't meet
	is that all of these actions are creating	13	it? And I think that's where I would start in
	opportunities for people through these other	14	terms of trying to think through that question.
	these other levers to stay in the Navy, inferred,	15	BY MR. STEPHENS:
	we're talking about, and specified people who meet	16	Q And and what if I understand
	the standards.	17	your reference to the the standard, the
18	And so this is the hard element of	18	vaccination requirements that have been around for
19	whether they all of that class left the Navy or	19	decades, but what if my question were specific to
	some subset didn't, clearly in the context of	20	the COVID-19 vaccine, if 80 percent of DEVGRU had
	these messages, that would be not the best	21	not received the COVID-19 vaccine, would you
	outcome for the Navy to lose that size of a	22	then would you then evaluate that issue in the
	Page 215		Page 217
1	Force. But I also talked about the shape of the	1	same way?
	Force and how the message specifically talking	2	MR. CARMICHAEL: Same objection.
	about sea duty operational, sea duty incentive	3	Speculation and improper hypothetical.
	pay.	4	You can answer.
5	And so the foundational elements	5	THE WITNESS: So let me think through
6	here that we're talking about is that it's not	6	that. The concept of standard for vaccines, as you
	purposeful. No matter how talented these	7	just highlighted, has been present for decades.
	individuals are, if they can't meet standard	8	That medical readiness standards applies to all
	and there's standards beyond medical readiness	9	vaccines, not just COVID. And you're saying, hey,
	standards, but sailors who can't meet standard,	10	what, if nonetheless, the disqualifying event in
11	which are designed to create ready and lethal	11	every case was one vaccine for 80 percent of the
	operational Forces to operate forward in a harsh	12	Force, then I think a thoughtful commander would
	environment, it's not purposeful to retain them	13	think through would again, would have to dive
	in the Navy.	14	into that, what's taking place there?
	BY MR. STEPHENS:	15	BY MR. STEPHENS:
16	Q If 80 percent of DEVGRU were	16	Q And the purpose of that would
	unvaccinated, would you allow the commanders the	17	potentially be to determine whether the standard
	discretion to decide whether those members of	18	whether maintaining that standard and separating
	DEVGRU can remain in the Navy and be deployed or	19	those Service members would have have a greater
	would you separate all of them from the Navy?	20	impact or negative impact on the Navy's ability to
1 = -			
20	MR. CARMICHAEL: Objection. Calls	21	accomplish its mission as as opposed to allowing

1       A       It is that approach we talked about.       CRETTIFICATE OF NOTARY PUBIC         2       The way we manage risk is to look at benefit versus       IFELICIA A. NEWLAND, CSR, the officer led whom the foregoing videouped deposition was taken by ransen, is that to a case-by-case basis. I         3       cost and risk. And, you know, again, we it's         4       interesting we talked loday best practice are         5       clearly to do that on a case-by-case basis. I         6       mean, just in the cases that we talked loday, the         7       in stenotype and thereafter reduced to typewriting         9       about, case by case, HIV policy we talked         9       about, case by case, Force management message,         10       pursuing transfer to the preliminary         11       injunction, which precludes the Navy from doing         12       And so I note the preliminary         13       injunction, with you have redirect.         14       MR, CARMICHAEL: No, I dort.         15       MR, CARMICHAEL: No, I dort.         16       further questions.         17       I dort know if you have redirect.         18       MR, CARMICHAEL: No, I dort.         19       VIDECORAPHIFE. If Ihree are no         20       further questions.         17		Page 218		Page 220
2       The way we manage risk is to look at benefit versus       2       I, FELICIA A. NEWLAND, CSR, the office rules         3       cost and risk. And, you know, again, we – it's       3       whom the foregoing videotaped deposition was taken brecky certify that the winness whose testimony         4       interesting we talked today best practice are       5       appears in the foregoing deposition was taken by r         7       index sub case, brace basis. I       6       me; that the testimony of side winness was taken by r         8       to standard is case by case, HUV policy we talked       and or loot the precliminary       record of the testimony given by sid witness; that I         10       pursuing transfer to other branches, pursuing       record of the testimony given by sind witness; that I         11       commission, case by case, Force management message,       record of the testimony given by sind witness; that I         12       And so I note the precliminary       and so I note the precliminary       and or I note the precliminary         13       injunction, which precludes the Navy from doing       further questions.       further questions, we are now going off the         14       record. The time is 2:44 p.m. And this concludes       record of the samong pires:       1         14       record of way was five. And these will be retained       hy commission expires:       1         15	1	_	1	-
2       Intervery end insk. And, you know, again, wer- it's in the standard is case by case practice are clearly to do that on a case-by-case basis. I       3       whom the foregoing videotuped deposition was taker in the trace or curify that the winess whoat sate withers was taken by r in stenotype and thereafter reduced to typewriting appears in the traces buy case by case. HIV policy we talked anot, case by case, Force management message,         7       high risk sailors is case by case, HIV policy we talked about, case by case, Force management message,       in stenotype and thereafter reduced to typewriting are are to other branches, pursuing in injunction, which precludes the Navy from doing         11       commissions, case by case.       parasition in the case in the outcome of this action.         12       And so I note the preliminary       and on in which this         13       injunction, which precludes the Navy from doing       in realize or employee of any counsel or attorney         14       case by case is foundational to my declaration.       17       Improvement in the outcome of this action.         15       MR. CARMICHAEL: No, I don't.       19       FELICIA A. NEWLAND, CSR         16       further questions, ware now going off the trained any science is available for the deposition of ADMIRAL WILLIAM LLSCHER was concluded; signature reserved.)       7       Fage 219         10       The total number of media units       17       September 15, 2024       Page         11       12       Andrew E. Car			2	I, FELICIA A. NEWLAND, CSR, the officer before
4       interesting we talked today best practice are       4       hereby certify that the winess whose testimony         5       clearly to do that on a case-by-case basis. I       6         6       mean, just in the cases that we talked today, the       7         7       in stenotype and thereafter reduced to typewriting         9       about, case by case, HIV policy we talked       9         9       pursuing transfer to other branches, pursuing       10         12       And so I note the preliminary       11         13       injunction, which precludes the Navy from doing       15         14       case by case, office are no       10         15       MR. CARMUCHAEL: No, I don't.       19         19       VIDEOGRAPHER: If there are no       20         10       further questions, we are now going off of the       18         12       today is testimony given my William Lescher.       18         21       September 15, 2024       22         12       today was five. And thes will be retained       20         14       used today was five. And thes will be retained       21         22       today is testimony given my William Lescher.       12         23       today is testimony given my william Lescher.       21			3	whom the foregoing videotaped deposition was taken, do
5       clearly to do that on a case-by-case basis. I       5       appears in the toregoing deposition visal diverses was taken by r         6       mean, just in the cases that we talked today, the       record of the testimony given by said winess was taken by r         7       high risk sailors is case by case, medical waiver       record of the testimony given by said winess; that I         9       about, case by case, Fore management message,       record of the testimony given by said winess; that I         10       pursuing transfer to other branches, pursuing       am either coursel for, related to, nor employed by         11       commissions, case by case, and the parliminary       any of the parlies to the action in which this         12       And so I note the preliminary       any of the parlies to the action in which this         13       relative or employee of any coursel or attorney         14       case by case. is foundational to my declaration.       16         15       MR. CARMICHAEL: No, I dont.       17         16       further questions, we are now going off the       18         17       The total number of media units       18         18       velocation of ADMIRAL WILLIAM LESCHER was       20         20       (Wherupon, at 244 p.m., the videotaped       6/30/2022, William K. Lsceher (#5289637)         5       (Wherupon, at 244 p.m., the vide			4	hereby certify that the witness whose testimony
6       mean. just in the cases that we talked today, the high-risk sailors is case by case, medical waiver to standard is case by case, HIV policy we talked a about, case by case, Force management message, 10       7       in incuttation we cannot be action in the sail we tailoud to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or atorney employed by the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or atorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.         15       MR. STEPHENS: Okay. I have no further questions, we are now going off of the 21       17         16       The total number of media units 2 used today was five. And these will be retained 3       18         2       used today was five. And these will be retained 3       19         3       the total momber of media units 2 used today was five. And these will be retained 3       10         4       reter uses found the externed applied by the articleal. Esquire 2       1         1       The total number of media units 2 used today was five. And these will be retained 3       10         2       used today was five. And these will be retained 4       14         6       deposition of ADMIRAL WILLIAM LESCHER was concluded; signature reserved.)       14         16       The winesshould note tho applicable			5	appears in the foregoing deposition was duly sworn by
7       high-risk sailors is case by case, medical waiver       8       in anoty provide instant said deposition is a true         8       to standard is case by case, HIV policy we talked       9       an orithor control of the testimony given by said witness; that I         9       about, case by case, Force management message,       10       an neither counsel for, related to, nor employed by         10       pursuing transfer to other branches, pursuing       11       an orither counsel for, related to, nor financially or         13       injunction, which precludes the Navy from doing       12       case by case, is foundational to my declaration.         14       case by case is foundational to my declaration.       16         15       MR. STEPHENS: Okay. I have no       17         16       further questions, we are now going off of the       17         17       I don't know if you have redirect.       18         18       MR. CARMICHAEL: No, I don't.       19         19       VIDEOGRAPHEE: If there are no       20         20       further questions, we are now going off of the       21         21       record. The time is 2:44 p.m. And this concludes       22         22       today's testimony given my William Lescher.       21         23       by Veritext Legal Solutions. Thank you all very       14	-	-	6	me; that the testimony of said witness was taken by me
8       to standard is case by case, HIV policy we talked       9       record of the testimony given by said witness; that I         9       about, case by case, Force management message,       10       am neither counsel for, related to, nor employed by         10       pursuing transfer to other branches, pursuing       11       and sol note the preliminary         11       commissions, case by case.       12       And sol note the preliminary         13       injunction, which precludes the Navy from doing       14       24       deposition was taken: and, further, that I am not a         14       case by case is foundational to my declaration.       16       17       deposition was taken: and, further, that I am not a         15       MR. STEPHENS: Okay. I have no       16       17       deposition was taken: and.       18         16       further questions, we are now going off of the       17       We commission expires:       21         21       The total number of media units       28       sequence (#5289637)       10         2       used today was five. And these will be retained       3       4       RE: U.S. Navy Seals 1-3 Et Al V. Austin, Lloyd J. III E         2       much. Have a nice day.       5       6/30/2022, William K. Lescher (#5289637)       10         3       by Veritext Legal Solutions. Thank you all ver	6		7	
9       about, case by case.       10       am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or automcy employed by the parties herein, nor financially or otherwise interested in the outcome of this action.         12       And so I note the preliminary       13       relative or employee of any counsel or automcy employed by the parties herein, nor financially or otherwise interested in the outcome of this action.         13       MR. STEPHENS: Okay. I have no fourther questions.       16         14       Idon't know if you have redirect.       18         18       MR. CARMICHAEL: No, I don't.         19       VIDEOGRAPHER: If there are no 20       10         20       further questions, we are now going off of the 21       18         22       today's testimony given my William Lescher.       20         24       used today was five. And these will be retained 3       by Veritext Legal Solutions. Thank you all very 4       much. Have a nice day.         5       (Wherupon, at 2:44 p.m., the videotaped 6       deposition of ADMIRAL WILLIAM LESCHER was 7       7         8       Within the applicable timeFrame, the witness should 7       13       14         10       11       12       The total number of media units 2       14         16       deposition was taken (#12, Wi	7			
<ul> <li>induct curve (sour) of construction in magnitum measures.</li> <li>pursuing transfer to other branches, pursuing</li> <li>commissions, case by case.</li> <li>And so I note the preliminary</li> <li>injunction, which precludes the Navy from doing</li> <li>case by case is foundational to my declaration.</li> <li>MR. STEPHENS: Okay. I have no</li> <li>further questions.</li> <li>I don't know if you have redirect.</li> <li>MR. CARMICHAEL: No, I don't.</li> <li>VIDEOGRAPHER: If there are no</li> <li>further questions, we are now going off of the</li> <li>record. The time is 2:44 p.m. And this concludes</li> <li>today's testimony given my William Lescher.</li> <li>page 219</li> <li>The total number of media units</li> <li>used today was five. And these will be retained</li> <li>by Veritext Legal Solutions. Thank you all very</li> <li>much. Have a nice day.</li> <li>(Whereapon, at 2:44 p.m., the videotaped</li> <li>deposition of ADMIRAL WILLIAM LESCHER was</li> <li>concluded; signature reserved.)</li> <li>within the applicable timeframe, the witness should</li> <li>read the testimony to verify its accuracy. If there are</li> <li>any of the parties to the action in which this</li> <li>deposition in which the set and</li> <li>record. The time day.</li> <li>(Whereapon, at 2:44 p.m. the videotaped</li> <li>deposition of ADMIRAL WILLIAM LESCHER was</li> <li>concluded; signature reserved.)</li> <li>read the testimony to verify its accuracy. If there are</li> <li>and return to the deposing attorne;</li> <li>the witness fails to do so within the time</li> <li>do allotted, the transcript may be used as if signed.</li> <li>22</li> <li>Yours,</li> <li>Yours,</li> <li>Yours,</li> <li>Yours,</li> <li>Yours,</li> <li>Yours,</li> </ul>	8			
10       pursting trainset to build trainsets, purstaing         11       commissions, case by case.         12       And so I note the preliminary         13       injunction, which precludes the Navy from doing         14       case by case.         15       MR. STEPHENS: Okay. I have no         16       further questions.         17       I don't know if you have redirect.         18       MR. CARMICHAEL: No, I don't.         19       VIDEOGRAPHER: If there are no         20       further questions, we are now going off of the         21       record. The time is 2:44 p.m. And this concludes         22       today's testimony given my William Lescher.         7       where a nice day.         7       (Whereupon, at 2:44 p.m. And they oull be retained         3       by Veritest Legal Solutions. Thank you all very         4       much. Have a nice day.         7       concluded; signature reserved.)         8       Within the applicable timeframe, the witness should         9       record.         10       11         11       record.         12       the testimony to verify its accuracy. If there are no         13       deposition of ADMIRAL WILLIAM LESCHER was	9	about, case by case, Force management message,		
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13       injunction, which precludes the Navy from doing       otherwise interested in the outcome of this action.         14       case by case is foundational to my declaration.       16         15       MR. STEPHENS: Okay. I have no       16         16       further questions.       17       Idon't know if you have redirect.         18       MR. CARMICHAEL: No, I don't.       19       FELICIA A. NEWLAND, CSR         19       VIDEOGRAPHER: If there are no       20         20       further questions, we are now going off of the       19       Notary Public         21       record. The time is 2:44 p.m. And this concludes       21       September 15, 2024         22       today's testimony given my William Lescher.       22       Page 219       1         1       The total number of media units       2       andrew.e.carmichael. Esquire       2         2       used today was five. And these will be retained       3       by Veritext Legal Solutions. Thank you all very       4       RE: U.S. Navy Seals I-3 Et AI v. Austin, Lloyd J. III E       5         4       deposition of ADMRAL WILLIAM LESCHER was       6       6/30/2022, William K. Lescher (#5289637)       6         10       11       12       The witness should not those with the       11         12       14	12	And so I note the preliminary		
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15       MR. STEPHENS: Okay. I have no       17 <i>Just Market and Strate St</i>	14	case by case is foundational to my declaration.		
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56 (Pages 218 - 221)

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 70 of 325 PAGEID #: 4735

	Page 222
1	U.S. Navy Seals 1-3 Et Al v. Austin, Lloyd J. III Et Al
2	William K. Lescher (#5289637)
3	ERRATA SHEET
4	PAGELINECHANGE
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57 (Pages 222 - 223)

[01236 - 2024]

0	153:8 160:2,6	28:4,20 29:18,19	<b>19th</b> 154:7
<b>01236</b> 1:9	163:18 164:20	29:21 30:6,8,22	<b>1:58</b> 195:5,6
<b>012360</b> 6:19	165:9 169:10	33:14,20 35:4	2
<b>05</b> 52:3	170:19,20,22	36:15 37:12 38:4	<b>2</b> 4:9 12:9,10,14
<b>06</b> 18:15 52:3	<b>142</b> 5:2	41:18 42:8,15	16:4,16,16 18:19
1	<b>142-22</b> 191:12	43:6,8,21 47:8,19	28:16 37:2 43:17
	192:14,15 194:6,8	48:15 49:21,21	68:18 99:16,17,17
<b>1</b> 1:5 4:8 6:12 9:12	<b>147</b> 5:3	50:16 51:1,7,15	116:19 118:13
10:13,15 11:18	<b>14754</b> 220:17	52:10,18 56:15,21	127:2 147:21
12:20 13:1 15:17	<b>148</b> 194:21	57:4,9 58:3,16	186:1
15:19 16:17 65:6	<b>149,000</b> 194:21	59:11,17 60:9	<b>20</b> 25:18 45:19,20
68:14 99:15	<b>14th</b> 96:5,9 98:10	62:14,20 69:5	122:21 127:18
148:16 188:20	<b>15</b> 5:8 64:21 154:4	72:11,17 74:17,22	122:21 127:18
193:17	163:1,5,9 164:2	96:22 97:16 99:3	223:15
1-26 5:5	165:6 169:10	99:4 100:2 101:19	<b>200</b> 49:1 209:4
<b>1-3</b> 1:4,8 221:4	170:1,19 220:21	102:18 103:9	210:17
222:1 223:1	<b>152</b> 5:7	105:17 106:3	<b>2000</b> 1:20
<b>1-5</b> 1:7	<b>16</b> 5:9 29:8 101:20	107:15,16,22	<b>2000</b> 1:20 <b>2001</b> 2:15
<b>10</b> 4:8,21 118:19	166:14,21 169:9	108:8,9,20 110:20	<b>2001</b> 2:13 <b>2012</b> 203:18
119:1 120:10	170:19	111:4,18 112:4	<b>2012</b> 203:10 <b>2013</b> 203:18
<b>100</b> 103:15 158:3	<b>160</b> 209:3	113:15 114:16	213:15
158:11	<b>1600</b> 2:16 87:14	115:14,14 117:5	<b>2019</b> 121:10 122:3
<b>103</b> 4:16	<b>163</b> 5:8	120:19 122:16	<b>2019</b> 121.10 122.3 <b>2020</b> 5:9 106:9,17
<b>108</b> 2:6	<b>166</b> 5:9	124:3 126:1	107:19,20 108:12
<b>11</b> 5:1 65:5 66:12	<b>16th</b> 87:11	127:13 133:1	122:6,9 124:13
139:20 140:3	<b>17</b> 5:10 29:7	134:20 138:14	167:12,16,18
142:22 143:20	170:19 176:12,13	145:14 149:3,18	168:7,11 208:12
<b>112</b> 4:20	177:9	150:22 151:7,10	209:11
<b>118</b> 4:21	<b>176</b> 5:10	161:3 164:6,10	<b>2021</b> 40:16 44:18
<b>11:04</b> 127:1,3	<b>178</b> 119:10 120:14	165:4,12 169:13	46:16 48:15 49:6
<b>11:22</b> 127:3,5	<b>18</b> 5:14 184:19	170:4,9,21 171:20	52:11,13 57:19
<b>11:53</b> 146:19,21	185:4 186:8	173:6 175:19	58:2,14 64:1
<b>12</b> 4:9 5:2 142:1,5	190:19 191:15	186:10 187:13	104:10 105:11,16
<b>12:33</b> 146:21	192:15,18 193:15	189:15,19 190:10	107:9 110:1
147:2	193:16 194:6	190:11 191:3,10	113:17 118:16
<b>12th</b> 84:18 87:14	<b>180</b> 119:11 124:7	191:20 192:19	<b>2022</b> 1:17 5:13,15
88:8	<b>184</b> 5:14	193:18 194:7	6:5 32:9 87:15
<b>13</b> 5:3 147:9,10,14	<b>19</b> 4:22 5:8,15	216:20,21	96:5,9 98:10
<b>139</b> 5:1	19:3,22 20:3	<b>190</b> 5:15	99:10 154:7 178:2
<b>14</b> 5:7 48:12	21:10 22:15 24:4	<b>197</b> 4:4	<b>2024</b> 220:21
152:16,17,22	25:9,12 26:15,16		

#### [21 - accommodation]

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<b>21</b> 25:16,22 26:12	<b>33</b> 140:10 166:19	<b>600</b> 29:13	<b>93</b> 4:15
26:12 27:21 31:5	167:15 169:3	<b>64</b> 96:11 98:15	<b>98</b> 110:2 114:21
45:20 209:19	<b>330</b> 25:19	<b>68</b> 107:2	<b>9:21</b> 68:13,15
<b>2100</b> 3:7	<b>34</b> 140:10	7	<b>9:40</b> 68:15,17
<b>212</b> 4:5	<b>35</b> 140:10	<b>7</b> 4:15 80:14 93:16	a
<b>21st</b> 107:9	4	93:21 98:8 156:15	<b>a.m.</b> 1:18 6:4
<b>22</b> 5:14 21:22	4 4:12 85:1,5	170:7	68:13,15,15,17
22:12 26:15,20	86:20,22 147:2	<b>7,000</b> 194:19	127:1,3,3,5 146:19
27:16 28:5 32:2	164:19 169:21	<b>7.d</b> 156:11 159:1	146:21
45:20 87:11	195:4 200:2	161:20 165:8	<b>abilities</b> 207:1
102:11 110:6	<b>4,000</b> 200:8 213:18	170:7,22 171:12	ability 17:9 18:22
116:13 154:5	<b>4.000</b> 200.8 213.18 <b>4-26</b> 1:6	<b>7.d.</b> 156:13 162:16	U U
209:19			19:2,11,13,21 20:3
<b>22314</b> 3:8	<b>4.c</b> 163:18 164:19	<b>700,000</b> 106:18	20:6 21:5,10
<b>23,000</b> 106:19	<b>4.c.</b> 160:3,11	<b>701</b> 1:20 6:22	34:14 43:19 44:9
<b>23rd</b> 104:10,18	<b>42</b> 66:3 197:19	<b>75075</b> 2:17	49:15 56:22 57:10
105:10,16	44 160:11	<b>7807</b> 4:14	74:22 99:21 100:1
<b>24th</b> 27:22	<b>48</b> 5:7 153:2 154:2	<b>7812</b> 5:2 142:6	133:18 179:1
<b>25</b> 74:11 165:20	<b>4:21</b> 1:9 6:19	<b>7830</b> 4:15 93:22	206:3 211:7
166:10 167:5	<b>4e642</b> 86:1	<b>7831</b> 140:9	217:20
168:12 169:12	5	<b>7835</b> 5:1 140:6	<b>able</b> 11:4 45:5
170:8,20 171:18	<b>5</b> 4:13 86:12,16,21	<b>78746</b> 2:8	90:18 102:12
<b>250</b> 2:7	87:5 153:13 195:9	<b>79</b> 4:10	107:21 108:6
<b>25th</b> 27:22	200:1	<b>7th</b> 38:12 41:13	115:21 133:11,20
<b>26</b> 9:12	<b>5,461</b> 121:10,21	42:10	138:4 188:17
<b>28</b> 185:10	<b>5-1</b> 200:3	8	196:7
<b>2:14</b> 195:6,9	<b>5-9</b> 200:3	<b>8</b> 4:16 65:4 66:12	<b>aboard</b> 113:16
<b>2:44</b> 1:18 218:21	<b>51</b> 21:21	80:14 103:18,22	125:6 201:13,18
219:5	<b>5289637</b> 221:5	104:4	203:13 211:16
	222:2 223:2	<b>80</b> 215:16 216:6,8	academy 197:20
3	<b>578</b> 29:14	216:11,20 217:11	197:22
<b>3</b> 4:10 12:20 79:20	<b>5th</b> 78:7 200:5	<b>85</b> 4:12 126:11	accept 172:10,11
79:21 80:12 127:6		<b>86</b> 4:13	174:22 175:8
146:20	6	<b>88</b> 4:14	202:2
<b>30</b> 1:17 48:15	<b>6</b> 4:14 5:13 80:11	<b>8:02</b> 1:18 6:4	acceptable 214:2
221:17	80:13 88:11,16		accepting 58:20
<b>30th</b> 6:5 40:16	91:6 178:2	9	137:9
49:6 52:11,13	<b>6.0</b> 158:21	<b>9</b> 4:3,20 112:16,20	access 83:17 168:3
57:19 58:2,14	<b>6/16/2022</b> 87:4	114:12	209:20 211:22
64:1	<b>6/30/2022</b> 221:5	<b>90</b> 64:18 126:15	accessions 184:11
<b>32</b> 140:10	<b>60</b> 208:7	<b>90s</b> 213:10	accommodation
			17:15,17 18:2,12
			,

#### [accommodation - allows]

47:7,18 62:19	actions 5:16 128:2	43:5 51:19 55:14	afternoon 147:5
63:5,10,21 64:2	185:12 186:20	63:16,17,19 64:3,4	195:12
65:16,17 66:6	187:21 189:7	64:8,11 68:21	agency 5:12 130:8
70:6,11 71:16	214:13	72:14 73:13 74:9	178:11
72:10 75:12,20	active 5:15 90:7	74:10,14 76:19,21	aggregate 27:11
77:17 78:12 126:1	112:12 185:11,12	76:22 80:3 84:7,9	<b>ago</b> 63:18 64:16
138:12 143:4	187:9 204:10	84:18 85:22 88:14	76:14,14
144:7 173:5,6	actively 37:7	92:1 93:7,19	<b>agree</b> 6:10 65:21
accommodations	activity 5:13	103:21 104:6	171:15,22 172:4
61:5 69:16,22	106:13 172:21	105:7 118:22	184:5
77:7 138:20 139:8	178:11	120:8 127:9 135:4	<b>ahead</b> 20:20 28:10
143:10	adapted 212:7	140:2 142:4 143:7	68:9 97:10 119:7
accomplish 21:6	adding 34:16,18	143:12 145:18	119:12 124:10
21:10 22:13 74:22	addition 46:19	147:5 148:2	196:14
106:3 107:21	additional 33:2	152:20 153:19,22	<b>air</b> 1:19 6:21
108:7 148:7	146:8 149:12	155:4 182:13,15	aircraft 4:21
217:21	150:15 169:4	185:2 190:1,17	107:3 120:18
accomplishing	186:13 193:22	195:12,20 197:15	125:8 199:15
53:17 118:6	210:2 211:3,12	201:2 209:3	200:7 202:4 203:4
accomplishment	additions 223:6	212:21 216:3	205:10 212:2,3
148:11,22	additive 146:5	219:6	aircrew 125:7
account 46:8	address 46:2	advanced 207:4	aircrewmen
122:2 145:8	55:16,17 59:15	advantage 132:16	199:10
accountable 35:1	93:3 151:20	adversary 78:7,8	<b>al</b> 5:5,6 6:15 9:12
accounting 31:15	201:16	207:7	221:4,4 222:1,1
accrued 34:6	addresses 89:2	<b>adverse</b> 132:14	223:1,1
accumulative	addressing 30:6	adversely 74:17	alexandria 3:8
90:19	79:8 187:12	advice 157:21	allocating 210:6
accuracy 67:2	adjudicate 18:16	159:3 162:5 171:4	allocation 198:21
221:9	adjudication 64:8	176:1	199:22 200:15
accurate 16:8 34:1	69:21	<b>advised</b> 96:10	allotted 221:20
34:5 68:1 205:20	administer 7:7	156:3,21 157:13	<b>allow</b> 60:8 157:17
acknowledgement	administrative	<b>adviser</b> 157:21	165:9 171:16
223:3	59:10,16 60:9,16	165:14	172:3 215:17
acknowledgment	62:14	advising 96:20	allowed 110:4
221:12	admirable 124:11	<b>affect</b> 20:2 55:21	allowing 141:7
acquisition 199:21	<b>admiral</b> 1:16 4:16	57:4 75:8 126:5	171:7 172:1
205:10	9:2,7 10:21 29:12	affiliations 7:14	217:21
action 7:9 32:4	30:15 36:7,8,10	afghanistan 55:13	<b>allows</b> 155:14
204:8 216:8	38:10 40:19,21	<b>afloat</b> 106:18	157:9 161:22
220:11,15	41:5,6 42:10,14		171:1

[amassed - august]

	1	1	
<b>amassed</b> 106:18	aor 25:17 42:9	approved 139:9	assessments 61:21
ambassadors	54:21 55:13 189:7	157:10	63:1 69:3,12
204:13	198:16 204:2	approximately	143:3
amended 4:9	aperture 186:13	14:4 52:7,19 53:2	assigned 198:13
12:17	186:19 187:7	73:9 105:18	200:21
america 198:3	193:22	159:10 162:18	assignment 199:7
<b>amount</b> 208:1	apparently 88:2	165:20 166:6,9	assistance 209:21
<b>amphib</b> 200:6	<b>appeal</b> 18:17 62:9	169:11 171:18	assistant 84:2
amphibious 200:6	appear 185:8	194:13	associated 17:14
amplify 92:16	appearances 7:13	<b>area</b> 25:17 41:19	141:6 143:21
analysis 17:14	appears 85:17	51:20 150:16	145:8 189:18
18:7 61:12 129:15	87:10 95:15	<b>areas</b> 141:18	204:19 205:4
130:10 134:4	104:17 119:10	143:21	assortment 203:15
137:19 145:13	183:11 186:5	<b>arg</b> 203:10	assume 14:22
<b>analyze</b> 145:13	193:9 220:5	<b>arlington</b> 1:20 7:1	26:16
<b>anchor</b> 209:6	appended 223:7	<b>armed</b> 4:18 104:8	assuming 124:21
<b>andrew</b> 2:3,9 3:3	applicable 221:8	104:15 106:1	135:8
7:15 8:1 9:9 64:17	<b>applied</b> 173:8,13	107:8 108:18	assumption 43:1
221:1	178:22 179:21	177:21	116:22 135:1
andrew.e.carmic	181:6,16 184:16	<b>article</b> 113:15	assumptions 58:7
3:10 221:2	<b>applies</b> 132:13	114:15,22 115:1,6	102:3 131:6 133:4
<b>answer</b> 13:9 15:8	148:8,19 171:13	116:6 118:10	135:2,20 149:21
28:10 30:19 41:3	217:8	120:4 121:7	151:14 173:21
41:7 51:11 53:6	<b>apply</b> 47:9 49:9	<b>ashore</b> 202:10	216:1
58:8 100:13,17	149:1 150:10	<b>asked</b> 12:2 14:5	asymptomatic
102:4 110:11	173:7 180:15	52:7,10,14 67:3	178:19 181:14
118:11,18 119:18	approach 17:5	69:2 73:2 81:2	attached 5:18
131:7 133:5 135:3	27:5 44:17 60:1	109:20 112:15	91:10 221:11
135:21 136:15	124:15 172:9,13	170:15 190:17	attachments 91:7
143:11 145:4	173:8,13 184:18	212:21	attack 115:4
149:22 150:2	218:1	asking 53:13	attending 7:12
162:11 164:21	approaches 60:3	157:6	attention 95:9
166:1 169:16	62:6	assert 9:19	97:19 147:21
170:14 173:22	appropriation	assertion 19:9	210:18
174:1 180:4	199:20	assertions 55:6	attorney 15:4
181:10 182:18	appropriations	90:16	220:13 221:13
189:22 196:14	199:19	assessment 61:14	attorney's 3:5
214:6 216:2 217:4	approval 49:17	61:22 62:13,21	audio 6:9
answer's 131:10	70:7,12 72:9	65:19,20 69:15	august 27:20
answering 141:9	approve 70:15	139:14 175:16	40:16 48:15 52:11
141:12			52:13,13 57:19

#### [august - break]

			1
58:2,14 64:1	background 174:5	86:16 88:16 93:21	<b>believes</b> 157:20
<b>austin</b> 1:11 2:8 5:4	<b>backs</b> 48:21	104:1 112:21	<b>benefit</b> 60:14,17
6:15 9:10,13	bahrain 25:20	140:5 142:6 153:1	61:2,8 71:8,9
12:20 50:2,4	200:2 204:1,2	156:12 160:10	77:16 172:10
179:9 221:4 222:1	<b>balance</b> 204:3	<b>battle</b> 90:3,11	218:2
223:1	balanced 97:21	91:12,16	benefits 102:8
<b>author</b> 120:21	<b>base</b> 202:7	battlewatch 93:8	benghazi 204:7
authority 18:17	<b>based</b> 15:21 23:4	93:11,14 111:9	<b>berry</b> 2:13 7:19,19
64:9 70:4	24:22 32:7 49:10	beards 61:6	<b>best</b> 11:11 48:10
authorized 7:7	60:3 68:1 79:14	becoming 49:13	69:11 81:15 82:6
available 22:7	99:5 117:17	97:14 118:14	82:13 98:5 209:16
99:7 136:21 150:7	129:12 143:17	175:6	214:21 218:4
221:6	152:3,4 169:17	beginning 127:6	better 42:1
avenue 3:7	170:18 171:3	147:1 195:8	<b>beyond</b> 152:13
aviation 106:17	183:10,14 184:9	<b>begins</b> 6:12 15:20	215:9
199:6	194:20 196:17	28:17 37:3,4	<b>big</b> 202:4
avoidable 150:8	197:2 201:8 206:3	43:18 68:17	bigornia 120:22
aware 22:22 29:5	213:19	189:13	121:5 124:5
36:16 37:16,19	baseline 45:4,4	<b>behalf</b> 1:4,5 2:2	<b>billet</b> 194:20
38:2,5,6,13 42:11	208:6	3:2	<b>billets</b> 186:3,3,5
51:1,10 63:2,11	<b>bases</b> 180:16	<b>belief</b> 125:22	194:14,18,21
82:9 109:3 110:19	<b>basic</b> 206:20 207:3	<b>beliefs</b> 75:14,22	197:18
111:1 112:6,14	207:13	<b>believe</b> 16:19	binder 94:8
165:19 166:3,3	basically 60:22	25:16,21 26:12	<b>bit</b> 206:6,10
171:7 177:2	94:19 98:3 125:7	27:22 30:11 33:22	biweekly 95:9
183:21 195:15	195:20 200:21	39:11 41:21 51:21	blanket 20:6
awareness 23:5	basin 2:6	57:15 59:19 60:15	<b>block</b> 83:19
73:5 90:19	<b>basis</b> 17:6 18:4	64:16 69:9 70:20	<b>blood</b> 176:20
b	19:14 20:5 29:1	71:1 80:17 81:12	<b>boat</b> 209:6
<b>b</b> 2:3 47:14 156:15	34:22 47:15 59:20	90:12 91:21 93:8	<b>body</b> 31:17 91:10
<b>back</b> 12:22 15:12	60:3,13 61:14	94:6 101:20 102:5	boosters 49:11
28:16 35:9 45:8	62:15 66:10 70:10	126:2 130:7 132:1	<b>bottom</b> 15:19
45:13 65:15 66:11	139:5 156:2	135:5 136:4,18	113:1 147:21
66:11 68:16 71:19	157:12 158:16	139:17 146:8	167:14
82:22 83:22 99:15	165:16 173:14	151:3,3,18 158:1	<b>box</b> 89:11 125:7
127:4 146:22	179:2,4,17 180:3	158:13,20 159:17	155:13 212:4
163:17 191:14	181:18,18,20	162:19 167:21	branches 168:20
195:7 200:16	182:4 184:13,17	171:11 177:4	218:10
202:6 207:14,20	218:5	182:22 196:4,10	break 68:9 69:2
208:11,13,18	bates 4:12,13,14	208:20 216:7	89:17 126:13,21
, ,	4:15 5:1,2,7 85:7		146:16 195:1

[breaks - cdc]

breaks 55:1 64:18	calendar 45:20	64:21 68:11 97:4	90:3 98:2 103:13
breathing 51:8	83:12,15 85:12,15	100:7,11 102:1	117:12 137:8
brief 197:17	87:16,19	105:1 110:9 117:7	139:5,5 147:16
<b>briefed</b> 182:16	<b>call</b> 74:6,7 91:15	118:3,7 119:6,8	148:5 152:3 156:2
<b>briefly</b> 108:2	95:10 206:16	126:10,14,18	156:2 157:12,12
197:21	<b>called</b> 9:3 46:6,9	131:4 133:2	158:16,16 165:16
<b>bring</b> 33:10 69:22	90:10 92:10	134:22 135:18	165:16 172:7,7
133:8	194:17 206:8	136:13 139:10,15	173:2,14,14 176:3
bringing 79:3	<b>calls</b> 15:4 53:4	143:6 145:16	176:4,6,6 184:13
<b>brings</b> 39:14 172:9	82:5 83:16 100:7	149:19 151:12	184:13,17,17
<b>broader</b> 56:4 66:8	100:11 102:1	156:7 162:6,9	187:9 195:16
71:2 109:8 155:12	131:4 133:2	164:17 165:21	201:9 217:11
broadly 55:13	134:22 135:19	169:14 170:12	218:5,5,7,7,8,8,9,9
71:13 126:7	136:13 139:10,15	173:19 180:1,7,10	218:11,11,14,14
153:16 187:19	143:6 145:16,18	180:13 181:8	cases 21:17,22
brought 22:9	149:19,20 151:13	182:7,12 189:20	22:13 27:4,12
54:16 82:8	169:15 189:20	190:14,16 195:2	31:15 60:12 90:8
<b>brown</b> 38:10,16	215:21	196:12 197:12,14	90:8 97:21 98:2
40:19,21,22 41:1	capability 34:19	212:17,21 214:3	99:13 102:12
42:1,13 43:4	200:20 201:14	215:21 217:2	112:3,7,8,13
51:18 52:5 72:14	capable 188:3	218:18 221:1	122:10,20 124:3
73:9,10,14,15 74:1	199:7	carried 112:3	130:18,19 131:15
<b>bruce</b> 89:13	<b>capacity</b> 1:11,13	<b>carrier</b> 4:21 20:16	139:18 203:13
<b>budget</b> 200:14,16	55:2,17 188:13	106:15 107:2,3	204:10 211:17
200:18	201:15	120:18 121:17	218:6
<b>bullet</b> 164:4,4,8	<b>capita</b> 97:21	124:20 202:5	category 134:8
<b>bureau</b> 18:15	<b>captain</b> 3:12 8:5,5	209:6 212:2,3	168:15 171:19
<b>burke</b> 36:7	13:20,22 38:10	<b>carriers</b> 210:16	catherine 3:4 8:3
burroughs 3:16	40:22 41:1 42:1	carry 18:22 19:11	catherine.m.yang
8:13,14	42:13 43:4 51:18	99:21	3:9
business 198:20	52:5 72:14 73:9	<b>case</b> 1:8 6:16,18	cause 16:20 17:2
<b>buy</b> 205:10	73:10,14,14 74:1	13:12 17:6,6,13,13	43:22 78:21
с	81:12 84:3	17:18,20,20,21	causes 216:10
<b>c</b> 2:1 3:1 4:1 6:1	<b>capture</b> 173:17	18:4,4 19:14,14	caveated 144:9
cadence 95:21	<b>care</b> 75:5	20:5,5 31:3,6	<b>cdc</b> 33:7,13 110:17
96:3	career 197:19	34:21,21 38:16,20	110:21 111:3
calculate 65:10	carlos 1:12	58:19 61:1,10,22	114:15 160:18,20
calculations 67:22	carmichael 3:3 8:1	61:22 62:1,1	161:4,7 163:13,17
calculus 60:18	8:1 13:7 15:3 28:8	65:20,20 66:10,10	163:20 164:3
71:17,21 77:15	30:15 36:18 46:18	69:8,8 70:19	169:18,21
175:9	53:4 58:5 64:17	71:12 78:4,4 81:7	
110.7			

### [cdr - command's]

<b>cdr</b> 120:21 121:2	136:5,11 144:17	<b>chief's</b> 159:21	<b>cno</b> 129:7 155:11
<b>centcom</b> 25:17	167:22 175:11	<b>chiefs</b> 77:5 204:17	cockpit 212:4
198:16	177:17 197:5,9	<b>choice</b> 77:19	<b>cold</b> 176:5
<b>center</b> 93:9,14	207:10 222:4,7,10	172:18	collect 81:4
113:5 130:9	222:13,16,19	<b>choices</b> 34:20,21	<b>combat</b> 33:18,19
163:12 198:10	<b>changed</b> 99:1,10	61:7	34:2 35:9,12,20
central 54:21	190:21 208:12	choosing 195:17	36:14,19,22 37:5
69:20 168:18	changes 15:15	circumstances	37:10 38:3 42:20
189:7	23:2,2 71:17,18	130:6 155:21	42:21 148:4
centrally 23:11	221:10 223:6	158:5 175:21	combatant 1:7
<b>certain</b> 53:17 75:1	changing 54:7	<b>cite</b> 54:2 146:4	5:11 22:19 39:13
79:6 80:10 89:18	55:20 187:9 192:7	<b>cited</b> 29:13 65:7	150:14 178:10
130:6 141:18	192:7	90:9	205:2
144:22 145:9	chaplains 76:5,10	<b>civilian</b> 198:20	combination
146:1 150:20	76:11,12,18 77:5,5	204:18	115:2 116:3 186:4
151:22 155:21	77:13	class 18:3 195:15	187:18,20
159:18 169:5	characterization	195:16 196:6,9,11	combined 45:1
187:10 192:7	107:19	196:21 213:19	combining 209:22
211:17 214:4	characterize 37:6	214:5,19	211:11
certainly 21:1	characterized	classified 33:22	<b>come</b> 13:2 32:5
29:4,7 41:15	132:1	40:4 92:4,13	45:8 65:11 78:18
54:15 60:19	characterizing	clause 19:20 28:22	78:20,21 89:11
155:12	172:16	29:17 30:17	90:4,17,22 91:2
certificate 220:1	charge 64:6	cleaning 49:12	95:8 103:6 137:16
certification 45:1	201:19	cleanliness 49:12	155:13 172:21
45:8 206:14	<b>chart</b> 167:1	<b>clear</b> 14:17 117:14	203:10 206:19
207:16 208:16	<b>check</b> 49:17	143:8	208:10 211:16
certified 207:9	checklist 63:12	<b>cleared</b> 105:2,4	<b>comes</b> 59:21 71:18
certify 220:4	cheeseman 63:19	<b>clearly</b> 47:13 99:7	77:14 148:14
certifying 206:13	195:20	109:2,17 123:13	201:17
<b>cetera</b> 61:6 210:19	<b>chief</b> 4:17 18:11	150:4 210:8	<b>coming</b> 21:20
<b>chain</b> 27:1 35:14	18:16,17 22:17,18	214:11,20 218:5	118:9 137:11
35:16 40:8 128:1	32:5 34:4 38:9,11	client 15:4	207:11
<b>chance</b> 114:9	52:6 60:5 63:15	clinically 178:20	<b>comma</b> 89:4
120:9 142:10	76:5,10,11,12,18	181:15	command 1:19
153:7 163:7	77:4,13 90:5	<b>close</b> 97:19 115:18	6:21 27:1 35:14
177:10 212:13	91:22 104:7 148:2	116:20 117:12	35:16 36:12 40:8
<b>change</b> 32:10,15	153:20 173:10	211:9	54:21 156:22
55:5 114:15 116:6	185:10 200:19	<b>closely</b> 210:17	189:7,8 199:1,6
131:2 132:9 133:1	201:1 204:16,19	<b>closer</b> 34:18	command's 128:2
134:20 135:16	204:20 205:3,5		

#### [commanded - consumer]

	• •	1.40.0	01 44754
commanded 203:6	commissions	compound 13:8	confidence 116:21
commander 3:13	218:11	compromise	confidential 92:4
3:15 8:7,7,11,11	committee 4:18	148:11,22	confined 146:2
8:14 18:14 22:6	104:8,16,20 106:1	<b>comptuex</b> 45:2,15	confirmed 178:20
23:2 34:12,15,20	107:9 108:18,18	46:9,11 48:22	181:15
34:22 36:9,10,11	committees 109:6	206:11,12 207:5	<b>conflict</b> 55:1 56:4
38:12 41:13 42:11	109:11,18 199:20	208:14 209:22	56:4
46:2 51:22 52:3	commodore	211:11 212:12	confronted 150:4
55:14 58:22 70:1	199:12,17	concept 69:20	congress 104:15
70:12 71:1,3,5,7,8	<b>common</b> 176:5	79:1 150:18 217:6	105:22 108:8,17
71:11 72:1 103:5	<b>commonly</b> 130:10	conceptually	108:19 109:6
121:3,4,5 124:5	communication	34:12 93:2 136:4	congressional
129:8 133:17	63:3	150:11 159:19	109:10 199:20
135:10 152:8	communications	216:5	consequence 98:5
156:1,3,20 157:11	15:10 50:9 82:3	concern 77:6	131:10 133:9
157:13,19,20	84:10 92:12	concerning 23:18	136:18 137:13
158:15 172:5,15	compelling 70:20	56:14,20 57:4	consider 21:9
175:1,8 199:22	99:13 132:18	74:19 97:14	31:18 61:13 111:2
200:2,3 201:19	136:18 158:16	concerns 79:9	111:16 131:20
203:12,17 211:7	compensate 59:6	<b>concert</b> 22:3 35:8	137:18 141:16
217:12	competition 54:12	<b>conclude</b> 195:18	143:2,2 214:2
commander's	54:13 186:11	concluded 219:7	consideration
133:7 162:1 171:1	193:21	concludes 68:13	65:19
171:3,7 174:19	competitive 205:9	127:1 146:20	considered 56:8
commanders 5:11	compile 81:4	195:4 218:21	56:14,20 75:17
22:19,20 23:12,21	compiles 91:14	conclusion 19:9	90:15 134:1 141:2
35:15 36:2 43:15	complete 25:9	70:15	143:15 182:11
44:12 52:1 69:11	223:8	condition 146:7	183:8
70:7 150:15 158:2	completed 33:20	175:5 181:19	consistency 69:22
159:2 165:12	35:11 37:11 38:4	201:8 210:19	consistent 172:12
171:12 175:20	39:4 43:6,8 72:17	conditions 60:21	consistently 90:22
178:10 205:1,2,13	72:22 128:9,10	159:18,19 160:20	consolidated 70:3
205:16,19,22	221:17	169:6 184:16	71:11
206:2 215:17	completely 175:8	204:14	constrained 66:5
commanding	component 5:15	<b>conduct</b> 17:13,19	211:19
199:2,7	22:20 23:12,21	127:22 203:14	consult 49:19
commands 5:12	35:15 36:2 52:1	conducted 42:7	165:14 184:2
178:10	158:2,4,14 171:12	52:21 62:15	consultation 152:9
commission 179:1	185:11 200:8	129:17	165:14,17
220:20	203:8 205:1	conducting 63:9	consumer 95:7
		213:1	

[cont'd - covid]

<b>cont'd</b> 3:1	contribute 138:4,9	<b>corps</b> 8:6,8,14	9:5 12:18 15:10
<b>contact</b> 116:20	169:5	146:13	68:19 80:9,16,22
117:12	<b>control</b> 44:12,19	corpsman 201:13	82:3,17,19 83:14
contacts 115:19	45:14 113:5 146:9	<b>correct</b> 11:1,2,6	127:7 140:5
contain 92:3	163:12 199:6	12:4,6,7 15:1,2	142:19 147:3
contained 16:14	202:19 210:7	25:5 36:17 37:17	181:3 195:10
23:19	212:8,16	37:18 38:17 42:3	197:13 212:19
<b>contains</b> 135:1,19	controlled 123:20	42:4 62:4,16 67:7	220:10,13 221:14
<b>context</b> 21:5 22:8	controlling 44:17	67:17,20 68:6,22	counseling 209:21
24:1 37:7 53:7	99:12	69:10 72:12 73:20	counter 59:1
54:12,17,20 55:2	conversation 54:3	74:18 75:2,3	countermeasures
69:16,17 71:15,18	55:3 73:15 76:8	81:11 82:1,20	124:6 133:22
74:11 77:10,21	97:3 100:22 136:5	85:19 86:7 94:18	199:6 212:15
78:5,6 96:15	137:7 152:12	95:1 98:12 107:12	countries 71:20
108:1,21 109:18	conversational	107:15 115:12	country 49:17
124:4 137:8	11:10	121:22 122:5,12	187:19 211:17
143:14 144:14,16	conversations 6:7	122:16 123:1,12	<b>couple</b> 82:14
144:20 145:6	24:22 29:5 38:6,8	127:10,19,21	112:5 120:3
172:6 173:3,4	38:13,15 39:1	140:22 141:3	<b>course</b> 16:2 22:8
175:4 184:14	42:13 43:4 50:13	147:6 148:16	22:22 24:8 55:10
187:19 189:6,11	57:6,9,12,14,16	152:14 153:9	109:5 207:11
214:20	72:4,9 73:18 76:3	154:7,8 155:17	211:6
contextually 72:3	76:4 77:4,9 96:18	157:8 161:8	<b>court</b> 1:1 5:3 6:17
continue 6:10	97:18 98:6 109:18	162:20,21 171:5	7:4 8:17 9:14
13:12 48:17 54:11	152:2	179:21 180:17	10:18 11:12,15,22
continued 31:21	conveyed 134:14	183:19,20 184:1	17:12 147:15
49:5 106:14	conveying 96:16	191:19 194:10,11	<b>court's</b> 16:19 17:1
continues 16:4	cooperative 198:6	195:13 223:8	18:21
49:9	coordination	corrected 5:17	courthouse 1:20
contours 144:9	81:17 206:22	191:21 192:6,10	6:22
contract 28:20	<b>copies</b> 221:14	192:11,21 193:5	<b>cover</b> 105:11
29:18 30:8,22	<b>copy</b> 5:17 10:14	194:8 214:12	<b>covered</b> 178:21
46:14 130:13	13:1 99:16 147:14	corrections 223:6	183:14 184:12
151:1,7	191:21 192:6,10	correctly 107:5	<b>covid</b> 4:22 5:8
contracted 51:7	192:11,22 193:5	157:3 158:13	19:3,18,22 20:3,14
51:15	194:9 214:12	196:4	20:18 21:10,17,22
contracting 29:19	coronavirus	<b>cost</b> 60:15,17	22:13,15 24:4,10
29:21 32:12,17,21	122:10	61:15 172:10	24:15,17 25:9,12
32:22 33:15 46:15	corporation 130:1	218:3	25:17,22 26:15,16
contractor 130:5	130:4,5	<b>counsel</b> 4:3,4,5	27:4,12 28:4,6,20
		6:14 7:11 8:10,20	29:6,8,18,19,21

### [covid - declaration]

30:6,8,22 32:11,17	186:10 187:13	<b>cut</b> 123:20	132:2,8
32:19 33:14,20	189:15,19 193:18	<b>cv</b> 1:9 6:19	decades 54:8
34:8,10 35:4,21	210:7 212:8,14	<b>cvn</b> 107:1	55:11 216:11,19
36:15 37:12 38:4	216:20,21 217:9	<b>cycle</b> 205:6	217:7
39:17 41:18 42:8	<b>cracked</b> 211:22	d	december 25:22
42:15 43:6,8,21	<b>craft</b> 1:7 39:13	<b>d</b> 2:13 6:1 156:15	<b>decide</b> 13:4 215:18
46:3,15 47:8,19	<b>crandall</b> 84:6,7,9	156:16	decision 70:3,4
48:15 49:21,21	84:18 85:22	<b>d.c.</b> 199:17	78:15 156:19
50:16 51:1,7,15	crashing 203:4	damaging 203:4	158:2 171:16
52:10,18 56:15,21	<b>create</b> 44:16 211:1	darse 84:6	172:1 173:16
57:4,9 58:3,16	215:11	data 19:8 20:10	174:3
59:3,11,17 60:9	creates 44:10	32:10,13 33:7	decisions 17:7
62:14,20 69:5	creating 214:13	56:18,20 65:15	23:3 55:21 60:12
72:2,11,17 73:14	<b>crew</b> 22:7 23:4	67:10,18 90:15	66:4,6 72:4
73:21 74:17,22	25:19 26:1 39:14	99:9 117:14 134:4	129:11 155:19
77:14 90:13 91:11	46:14,16 48:5	134:12 167:13	156:5 157:15
91:17,18,19 92:2	49:11,18 72:2	169:19	159:22 172:6,11
92:19 96:22 97:16	103:2,6,7,15 116:7	date 1:17 6:5	183:13 198:22
99:3,4 100:2,6,15	116:18 118:13	14:12 26:4,9	200:16
101:19,22 102:5,6	121:10,20 133:22	27:18 32:8,9	<b>deck</b> 200:6 202:4
102:18 103:9	135:13 208:9	80:15 98:9,11	212:5
105:17 106:3	211:4,6 212:1	154:3,4 167:13,18	declaration 4:8
107:15,16,22	<b>crew's</b> 148:4	192:20 222:24	10:3,14 11:22
108:8,8,9,20	crewmember	223:12	12:1,5 13:1 14:5,7
109:21 110:4,20	133:19	dated 178:1	14:11,13,16 15:18
111:4,10,18 112:4	crewmen 1:7	dav 219:4 223:15	15:21 16:11,14,18
112:8,13 113:15	criteria 160:18	days 21:21 27:6	18:20 23:18 24:1
114:1,16,17 115:4	161:7 163:20	48:12 49:1 94:19	28:17 29:12 31:1
115:14,14 117:5	169:21	106:19 157:2	32:1,8,10 37:2
120:19 122:16,20	<b>critical</b> 186:2	208:8 209:4	43:18 44:8 52:21
123:14 124:3	188:3 209:10	210:17 221:17	53:14 65:4,5
126:1 127:13	212:1	dead 150:5	66:12 73:17 74:14
133:1 134:20	<b>cs</b> 221:15	<b>deal</b> 106:3	81:10,15,18,22
138:14 144:4	<b>csr</b> 1:22 220:2,19	<b>dealing</b> 105:16	82:4,11,12 83:7,8
145:14 149:3,18	culminates 207:5	109:13	83:16 84:10,12,19
150:22 151:7,10	current 76:18	<b>death</b> 117:2,17	85:5 90:16,20
161:3,5,10,12	204:15 213:21	131:9 132:17	94:9,11,17,22
164:6,10 165:4,12	currently 22:12	136:17 137:4	98:11,22 99:2,17
168:2 169:13,19	26:15 28:7	176:9	111:17 141:2
170:4,9,21 171:20	curtailed 106:13	deaths 20:22	148:15,15 149:8
173:6 175:19		116:16 131:21	154:6,11,14 197:6
		110.10 151.21	

### [declaration - designated]

			-
197:9 209:3	<b>delay</b> 187:4	51:13,15 57:18	<b>deposed</b> 10:10
218:14	<b>delayed</b> 26:1 73:6	58:1,1,13,13,17	deposing 221:13
declare 223:4	<b>deliver</b> 206:4	110:2 114:17,18	deposition 1:16
declining 45:18	207:1	115:15 121:9	4:6,9 6:13,20 10:7
209:18	delivery 212:2	122:15 123:4,7,9	10:13,15,21 11:9
decoding 204:18	<b>delta</b> 117:13 137:4	123:11,19 141:19	11:17,18 12:8,10
decrease 133:18	137:4,4,5	145:2 146:1	12:14,17,19,22
212:13	<b>delve</b> 40:9	150:16 155:22	15:18 16:16 44:5
decreased 102:6	demand 45:22	157:10,19 174:10	65:6 73:12 79:20
117:10	demographics	198:2,3,4,15 200:2	79:21 80:12 85:1
<b>deduce</b> 19:16	169:20	203:22 208:4,22	86:12,16,20 88:11
<b>deem</b> 159:4	<b>denial</b> 72:10 75:20	215:19	88:15 91:6 93:16
<b>deemed</b> 223:6	77:6	deploying 58:20	93:20 94:10,12,15
defendants 1:14	<b>denied</b> 63:5 70:16	71:6,20 151:8,17	98:8 99:15 103:18
3:2 4:4 8:2,4 80:9	125:22 143:5	199:14	112:16,20 114:12
80:15 140:4	denying 78:12	deployment 44:21	118:19 119:1
142:18,19 147:15	departing 45:6,7	45:3,10,15 46:8,20	120:10 139:20
197:13	department 1:12	47:10,17,20 48:2,3	140:3 142:1,5,14
<b>defense</b> 1:12,12	33:11 54:6 110:16	48:8,11 107:3	142:21 147:9,10
5:5,12 27:21	110:21 111:7	109:12 112:8	147:14 152:17,21
49:20 50:9 54:7	113:2 179:11	114:1,14 115:21	153:8 160:2 163:1
106:9,22 109:16	183:12 198:17,19	116:8 122:1 125:2	163:5,9,18 164:19
111:7 140:5 178:5	department's 9:20	127:14 145:9,15	166:14,20 169:9
178:11 179:10,11	13:12	149:3,10,17	169:10 176:12,13
183:12 199:18	depends 69:14	151:22 155:15	177:8 184:19
deficiencies 148:6	depiction 30:22	165:9 171:16	185:3 186:8
<b>define</b> 36:22	<b>deploy</b> 43:21	175:17,22 206:17	190:11 191:3
defined 36:20	44:22 45:9 48:21	208:15 210:1	219:6 220:3,5,8,12
161:4 163:19	77:19 78:9 106:8	211:15 212:12,12	<b>deputy</b> 90:5 91:22
202:19	144:20 156:19	213:13	153:20 200:14,19
definition 37:10	159:3 162:1	deployments	dereliction 148:8
52:20 159:15	165:13 171:2	45:16 48:22	149:11
160:13 161:18	172:19 173:16	106:16,20 109:15	<b>describe</b> 206:10
164:14	203:20 208:2,17	112:1 124:17	description 4:7
degrade 132:4	deployability	150:11 208:19	desert 198:15
<b>degree</b> 20:11,13	179:1,21 180:16	210:21 211:10,11	213:9
20:16 133:10	181:7,17 183:9,13	deploys 198:2,14	<b>design</b> 58:22
136:7 149:12	deployable 144:16	199:3	175:11
198:6	146:3,12	<b>depo</b> 71:6,18	designated 160:17
<b>del</b> 1:12	deployed 24:16	deponent 221:13	198:8
	41:17,20 43:22	223:3	

### [designed - document]

	1	1	
designed 95:21	develop 77:12	diploma 79:12	132:15 151:1
151:19 206:18	developed 203:1	direct 32:5 43:22	163:12
215:11	developing 34:14	44:6,10 45:12	<b>disposal</b> 1:5 35:2
desire 187:4	183:18 201:8	147:21 174:1	<b>dispute</b> 165:2,6
<b>despite</b> 107:21	207:14	204:8	disqualifying
108:8,8 114:20	development	directed 155:11	217:10
116:5 151:9	130:8	direction 220:8	distancing 115:22
165:10 170:9	developmental	directive 63:2	209:16
destroyer 121:17	198:9	directly 18:21	distinguish 29:18
destroyers 199:16	devgru 215:16,19	19:10 27:1 60:5	distributed 153:16
detachment	216:20	99:20 138:21	154:10,21 178:14
201:20	deviation 174:21	205:4	<b>district</b> 1:1,1 3:6
detachments	device 51:8	<b>director</b> 200:12,14	6:17,18 9:13
199:3	<b>died</b> 29:8	directors 5:13	17:12
<b>detail</b> 22:16 41:14	<b>diet</b> 172:22	178:12	<b>dive</b> 217:13
41:15 43:9 73:5	difference 131:11	discharged 179:4	divergence 31:6
79:16 129:18	135:9 136:1	179:17 180:21	31:11
151:16	137:13	<b>discovery</b> 81:1,6,8	divers 1:8
detailed 141:14	differences 134:14	104:2 112:22	<b>division</b> 1:2 6:18
<b>details</b> 34:3 40:10	<b>different</b> 31:4 55:2	119:21 140:4	200:13
40:11 63:13	55:8,17,19 59:13	153:1	<b>doctor</b> 201:13
110:13 128:16	59:14,22 60:3	discretion 152:8	document 11:19
158:8	70:15 71:21 79:15	152:11 156:1	12:13 80:3,18
<b>deter</b> 78:7	138:7 143:19,20	159:2 162:1	84:21 85:4,8,10,17
determination	143:21 145:2	165:13 171:1,8	86:15,17,19,22
20:9 49:20 50:6	175:8 189:17	215:18	87:1 88:15,17,20
50:10 141:5,6	190:2,20 193:11	discussed 24:5	88:21 90:10,12
158:15 165:6,18	193:12 210:7	44:5 114:14 120:4	93:20 94:1,4,6,7
174:9 176:8	differential 33:6	124:20 194:16	95:3,7,16,20
determinations	97:22 130:16	197:2,3 206:7	103:22 104:3,5
70:1	131:1,9 132:7,20	214:11	105:4,14 112:19
determine 70:14	134:4,10,11,18	discussing 96:20	113:9 114:10
100:5 217:17	135:11,15 136:8,8	129:20 131:16	119:1,20 120:9
determined 110:5	136:11,16,17,19	193:16	123:13 140:3,7,11
173:2 194:15	differentially	discussion 53:16	140:14 141:4
determining 59:21	32:21 98:4 133:18	63:11 97:13	142:5,7,21 143:1
175:17 183:9	<b>difficult</b> 11:8,14	175:15 196:16	143:18,20 147:8
deterrence 78:8	51:3	discussions 24:7	147:17,18,19
detrimental 116:9	digits 160:10	57:3 75:18 84:11	152:15,21 153:3,8
116:9 117:5 118:6	dimensions 97:19	disease 32:12	153:11 154:9,13
		33:16 113:5	156:8 160:4 163:4

### [document - environment]

	1	1	1
163:8,12 164:3,20	<b>duties</b> 16:2 62:3	effectively 138:8	<b>employ</b> 23:14,14
166:20 167:8,9,12	<b>duty</b> 148:8 149:11	effectiveness	35:22 49:5
167:19 168:11	185:12 186:2,3,3	32:11,15 33:14	employed 47:1
176:11 177:8,14	201:12 215:3,3	96:11,17 98:15	124:1 204:22
180:2 185:3,5	dynamic 109:16	99:3,8,11 100:4,16	220:10,14
190:9 191:2,6,9	144:4,5 168:1	101:18 131:17	employee 220:13
192:2,15 194:9	dynamics 185:19	effects 74:21 207:2	employes 200:7
documents 4:11	e	efficacy 97:20	employing 49:4
80:10,22 81:5,5,20		<b>efforts</b> 124:7,8	205:4
82:17,18 142:18	e 2:1,1 3:1,1 4:1	<b>eight</b> 106:15	employment 22:19
197:4	6:1,1 50:12 81:5	either 59:2 62:9	enabled 27:11
<b>dod</b> 5:9,12 8:9	82:4 89:2,9,11,14	73:7 77:5 88:4	44:16 48:17 209:9
167:7 168:11	89:22 90:2 91:5,9	93:12 95:9 108:21	endanger 148:10
169:1,9 178:11	91:10 92:7,9 93:5	187:5	148:21
<b>dog</b> 156:16	120:21 155:6,8	elected 195:22	<b>endemic</b> 146:7
doing 39:15 48:4	221:1 222:3,3,3	electronic 198:22	150:17
81:14 180:10	<b>earlier</b> 26:14	<b>element</b> 76:10	endorsed 70:22
199:18 204:4,8	72:13 99:20	101:14,16 143:14	enduring 124:15
218:13	109:20 171:10	202:11 205:10	<b>energy</b> 45:11
<b>doj</b> 8:2,3 15:12	172:8 206:7	214:18	engagement 204:5
<b>domain</b> 21:19	208:20 214:11	elements 22:5	enlisted 5:16
<b>dose</b> 60:20	early 26:12 187:17	33:22 52:2 60:22	185:12 187:9
<b>doubt</b> 11:15 75:13	213:10	125:9 144:6	188:17
78:19 205:18	east 198:3	172:22 173:1	<b>ensure</b> 188:21
<b>draft</b> 14:13,15,17	eastern 3:6	174:20 175:12	ensuring 204:21
14:21,22 15:1,14	easy 201:13	182:21 187:6	<b>entered</b> 17:12 97:2
66:22 81:16,22	eat 212:4	200:9 209:13	entering 79:7
82:14 83:4 84:15	echelon 52:3 156:4	210:9 211:1 212:6	entire 105:4
drafting 81:9	157:14	215:5	entities 130:13
drafts 15:5,11	economy 54:14	eliminate 146:10	entry 79:16 85:15
91:15,20	editing 81:21	<b>elizabeth</b> 3:12 8:5	envelope 202:9,11
<b>drew</b> 68:8 194:22	edits 14:20	elrod 201:18	202:22
<b>driving</b> 174:22	educated 182:21	embark 125:8	envelopes 202:18
<b>due</b> 109:15 136:20	education 79:15	embarked 121:17	203:1
164:10 186:9	effect 28:12	embarking 157:2	environment
187:5,15 188:1	effective 22:3	embassy 204:11	116:2 144:4 148:9
189:14 193:17	29:20 44:16 48:14	emerge 102:13	148:20 149:10
duly 8:19 9:3	49:7 70:21 96:22	emergent 54:18	186:11 187:18
220:5	97:15 99:7,14	183:11 201:8,20	188:2,9 193:20
<b>duration</b> 71:15	101:3,15,21	emmett 76:20	205:9 215:13
	102:10,10 114:16		
	133:22 150:7		

#### [environments - expected]

	I	I	,
environments	evaluate 174:4	<b>exceed</b> 201:14	65:6 79:20,21
79:2 138:9	175:20 216:22	202:21	80:12 85:1,5
ephemeral 144:17	evaluated 17:21	excellent 39:14	86:12,16,20,22
<b>episodic</b> 208:13	18:4 184:12	<b>excerpt</b> 147:20	87:5 88:11,16
episodically 76:16	evaluating 20:11	<b>excerpts</b> 147:18	91:6 93:16,21
90:18	20:11 64:7 103:5	excess 27:3	98:8 99:15 103:18
<b>equip</b> 204:21	evaluation 175:2	exchanged 14:22	103:22 104:4
equipment 211:13	event 45:3,8	15:12	112:16,20 114:12
equipping 214:1	132:14 151:7	<b>excludes</b> 161:10	118:19 119:1
<b>eric</b> 3:13 8:7,8	206:13 208:3	executable 47:15	120:10 139:20
errata 221:11,13	217:10	execute 39:18	140:3 142:1,5,22
221:17	events 95:10 109:4	48:18 95:22	143:20 147:9,10
<b>esg</b> 200:10	144:18 206:14	202:12	147:14 148:16
especially 186:12	evidence 16:13	executed 24:18	152:16,17,22
193:21	19:8 30:10 44:7	73:6 94:17 96:1	153:8 160:2,6
esquire 2:3,4,12	56:8 90:15 110:10	98:11 108:3,11,16	163:1,5,9 164:2,19
2:13 3:3,4,14	110:10	112:8	165:6,9 166:14,20
221:1	<b>evolved</b> 48:10	executing 26:1	169:9,10 170:1,20
essential 125:5	evolving 96:18	53:8 54:7 73:17	170:22 176:12,13
148:11,22 206:2	exact 39:21	74:14 83:7 98:22	177:9 184:19
212:1	<b>exactly</b> 108:1	106:10 154:11	185:4 186:8
essentially 46:2	<b>exam</b> 79:16	execution 44:1,6	190:11,19 191:3
48:20 77:15 138:5	examination 4:2	61:10	191:10,15,15,20
153:16 158:15	9:5 197:13 212:19	executive 98:9	192:15,18,19
174:22 184:8	examine 19:13	199:1,5	193:15,16 194:6,7
186:22 207:6	examined 9:4	exemplar 78:4	211:20
estimate 74:5,11	examplar 201:21	exemption 47:8,19	<b>exhibits</b> 4:6 5:18
100:15	<b>example</b> 21:3 32:2	59:10,16 69:5,18	170:19
estimation 131:20	41:17 71:5 103:14	138:14 139:8	exist 137:14 138:3
<b>et</b> 5:5,6 6:15 9:12	106:10 109:20	141:7 173:6	<b>existed</b> 108:10
61:6 210:19 221:4	114:13 122:14	exemptions 56:1	<b>exists</b> 151:9
221:4 222:1,1	123:18,22 134:7	60:9 62:14 145:20	<b>exit</b> 196:7
223:1,1	141:17 149:11	<b>exercise</b> 165:13	<b>expect</b> 41:13 52:4
ethnicity 5:8	150:14 152:8	207:5 208:16	58:2,15,18,19,21
<b>europe</b> 36:6	173:17 174:10	<b>exhibit</b> 4:8,9,10,12	78:3 124:16 139:7
european 189:8	201:17 208:20	4:13,14,15,16,20	139:18 155:9
evacuate 102:15	examples 21:8,9	4:21 5:1,2,3,7,8,9	176:21 202:12
evacuation 34:19	21:14 24:3 36:12	5:10,14,15 10:13	expectation 54:22
50:17,19 51:2	36:16 37:16 38:13	10:15,19,20 11:18	152:1
174:16 175:7	42:12,18 46:8	12:9,10,14 13:1	expected 144:15
201:4,6,21 204:12	60:16 61:11 146:4	15:19 16:17 65:6	

# [expeditionary - flying]

Page 15

expeditionary	extension 187:2	94:5 95:2 103:13	financially 7:9
106:16 200:1,1,5	<b>extent</b> 151:21	111:21,22 113:22	220:14
203:6,7,9,17	extreme 176:5	119:3,17 128:11	finding 198:4
expeditiously	extremist 54:20	128:13,21 129:1,6	<b>findings</b> 128:18
146:13	extremists 54:10	129:11 134:3,9,10	129:1,14
experience 15:22	55:12	140:12 159:22	<b>fine</b> 64:20 65:2
19:18 20:14,15,17	f	167:9 195:19	114:6 126:16
21:1 22:9 27:2,4,8	<b>face</b> 151:11 178:7	familiarize 141:19	<b>firm</b> 7:3
29:7,15 30:20	facilitates 195:20	families 45:9 75:7	<b>first</b> 2:14 4:10
35:13 45:17 48:4	facilitating 196:2	family 45:6 207:18	7:19,21 9:3 15:19
48:9,16 61:4	facilities 34:18	207:21 208:2,13	16:15 47:16 49:12
66:10 77:22 82:8	168:3 202:5	208:18	56:11 70:18 85:6
90:20 99:6 116:20	facility 1:19	far 44:5 194:13	89:3,4 91:8 98:7,8
117:18 124:15	<b>fact</b> 71:16 114:20	<b>fashion</b> 95:14	98:9,13 104:6,14
201:7 213:1,20,20	131:11 183:14	<b>fast</b> 133:16	105:8,10 120:14
experienced 106:2	<b>factor</b> 126:8 183:8	fatigue 211:3,6	122:20 164:3,4
experiencing	factors 62:11	favorably 70:22	167:1 174:20
78:13	70:13 151:4	feature 184:13	178:17 181:2,5,12
<b>expert</b> 33:10	172:18 173:7	federal 9:14	182:15 186:6,8
100:18 151:2	172:18 175.7	federally 130:7	190:4 191:11
152:9	<b>facts</b> 110:9,10	felicia 1:22 7:5	197:22
experts 101:1	114:14 120:4	220:2,19	firstliberty.org
111:6	<b>failed</b> 36:15	<b>fell</b> 48:20	2:18,19
<b>expires</b> 220:20	failing 35:20	<b>fewer</b> 175:5	fiscal 5:15
explain 47:3	<b>fails</b> 78:9 221:19	<b>ffrdc</b> 130:9	<b>five</b> 27:6 199:14
204:15	failure 34:2	<b>field</b> 4:20 5:12	219:2
explained 148:3	fair 42:22 75:9	89:3 176:20	<b>fixed</b> 144:3
explains 169:5	82:16 102:17,20	178:11	<b>fixing</b> 207:12
explosive 1:5	106:4 107:18	<b>fifth</b> 36:9 80:14	<b>flag</b> 33:8 153:19
<b>exposed</b> 17:10	141:21 149:13	<b>fight</b> 54:10 78:9	fleet 31:1 36:8,9
29:4	159:2 168:17	175:10 204:9	38:12 41:13 42:10
exposing 20:8	169:11 170:18	207:6	78:7 192:19 199:8
<b>exposure</b> 123:21	179:10	fighting 54:9	fleets 200:5,17
172:22	<b>fairly</b> 76:12 95:13	55:12	<b>flew</b> 106:17
express 77:6	196:19 201:13	figure 22:1 90:9	flight 53:8 106:18
<b>extend</b> 45:15	<b>fall</b> 166:10 171:18	96:12 112:9 167:7	197:22 212:5
extended 106:21	falling 194:14	194:19	<b>flow</b> 55:2 204:22
109:15 210:21	<b>falls</b> 168:12 176:8	<b>filed</b> 6:16 37:20	fluctuates 22:1
212:11,12	familiar 9:15	<b>filled</b> 194:15	<b>fly</b> 199:10
extending 211:10	11:19 35:11 43:11	<b>filling</b> 186:2	flying 125:5
	63:7,12 79:10	194:14	201:11 210:15
	05.7,1277.10		

### [flying - granted]

Page 16

212:3	200:5 204:22	<b>fully</b> 28:12 37:4	gillingham 89:13
<b>fm</b> 186:13 193:22	205:4 206:15	110:6,7 116:14	<b>give</b> 10:7 140:16
focus 29:16 55:11	214:1 215:12	185:21	197:17
91:11 109:11	foregoing 220:3,5	fundamental 66:2	<b>given</b> 47:18 62:20
188:16 205:7	223:5	fundamentally	65:18 124:8 125:7
<b>focused</b> 108:3	form 28:9	174:19 175:14	144:6 218:22
187:3 204:20	format 85:15 87:9	<b>funded</b> 130:7	220:9 223:9
205:5	<b>fort</b> 1:2 6:18	<b>further</b> 115:10	<b>giving</b> 12:18
folks 211:17	<b>forth</b> 15:12	182:21 212:18	105:22
<b>follow</b> 11:14 24:12	forward 24:16	218:16,20 220:12	glanced 196:19
170:4,6 176:17	125:18 204:22	<b>future</b> 104:9	globally 106:8
following 43:18	215:12	200:22	<b>go</b> 6:11 16:10
105:8 106:6	<b>found</b> 158:16	g	18:14 20:20 27:6
189:17 198:19	foundation 117:8		28:10 45:5,13,15
follows 9:4 158:21	118:8 151:14	<b>g</b> 6:1	46:11 48:22 65:15
<b>footnote</b> 167:15,16	162:10 164:18	gaps 194:17,17,19	68:9 70:18 95:11
footprint 34:19	165:22 169:15	gebelin 2:4	119:7,12 124:10
<b>force</b> 5:9,16 19:2	170:13 173:20	ged 79:17	133:9 137:4
19:17,19 22:19	181:9 182:8,14	<b>general</b> 8:10 14:9 18:13 24:21 25:15	146:17 175:2
31:2 46:3,5 50:1	196:13		183:13,13 196:14
56:6 61:1 65:13	foundational	29:6 33:9 57:13 57:16 61:3,7,17	206:11,17 208:14
78:5 90:11 91:12	146:11 215:5	62:6 89:15 95:12	208:17 212:13
91:16 100:1 102:8	218:14	95:18 96:1,10,13	<b>goes</b> 153:16 201:6
112:12 137:20	<b>four</b> 45:2 48:14	96:20 97:2 100:22	207:4
138:6,7,10 167:10	80:12,13 175:5,9	111:7,11 159:17	going 12:8 20:21
168:11 169:20	fourth 89:1,3	general's 97:13	68:12 79:14 82:22
185:12,14,18	fraction 116:18	generalities 152:5	114:3 126:10,22
187:9,21 188:17	<b>frame</b> 14:9 26:13	0	143:14 146:18
188:22 198:13	39:22 40:12 49:2	<b>generally</b> 9:17 22:17 38:5 40:2	147:8 187:2
200:3,3,4 205:8	109:2 122:21	64:17 95:2 111:18	188:15 189:8
207:9 210:11	123:15 124:13	128:13,21 153:18	190:9 195:3
215:1,2 216:12	200:10 211:18	128.13,21 133.18	197:16 208:17
217:12 218:9	freedom 9:21	185:15 201:7	209:11 218:20
<b>forced</b> 45:13	frequently 49:2		<b>good</b> 6:3 9:7,8
202:22	130:14 194:16	generate 205:5	147:5 195:12
forces 20:7 23:14	<b>frigates</b> 199:16	<b>geographic</b> 41:19	graduating 197:21
23:15 24:16 31:2	<b>front</b> 94:1 140:7,9	143:21 145:2,9	graduation 197:19
36:1,11 37:7	142:7 153:3 177:9	<b>geographically</b> 144:4	<b>grant</b> 60:13
106:18,20 146:13	191:4		granted 47:7 56:2
146:14 158:10,11	<b>full</b> 11:13 56:5	<b>getting</b> 26:1 36:7	143:5
175:8 177:21	112:7 203:22	49:12 155:7	
		210:19	

# [granting - hiv]

Page 17

granting 59:15	93:19 103:21	113:2 114:15	159:13,16,20
greater 137:14	118:22 119:10	126:3,4 137:1,3	160:13,16 161:2
217:19	140:2 142:4	139:1,2 150:17	161:19 162:19
grounded 173:11	152:20 185:2	167:9 168:11	163:19 164:14
<b>group</b> 93:1,3	191:2	169:6 209:20	165:8 168:13
106:15,16 107:2	handled 112:19	heard 101:11	169:1,12 170:8,10
111:9 121:15	happen 116:19	<b>hearing</b> 104:18	170:21 171:9,13
122:11 123:3,7,18	117:22 118:17	108:22	171:17 172:20
124:1 129:8 154:4	177:2,4	heathcock 3:17	173:18 175:17
155:12 192:20	happened 35:21	7:2	184:14 201:22
200:1,2,4,6 203:6	86:9 118:1,2	<b>heather</b> 2:4,10	202:11 206:14
203:7,9,17 206:13	hard 34:20 44:19	7:17	207:2,6,8 208:16
207:9	46:7 48:17 61:7	heavier 54:22	218:7
groups 206:15	75:2 108:5 124:13	heavily 29:10	higher 28:19
growth 209:20	133:16 141:13	48:20 55:11 144:9	30:21 32:22 33:1
guess 41:22 198:4	206:9 210:5,21	heavy 44:19 46:6	34:13 46:3 54:14
202:16 212:11	212:8 214:7,18	48:17 124:13	55:2 56:4 58:15
<b>guidance</b> 27:6,21	harm 16:20 17:2	206:17 210:5	117:15,16,17
28:1 70:19 153:13	harriers 200:7	hecker 3:14 8:9,9	118:14 150:21
157:16 158:9,18	harry 121:8	<b>hectic</b> 83:20	151:6,8,10 165:3
158:21 165:16	208:21	helicopter 198:1	165:11 168:16,19
173:11	harsh 79:2 138:9	198:14 199:2,13	175:10 187:5
<b>gyms</b> 168:3	209:12 215:12	201:3,19 202:21	highlight 46:4
h	hazard 41:22	213:1	115:1 116:12
<b>h</b> 222:3	head 166:8 191:8	<b>helpful</b> 13:11	141:10 144:13
hacker 2:4,5 7:16	194:12	hentz 3:15 8:11,12	180:5
7:17,17,17	heading 194:8	hereinafter 178:21	highlighted
hackerstephens	headquarter	<b>hereto</b> 220:14	106:15 108:14
2:9,10	93:13	223:7	181:3 217:7
half 76:14	headquartered	heroic 124:7,8,17	highlighting 150:8
halfway 99:17	204:1	hey 155:8 187:1	169:18
191:11	headquarters	217:9	highlights 103:1,4
halt 19:2,22 20:3	73:13	high 21:16 29:18	214:10
100:2,16	headwear 61:6	44:10 55:18 78:17	<b>highly</b> 113:16
halting 100:5	health 5:9 19:1,16	78:19 79:2,12	historically 55:16
hand 10:12,19	20:19 23:4 27:10	106:14,21 109:4	history 107:4
71:22 147:8	44:20 45:22 49:9	116:2,5 131:10	159:18
152:15 176:11	49:22 61:10 76:5	138:9 149:17	hit 208:22
190:9	76:6 77:11,18	151:22 155:15,21	hiv 173:16 174:9
handed 11:18 85:4	99:22 102:8	156:9,18,20 157:1	176:8 178:19
86:15 88:14 91:5	110:16,22 111:2	157:9 159:4,5,11	179:3,5,16,18

# [hiv - increasing]

<b></b>	Ι	Ι	
180:3,16 181:14	151:13 172:14	immediate 16:20	implement 187:21
181:20 182:5,10	173:10,20 215:22	17:2 18:14 44:1,6	implemented
183:7,7,16 218:8	217:3	44:11 45:12	124:5
<b>hold</b> 182:12	hypothetically	156:22	important 184:15
holly 2:12 7:21	58:19 70:17 135:8	immunodeficien	206:1
home 122:6,8	139:18 145:12	177:20	improper 58:5
202:7 207:18	hypotheticals	<b>impact</b> 19:19	102:2 217:3
homeport 45:7	141:12	20:18 21:19 22:5	improved 49:16
honestly 11:5	i	22:18 24:8,10	incentive 186:4
hospitalization	iceland 113:17	27:9,9 29:20 30:7	215:3
116:15 117:1,16	118:16	30:12 34:14 38:14	<b>inchon</b> 199:5
132:17 136:17	identification	39:16,20 41:9	<b>incidence</b> 58:3,16
137:4 164:10	10:16 12:11 79:22	42:7 43:10 44:1	incident 118:9
176:10	85:2 86:13 88:12	44:11 45:12 47:13	141:17 201:9
hospitalizations	93:17 103:19	56:16 61:9 75:6	incidents 96:22
20:22 29:10,13	112:17 118:20	75:20 77:6 103:16	141:17
31:16 90:8 132:2	139:21 142:2	107:21 109:9	inclined 71:7
132:12,22 134:11	147:11 152:18	125:1,11 135:6	include 20:21
hospitalize 102:14	163:2 166:15	136:20,22 137:2,2	49:10 90:8 179:11
hospitalized	176:14 184:20	137:6,19,19 144:2	209:14
132:14 150:6	190:12	176:8,10 181:4	<b>included</b> 160:20
<b>host</b> 49:16 211:16	<b>identified</b> 166:7	217:20,20	<b>includes</b> 121:16
<b>hostile</b> 37:7,7	178:18 181:13	impacted 21:10	133:3
hours 106:18	identify 33:18	24:4 25:5,8,13	inconceivable 83:2
207:12	37:10 50:15,22	26:10,21 39:17	inconsistent
house 4:18 104:8	51:5,12 52:8,16	41:18 42:15 43:5	157:12
104:15 105:22	<b>iii</b> 1:11 5:4 221:4	52:9,9,17 72:19,20	incorporated
107:8 108:17	222:1 223:1	73:19 74:17,17	161:19
<b>howard</b> 55:14	<b>illness</b> 34:13 135:9	108:15,20 122:16	increase 58:3
hrandall 2:18	149:3,17 160:19	137:10	increased 45:21
<b>huh</b> 113:4,7,13,18	161:3,6,8,11,16	impacting 19:10	59:3,4 137:9
122:17 160:12	163:21 164:5	21:5 23:3 47:10	149:2 150:17
179:19 193:19	165:4,11 169:13	47:21 56:10	160:19 161:7,15
human 110:17,22	169:19,22 170:3,9	impacts 18:21	163:20 164:7
111:3 113:3	170:11,21 171:19	22:21 23:6,9	169:22 174:15
114:15 177:20	174:14,18 176:3	24:15,15,17 25:2	175:6 210:10
hundred 202:4	212:16	34:8 39:13 44:6	increases 164:5
hundreds 53:3	<b>illuminate</b> 172:15	46:5 99:20 168:2	169:18 170:3
hypothetical 58:6	imagine 84:14	imperative 66:8	increasing 32:19
102:2 131:5 133:3	172:15 174:3	106:11	98:4,4 176:9
135:19 149:20	209:13		206:21 207:17
	207.13		

### [increasingly - isolation]

		-		C
in	creasingly	63:3 72:14 103:6	110:15,20 111:4	interesting 218:4
	144:14	115:7 132:5	141:20 169:4	interests 66:7
in	cremental	134:19 138:13	197:4 205:19	106:9
	131:11 132:16	149:9,16 151:6,9	informed 31:17	intermediate
	210:4	151:10,17 160:17	98:19,21 174:5	206:21 207:15
in	dependent	161:11 164:15	informing 63:4	<b>interpret</b> 183:1,4
	201:12	165:3,12 171:2	infrequently	184:7 189:5
in	<b>dicate</b> 87:10	178:18 179:3,15	130:3,11 209:5	<b>interrupt</b> 11:10,11
	89:8,10 159:14	179:16 181:13	<b>initial</b> 62:9 66:22	11:16
	164:13 178:7	183:14 184:8	initiate 128:1	introduce 17:4
	192:5	215:8	initiated 128:9	introducing 72:1
in	dicates 120:13	<b>indo</b> 189:9	injunction 16:20	103:2
	143:18 177:15	indopacom 42:9	17:1,8,11 18:21	investigation
	192:14	43:1	19:12 20:2 99:20	128:1,8,12,18,22
in	dication 105:3	infected 110:7	218:13	129:2,5,12,15,20
in	dividual 17:15	116:13 117:13	<b>input</b> 154:17	<b>invite</b> 85:13 87:8
	17:18 23:5 47:1,9	infection 30:12	insight 27:2	87:17
	47:14,15,17,21	36:15 37:12 50:17	installations 168:4	<b>invites</b> 87:19,20
	48:2 60:13 61:2,5	103:7 111:4 124:3	instance 213:7	involuntarily
	61:7,8,14 63:1	164:10 169:13	instances 35:20	195:17
	66:8 67:7 70:2	infections 22:15	39:22 40:1 51:1,5	<b>involve</b> 185:15
	71:10,12 75:6	26:15,17 28:6	51:13 103:8	involved 37:20
	77:17 84:5 132:14	52:18 58:16 72:17	106:20 109:15	38:19 39:10 62:4
	133:14 137:3	101:19 102:19	112:2	62:8 63:3 72:7,8
	139:2 141:8,18	103:1,9 110:21	<b>institute</b> 2:14 7:20	84:10 97:13 128:2
	144:15 150:21	115:5,15 117:5	7:22	143:8 145:19
	151:21 159:5	127:13	integrated 207:3	175:16 196:16
	165:13,17 172:17	inference 196:17	207:15	201:22 202:14
	173:18 175:18,19	<b>inferred</b> 214:11,15	integration 200:20	213:6
	179:15 205:13,15	influenced 90:20	<b>intel</b> 39:14	involvement 14:1
	205:22	<b>inform</b> 39:1	intelligence 95:5	14:3 183:18
	dividual's 62:3	108:17 141:14	intentions 156:22	involving 114:1
	139:3	information 16:1	interact 23:20	<b>iran</b> 189:7
	dividualized	16:12 19:8,15	45:8	iraq 55:12
	61:14,20 62:13,15	20:10 29:2 31:12	interacting 48:5	<b>isic</b> 157:1
	62:21,21 65:18,19	31:19 32:7 33:13	interactions	<b>isolate</b> 133:20
	69:3 139:13 141:6	35:19 39:2 44:7	108:22 109:5	137:15
	143:3 175:16	56:8,14,20 57:2	interest 70:20	isolating 49:13
	dividuals 20:7	67:11,19 72:15	interested 7:9	136:21
	23:8,10,17 24:5	81:21 89:19 92:3	168:5 220:15	<b>isolation</b> 22:4 27:6
	29:21 36:13 58:17	96:16 97:14		27:10

[issue - left]

Page 20

issue11:17 19:12133:17 135:579:13,17 82:7,9language16919:15 27:19 74:15139:1,4,7 144:283:20 84:5,719:5 29:17 1150:8 151:20145:21,22 150:1285:10,20 86:3,8,8148:14 149:7175:21 192:6152:4 171:3,1287:7,20 88:3186:15 192:8216:22176:6 203:391:14,20 92:20193:16 194:9issued27:21 28:1judgments20:593:2,6 95:3 99:91arge153:18,22 154:3129:7103:8 108:14106:12 200:0154:10,21 178:4july110:1 113:17109:9 116:171argely193.16140.16120.16120.17120.17	148:12 7 8 9 3:1 6
150:8 151:20145:21,22 150:1285:10,20 86:3,8,8148:14 149:7175:21 192:6152:4 171:3,1287:7,20 88:3186:15 192:8216:22176:6 203:391:14,20 92:20193:16 194:9issued 27:21 28:1judgments 20:593:2,6 95:3 99:9large 78:8 93153:18,22 154:3129:7103:8 108:14106:12 200:0154:10,21 178:4july 110:1 113:17109:9 116:17largely 54:21	7 8 9 3:1 6
175:21 192:6152:4 171:3,1287:7,20 88:3186:15 192:3216:22176:6 203:391:14,20 92:20193:16 194:3issued 27:21 28:1judgments 20:593:2,6 95:3 99:9large 78:8 93153:18,22 154:3129:7103:8 108:14106:12 200:0154:10,21 178:4july 110:1 113:17109:9 116:17largely 54:23	8 9 3:1 6
216:22176:6 203:391:14,20 92:20193:16 194:9issued27:21 28:1judgments20:593:2,6 95:3 99:9large78:8 93153:18,22 154:3129:7103:8 108:14106:12 200:0154:10,21 178:4july110:1 113:17109:9 116:17largely54:21	9 3:1 6
issued27:21 28:1judgments20:593:2,6 95:3 99:9large78:8 93153:18,22 154:3129:7103:8 108:14106:12 200:0154:10,21 178:4july110:1 113:17109:9 116:17largely54:21	3:1 6
153:18,22 154:3 154:10,21 178:4129:7 july 110:1 113:17103:8 108:14 109:9 116:17106:12 200:0 largely 54:21	6
154:10,21 178:4 <b>july</b> 110:1 113:17 109:9 116:17 <b>largely</b> 54:21	-
	1
184:3 118:16 121:5 128:17,22 82:10	
issues 78:14 82:9 june 1:17 5:13,14 130:13 131:16 largest 198:1	17
95:19 109:8 6:5 87:11 122:6,9 133:15 140:14 <b>launch</b> 40:10	)
153:17 189:8 167:16,17 178:2 144:5 158:6,17 <b>lawsuit</b> 9:11,	,15,18
it'd 53:1 185:10 159:10,12,13 10:1,4,7 11:	7 12:3
it'll 105:4 k 162:17,20 167:17 12:19 14:2,6	5
iterated 82:14 k 4:8,16 104:7 167:18 168:2,8 17:13 18:3 2	27:19
iterations 15:13 221.5 222.2 24 175:3 176:4,4,7,18 37:19 195:18	8
j 223:2,4,12 177:14 183:11 213:17	
<b>i</b> 1.11 3.17 5.4 <b>karen</b> 3.14 8.9 186:1 187:16 <b>lawyer</b> 9:10	
221:4 222:1 223:1 keen 83:11 125:6 193:3,3,4 194:13 lawyers 9:10	
<b>iag</b> 8:6 8 14 13:10 208:16 204:3 208:9,10 38:16,19,21	
13.15.18.15.1.12 keeping 185.20 210:14,15,18 Icar 3:16.8:1	
84.8 85.21 key 55.16 204.5 212:5,6 214:8 lead 73:13 92	
iamieson 3.7 kill 173.17 218:3,17 211:3 216:10	
ianuary 14.8 32.9 kind 83.20 20 88.1 knowing 171:17 leader 204:5	
84:18 87:14 96:5 125:9.10 141:20 <b>knowledge</b> 14:2,3 <b>leaders</b> 23:1.	
96.9.98.10.99.10 204.18 15:21 18:1 23:9 35:22 90:7 1	.50:6
153·13 154·4 7 knew 34·12 29:2 33:12 35:13 204:5	
jets 210:15 know 9:18 18:9,10 36:14 50:4 56:13 leadership 5	
<b>iob</b> $62:3.64:14$ $22:11.24:19.22$ $68:1.111:18.118:9$ $31:14.75:18$	,19
134.7 27.14 18 20 29.7 124:22 180:20 1/8:10	•
joint 65:12 66:15 30:22 33:1 35:19 known 45:1 150:7 leading 187:	
66:16,20 67:5,10 36:1 39:19 40:2 210:8 learned 27:5	65:17
<b>68:4</b> 199:21.21 <b>40:17</b> 41:3.7.12.13 <b>I 2</b> 12:7	1 /
200:15 41:15 42:22 43:2 <b>lack</b> 117:8 118:7 <b>learning</b> 44:	14
josephson 3:12 8:5 43:3 50:3 51:19 151:14,16 162:9 104:9	1
8:6 13:20,22       51:22 52:5,6,19       164:17 165:21       187:17         164:17 165:21       187:17	4
81:12 84:3 56:7,19 57:17,20 169:14 170:12 <b>led</b> 122:2 199	0.19
journal 113:15 60:8 62:17 64:13 173:19 181:8 left 122:3,3 1	
Judgment 15:22 /0:10 /2:21 /3:6 landing 202:15	17
71:9 77:15 78:1 76:13,15 79:11,13	

Veritext Legal Solutions 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

### [legal - management]

Page 21

	1	1	1
<b>legal</b> 7:3,6 70:20	levels 22:21 23:1	150:17 184:16	low 157:20 203:3
219:3 221:23	79:15 206:21	located 6:22	lower 17:4 34:7
lengths 109:12	levers 186:13	<b>location</b> 1:19 6:20	44:12 58:20 115:3
<b>lens</b> 54:15 56:3	194:1 214:15	86:1 152:1	168:16 174:22
<b>lescher</b> 1:16 4:6,8	liaison 6:22	long 73:22 74:4,8	<b>lunch</b> 146:16
4:16 6:13 9:2,7	199:18,19	144:6 146:16	150:14 212:4
10:13,15,21 12:10	<b>liberty</b> 2:14 7:20	157:10 171:2	lunches 125:7
12:22 68:21 79:19	7:22 209:7	203:16,16 206:16	m
79:21 80:3 85:1,5	lieutenant 8:13	207:12	<b>m</b> 2:12
86:12,16 88:11,14	201:19	<b>longer</b> 24:16 46:20	magnitude 135:9
88:15 93:16,19,20	life 125:14,19	95:8 187:1 205:7	187:17
103:18,21,22	light 179:8	208:19	mail 89:2,9,11,14
104:7 105:7	likelihood 30:7	<b>longest</b> 107:3	89:22 90:2 91:5,9
112:16,20 118:19	32:16 135:12	<b>look</b> 62:2 70:14	92:7,9 93:5 155:8
118:22 120:8,10	137:10	71:1,13 86:20	mails 50:12 81:5
127:9 139:20	limitation 181:4	104:13 131:22	82:4 91:10 155:6
140:2 142:1,4,5	limited 71:15	132:12 134:8	maintain 19:1,16
143:7 145:18	limits 202:21	140:17 160:1	99:22 115:21
147:5,10 148:2	211:7	169:1 174:8	maintaining
152:17,20,21	<b>line</b> 89:1,4 154:1	182:21 189:6,8,9	207:13 217:18
163:1,5,8,18	222:4,7,10,13,16	191:10 205:7	maintenance 71:6
166:14 176:13	222:19	216:8 218:2	71:19 72:2 198:17
177:8 184:19	listed 89:2	looked 142:12	206:16,17,20
185:2,3 190:11	lists 186:20	165:8 211:21	207:12 211:17
191:3 195:12	literally 64:15	looking 28:16 56:3	<b>major</b> 106:15
197:15 212:21	little 130:22	65:5 81:19 86:21	majority 92:17
218:22 219:6	141:11 203:19	118:17 159:1	201:10
221:5 222:2,24	206:6,10	160:5 163:17	making 11:13 20:4
223:2,4,12	lives 75:7 148:10	169:10 170:7,19	50:6 139:6 141:5
<b>lesser</b> 54:11	148:10,21,21	186:1 193:15	143:3 200:16
<b>lethal</b> 207:1,9	<b>lloyd</b> 1:11 5:4 6:15	194:7 214:9	216:6
215:11	179:9 221:4 222:1	looks 81:8 85:12	man 188:17
level 18:15 21:16	223:1	91:8 177:17	manage 17:6,9
52:1,3 54:14	<b>llp</b> 2:5 7:16,18	190:20	34:6 35:2 102:12
71:11 78:1 100:4	load 178:20	lose 214:22	210:17 211:8
100:15 129:9	181:15 183:15	loss 214:2,8	218:2
132:11 133:9	loading 188:14	losses 186:10	manageable 27:9
136:8 150:5	<b>local</b> 34:21 49:9	187:12,13,14	managed 211:5
152:12 159:17	71:3,8,17 72:1	189:19 193:18	management 5:16
172:12 188:14	125:5 144:13,16	<b>lot</b> 209:11	61:17 185:12,14
	144:20 146:6,7		185:19 187:21
			103.17 107.21

Veritext Legal Solutions 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

### [management - members]

218:9	118:20 119:1	49:5,6,8,10 59:9	<b>medicine</b> 119:2,17
mandate 22:14	120:9 139:21	59:14 74:20 75:1	120:13
27:19 44:18 46:5	140:3 142:2,5,21	115:9 116:4 124:1	<b>meet</b> 79:3 138:7
56:2,21 57:5,10	147:11 148:15	124:2,12,18,22	151:17 160:18
58:15 63:22 72:11	152:18,21 153:8	125:9,10 131:17	209:10 214:16
99:2 101:3 108:9	163:2,8 166:15,20	206:7,8,9 209:9,14	215:8,10 216:7,12
131:3 134:21	169:9 176:14	210:6 212:11	meeting 74:6
135:17 136:10	177:8 184:20	<b>medevac</b> 213:2,6	84:17 85:21 86:9
137:20 138:14	185:3 190:10,12	medevacs 132:3	87:11 88:3,8
mandatory 9:20	191:2,9	<b>media</b> 6:12 68:14	95:12 96:4,8,10
19:3,22 28:3	marking 176:16	68:18 127:2,6	152:10 216:8
49:21 100:2	<b>mask</b> 49:11	146:20 147:1	<b>meetings</b> 83:6,16
maneuver 23:2	<b>masked</b> 209:15	195:4,8 219:1	95:17 96:14
34:18 144:19	matter 6:14	<b>medical</b> 17:3,5	111:10
<b>manifest</b> 59:2,4,5	124:16 215:7	31:2 34:7,18,19	<b>meets</b> 161:7
209:18 210:12	<b>mature</b> 77:12	44:10,12 50:17,19	<b>member</b> 47:6,18
manifestation	maximizing 148:4	51:2 58:20 59:6	50:18 51:2,6
133:14	mberry 2:19	59:10,16,21 60:8	59:17 110:6
manifested 150:5	<b>mean</b> 34:10 53:9	60:20 62:13 69:18	125:20,21 141:8
manpower 27:3	53:19 81:13 92:16	78:9,11,17,20 79:4	146:1 150:16
<b>march</b> 25:16	100:17 109:17	89:19 95:4,4,8	159:7 179:2 196:8
26:12 104:10,18	112:6 123:6	99:5 100:18 101:1	196:11,20 214:4
105:10,15,16	125:12,14 126:14	111:6 117:10	members 18:3
107:9 122:21	182:4 183:1,5,6	121:8 134:13	22:7 26:16 27:15
123:15 125:4	186:18,19 188:8	138:2 146:5 151:2	28:5,19 30:21
127:18	190:5 210:17	151:17,18 152:2,9	47:1 51:13,14
<b>margin</b> 203:3	218:6	152:10,13 156:3	59:9 62:18 64:3
<b>marine</b> 146:13	meaning 182:17	156:21 157:14,21	71:21 75:12
200:7	means 85:20 87:7	159:3,18,19	103:10,10,11
<b>maritime</b> 199:13	101:10,12 148:7	160:18 162:8	110:1,3,7 115:22
mark 10:13 12:8	187:8,14 203:2	165:14,17 171:4	116:7,7 117:4,10
79:19 83:21 147:9	206:11	172:16 174:5,14	118:5 130:17,18
152:16 163:5	measure 27:11	174:16,21 175:7	132:9,21 134:5
176:12 190:10	46:16,20 131:14	176:1,7 184:14	136:20 137:10,22
<b>marked</b> 10:16	131:21 167:1	201:4,6,8,14,20	145:1 149:2
12:11,14 15:18	194:17	202:1 211:21	150:21 151:1
79:22 85:2,4	measures 22:4	215:9 217:8 218:7	159:10 165:10
86:13,15 88:12,15	35:3,5 43:12	medically 56:6	171:9 175:9
91:6 93:17,20	44:19 45:14,17	165:5 174:2	176:19 195:16,16
103:19,22 112:17	46:2,7,22 47:9,12	medication 99:8	195:21 213:18
112:20 114:12	47:14 48:13,17,20		215:18 217:19

### [memo - navadmin]

momo 179.0	midst 4.22 120.10	212:1 217:21	month 28:1 48:22
memo 178:9	<b>midst</b> 4:22 120:19 <b>miles</b> 202:4	missions 21:13	76:14 107:2
memorandum			
5:10 179:9	milestone 208:3	24:3,11,11,17,19	months 76:13,14
<b>mental</b> 45:22	military 15:22	25:1,9,13 26:20	88:2 206:18 208:5
209:20	50:1 65:13 119:2	33:19 34:3 38:3	208:7
mentally 208:9	119:17 120:12	39:2,3,6,8,12,12	morale 45:11
mention 107:15,16	168:21	39:20 40:3,8	<b>morbidity</b> 113:9
mentioned 17:20	milwaukee 21:18	42:14,16,21 43:5,7	113:10
21:4,4 22:12 23:7	25:10,21 103:14	50:16 52:9,17,20	morning 6:3 9:7,8
28:6 30:11 42:5	mind 197:5 201:18	52:21 53:11,16,17	89:17
46:7 48:14 61:12	mine 199:5	53:19 54:5,6,18,20	mortality 113:10
75:1 89:17 109:19	<b>minutes</b> 64:18,22	57:18 58:14,17	<b>motion</b> 147:15
111:9,22 122:14	74:5,12 126:11,15	62:4 72:16,21	<b>move</b> 20:7
127:12 130:15	mirror 54:4	73:19 74:16 75:1	movement 207:22
131:15 201:2	118:17	106:3 107:21	208:18
203:5	mischaracterizes	108:7,11,15,15,19	<b>moving</b> 166:8
<b>merged</b> 83:21	30:17	148:11,22 202:13	191:8 194:12
merits 17:22 137:8	<b>mishaps</b> 104:10	203:14,15 204:8	<b>mtg</b> 85:17
<b>merz</b> 38:10,16	mispronouncing	204:12	<b>multi</b> 208:15
41:5,6 42:10,14	64:3	misspoke 94:18	multiple 15:13
43:5 51:19 72:14	<b>mission</b> 20:18 21:6	97:6	22:21 94:8 121:18
73:13 74:9,10,14	21:11,19,21 22:6	misstates 180:2	121:21
92:1 93:7 153:19	22:14,20 23:3	misstating 156:8,8	<b>munsch</b> 36:8
153:22 155:4	24:7 25:19 26:1,9	mitigate 34:15	<b>mute</b> 6:7
209:3	27:7 34:17 38:14	35:6 43:20	n
merz's 29:12	39:16,18 41:9,11	mitigated 52:4	<b>n</b> 2:1 3:1 4:1,1 6:1
message 153:15	41:14 42:5,6 44:1	112:2 210:9	<b>n</b> 2.1 3.1 4.1,1 0.1 <b>n1</b> 63:12,14
214:12 215:2	44:6,20 47:11,13	mitigating 34:10	<b>n3</b> 90:4 93:13
218:9	47:22 48:18 53:8	48:14 74:21 102:8	<b>n3</b> 90.4 95.13 <b>n35</b> 91:22
messages 192:10	53:9 55:8,11,18,20	mitigation 35:3	<b>n5</b> 90:4 93:13
214:21	58:1 59:4 61:10	43:12 59:8,14	name 7:2 9:9 25:3
methods 34:9	66:9 71:10 73:10	60:3 74:20 124:1	25:4 26:5 66:18
<b>meus</b> 203:10	77:20 79:5 103:16	124:2,22	89:4,5
michael 2:13 7:19	108:2,3 112:3,7	mitigations 22:2	<b>names</b> 25:7 36:4
microphones 6:6	116:9 117:5,6	34:6 58:22 172:18	<b>nation</b> 106:7
midatlantic	118:6 136:20	172:20	<b>nature</b> 24:21 76:2
221:15	137:2,5,11 148:7	<b>modern</b> 107:3	96:19 97:12
<b>middle</b> 18:19	173:17 174:11,11	<b>moment</b> 140:16	109:16 177:3
28:18 37:2 164:3	175:11,21 176:10	moments 114:5	nav 92:2
167:1 198:3	177:3 198:11	<b>monitor</b> 112:11	nav 92:2 navadmin 5:14
	199:14 209:10		
			153:14 154:9,18

### [navadmin - nsw00000043]

Page 24

			_
155:3,7,9,14 157:5	12:20 16:20 17:2	192:6 193:22	neither 38:16
158:18 160:8	17:8,13,19 19:13	194:14,15 196:8	220:10
161:2 170:8,22	19:17 20:4,14,17	196:21 199:16	network 92:8
185:9 190:19	21:16 23:5,8,13	200:13,16,18,22	<b>never</b> 36:19
191:12,15 192:7	28:1,2 29:7,10,14	203:13 205:8	<b>new</b> 56:22 76:12
192:11,13,19	30:20 31:4,14	209:10 210:2	96:21 97:20
193:8 194:6,8	33:9 41:17 44:14	212:7 213:16,19	179:10 188:2
195:19 196:1,5,18	44:16,18 45:13	213:21 214:2,8,15	newer 97:15
196:19	46:4 47:9,20 48:1	214:19,22 215:14	newland 1:22 7:5
navadmins 153:17	48:9,17 49:4,5,8	215:19,20 218:13	220:2,19
154:20 214:9	50:5 52:22 54:7	221:4 222:1 223:1	newsworthy 95:14
<b>navaf</b> 23:12	56:1 57:18,21,22	navy's 17:5 18:21	<b>nice</b> 219:4
naval 1:19,19 4:17	58:13 59:8 60:8	19:11 20:3 21:5	<b>nimitz</b> 107:1
6:21 18:16,17	61:4 63:8 69:21	21:10 24:3 28:3	nonresponsive
22:20 23:12,20	73:13 76:5 78:13	43:19 53:18 56:10	117:20
35:15 36:1,11	78:14,17,18,20,21	56:17,22 57:10	norfolk 121:9
37:20 38:1,2,9,11	79:3,7,7,11 84:7	74:22 75:7 99:21	122:3
39:2 42:15 50:16	89:15,19 92:2	106:14 107:19	<b>norm</b> 210:22
51:6,14 52:1	93:11 99:4 100:10	108:19 129:7	<b>northern</b> 1:1 6:17
55:21 58:4 63:15	105:16 106:2,8,10	153:12 171:15	9:13
72:16 73:18 74:15	106:18 107:20	217:20	notary 220:1,19
75:18,19 90:5	108:2,6,11 109:22	necessarily 35:16	223:13,19
91:22 95:4,4	110:5,19,21	96:2	<b>note</b> 6:5 88:1
104:7 106:17,20	111:19 113:16	necessary 49:22	119:9 218:12
138:10 148:3	114:18 117:17	223:6	221:10
153:20 158:2,14	120:18 125:20	necessity 135:17	<b>noted</b> 223:7
171:11 176:19	126:6 130:6,9,10	136:10	<b>notes</b> 4:20 81:5
185:10 197:20	130:12 144:22	<b>need</b> 185:21	noteworthy 124:6
198:7,9 200:19	145:7,7,13 146:12	194:15	184:10
201:1 203:7	150:21,22 153:16	needed 82:7	<b>notice</b> 4:9 12:17
204:16 205:1	154:10,22 155:6	124:18	12:17,18 193:11
213:12	157:17 159:10	negative 56:16	noting 54:5
navcent 23:13	162:18 165:20	125:1 137:19	november 121:10
36:8,9	166:6,10,21 167:2	217:20	122:3
naveur 23:12 36:6	168:12 169:12,20	negatively 25:8,13	<b>nowell</b> 63:16,17
navsouth 36:10	170:8,20 171:6,18	26:20 41:18 42:8	64:3,4,8,11
navspec 52:5	172:9,9 173:16	42:15 43:5 47:10	nsw000000044
55:14,15	174:10 176:18	52:9,17 56:9,21	160:3
<b>navy</b> 1:4,5,6,7,7	179:12 185:20	57:10 74:16	nsw00000043
1:13 4:21 5:5 6:15	186:12 187:17,20	108:20 122:15	153:2
8:6,8,12,15 9:12	188:1,5,11,12,18	125:21	

Veritext Legal Solutions 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

## [nsw00000046 - okay]

nsw00000046	<b>numbers</b> 4:12,13	occurred 15:16	38:1,7,15,22 39:6
156:13	4:14,15 5:1,2,7	39:20 51:18	40:18 42:20 43:3
<b>nsw0000043</b> 5:7	65:10,11,12 105:3	116:16 127:13	43:11,17 44:4
nsw000007803	133:16	129:5	47:16 50:8,12,15
4:12	0	occurring 96:5	51:12,17 53:13
nsw000007808	<b>o</b> 4:1 6:1	177:2	57:3,8,13 61:19
142:6	oath 7:8 10:22	october 49:6	62:12,17 63:2,7,16
<b>nsw00007803</b> 85:7	12:6 68:22 127:10	odd 88:8 167:6	63:20 64:10,19
<b>nsw00007804</b> 4:13	147:6 195:13	<b>odds</b> 148:4	65:14 66:1,16,19
86:17	obese 164:15	offer 41:22 174:5	67:1,4,6,13,21
<b>nsw00007805</b> 4:14	165:9,20 166:7	offered 9:22 10:3	68:3,7,8 70:10
88:16	172:17	94:22	72:6,13,20 73:16
<b>nsw00007808</b> 5:2	obesity 5:8 164:5	offering 187:3	73:22 74:8,19
<b>nsw00007813</b> 4:15	164:9 165:3 167:2	<b>office</b> 3:5 6:22	75:11,17 76:2,17
93:21	168:10 169:5,18	8:10 82:12 86:4	80:21 81:4,19
<b>nsw00007831</b> 5:1	170:2 175:19	87:19 199:17	82:2,16,21 83:5,10
140:5	object 46:18	200:13	84:1,4,4,5,9,17,21
<b>nuance</b> 190:3	objection 13:7	<b>officer</b> 31:2 33:9	85:10,14,16,20
<b>number</b> 1:8 6:12	15:3 28:8 30:16	121:8 198:17	86:5,8,11 87:7,22
6:19 10:15,19	36:18 53:4 58:5	199:2,2,5,8 200:16	89:1,8,16 90:21
12:10 16:11 65:7	97:4 100:7,11	200:18 204:20	91:14 92:6,9,15,19
68:14,18 79:21	102:1 105:2 110:9	211:22 220:2	93:10,15 94:13,20
85:1 86:12 88:11	117:7,19 118:3,7	officers 153:19	95:2 96:4,8 98:21
89:2 91:7 93:16	131:4 133:2	185:18	101:18 102:21
97:21 99:9 103:18	134:22 135:18	official 1:11,13	103:17 104:5,13
103:22 104:1	136:13 139:10,15	16:2	104:19,22 105:21
106:19 109:14	143:6 145:16,17	oftentimes 204:18	106:6 107:14,18
112:16,21 118:19	149:19 151:12	<b>oh</b> 94:12 129:10	108:6,13 110:15
127:2,6 130:18	156:7 162:6,9	140:10	110:19 111:2,8,21
131:21 132:2,2,3,3	164:17 165:21	<b>ojag</b> 85:18 87:11	112:10 113:8,22
132:8,12 139:20	169:14 170:12	okay 10:6 12:1,13	114:8,9,20 115:5,9
142:1 146:20	173:19 180:1	12:16 13:6,10,15	115:20 116:11
147:1,10 152:17	181:8 182:7,14	13:19 14:4,10,13	117:19 118:22
160:11 163:1	189:20 196:12	14:15,21 15:17	119:5 120:2,7,8
166:14 167:16	214:3 215:21	16:10 17:19 18:1	121:7,14,18,20
176:13 184:19	217:2	21:13 23:7 24:2,9	122:1 123:2
190:10,11 191:16	obligation 187:1	24:19 25:3,12	125:12,16 126:4,9
192:14 193:8	obviously 135:12	27:18 28:2,16	126:12 128:5,8,11
195:4,8 203:12	144:16 150:12	29:16 30:5,10	128:15 129:10,19
219:1	189:6 192:9 202:1	31:18 33:18 35:17	129:22 130:4,15
		36:3,13 37:9,15	131:14 132:19

[okay	-	page]
-------	---	-------

Page 26

134:17 139:6	onshore 110:4	<b>opinion</b> 114:16	outcome 7:10
140:11,14,19	opening 186:12,18	116:6 132:10	214:22 220:15
141:1,16,22	187:7 193:22	133:1 135:16	outlier 216:5
142:17 145:6,12	operate 79:1	138:18,19 147:15	outlined 196:5
147:20 148:18	156:19 172:19	174:5	outlook 83:12
149:15 150:1,20	202:8,22 215:12	opinions 55:5	85:12 87:21
151:5 152:7,15	operated 200:9	94:22 131:2	outside 82:11
153:6,14,17	203:14	134:20 136:10	167:6 202:10,15
154:17 155:2	operates 138:10	<b>opnav</b> 38:10 91:21	202:15,22
156:6 157:17	operating 27:5	95:10,17 96:4,8	outweigh 78:2
159:1,9 160:1,9	153:12 157:16	opportunities	outweighed 77:18
161:1,9,14,17	158:21 201:10	214:14	outweighs 60:15
162:15,17 163:6,7	204:4,4,19 210:15	opportunity 187:3	61:15 71:10
163:11,17 164:2	operation 37:11	opposed 152:4	172:10
165:7,19 167:8	158:9	217:21	overall 47:22
169:3,8 170:6	operational 20:7	opposition 37:8	98:15 99:8 210:21
171:6 173:15	22:18 23:14 28:14	<b>opt</b> 196:21	overarching 60:11
176:11 177:1,5,6,7	51:22 61:1 71:19	order 29:13 43:20	overseas 207:22
177:14,19 178:13	78:5 106:14	48:11 166:4	208:18
178:16 179:14	125:17 132:5	194:19,20 206:18	oversee 128:1
181:2 182:3	135:6 138:1	208:5	200:4
183:17,21 184:21	144:19 155:22	ordered 13:3,5	oversees 199:13
185:14 187:11	157:9,18 158:10	ordering 148:8,19	oversight 51:20
189:3 190:15	158:11 159:4	149:1,9,16	109:6
191:14 192:5,13	171:1 186:3 188:4	ordnance 1:5	overweight 164:6
193:1,6 194:22	194:17 198:1,13	148:6 207:7	oxygen 116:15
195:2 196:1	201:11 202:6	organize 204:21	117:1
197:12,21 213:11	203:12 210:2,13	organizing 213:22	р
213:16 218:15	215:3,12	original 214:12	<b>p</b> 2:1,1 3:1,1 6:1
omicron 32:18	operationally	originally 37:20	<b>p.m.</b> 1:18 146:21
96:15	205:1 213:14	ospreys 200:7	147:2 195:5,6,6,9
onboard 21:22	operations 4:17	osterhues 3:13 8:7	218:21 219:5
26:16 27:13	18:18 33:19 35:10	8:8	pace 54:11 106:14
125:14 201:14	35:12,20 36:14,19	outbreak 4:22	108:12 187:16
209:15 212:2	37:1,5,6 38:11	25:18,22 39:15	<b>pacflt</b> 36:9,10
<b>once</b> 123:14 202:9	42:20 90:5,6	103:16 109:21	<b>pacific</b> 55:1 189:9
206:19 208:21,22	91:22 92:1 104:7	110:4 113:15	page 4:2,7 15:19
ongoing 23:21	148:3 153:20	114:1 116:2	16:4,16 65:4
online 31:6	155:14 171:16	120:18 124:9	66:12 80:11,13,14
<b>onset</b> 19:18	200:13,20 201:1	128:3	80:14 87:4 89:3
	204:16		91:8 98:7,7 99:16
			71.0 70.7,7 99.10

Veritext Legal Solutions 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

## [page - phrase]

			C
99:17 104:6,14	parkway 2:15	98:1 102:14,15	personal 15:21
105:3,7,8,8,10,12	part 14:15 16:3	103:2 108:5	29:1 50:3 68:1
106:6 113:1	21:1,2 44:14	109:10 134:16	77:18
120:14,14 124:7	54:15 56:11 66:21	137:15 138:3,7	personally 33:8
147:21,22 154:2	73:11 87:3 94:7,8	164:6 175:5	213:6
156:11,12 160:1,2	96:18 107:7	209:12,18 210:14	personnel 18:16
163:15 164:4	122:11 125:2	212:9 214:14,16	31:8 43:20 63:15
166:19 167:1,15	144:8 179:14	people's 61:9	116:13 121:11,21
167:15 169:3	181:2,5,12 187:11	137:1	125:5 148:9,20
186:1,8 191:11	187:12	percent 96:11	155:15,21 156:9
222:4,7,10,13,16	<b>partial</b> 147:15	98:15 101:20	156:18,20 157:1,9
222:19	partially 28:19	103:15 110:2	157:18 159:11,16
pages 119:10,11	29:9	114:21 116:19	160:14,17 161:2,2
119:11	participated 84:15	118:13 158:3,11	161:19 162:2,18
<b>pandemic</b> 106:13	particular 19:2,21	165:20 166:10	163:19 164:14
123:7,14,19,20	52:11 99:12 100:1	167:2,5 168:12	165:8 171:8,14,17
186:10 187:13	143:9 145:19	169:12 170:8,20	177:21 178:21
189:15,19 193:18	166:22	171:18 215:16	184:12 185:10,15
208:22,22	particularly 66:4	216:6,8,12,20	185:18 186:13
<b>paparo</b> 36:10	parties 6:10	217:11	194:1 203:13
paragraph 15:17	220:11,14	percentage 159:9	perspective 33:11
16:16 18:19 28:16	party 7:8	162:18 167:22	60:14 71:4 82:8
28:18 37:2 43:17	pass 197:11	168:10	133:8 144:21
65:5,7 66:12 98:8	path 196:5	perception 34:5	174:19
98:9,13 99:17,18	patient 110:5	perform 201:4	pertained 30:11
106:7 147:22	202:3	performance	pertaining 17:16
148:1 154:1	patients 116:14	107:19 139:3	28:3 33:14 35:4
156:11,13,14	patrice 3:15 8:11	198:10	50:10 72:9 83:15
157:7,8 160:3,11	8:12	<b>period</b> 45:1 48:7	99:2 111:4
160:16 161:20,22	<b>pay</b> 186:4 215:4	123:4,10 133:21	pertinent 89:19
162:16 163:18	<b>paying</b> 97:19	155:9 203:21	<b>phase</b> 72:2 206:16
164:19 165:7	210:18	periodically 23:21	207:3,4,12,13,15
169:21 170:7,19	<b>pcr</b> 157:1	32:6 49:13 76:15	207:15,22
170:22 178:17	<b>peer</b> 54:14,15	89:18	<b>phil</b> 25:10
181:5 188:20	pending 9:13	<b>permit</b> 187:2,10	philippine 21:18
193:17	pentagon 5:10	permits 172:5	25:11,15 26:4
parameters 174:3	86:5 178:9 198:21	perpetuity 124:17	<b>phone</b> 50:12 74:6
174:18	people 20:19 27:7	person 137:1	74:7 82:5 83:16
parenthetical	34:13,16 44:20,22	172:7,20	phones 6:8
191:21	45:21 48:21 59:6	<b>person's</b> 157:20	<b>phrase</b> 109:14
	78:21 79:3 95:11		

# [physical - prior]

		I	
physical 172:21	184:3,5,7 185:15	practice 207:6	presents 149:12
physically 208:9	185:15 186:13	208:7 218:4	pressing 210:8
<b>pick</b> 6:6	187:21 194:1	practices 75:8	presumably
<b>pier</b> 49:3,3 209:6,8	218:8	<b>pre</b> 40:14 44:21	167:17
<b>pilot</b> 198:8,8 201:3	<b>poor</b> 202:1	45:14,15 46:8,17	<b>pretty</b> 74:10 93:1
203:2 213:1	poorly 59:3	47:10,17,20 48:2,3	141:13
<b>pilot's</b> 203:3	<b>pop</b> 183:16	48:8,11,15,15,21	prevail 78:12
<b>pilots</b> 199:10	population 99:4	52:11,13 74:20	prevails 78:10
202:19	113:16 136:2	123:7,19 125:8	prevalence 31:3,7
<b>pitch</b> 202:19	216:7	206:8 207:22	90:9 98:5 99:11
pitching 175:10	populations 32:20	208:15,18,22	102:6 131:9 136:4
<b>place</b> 6:10 22:21	98:4	212:12	<b>prevent</b> 114:17
40:10 69:21 152:2	<b>port</b> 45:10,16	preceded 208:14	115:10 132:16
159:19 217:14	46:17 49:1,1,15	precisely 165:15	prevented 50:17
plaintiff 6:14	113:17 123:15,20	precluded 39:15	50:19
195:16	125:4 208:8,10	196:8,11	preventing 29:21
plaintiffs 1:9 2:2	209:1,2,4 210:16	precludes 218:13	96:22 97:7 99:3
4:3,5,10 7:16,18	212:11	precluding 19:13	101:19 102:18,22
7:20,22 9:5,11,19	<b>portions</b> 106:12	20:4	104:9
80:9 85:6 153:1	<b>ports</b> 209:5	predates 96:16	prevention 113:6
212:19	<b>position</b> 69:11	predecessor 76:15	115:3 116:4 124:8
plano 2:15,17	138:11 143:3	77:2	163:13
plans 90:5 92:1	172:1 200:19,22	pregnancy 60:21	preventive 27:11
<b>play</b> 172:21	201:3 204:19	preliminary 17:7	prevents 4:21
<b>please</b> 6:5,7 8:18	213:22	17:11 218:12	120:18
120:6	positions 23:8	premium 56:5	previous 45:4
<b>plus</b> 202:4	positive 49:14	preparation 73:12	primarily 37:21
<b>point</b> 40:10 54:2	137:15 173:16	94:8,14	54:9 91:11 111:13
77:16 124:12	174:9 177:20	prepared 54:19	111:14
135:6 136:9	178:19 179:3,5,16	78:6,8 144:10	<b>primary</b> 111:20
137:12 164:4,8	179:18 180:3	<b>prepares</b> 91:15,20	130:9,9
166:17 167:17	181:14,20 183:7	preparing 16:12	principle 60:11
168:14 193:12	183:16 184:9	23:17 43:21 44:8	61:3,18 66:2
214:10 216:6	possible 43:2	44:22 81:9 141:2	78:16 132:13
<b>policies</b> 28:3 75:8	71:12,22	204:10	<b>printed</b> 190:22
187:10	<b>post</b> 204:7	<b>present</b> 3:11 7:11	prior 14:2 17:11
<b>policy</b> 9:20 13:13	postgraduate	217:7	22:14 23:17 50:5
28:12,13 171:7	198:7	presented 20:13	73:16,16 83:7
173:15 177:17,19	<b>posture</b> 71:19	117:11 118:14	86:21 98:22
178:4 179:10,14	potentially 217:17	168:10	119:11 142:21
182:16,17 183:19			143:19 154:10,13

## [prior - quote]

	1	1	1
186:22 187:22	promulgated 63:8	220:19 223:19	40:6 47:4 53:6
189:12,14 191:15	<b>proper</b> 172:12	publication	56:12 58:8,10
192:15	186:4,5 187:8	196:17	59:12,19 60:2
<b>priority</b> 106:21	210:19	<b>pull</b> 83:21 211:15	71:14 73:2 74:15
private 6:7	properly 211:5	<b>pulled</b> 25:19 83:2	88:5 97:6 100:13
privilege 15:4	proposition	133:20 190:19	102:4 110:11
<b>probably</b> 68:10	135:10 138:2	pulls 27:7	111:5 112:6
93:3	prosecution	<b>pure</b> 209:5	117:22 118:11
procedure 63:8	190:18	<b>purpose</b> 78:19	119:12,14,16
proceed 8:21	<b>protect</b> 19:1 49:22	196:20 217:16	131:7 133:6
68:19 127:7 147:3	99:22	purposeful 79:4	134:11 135:3,21
195:10	protection 136:2,3	215:7,13	136:15 139:17
process 18:12,13	protective 49:9	purposes 20:10	143:11 149:5,22
62:8 63:4 64:6	209:14	63:9 74:21 79:8	150:10 162:11
70:2,8 111:1	protocol 63:8	81:6 94:21 161:1	164:21 166:1
143:9 155:18	<b>proven</b> 206:3	pursuing 218:10	169:16 170:14,16
<b>produce</b> 83:14	<b>provide</b> 14:5 20:6	218:10	171:21 176:17
produced 82:17	34:19 39:1 80:22	<b>purview</b> 22:17	181:10 182:18,20
85:5 104:2 112:22	95:18 100:15	32:5 34:4 60:5	182:22 183:2
119:5,9,21 140:4	provided 12:18	138:22 159:21	189:22 190:17
142:17,19 152:22	14:18 16:1 80:18	173:9	193:2 196:14
producing 30:2	80:19,20 82:19	pushed 59:5	212:22 214:6
production 4:11	102:7 106:9	<b>put</b> 10:19 69:21	216:2,14,19
80:8 85:7	138:13 177:7	189:10 190:18	questioning 68:10
products 130:12	205:19	211:12	questions 15:8,15
professional 109:1	<b>provider</b> 157:14	<b>puts</b> 56:5	16:11 40:18 41:8
152:3	160:18 165:18	q	52:8,10,14 65:15
professionals	172:16	qualified 165:5	65:16 69:3 120:3
134:13	providers 156:3	174:2 213:18	142:22 193:7
proficiency	156:21 159:3	qualifies 159:13	197:16 212:18,22
207:14	162:8 171:4	159:14	218:16,20
<b>profile</b> 109:4	provides 31:14	qualifying 160:19	<b>quick</b> 190:16
166:21 202:12	90:6 155:20	quality 45:19	195:1 214:4
<b>program</b> 198:5,6	160:13	124:14 125:11,13	<b>quickly</b> 196:19
programs 77:13	providing 47:7	125:14,19 126:5	quirky 88:1
progress 206:15	110:20	quantify 33:5	quite 151:15,16
progressing	proving 207:8	quarantine 125:8	174:12 204:10
206:20	provision 157:5	quarter 166:6,9	216:4
progression	171:11	question 11:13	<b>quote</b> 148:3
207:11	<b>public</b> 21:18,19	13:8 15:11 24:13	178:21,21
	22:22 33:13 220:1	30:19 32:13 35:9	

# [quoted - regarding]

<b>quoted</b> 149:8	132:4 138:3 146:6	83:3,5,9,15 84:13	218:21 220:9
r	146:14 151:18,19	84:17 86:10,22	recorded 6:13
<b>r</b> 2:1 3:1 6:1 222:3	152:10 174:15,21	87:16 88:8,19,22	recording 6:9
222:3	175:1 188:4 205:6	89:20 90:4 94:15	records 83:15
race 5:8	207:2 215:9 217:8	96:4,8,12,13,14	<b>recover</b> 132:6
radar 148:6	readinesses 78:17	97:2,12,17 98:18	208:9
raise 88:5	reading 97:10	108:21 109:9,22	recovered 202:10
ran 198:17	180:13 183:11	110:12 115:17	<b>recovery</b> 202:9,10
rand 130:1,4,5,12	ready 36:7 56:6	118:8 122:19,21	202:18
randall 2:12 7:21	106:8 125:6 155:7	129:20 154:15	recruit 56:22
7:21	200:6 207:9	155:5,10 158:13	recruiting 57:5
range 34:17 167:7	215:11	164:1 178:13	186:11 187:18
169:1	real 190:16 209:19	192:11 194:2	193:20
rank 121:3	214:3	196:4 213:3	recruitment 79:8
rapidly 78:9	reallocated 48:18	<b>receipt</b> 221:18	<b>redirect</b> 218:17
rate 32:22 33:1	210:10	<b>receive</b> 59:10	<b>reduce</b> 116:4
58:3,16 98:2	really 22:9 31:15	89:18	reduced 59:6
102:7 114:21	73:11 90:6 103:1	received 72:15	220:7
115:4 131:9	144:10 188:12	84:15 89:9 123:14	reducing 30:12
141:17,18	211:22	216:21	32:12,16 33:15
rates 32:19 45:18	realtime 200:17	<b>receives</b> 92:15,20	reference 189:16
116:3	<b>rear</b> 54:4	recess 68:15 127:3	216:17
rating 79:14	reason 11:3 75:13	146:21 195:6	referenced 66:13
rdc 130:8	111:5 205:18	recognize 77:11	221:6
reach 19:8 70:15	210:21 216:9	88:19,21 210:22	references 83:4
reaching 81:17	221:11 222:6,9,12	recognizes 71:16	163:19 193:12
82:11	222:15,18,21	recollection 32:22	referred 25:4
reaction 60:19	reasonable 184:17	48:10 81:15 82:6	52:20
read 30:5 107:5	reasons 202:6	82:13 83:18 96:6	referring 90:1,2
114:5 120:3 125:3	reassign 43:19	98:6 155:11	121:15 157:6
129:19 148:19	recall 14:6,11	recommend 70:12	158:5 164:20
157:3,13 165:16	15:11 24:2,9 25:1	recommended	171:10 189:18
182:1 186:6 191:7	25:3,7,12,18 26:11	70:6	196:2,7
221:9 223:5	31:2,10 39:21	recommends	<b>refers</b> 124:7
reader 182:22	40:1,12,13,14,15	157:22	188:10
readiness 4:19	41:16,19 42:6,16	reconnect 207:21	reflected 95:19
17:3,5 34:7 44:10	42:21 48:10 52:12	record 6:4,11 7:14	194:4
44:13 50:1,1	57:13,16 66:21	68:13,17 119:9	reflects 29:14
58:21 59:22 78:10	69:4,7 72:18 73:1	127:1,5 146:17,19	regarding 32:11
78:11,20 79:4	73:8 76:4 80:19	147:1 176:2	49:20 110:20
104:9 117:11	81:2,16,19 82:2,11	190:18 195:4,8	129:7 177:20

## [regarding - result]

186:10 187:16	remain 133:11	requested 80:21	resolved 90:8
189:15 193:18	215:19	186:21	<b>resource</b> 185:21
regardless 59:20	remained 123:9	requesting 80:9	198:21 199:22
<b>region</b> 146:2 204:6	remember 130:11	requests 4:10 18:2	resources 200:15
<b>regions</b> 145:2,9	<b>remind</b> 11:16	18:14 62:19 63:5	200:21
regular 31:14	remotely 7:13	63:10,21 64:2	respect 38:1 59:9
regularly 74:11	removed 134:7	65:18 69:5 70:6	75:11 111:17
reinforcement	removes 17:9	72:10 75:13,15	132:22 134:18
204:11	<b>rep</b> 95:12,14 96:3	78:13 80:13,13	145:14 149:16
<b>related</b> 7:8 43:21	repairs 211:14	81:1 82:18 139:9	171:8 174:13
89:19 220:10	replacement 199:9	<b>require</b> 47:20 48:1	175:18
relationship 23:22	report 91:11 95:5	134:6 144:22	responding 81:6
relative 99:11	113:11 116:1	150:15 175:7	response 34:1
220:13	156:21 168:7,20	176:3,5 188:15	80:22 82:18 85:6
<b>release</b> 155:7,9	169:9	required 19:16	129:8 142:17
released 185:9	reported 1:22	24:17 116:14	152:22
<b>relevant</b> 54:3 55:3	115:14 122:9	117:1 146:9,11	responsibilities
55:5 144:14	124:3 156:4	176:22 201:20	18:22 19:11 99:22
reliable 31:19	157:14 203:11	202:2,6 223:13	213:22
111:3	<b>reporter</b> 7:4 8:18	requirement 19:4	responsibility
reliably 148:7	10:19 11:12,15	20:1 28:4 47:20	25:17
relied 16:12 29:2	reports 81:20	55:7 56:9,15,16	responsible 34:15
90:15 94:21	89:18 110:16	59:11,18 60:10	34:22 64:7 155:3
religious 9:21	129:19 130:1	69:18 100:3	<b>rest</b> 48:5 210:19
17:15,17 18:2,12	represent 12:16	158:10	restate 58:9
47:7,18 61:5	80:7 147:13	requirements 79:6	restricting 44:9
62:19 63:4,9,21	163:11	216:18	182:5
64:2 65:16,17	representation	requires 49:16	restriction 43:19
66:5 69:4,16,22	13:16	79:12 106:8 145:7	restrictions
70:5,11 71:16	representations	188:20	178:22 179:20
72:10 75:12,14,20	206:4	requiring 24:15	180:15 181:6,16
75:22 77:7,17	represented 13:11	131:2 174:16	restrictive 101:10
78:12 125:22	representing 7:5	research 130:8	101:12,15,17
126:1 138:13,20	9:11	reserved 219:7	<b>rests</b> 156:20
139:8,8 141:7	represents 175:6	residence 93:12	result 22:14 24:4
143:4,9 144:6	request 13:16	resident 91:21	25:9 33:20 35:20
145:19 173:4,5	17:15,17 66:19	92:8	36:15 37:12 38:4
<b>rely</b> 19:7 33:10	70:12,13,22 75:21	<b>residual</b> 184:10	51:7 52:10,17
134:13 205:12	80:8 85:6 142:18	resiliency 76:7	72:17 78:14 97:15
relying 94:16	153:1 173:5	<b>resolve</b> 139:19	124:2 129:11
	209:20		132:22 210:1

[result - sailors]

213:17	reviewing 81:21	48:18 59:1,15	<b>role</b> 18:6,12 76:6
resulted 115:3	142:14 155:3	60:14,18 61:1,2,15	141:10,13 154:17
results 97:22	reworked 14:18	61:17 66:4 69:12	183:18 204:15
<b>retain</b> 57:11 138:6	15:14	69:14 71:8,10,17	205:3,5,12 213:21
138:7 186:14	reykjavik 118:16	72:1 77:18,20	<b>roll</b> 202:20
194:1 215:13	<b>right</b> 9:21 10:8	78:1,2 79:2 103:1	<b>room</b> 7:11
retained 137:22	12:3 21:6 25:6	103:4 117:11,15	roosevelt 20:16
219:2	26:17 28:7,12	117:16,17 118:14	21:3,15,20 22:15
retaining 138:6	30:1,8,13 35:14	133:12,13 138:9	24:6 25:4 109:4
retention 45:18	38:20 46:10 52:15	139:2 141:6 144:3	109:19 111:22
56:10,17 78:13	53:15,21 54:12	145:8,14,22	122:14,18,22
79:9 137:20 188:3	61:8,16 66:11	146:10 149:2,12	123:1,5,10 127:13
188:20 209:19	67:8 68:5 69:6,13	149:17 150:5,8,22	127:14,17
retentions 184:11	69:19 73:3 74:18	151:6,8,9,10,22	<b>root</b> 216:10
<b>retired</b> 63:18	81:22 86:6,9 88:4	155:15,21 156:9	rotational 54:20
64:11,15	89:12 90:11 91:4	156:18,20 157:1,9	rotationally
retirement 187:5	98:11 100:20	157:20 159:5,11	203:10
retiring 60:17	101:6 107:17	159:16,20 160:13	rough 77:15
<b>return</b> 45:11	108:1,10 111:12	160:16,19 161:2,3	<b>routine</b> 124:16
202:6 208:6	115:7,11,16	161:8,11,15,19	<b>runs</b> 87:20,20
221:13,17	120:10 121:13,21	162:1,19 163:19	<b>ryan</b> 3:17 7:2
returned 49:16	122:4,13 123:8,11	163:20 164:5,7,9	S
107:2 122:6,8	125:9 129:13	164:14 165:3,8,11	<b>s</b> 2:1 3:1 4:1 6:1
198:12,16	131:18 140:21	165:11 168:13	121:9 208:21
<b>review</b> 20:10	143:22 144:11	169:12,19,22	222:3
31:22 32:3,6 33:7	145:10 146:15	170:3,9,10,21	safe 210:20
62:21 63:9 70:11	155:22 156:2	171:9,13,17,19	safety 19:1,17
90:18 91:1,3,9	161:4,18,21	172:6,10,11,11,17	100:1
110:15 114:10	168:21 169:6	172:20 174:14,14	<b>sailor</b> 75:21 76:6
118:17 120:9	177:21 178:2	174:15,16 175:9	188:3 201:18
129:22 142:10	179:18 188:11,20	175:10,11,17	sailors 20:22 21:1
143:18 153:7	191:17,18 192:16	176:9 184:14	25:18 28:14 29:8
154:20 159:21	193:14 194:5	202:11 210:2,6,7,8	29:10 30:8 45:6
163:8 177:10	rightfully 109:11	210:9,9,10,13	56:10,17 57:1,11
221:7	<b>rights</b> 66:7	211:2 218:2,3,7	75:2,6 77:8 78:14
reviewed 31:10	<b>risk</b> 17:4,6,7,9,14	<b>risks</b> 20:8 34:6	115:15 116:8
44:8 66:22 67:14	20:12,13,17 28:20	43:21 48:15 59:4	125:1 150:5,6
67:16 94:14 134:3	29:18 30:7,21	59:5 143:19,20	185:18 186:14,21
154:13 177:16	32:12,17 33:4,15	201:22 202:2,14	187:4,14,17 194:1
191:7	34:10,13,16 35:2,6	road 1:20 2:6 7:1	207:18,19 215:10
	44:19 45:14 46:3		218:7
			210.7

### [sandbox - service]

sandbox 209:7	screened 199:1	120:19,22 146:8	sent 87:4,8 88:2
save 166:19	<b>sea</b> 4:22 21:18	148:12 153:21	91:9 92:12 93:5
saw 20:18 29:12	25:11,11,16 26:4	155:12 156:13,17	155:4 178:6,8
45:18 94:19	120:19 124:9	160:14,21 163:14	193:4 221:14
122:20 168:3,22	186:2,3,3 194:17	164:11 167:3,7	sentence 14:19,20
168:22 196:5	194:18,20 201:22	179:6 180:8	15:20 16:3,5,16
209:1,17	215:3,3	185:19 186:15	18:20 19:21 28:17
saying 101:9	seahawk 199:10	187:19 188:6	37:1,3 43:18 44:2
118:15 125:3	seal 57:22 173:16	189:1 191:11	98:14 99:19
135:7 150:4 155:8	174:10 175:4	192:1 205:9 206:5	116:12 147:22
161:10,13 180:9	204:9 213:12	208:10	148:1,18 178:16
187:1 188:12	seals 1:4,6 5:5	seeing 86:22 94:16	178:17 180:11,14
210:12 217:9	6:15 9:12 12:20	94:16 96:17 97:22	181:3,12 186:9
says 19:21 29:17	39:16,17 41:17	130:11 155:6	187:7,22 188:19
98:14 105:10	57:18,22 58:13	<b>seek</b> 34:15	189:12,14,17
106:7 113:2,9	176:18 221:4	seeking 138:13	190:3
115:2,17 116:1,13	222:1 223:1	seen 12:13 32:8,10	separate 123:3
148:2,19 156:8	<b>seas</b> 202:16	32:13 56:18 80:4	186:22 215:20
160:16 161:5,15	secnav 28:1	87:9 94:7 113:20	separated 179:4
164:8 167:5,14,16	<b>second</b> 16:3,15	119:22 134:12	195:17 214:5
169:4 170:1 178:9	19:20 41:16 87:3	140:12,21 142:13	separately 179:17
180:2 181:6,12	98:13 106:7	142:14,16 144:1	separating 60:17
184:11 186:9	147:22 148:18	147:17,18 177:12	217:18
187:13,15 188:1	178:16,17 190:3	182:16 185:5	separation 186:21
189:14 191:12,21	199:8	192:2,9,9,17 197:4	187:4 196:3
193:4	secret 92:8	208:2 210:8,13	september 220:21
<b>scale</b> 56:4	secretary 1:11,13	sees 71:11 72:1	sequester 44:21
scanning 184:6	5:4 27:20,21	selected 206:3	45:14,15 46:9
scenario 216:5	49:19 50:2,4,9	send 83:22 87:18	47:17,21 48:2,3,8
schedule 83:11,19	106:21 109:16	155:8	48:21 208:15
83:20 87:20	178:5 179:9	sender 89:14	sequestered 48:6
scheduled 87:12	199:18	sending 87:16	sequesters 48:11
87:12,13	secretary's 49:20	148:3	serendipitously
scheduler 87:19	see 14:7 16:5,6,21	sends 87:20 93:6	116:19
scheme 23:2	16:22 19:5 28:20	senior 5:10 121:8	series 52:14
school 79:12	31:6 32:19 44:2	153:19 178:9	186:20 212:22
197:22 198:7,8,20	45:21 58:2,15	sense 37:6 40:5	serve 138:1
scope 23:5 53:18	65:8 85:18 87:4	144:7 169:2	served 80:8,15
score 79:15	89:6 98:16 102:11	210:14	200:9,12,14
<b>scott</b> 77:3	104:11 105:11	sensitive 6:6	service 26:16
	113:2,12 120:15		27:15 28:5,19

## [service - sorry]

Page 34

			-
30:21 45:19 47:1	131:19 132:1,11	203:14 204:2,4	sipr 92:10,11,13
47:6,18 50:18	133:10,19 134:14	205:9 211:12	92:18
51:2,6,13,14 59:9	136:3 212:16	212:1	<b>sir</b> 13:9
59:17 62:18 64:2	<b>shape</b> 185:17,22	shooting 207:7	sitting 11:3 37:15
75:11 103:10	186:5 187:8	<b>shop</b> 93:1 155:12	situated 1:5,6
110:1,3,6,7 115:22	200:21 205:8	199:19	situation 111:19
116:7 117:3 118:5	215:1	<b>shore</b> 54:9 168:4	124:5 141:15
124:14 125:11,13	<b>shaping</b> 188:16	<b>short</b> 100:17	<b>six</b> 45:2 88:2
125:20,21 126:6	shedding 188:13	194:14	206:18
130:17,18 132:9	<b>sheet</b> 221:11	<b>shorter</b> 34:17	size 93:4 185:17
132:21 134:5	<b>shift</b> 54:8 175:11	133:21	185:20 186:4
141:8 145:1 149:2	shifting 54:13	<b>show</b> 84:21	187:8 188:11
150:21 151:1	55:15 188:12	<b>showed</b> 31:3,11	200:21 205:8
159:7,10 165:10	shifts 188:2,9	<b>shown</b> 121:16	214:22
166:21 171:9	<b>ship</b> 25:5 26:7	<b>shows</b> 32:14 87:14	sizing 188:16
179:2 186:22	39:16,18 41:18,20	99:6,9 116:20	skew 29:10
204:17,21 217:19	71:5,18 103:11,12	side 12:21 202:9	skid 200:7
services 4:18	109:21,22 110:2	sign 221:12	<b>slightly</b> 168:15
104:8,15 106:1	112:2 113:17	signature 219:7	190:20
107:9 108:18	114:2,14 115:6,10	220:17	<b>slow</b> 11:16
110:17,22 111:3	115:16,22 117:4,6	signed 12:5 32:9	small 78:7 118:13
113:3 114:15	117:10,11 118:2,6	154:6 221:20	130:22 131:8
169:2 183:12	122:14 125:6,15	significance 87:8	198:2,14 199:3,15
serving 125:17,20	126:6 148:5 199:6	significant 14:20	201:11 212:6
set 12:21 55:8,18	202:7,8,20 207:13	19:18 131:12	snapshot 90:7
55:21	207:13 209:15	132:3,13 144:21	social 115:21
<b>seven</b> 208:5,6	ship's 112:7 114:1	189:10	209:16
severe 117:15	129:9	significantly 14:19	<b>soldiers</b> 180:20
133:14 149:2,17	shipmates 139:3	signing 31:22	solely 179:2,4,17
150:22 151:6	ships 21:17,22	154:14	180:3,16,21
160:19 161:3,6,8	22:11 25:8,14	similar 142:20,22	183:14
161:11,15 163:20	26:15,20,22 27:3,4	150:12 174:12	solutions 7:3,6
164:5 165:4,11	27:13,16 28:5,14	175:15	219:3 221:23
169:12,19,22	32:2 90:9 102:11	similarly 1:4,6	somebody 60:16
170:3,9,11,21	102:12,18 103:8	<b>simply</b> 21:20	212:13
171:19	112:1,12 114:17	54:17 133:13	<b>soon</b> 60:17 71:7
<b>severely</b> 118:14	114:18 121:18,21	188:11 196:20	sophistication
212:14	122:10 148:3	sincere 75:22	206:22
<b>severity</b> 30:2,12	185:21 188:17	sincerity 75:14	sorry 13:21 20:20
98:2 99:12 102:9	198:2,14 199:3,15	<b>single</b> 37:10	40:20 94:12 103:3
130:19 131:15,16	200:10 201:11	207:19	119:13 124:10

Veritext Legal Solutions 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

## [sorry - status]

127:16 156:15	96:12 118:15	spread 19:2,22	174:21 214:17
160:4 166:11	128:19 129:2,14	20:3 46:16 99:4	215:9,10 217:8
180:5 183:1	166:3 167:18	100:2,6,16 101:21	star 36:8,11 52:1
<b>sound</b> 134:10	172:6 173:2	114:17 115:10,13	155:6 200:19
sounded 30:11	175:20 184:16	115:14 116:5	stark 21:20
<b>sounds</b> 53:22	190:4 195:21	135:11,13 137:14	start 14:10 36:5
175:14	201:9,17 208:1	spreading 133:13	39:7 47:16 63:21
<b>source</b> 67:3,4,9	211:1 216:19	sprinting 208:11	105:9 206:20
111:3,6 166:12	specifically 13:15	squad 198:18	208:11 216:13
168:5	35:18 69:15 78:18	squadron 121:17	<b>started</b> 189:13
<b>sources</b> 31:19	81:9 96:15 151:19	198:1,14,16 199:3	starting 20:15
111:16,20	154:15 164:18	199:9,9	141:11 173:10
<b>south</b> 1:20 2:6	192:11 215:2	squadrons 199:14	197:19
6:22 198:3	specificity 62:10	stab 182:20	starts 61:9 70:1
southern 36:11	specifics 24:10	staff 38:9,11 52:6	state 7:13 202:1
<b>soviet</b> 198:4	25:2 40:2,3,9 41:8	65:13 66:15,16,20	207:2
<b>space</b> 198:22	41:11 150:13	67:5,10 68:4	stated 109:3
spans 20:15	152:4 158:6	73:13 92:2 93:13	statement 4:16
<b>speak</b> 23:16 62:10	specified 152:10	109:1 199:21,21	16:7 21:2 22:10
73:22 74:4,9,10,13	214:16	200:15	23:18 29:3 30:17
206:3	spectrum 176:9	staging 204:11	31:17 104:6,14,18
speaking 70:17	speculate 41:14	stamped 85:7	104:20 105:22
96:13	speculation 28:11	86:16 88:16 93:21	107:7,11,14 151:3
<b>spec</b> 38:9 54:18	52:4 53:5,10	140:5 142:6 153:1	171:10 181:5
203:13	84:16 100:12	156:12	statements 15:20
<b>special</b> 1:7 37:20	102:2 117:8 131:5	stand 121:2	16:13 23:19 68:4
38:1,2 39:2,13	133:3 135:1,19	standard 17:5	94:21 99:1 108:4
42:15 50:16 51:6	136:14 139:16	27:5 34:7 44:13	197:6
51:14 55:21 58:4	143:7 145:18	58:21 59:7,22	states 1:1,11,12,13
72:16 73:18 74:16	149:20 151:13	70:18,20 71:2	3:5 5:3 6:17 8:6,8
176:19 200:8	169:15 189:21	78:10,11 146:6	8:12,14 9:12
203:7 213:12	215:22 217:3	153:12 157:15	18:20 123:14
<b>specific</b> 14:12 15:9	<b>spend</b> 207:19	158:9,20 175:1	164:4 168:12
15:10 17:7 23:22	208:1	215:8,10 216:7,9	179:16
24:3 27:2 29:17	<b>spent</b> 198:6	216:11,17 217:6	stating 180:7
35:12 36:16 37:16	spiritual 76:5,6	217:17,18 218:8	statistic 166:3
39:2,12 40:10	77:11 126:3,4	standards 17:4	statistics 65:7
41:8,9 42:14 52:8	137:3 139:1	44:10 59:13 70:19	66:13,20,21 67:2
57:12 60:22 62:2	<b>spoke</b> 50:4	78:17,20 79:4	status 49:10,18
71:4 73:18 74:15	<b>spoken</b> 72:15	138:3,8 151:18,19	123:14 159:20
80:12 88:22 96:6		152:11,13 173:12	179:3,5,18 180:3

### [status - sustain]

	1		
180:17,22 181:21	216:15 217:15	<b>study</b> 141:13	<b>summary</b> 197:17
182:6,10 183:8	218:15	studying 81:16	<b>superior</b> 156:22
stay 24:16 49:3	<b>steps</b> 43:12	subcommittee	supplemental
147:16 214:15	stipulates 155:18	4:19 104:8 107:8	116:15
217:22	stipulation 158:1	<b>subject</b> 85:16	supplementation
staying 207:2	158:14	144:17,17 177:19	117:1
steaming 106:19	stopped 209:1	185:11	support 1:19
stenotype 220:7	stopping 101:21	submarine 51:14	16:13 19:8 29:3
<b>step</b> 201:15	125:4	51:15 198:4	77:12 90:16
stephens 2:3,5	storm 198:15	submission 64:1	106:21 151:8,17
7:15,15,16,18 9:6	213:9	<b>submit</b> 13:2 197:8	173:15 175:12
9:9 10:17 12:12	strain 211:12	submitted 12:3	204:8 209:21
13:14 15:6 28:15	strains 97:15	14:8 18:3 62:19	supported 44:7
31:9 36:21 46:21	strategic 54:13	75:12 104:19	supporting 200:17
53:12 58:11 64:20	78:5	192:21	supports 61:4,6
65:1,3 68:8,20	strategies 115:3	subscribed 223:14	<b>suppose</b> 192:12
79:19 80:1,2 85:3	streamline 68:10	subsequent 20:16	supposition 81:14
86:14 88:13 93:18	stress 45:21	subsequently	169:21
97:9,11 100:9,19	125:17,20 210:10	192:21	supreme 5:3
102:16 103:20	stressful 207:19	<b>subset</b> 214:20	147:14
105:6 110:14	stressing 209:13	216:12	<b>sure</b> 35:17 46:5
112:18 117:19,21	<b>strike</b> 106:15,16	substance 15:9	47:5 62:7 68:11
118:4,21 119:7,15	107:2 121:15	82:4 83:6 84:11	69:8 101:16 114:4
126:12,16,20	122:11 123:3,7,18	154:18 193:9	125:10 128:20,20
127:8 131:13	124:1 129:8	substantial 102:7	130:2,12,12
134:2 135:14	199:13 200:1,2,4	substantially 31:4	140:18 149:4,6
136:6 137:17	203:6,7,9,17	116:4	158:3 161:17
139:12 140:1	206:13,15 207:8	success 148:5	166:13
142:3 143:16	striker 122:2	successfully 33:20	surfaces 49:13
146:15 147:4,12	124:20	35:10 37:11 38:4	<b>surgeon</b> 29:6 33:9
150:19 152:6,19	<b>strive</b> 77:12	39:3 43:6,7 72:21	65:13 66:15,17,20
156:10 162:7,14	<b>strong</b> 31:6 56:5	108:7 112:1	67:5,10 68:4
163:3 165:1 166:5	106:9 124:5,6	succinct 95:13	89:15 95:12,18
166:16 170:5,15	125:22 138:1,2	sufficient 79:18	96:1,10,13,20
170:17 174:7	185:22 188:16	<b>suggest</b> 60:18	97:13 100:22
176:15 180:18	205:7	suggesting 124:21	111:6,11
181:11 182:9	strongly 54:4,8,13	149:8	susceptibility
183:3 185:1 190:6	109:11 124:14	<b>suggests</b> 107:20	175:6
191:1 194:22	159:22	116:2	susceptible 103:7
195:11 197:1,11	structure 55:15	<b>suite</b> 1:20 2:7,16	<b>sustain</b> 44:9 45:10
212:20 215:15			

## [sustainable - thinking]

sustainable 44:17	125:1 168:14	tear 209:18	26:19 35:5 69:9
45:5,17 48:19	208:14 220:3,6,12	technician 1:5	74:19 80:17 89:16
211:1	takes 17:8	technicians 211:16	127:15 130:16
sustaining 188:13	talent 186:12	tell 9:17 11:1 15:9	218:22 220:4,6,9
sustainment 188:2	188:21 193:21	24:14 108:3	221:9,18 223:8
188:9,22	talented 215:7	<b>tempo</b> 106:14	testing 49:14
<b>swcc</b> 39:13 42:2,2	talk 39:11 40:3	207:17	198:11
42:5	50:2 62:5 76:9,11	ten 48:22 74:5	tethering 34:17
swear 8:18	189:5 204:12	154:1	texas 1:1 2:8,17
sworn 8:19 9:4,22	206:6	tendency 11:9	6:18 9:10,13
10:3 11:1 16:18	talked 46:1 71:9	tens 53:10,22	thank 8:16 68:14
220:5 223:14	73:8,9,12,14 76:13	tensions 189:10	80:1 127:2 146:20
symptomatic	77:10,15 81:13	tentatively 87:12	190:13,14 197:15
118:15	95:16 99:6,19	tenure 187:5	219:3
symptoms 34:14	103:14 109:1,12	term 65:20 95:8	theater 55:19
117:15 132:3	138:22 172:8	101:11 205:7	189:9
133:10,19 134:6	175:18 184:13	terminated 213:19	theodore 20:15
134:15,18 137:6	207:10 208:19	terms 19:10 20:17	21:20 109:4
150:22 151:7	210:5 211:20,21	22:18 44:22 45:19	thing 144:12
synchronization	214:10 215:1	49:11 54:5 70:21	things 83:19 125:5
95:10	218:1,4,6,8	71:4 90:7 96:17	141:17
syncs 95:10	talking 53:9,10,19	97:21 98:1,5	think 26:3 32:18
system 198:11	69:15 82:10 84:13	99:11 102:8 109:8	46:9 47:12 65:20
199:11 208:4	109:9 133:12,12	109:11,14 130:18	72:3,7 73:1 95:15
systems 1:19 6:21	133:13 136:20	131:20 136:2,3	97:5 101:14 112:5
t	137:5 144:18	137:14 168:2	119:18 125:19
<b>t</b> 4:1,1 222:3,3	152:12 172:16	172:21 185:20	131:15 132:12,17
tabs 94:9	175:4 214:16	209:15 216:14	134:1 137:7,21,21
tactical 210:15	215:2,6	test 137:15 183:16	138:20 141:21
taiwan 189:10	talks 158:9 186:2	183:16 184:9	143:7,13 144:9,12
take 6:10 22:21	189:13 190:3,4	198:7,8,9,10	150:3,11 152:13
64:18 68:9 114:3	<b>target</b> 40:11	202:19 203:2,2	155:5 168:1 172:7
114:4 120:2	targeted 186:6	tested 157:2 207:1	172:7 174:12
126:20 140:17	task 137:16 200:2	<b>testified</b> 9:4 12:2	175:3,12,13
145:8 146:16	200:3,4 201:15	16:17,18 26:3,14	179:13 184:10,15
152:2 182:19	tasking 106:22	35:11 66:14 72:7	189:16 195:1
195:1 209:6	109:16	72:13 101:2	200:11 209:2
<b>taken</b> 6:14 12:19	team 39:14 175:4	testify 11:4 67:21	216:13,14 217:5
35:4,5 43:13	213:12,13	67:22	217:12,13
64:14 74:20	teams 175:5 204:9	testimony 9:22	thinking 33:21
115:10 124:12,18		13:2 14:5 16:19	
113.10 124.12,10			

third 46:13,19	timeframe 221:8	touching 212:3	trust 205:15
99:18 134:8 148:1	timelines 23:3	tough 186:12	trusting 205:22
156:11 178:17	times 46:20 82:14	193:21	trustworthy 206:4
thought 82:7	127:14 130:15	tour 198:1,19	truth 11:1 206:4
thoughtful 217:12	207:20	203:10	truthfully 11:5
thousands 53:1,2	<b>timing</b> 168:5	track 112:9	trying 53:17 174:3
53:3,10 54:1	<b>tiny</b> 116:17	tracks 21:16	216:14
<b>thread</b> 54:4 97:17	<b>title</b> 89:5 104:5	traffic 92:18	<b>tuesday</b> 185:10
169:17 170:4	105:8 113:8,14	train 204:21	<b>turn</b> 36:7 80:11
185:21	120:17 191:20	training 104:10	<b>turned</b> 76:11
<b>threat</b> 54:15	<b>titled</b> 90:12 95:4	206:21 214:1	turning 12:22
150:17	today 7:4 10:7	trains 199:9	66:11 99:15 163:4
<b>three</b> 36:8 52:1	11:4 12:19 21:21	trajectory 188:10	191:14
155:6 157:2 198:9	35:7 37:15 78:6	trans 174:14	turnover 24:15
200:19 203:10	102:12 127:15	transcribe 11:13	<b>twice</b> 15:16
thursday 6:5	142:11 143:18	transcript 5:18	<b>two</b> 24:8 25:11,13
tied 49:3	172:8 177:12	11:14 221:6,20	36:11 37:3 38:12
<b>time</b> 1:18 6:4,8	183:22,22 185:6	223:5,8	39:22 42:12 46:8
8:17 14:2,9 26:13	192:3 197:3,3,4,9	transfer 218:10	46:8 54:8 55:11
31:13 38:12 39:21	208:20 218:4,6	transfusions	64:15 76:13,14
40:10,12 42:7	219:2	176:20	97:18 111:20
48:7 49:2 63:20	today's 6:4,20	transmissibility	136:9 160:10
63:22 68:13,17	218:22	116:5	214:9
71:6 82:12 83:1	todd 76:19,20,21	transmitted	<b>type</b> 22:16 27:12
90:19 98:19 99:10	told 108:7	192:18	31:12 34:2 38:14
105:21 107:12	<b>tool</b> 22:3 44:16	transpired 98:6	54:5 62:20 66:3
108:19 109:2	49:8 70:21 99:14	transported 202:3	69:14 71:15 79:14
114:4 117:4 120:2	101:4 102:10	trauma 201:9	83:18 88:21 89:22
122:8,19,21 123:3	150:7	travel 204:12	95:3,7,8,15,19
123:4,10,15	tools 35:1	trend 188:13	97:18 100:21
124:13 127:1,5	top 16:4 87:3	trending 112:14	102:7 124:12
146:19 147:2	113:9,10 120:14	trends 90:7 95:8	125:10 144:13
154:4 166:19	146:5 163:14	95:15 144:5	153:15 155:19
182:15 188:21	191:9 192:21	triple 164:9	156:4 202:12
189:3 190:3	topic 177:18	<b>true</b> 16:7 67:22	205:9
192:20 195:5,9	185:13	107:11 149:15	<b>types</b> 24:14 25:1,1
199:8 200:10	toro 1:12	151:3 180:19,20	39:7,8,12 45:13,16
204:1,3 207:20	total 106:19 219:1	220:8 223:8	54:6 69:4,12
208:1 209:10	touched 108:2	truly 139:13	70:13 81:5,20
211:18 213:5,11	touches 208:13	truman 121:9,16	91:10 134:6 138:8
218:21 221:19		124:19 208:21	204:13,14

# [typewriting - vaccination]

typewriting 220:7	underlying 60:20	unmanaged 20:8	<b>use</b> 20:14 35:1
typically 45:2 48:3	67:10,18 75:14	unnecessary	37:1 49:7 53:13
52:2 78:4 83:10	129:15 216:9	172:11	59:8,13 83:12
83:18 95:13 96:2	understand 10:6	unstated 58:6	111:6 132:18
112:11 146:4,7	10:22 30:3 40:6	102:3 131:5 133:4	150:6 176:4
154:20 155:1,6	53:18 59:12 61:13	135:2,20 149:21	<b>useful</b> 141:5
182:20 201:12	61:20 62:12 68:3	151:13 173:20	<b>uses</b> 63:12
206:13 207:21	68:6,21 127:9	215:22	uss 25:21 107:1
208:4 211:14	147:6 149:4 190:7	<b>untied</b> 1:11	121:8 124:19
u	195:13 216:16	unusual 92:17	199:5 201:18
<b>u.s.</b> 1:4,5,6,7,7	understanding	192:12	usually 126:15
4:21 5:5 6:15,17	18:5,13 22:8	unvaccinated 20:6	v
12:20 106:9,10,20	49:18 60:1,6	27:15 28:5,13,18	<b>v</b> 5:5 221:4 222:1
110:16 113:2,16	62:18,22 145:4	29:9,11,14 31:3,7	223:1
120:18 221:4	174:17 176:2	31:12,16 32:20,21	vaccinated 28:19
222:1 223:1	184:16 192:18	43:20 46:14 47:2	29:9 31:4,7,11,15
<b>uh</b> 113:4,7,13,18	194:18	57:17,21,22 58:12	32:20 37:4 98:1
122:17 160:12	understood 80:17	98:1 103:2,5,11	103:7,10,15 110:2
179:19 193:19	underway 26:2	115:15,18 116:7	110:3,6,8 113:16
ukraine 189:9	45:1 49:12 207:14	116:18 117:3,9	115:7 116:14
ultimate 70:3	209:4	118:5,12,13	130:17 131:1
ultimately 64:7	undetectable	130:17 131:1	132:9,21 134:5,15
unable 22:13	178:20 181:15	132:8,21 134:5,15	132.9,21 134.3,15
unacceptable 72:3	183:15 184:9	134:19 135:8	136:1,12 156:9,18
78:2	unforgiving 79:2	136:2,12 137:1	156:19 157:10
<b>unaware</b> 34:1,4	union 198:5	148:9,20 149:9	158:12 159:4
37:14 50:7 51:16	<b>unit</b> 6:12 61:9,10	157:18 170:10	162:3,4,4 165:8,10
195:21	62:3 66:8 68:14	171:8 180:20	170:10 171:3,13
uncertain 41:21	68:18 71:4 107:1	215:17	171:17 172:19
41:22	127:2,6 132:5	<b>unware</b> 37:13	vaccination 9:20
uncertainty	133:11 137:2,16	upcoming 155:8	19:3 20:1 22:3
109:13 186:9	139:4 144:3,3,15	<b>update</b> 32:3 90:3	35:6 37:3 47:19
187:16 188:1,21	146:20 147:1	90:11,13 91:12,16	49:17,21,22 60:4
189:4,11,14,16,18	195:4,8 210:3	91:17,18,19 92:19	97:1,7,7,20 100:3
190:4,5 193:17	<b>united</b> 1:1,12,13	95:15,18 111:10	101:3 102:18
<b>unclassified</b> 92:17	3:5 5:3 6:17 8:6,8	<b>updates</b> 31:14,17	114:21 115:2
uncomfortable	8:12,14 9:11	31:19,22 99:5	114:21 115:2
141:11	<b>units</b> 43:21 44:22	uptempo 207:8	180:22 186:10
uncommon 209:2	125:18 138:1	urgency 202:2	187:13 189:15,19
undergoing 71:6	144:19,19 188:18	<b>usdoj.gov</b> 3:9,10	193:18 216:18
	219:1	221:2	175.10 210.10

### [vaccinations - went]

	1	I	
vaccinations 27:10	<b>vcno</b> 127:22 128:4	<b>virgina</b> 3:6 122:3	198:22 200:8
31:5 44:15 145:1	128:5	<b>virginia</b> 1:20 3:8	203:8,13 213:13
146:9,11	<b>velocity</b> 202:20	7:1 121:10	washington 6:21
<b>vaccine</b> 13:12	<b>verify</b> 67:1 221:9	virtue 27:9	<b>watch</b> 90:3
17:16 22:14 27:19	veritext 7:3,5	<b>virus</b> 17:10 19:19	way 25:15 48:19
28:3 29:20 30:6	219:3 221:14,23	22:9 44:17 177:20	95:7,22 99:18
32:11,16 33:15	veritext.com	184:8,10	101:9 112:11
44:18 46:4,17	221:15	<b>visit</b> 49:1 113:17	123:21 137:21
47:8 48:15 55:6	veronica 120:21	208:8	139:19 141:14
56:1,9,15,15,21	<b>version</b> 153:13	<b>visits</b> 45:10,16	184:3 187:4 210:7
57:5,9 58:15	190:21	46:17 49:1,15	210:14 217:1
59:11,17,21 60:9	<b>versus</b> 6:15 9:12	123:16,20 125:4	218:2
60:20 62:20 63:22	12:20 29:19,22	209:1,2,4,5 212:11	ways 108:4 112:5
69:5,18 72:11	137:2 139:2 146:2	visual 30:22	212:8
74:20 96:11,21	218:2	voluntarily 196:7	<b>we've</b> 44:4 77:10
99:2 100:5 101:2	<b>vice</b> 4:17 18:11	voluntary 187:2	126:10 152:21
101:19,21 102:6	22:17,18 32:5	<b>voyage</b> 211:14	172:7 184:13
108:9,9 114:16	34:4 60:5 104:7	<b>vs</b> 1:10	197:2,3 207:22
126:1 131:3,3,17	148:2 159:21	W	216:11
134:21 135:10	173:9 201:1	<b>w</b> 2:15	weapon 199:11
137:20 138:14	204:16,16,17,20	waiting 195:18	weapons 148:6
145:14 173:7	205:3,5	waived 79:7	wear 209:17
206:8 216:20,21	<b>video</b> 6:9,13	waiver 59:20 60:4	weather 202:1,8
217:11	videographer 3:17	60:13,18 218:7	<b>website</b> 160:20
vaccines 49:8	6:3 7:4 8:16,20	waivers 17:3	week 26:2 32:4,6
97:14 98:14 145:7	68:12,16 126:22	19:14 184:14	45:2 74:2 90:22
146:5 150:15	127:4 146:18,22	want 15:7,8 29:16	91:1,2,3 185:11
217:6,9	195:3,7 218:19	65:1,15 68:9	208:15
<b>vague</b> 97:4	videotaped 1:16	105:1 126:12,18	weekly 31:15,17
vaguely 57:16	219:5 220:3	141:9 143:2	31:19 90:3,10,13
vagueness 36:19	<b>view</b> 54:4 101:16	146:16 190:18	90:18,21 91:11,16
<b>value</b> 135:10	118:17	206:6	91:17,18,19 92:19
167:2,5 173:18	<b>vignette</b> 118:16	wanted 64:22 88:5	95:9,22 111:10
variant 32:18	172:14	war 54:14	113:10
117:13	vignettes 212:7	warfare 1:7 37:20	weeks 63:18 64:16
<b>variants</b> 96:18,21	violates 9:20	38:2,2,9 39:3,13	weigh 60:12
97:20	<b>violent</b> 54:9,19	42:16 50:16 51:6	weighing 66:7
<b>varies</b> 155:5	55:12	51:14 52:5 54:18	70:22 136:21,22
various 23:1	<b>viral</b> 157:1 178:20	55:14,15,18,21	went 14:19 137:13
<b>vast</b> 92:16 201:10	181:15 183:15	58:4 72:16 73:19	197:22 198:5,20
		74:16 176:19	198:21 199:4

[went - zero]

202:7	wording 193:13	114:6,7 116:1
western 55:1	<b>words</b> 37:3	119:8 120:6 123:6
westpac 21:21	work 22:6 27:12	126:14,16,20
whispering 6:7	48:4 82:7 130:10	127:18,20 134:9
wide 153:16	132:5 144:10	151:15 160:7
154:22	150:2 199:18	165:15 166:18
<b>wild</b> 2:6	211:8,17	168:4,9,14,18
wildly 192:12	workaround 73:5	170:2,4 174:12
william 1:16 4:8	workarounds	182:19 185:13
4:16 6:13 9:2	44:11	187:15 188:10
104:6 148:2	worked 25:20 29:5	190:8 193:11
218:22 219:6	43:10 93:14	194:16 202:18
221:5 222:2,24	203:11 213:12	204:17
223:2,4,12	working 14:10	<b>year</b> 5:15 14:8
wind 202:20	64:13 81:16 148:6	45:20 52:22 53:20
window 202:15	206:22	105:17,18,19,20
winds 202:16	works 77:13	106:2 153:13
wing 121:17	workup 45:7	197:19 198:6,7
199:13	world 106:12	203:19
wins 213:16	144:18 145:3	years 24:8 66:3
withdraw 196:5	189:6 208:10	198:9 213:20
witness 8:18,19	209:11	yesterday 33:13
9:3 13:10 28:11	worldwide 144:15	73:15
30:20 53:7 58:9	146:3,5,12 198:2	yesterday's 32:3
100:14 102:5	198:15 199:15	Z
110:12 117:9	worth 1:2 6:18	<b>zero</b> 110:5 112:3,8
118:12 119:13	54:5	122:9 124:3 139:7
131:8 133:7 135:5	writing 104:20	122.9 124.3 139.7
135:22 136:16	written 50:12	
139:17 143:13	82:10 104:17	
145:21 150:1	171:13	
151:15 162:12	wrong 69:10	
166:2 169:17	y	
174:1 180:5,8,12	yang 3:4 8:3,3	
180:15 182:19	<b>vard</b> 198:9	
184:21 190:2,13	yeah 25:10 31:13	
190:15 196:15	32:2 39:9 46:11	
197:11 214:7	77:1 83:1 86:10	
216:4 217:5 220:4	87:9 88:6,10	
220:6,9 221:8,10	89:10 95:21	
221:12,19	110:10 112:14	
	110.10 112.14	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
(A) to review the transcript or recording; and
(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION. VERITEXT LEGAL SOLUTIONS COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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# EXHIBIT B: DEPOSITION EXHIBITS FOR Admiral William K. Lescher

Case: 1:22-24-000842MMM DOC #m85118Filedie086186242Bage: a11540fr325 BAGEFD2#14780

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

U.S. NAVY SEALs 1-26; U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5; U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1; and U.S. NAVY DIVERS 1-3,

Plaintiffs,

٧.

LLOYD J. AUSTIN, III, individually and in his official capacity as United States Secretary of Defense; UNITED STATES DEPARTMENT OF DEFENSE; CARLOS DEL TORO, individually and in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-CV-01236-O

#### DECLARATION OF WILLIAM K. LESCHER

I, William K. Lescher, hereby state and declare as follows:

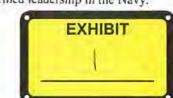
1. I am an admiral<sup>1</sup> in the United States Navy, currently serving as the Vice Chief of Naval Operations (VCNO), located in Arlington, Virginia at the Pentagon. The position of

VCNO is appointed by the President, with the advice and consent of the Senate, and is the

second highest uniformed Officer in the Navy. I have served in this position since May 29,

2020. I make this declaration in support of the Government's motion for a stay of this Court's

preliminary injunction pending appeal. The statements made in this declaration are based on my



<sup>&#</sup>x27; The rank of "admiral" is the highest military rank in the Navy. The term "admirals" is also frequently referred to as "flag officers." Flag officers include the ranks of rear admiral (lower half), rear admiral (upper half), vice admiral and admiral. Flag officers comprise the most senior levels of uniformed leadership in the Navy.

personal knowledge, my military judgment and experience, and on information that has been provided to me in the course of my official duties.

#### Preliminary Statement

2. I have reviewed the preliminary injunction order issued by this Court on January 3, 2022. I believe the Court's injunction will cause immediate harm to the Navy, and in particular to the operations of Naval Special Warfare (NSW) and Special Operations Forces (SOF), and to the national security of the United States. Operationally, in 2021, the Navy executed more than 30,000 steaming days and one million flying hours to protect America, deter conflict and keep the sea lanes open and free. The Court's injunction directly impacts the Navy's ability to carry out its responsibilities to protect and maintain the health and safety of our Force, in particular our ability to halt the spread of COVID-19 through a mandatory vaccination requirement. Unvaccinated or partially vaccinated service members are at higher risk to contract COVID-19, and to develop severe symptoms requiring hospitalizations that remove them from their units and impact mission execution. Vaccination against COVID-19 has proven to be essential in keeping Navy units on mission by mitigating the impact of COVID-19. Fully vaccinated naval forces are required to ensure readiness to carry out Navy missions throughout the world and, if required, to engage in combat operations. Restriction of the Navy's ability to reassign unvaccinated personnel in order to mitigate COVID-19 related risks to units preparing to deploy, or that are deployed, will cause direct and immediate impact to mission execution, Further, the harm caused by this injunction is not limited to 35 unvaccinated Plaintiffs. The heath, readiness, and mission execution of broader conventional Navy units and personnel who support these personnel are threatened as well.

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 117 of 325 PAGEID #: 4782 Case 4:21-cv-01236-0 Document 87 Filed 01/24/22 Page 6 of 46 PageID 2715

#### Naval Background and Experience

3. As the Vice Chief of Naval Operations,<sup>2</sup> I work in coordination with the Chief of Naval Operations (CNO), the senior admiral in the U.S. Navy, <sup>3</sup> in the execution of his statutory duties and responsibilities as they pertain to the employment of the Navy. Those duties include recruiting, organizing, supplying, equipping, training, servicing, mobilizing, demobilizing, administering, and maintaining the Navy, as will assist in the execution of any power, duty, or function of the Secretary of the Navy or the Chief of Naval Operations. Additionally, the CNO delegated several specific responsibilities to me. I oversee programs and policies that impact Sailors and their families, including health affairs, and monitor and enact polices that promote good order and discipline in the Navy.

4. I have served in the United States Navy for nearly 42 years. A 1980 graduate of the United States Naval Academy, my experience includes command of the Vipers of Helicopter Anti-Submarine Light (HSL) Squadron-48, the Airwolves of HSL-40 and the Maritime Strike Wing Atlantic. As Commanding Officer, HSL-48, my responsibilities included training, preparing, and executing Seahawk helicopter detachment deployments on Navy ships deploying worldwide. As Commanding Officer, HSL-40, I was responsible for the training, evaluation, and maintenance of the Seahawk helicopter squadron that trains all East Coast Seahawk pilots in employment of this weapon system. As Commander, Maritime Strike Wing Atlantic, I was responsible for the material readiness and training of eight Helicopter Maritime Strike (HSM)

<sup>&</sup>lt;sup>2</sup> "The [VCNO] has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the [VCNO] in performing such duties have the same effect as those issued by the Chief of Naval Operations." 10 U.S.C. § 8035(c).

<sup>&</sup>lt;sup>3</sup> The CNO is the senior uniformed officer in the United States Navy. See 10 U.S.C. § 8033(b) ("The Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade. In the performance of his duties within the Department of the Navy, the Chief of Naval Operations takes precedence above all other officers of the naval service.").

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 118 of 325 PAGEID #: 4783 Case 4:21-cv-01236-0 Document 87 Filed 01/24/22 Page 7 of 46 PageID 2716

squadrons, the Weapons School, Fleet Replacement Squadron, and a total of 42 detachments deploying on Atlantic Fleet aircraft carriers and air capable ships, encompassing 68 aircraft and 1,900 personnel. Between command of the Vipers and Airwolves, I was the executive officer of Mine Countermeasures Command and Control Ship USS Inchon (MCS 12), a 20,000 ton vessel with a crew of 700. As the second in command, I was responsible for the supervision, training and development of the crew and the daily execution of the command mission, which included training and preparing the crew for deployment, maintaining and improving operational readiness and material condition of the ship. As a flag officer, I commanded Expeditionary Strike Group 5 (ESG-5) and Task Forces 51/59 (CTF 51/59) in Bahrain, leading multiple Amphibious Ready Groups, Marine Expeditionary Units and the afloat forward staging base USS Ponce (AFSB(1)-15) in execution of theater security events, combat operations, and emergent national taskings spanning the Middle East/Central Command region. My responsibilities as ESG-5 and CTF 51/59 included multiple events working with NSW forces embarked on my ships and interoperability exercises with partner countries. I also served as Joint Staff deputy director for resources and acquisition, deputy assistant Secretary of the Navy for budget, and Deputy Chief of Naval Operations for integration of capabilities and resources.

#### Specific Functions of the United States Navy

5. The United States Navy and Marine Corps comprise the Nation's principal maritime forces. Their missions are to provide globally deployable forces in order to "secure the Nation from direct attack; secure strategic access and retain global freedom of action; strengthen existing and emerging alliances and partnerships; establish favorable security conditions; deter aggression and violence by state, non-state, and individual actors and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests." *See* 

#### Case: 1:22-cy-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 119 of 325 PAGEID #: 4784 Case 4:21-cy-01236-0 Document 87 Filed 01/24/22 Page 8 of 46 PageID 2717

Department of Defense Directive (DoDD) 5100.01, Change 1, 09/17/2020, Encl. 6, ¶ 5.a. –b (attached hereto). Effective execution of all of these discrete functions is vital to the national security of the United States, and is accomplished by providing fully trained and qualified naval forces to joint commanders<sup>4</sup> to deter aggression and, if required, engage in combat operations and win decisively.

#### Naval Special Warfare (NSW) and Special Operations Forces (SOF)

6. Naval Special Warfare (NSW) and Special Operations Forces (SOF) are composed of Navy SEALs<sup>5</sup> and Special Warfare Combatant-Craft Crewmen (SWCC). The NSW team is a multipurpose combat force organized and trained to conduct a variety of special operations missions in all environments. Navy SEALs conduct clandestine missions infiltrating their objective areas by fixed and rotary-wing aircraft, Navy surface ships, combatant craft, submarines and ground mobility vehicles. Service members designated as Navy SEALs consist of officers and enlisted members who have been designated pursuant to Navy and NSW policies. SWCC focus on infiltration and exfiltration of SEALs and other SOF to include from other Services, and they provide dedicated rapid mobility in maritime environments, as well as the ability to deliver combat craft via parachute drop. SWCC operate and maintain state-of-the-art surface craft to conduct special operations.

 In addition to SEALs and SWCC, combat support (CS) and combat service support (CSS) personnel are assigned to NSW units to support the mission. CS/CSS personnel

<sup>&</sup>lt;sup>4</sup> Joint commanders are the combatant vested with authority and responsibility for military operations within their area of responsibility. The Navy and other branches of the Armed Forces provide forces to the combatant commanders to execute those responsibilities and functions. The combatant commanders exercise authority, direction and control over the commander and forces assigned to them and employ those forces to accomplish missions assigned to the combatant commander. Department of Defense Directive (DoDD) 5100.01, Change 1, 09/17/2020, Encl. 1. ¶1.a through d.

<sup>&</sup>lt;sup>5</sup> The term "SEAL" refers to "Sea, Air, Land,"

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 120 of 325 BAGEID #: 4785

include officers and enlisted service members identified in Plaintiffs' complaint (i.e., Explosive Ordinance Disposal (EOD) personnel and Navy Divers), in addition to other officers and enlisted service members performing a variety of military functions (e.g., chaplains, medical personnel, mobile communications teams, tactical cryptologic support, etc.). Navy EOD personnel perform missions neutralizing explosive weapons, including various weapons of mass destruction. Their duties include detonating or demolishing hazardous munitions, neutralizing various ordnance, including sea mines, torpedoes or depth charges, performing parachute or helicopter insertion operations, and clearing waterways of mines in support of our military operations. Navy Divers perform a variety of military functions, including wreckage salvage operations and underwater repairs, harbor and waterway clearance operations, assisting in construction and demolition projects, executing search and rescue missions, performing deep submergence operations, and serving as technical experts for diving operations for numerous military special operations units.

8. Service members in the NSW force are responsible for performing special operations. Special operations require unique tactics, techniques, procedures and equipment. They are often conducted in hostile, austere or diplomatically sensitive environments, and are characterized by one or more of the following: time-sensitivity, clandestine nature, low visibility, working with or through host-nation forces, greater requirements for regional orientation and cultural expertise, and a higher degree of risk. These missions often require members of the NSW force to work in close quarters where social distancing is not possible. Small NSW teams may travel for an extended duration on boats, submersibles, helicopters, aircraft, or other vehicles that are less than six feet across, and/or which have limited ventilation. Service members may be in such close quarters while traveling that they must sit shoulder-to-shoulder.

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 121 of 325 PAGEID #: 4786 Case 4:21-cv-01236-O Document 8/ Filed 01/24/22 Page 10 of 46 PageID 2719

Additionally, members may be required to operate in subsea environments and may have to share diving rebreather devices and inhale one another's exhalation.

#### Mandatory Vaccination Requirements in Response to COVID-19 Pandemic

9. On August 24, 2021, the Secretary of Defense directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces on active duty or in the Ready Reserve. The Secretary of Defense determined that mandatory COVID-19 vaccinations are necessary to protect the health and military readiness of the force. The Secretary of the Navy directed implementation of Secretary of Defense's COVID-19 vaccination mandate<sup>6</sup> via a Department-wide administrative message (ALNAV) on August 30, 2021. The ALNAV applies to both Services within the Department of the Navy (DON), the United States Navy and the United States Marine Corps. The ALNAV required all active duty DON Service members, who were not already vaccinated, exempted, or currently seeking an exemption, to be fully vaccinated with an FDA-approved COVID-19 vaccine within 90 days of the ALNAV, and all Reserve Component personnel to be fully vaccinated within 120 days. ALNAV 062/21 ¶ 4. Active duty Sailors and Marines were required to become fully vaccinated7 by November 28, 2021, and Reserve Component Sailors and Marines by December 28, 2021. The requirement to obtain full vaccination constitutes a lawful order under Article 92 of the Uniform Code of Military Justice (UCMJ), and failure to comply may result in punitive or adverse administrative action, or both. ALNAV 062/21 ¶ 5.

<sup>&</sup>lt;sup>6</sup> Secretary of Defense Memorandum, "Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency, and DoD Field Activity Directors," (August 24, 2021).

<sup>&</sup>lt;sup>7</sup> Although refusal to receive the vaccine may subject a member to adverse administrative or disciplinary action, the vaccine will not be forcibly administered to any member who refuses.

# Case: 1:22-22-22-00-084-MVM Docu# 85-1-Filed: 08/18/22 Page: 122 of 325 PageID # 2787

10. The United States Navy issued service-specific guidance via a separate administrative message ("NAVADMIN") on September 1, 2021. NAVADMIN 190/21 outlines Navy policy concerning the mandatory vaccination of Navy service members, vaccination administration and reporting requirements, and general guidance related to logistics and distribution of vaccines. The policy reiterates that COVID-19 vaccination "is mandatory for all DoD service members who are not medically or administratively exempt" under existing Navy policy. NAVADMIN 190/21 ¶ 2, 3.a. Refusal to become fully vaccinated against COVID-19 without an approved or pending exemption constitutes a failure to obey a lawful order and is punishable under Article 92, UCMJ.

#### The COVID-19 Pandemic Threat to Naval Forces

11. The judgment of each of the Military Services is that vaccines are the most effective tool the Armed Forces have to keep our personnel safe, fully mission capable and prepared to execute the Commander-in-Chief's orders to protect vital United States' national interests. As of January 5, 2022, 261,504 members of the Armed Forces have contracted the COVID-19 virus, resulting in 2,320 hospitalizations and 82 deaths. Eighty of 82 members who have died were unvaccinated. Of all active duty personnel who were required to be hospitalized because of COVID-19, 0.8% received a booster shot prior to hospitalization. Separately, there have only been six active duty personnel who have received a booster and had a breakthrough COVID-19 infection that required hospitalization. Among the active duty force, 12% of those required to be hospitalized have received a primary COVID-19 vaccine without the booster. Among Reserve and National Guard service members, 97% of those hospitalized with COVID were unvaccinated or partially vaccinated; 3% of hospitalized members received primary vaccination but no booster shot; 0.2% hospitalized members had received a booster shot.

# Case 1:22:21:20:0812:38 MM BOCI # 85-1 Filed: 08/18/22 2 age 12 2 6 325 PAGEID # 27 27 88

Sending ships into combat without maximizing the crew's odds of success, such as would be the case with ship deficiencies in ordnance, radar, working weapons or the means to reliably accomplish the mission, is dereliction of duty. The same applies to ordering unvaccinated personnel into an environment in which they endanger their lives, the lives of others and compromise accomplishment of essential missions.

12. The environment in which Navy personnel operate -- in close quarters for extended periods of time -- make them particularly susceptible to contagious respiratory diseases such as COVID-19 and renders mitigation measures such as social distancing unrealistic. In mid-March 2020, the aircraft carrier USS THEODORE ROOSEVELT (CVN 71) was deployed to the Western Pacific Ocean, a vital geo-political center of gravity encompassing several of the world's largest militaries and five nations allied with the U.S. through mutual defense treaties. The leadership of USS THEODORE ROOSEVELT began to see several COVID-19 cases among the crew. By April 1, 2020, USS THEODORE ROOSEVELT had been pulled off mission and into Guam with approximately 1,000 crew removed from the ship, with a reduced crew remaining to maintain the nuclear reactor and other essential systems. By April 20, 2020, 4,069 Sailors had been removed from the ship out of a crew of approximately 4,800. The ship was unavailable for 51 days to maintain presence in a strategically important area which includes the world's busiest sea lanes, creating a national security vulnerability in an area vital to our national interests. When USS THEODORE ROOSEVELT finally got underway on May 21, 2020, approximately 1,800 Sailors remained in Guam. Tragically, one Sailor succumbed to the COVID-19 virus and died.

13. Even with approximately 97% of the Navy vaccinated, the COVID-19 virus can degrade units and impact mission. Last month, USS MILWAUKEE (LCS 5), with a 100%

# Case: 1:22-cy-00084-MWM Doc #: 85-1-Filed: 08/18/22 Page: 124.0f 325 PageID #: 4789

vaccinated 100-person crew, remained in port one week beyond its schedule because several members tested positive for COVID-19. Because the full crew was vaccinated, infected personnel were asymptomatic or had mild symptoms and the impact to mission accomplishment was substantially mitigated compared to the USS THEODORE ROOSEVELT's experience of more than 4,000 crew removed from the ship and a 51-day loss of mission. Given the hospitalizations and death statistics cited above, the MILWAUKEE's minor deployment delay would likely have been far worse with unvaccinated personnel. The MILWAUKEE is one example of a Navy manning model where each individual crew member has a high level of responsibility with little redundancy. The medical staff of the MILWAUKEE consists of only two Navy Hospital Corpsman, comparable to an Emergency Medical Technician in the civilian setting. There is little ability on ship to care for a service member with severe COVID symptoms. If a service member were to develop severe symptoms on this type of ship, it would require a return to port or an emergency medical evacuation by helicopter. Helicopter medical evacuation is not always viable due to the location of the ship and the limited range of helicopters. At the deployable unit level, NSW, EOD, and diver personnel operate in units that can be as small as a squad of four personnel. Medical evacuations in these small units can be even less practical and significantly more damaging than the loss of an equal number of crew on a ship the size of the MILWAUKEE.

14. The types of missions conducted by SEALs, SWCC, EOD and divers cannot be conducted remotely. A SEAL assigned to perform a counterterrorism mission in a foreign country cannot perform that task from home; a SWCC cannot drive a combatant craft and transport SEALs in a telework status; an explosive ordnance disposal technician—whose job it is to disarm and dispose of explosives—cannot perform that task remotely. Similarly, the arduous

# Case: 1:22-cy-00084-MVM Boc. #: 85-1 Filed: 08/18/22 Page: 125 of 325 PageID #: 2790

training necessary to prepare NSW personnel for these missions cannot be performed remotely. It is not possible for a Navy Diver to remotely prepare compressed air and oxygen tanks for personnel to complete their training dives. A safety diver must be physically present during a high-risk training evolution that may require rescue divers or oxygen technicians. In particular, Navy Divers assigned to NSW must be able to operate a diving recompression chamber – a small confined space where the Navy Diver must be in the chamber to assist with the personnel casualty – which cannot be done remotely. SEAL trainers cannot oversee dangerous swim or survival training from a physically distanced location. NSW personnel also routinely interact with the greater Navy population, on ships and aircraft, and in dining facilities and office environments across the globe. They are required to deploy with no-notice. NSW, EOD and diver training and operations necessitate our service members interact in close-quarters, confined spaces, and under conditions where telework, social distancing, and mask-wearing are not reliable mitigation options.

#### Immediate Harm to Readiness and Mission Accomplishment

15. The preliminary injunction forbids the Navy from applying MANMED § 15-105(3)(n)(9), NAVADMIN 225/21, NAVADMIN 256/21 and Trident Order #12. Order 26, ECF No. 66. MANMED § 15-105(3)(n)(9) states that personnel who choose not to receive required vaccinations will be disqualified from special operations duty. NAVADMIN 225/21 provides guidance for disposition of offenses involving Navy service members who are not fully vaccinated by the required deadlines. Navy Service members who refuse the COVID-19 vaccine, absent a pending or approved exemption, are required to be processed for administrative separation.<sup>8</sup> NAVADMIN 225/21 ¶ 2. A Navy Service member is considered to be "refusing the

<sup>&</sup>lt;sup>8</sup> Although processing for separation is required, this does not automatically result in a member actually being separated. Members processed for separation may ultimately be retained in the service.

## Case: 1:22.21.0008238100 BOCU#: 85-1 Filed: 08/18/22 2 age: 126.96328 PAGEID #: 24791

vaccine, if: (1) the individual has received a lawful order to be fully vaccinated, (2) is not or will not be fully vaccinated by the date required, and (3) does not have a pending or approved exemption request." Id. ¶ 3.c. The policy designates the Chief of Navy Personnel, a 3-star admiral, as the COVID-19 Consolidated Disposition Authority to ensure fair and consistent administrative processing across the service. Id. at § 5.b. For disciplinary matters, authority to initiate disciplinary proceedings, either non-judicial punishment or court-martial, is withheld to the Vice Chief of Naval Operations. Id. NAVADMIN 256/21 provides additional guidance on administrative separation processing for those refusing the vaccine, as well as guidance on other applicable administrative actions. These other applicable administrative actions include: cancellation of government travel for training or other official purposes; temporary reassignment within the local area for unvaccinated personnel (with or without a medical exemption or religious accommodation); adverse fitness reports and evaluations; prohibition on executing permanent change of station orders; potential termination of special duty and incentive pays; potential recoupment of unearned bonuses; termination of and potential reimbursement for Navy-funded education and training; promotion and advancement delays; and removal of additional qualification designations or Navy Enlisted Classifications.<sup>9</sup> See NAVADMIN 256/21 1. Trident Order # 12, which is directed to the NSW force, does not create any new requirements or adverse administrative actions. It consolidates and restates previously promulgated Navy implementing guidance.

16. The preliminary injunction forbids the Navy from "[t]aking any adverse

<sup>&</sup>lt;sup>9</sup> Navy Enlisted Classifications define the work performed by Navy enlisted members and the requirements to perform specific "ratings" (i.e., occupations). See generally, MANUAL OF NAVY ENLISTED MANPOWER AND PERSONNEL CLASSIFICATIONS AND OCCUPATIONAL STANDARDS, VOL II NAVY ENLISTED CLASSIFICATIONS (NAVPERS 18068F), April 21, 2021 (supplementing the enlisted rating structure in identifying personnel and billets [i.e., jobs] and skills, knowledge, aptitude, or qualifications that must be documented to identify both people and billets for management purposes).

# Case 1:22-27-29-00082-38WM BOCT # 85-3 Filed: 08/18/22 Page 3 27.06 325 PAGE B # 27.92

action against Plaintiffs on the basis of Plaintiffs' requests for religious accommodation." Order 26, ECF No. 66. The order specifically references actions that Plaintiffs allege are being taken against them while they await a decision on their religious accommodation requests, actions such as restrictions on travel, access to non-work activities, unpleasant assignments, and being relieved of leadership duties. Order 26, ECF No. 66. This aspect of the order is intrusive and harmful to Navy operations, including deployment decisions. In the Navy, "adverse action" refers to an action that is punitive or the action itself has a direct adverse impact on one's career such as a court martial or discharge. The Court's order, however, indicates that routine personnel actions, such as assignment, official travel and specific duties, are adverse decisions. Contrary to the Court's apparent understanding, temporarily reassigning personnel to other units because they are unvaccinated, regardless of the reason they are unvaccinated (e.g., medical exemption, religious accommodation, or pending exemption request) is not an adverse action but a step to protect the health of the whole unit and maintain mission readiness. The Court's injunction appears to require the Navy to leave unvaccinated NSW, EOD, and diver personnel in their units, performing their same duties and deploying on missions regardless of the known risk to personnel and mission. Such an injunction will degrade NSW, EOD, and diver mission readiness, breakdown good order and discipline within the NSW force, unnecessarily limit the Navy's ability to conduct daily operations and operational missions, and could clearly result in mission failure in contingencies and crises that cause harm to national security.

17. NSW personnel must be fully medically ready and at peak fitness given that their training and missions are physically demanding and arduous. It is vital that all members of the NSW force be medically fit to perform daily operations and to train or deploy on short notice. Regardless of their current assignment, all naval forces, NSW in particular, must be ready to

respond to contingencies and crises around the world. All NSW personnel are expected to meet this requirement, whether in a training status, on instructional duty, or at a headquarters, as the mission of NSW is to be ready to provide maritime SOF to conduct full spectrum operations to support national objectives. The Navy could easily require Navy Special Warfare Command to mobilize personnel outside from any unit, regardless of the planned deployment cycles of a unit or the currently assigned duties of NSW personnel to respond to the full range of contingencies and crises. Medical conditions or illness create risk, both medical and operational, not only for the service member afflicted, but for other members of the unit. As a result, unvaccinated personnel in a unit degrade the force health protection conditions in the unit, placing personnel in the unit at risk and degrading the unit's ability to safely conduct operations, regardless of the scope of the operation. The following publicly available mission event illustrates how rapidly a NSW unit can go from steady state in the United States to deploying forward on a mission of the highest difficulty, requiring peak medical, physical and mental readiness. This example illustrates the rapid manner in which a contingency or crisis could unfold, and although more than a decade old, is used due to the unclassified classification of my declaration.

18. On April 8, 2009, armed Somali pirates boarded the U.S.-flagged container ship, *Maersk Alabama* in the Indian Ocean, taking the crew, composed of U.S. citizens, hostage and making ransom demands. USS BAINBRIDGE (DDG-96) was the first ship of the international counter-piracy task force to respond. BAINBRIDGE's commanding officer realized he needed additional capabilities beyond what he had available on the ship. In response, on short notice, a SEAL team flew 8,000 miles from the United States to USS BAINBRIDGE and were recovered onboard. By the evening of April 12, 2009, the situation escalated and SEALs on BAINBRIDGE eliminated the threat to the remaining hostage, *Maersk Alabama* Captain

## Case: 1:22:27:00084-38WM DOC #: 85-1 Filed: 08/18/22 Page: 129 06325 PAGEID #: 2794

Phillips, who was subsequently rescued. This is but one example, using a well-publicized mission, that illustrates how an unvaccinated member would put himself, his teammates, the conventional forces and the mission at great risk. While NSW personnel may be assigned to various units with various mission-sets, all naval forces must be ready to respond to global contingencies and crises on short notice.

19. If this type of crisis or contingency occurred today, with the Court's preliminary injunction in place, the Navy could be required to deploy a SEAL team with one or more unvaccinated members, risking a COVID-19 outbreak within that unit or on the host Navy destroyer. Destroyer crews, and others embarked aboard, sleep in confined shared berthing spaces, are in close proximity in passageways, and eat meals in a communal galley. An unvaccinated service member is not only more likely to contract COVID-19, but to experience significant disease symptoms, impact the mission and spread the disease to others.

20. Navy ships have limited health care facilities. A Sailor experiencing severe COVID symptoms would require the ship to pull into port instead of executing its mission. NSW forces often deploy in countries with little or no healthcare support structure and in remote areas where healthcare is scarce. This is why there has been a long-standing requirement for all members of the NSW force to be fully medically ready to deploy. A small number of SOF medical personnel provide limited medical support and patient movement; therefore, any encumbrance placed on that limited capability unnecessarily puts the mission and the force atrisk. While some SEALs are trained to perform emergency, life-saving procedures in remote and hostile environments, those personnel are not physicians or nurses. Unlike doctors and nurses, formal civilian medical licenses are not required for them. They do not generally have the capability, capacity or training to use a ventilator. Additionally, they do not have access to this

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equipment in the types of austere environments in which the NSW units operate. If a deployed team member contracts COVID-19, there is a strong possibility that the necessary equipment or treatment would not be readily available. Further, if medical evacuation is necessary for a member of the unit, this creates additional risk not only to the mission, but places those service members executing medical evacuation at a risk of harm to themselves such as when the member requires transport from a hostile, remote or diplomatically sensitive areas.

21. Redirecting these assets and their crew to perform preventable evacuations results in a degradation of the Navy's ability to accomplish its primary missions and incurs collateral impacts. Medical evacuations often require one or more member from the service member's unit to accompany the evacuated service member. The loss of even one member can degrade the effectiveness of small NSW units and may compromise the mission. This is similarly the case for SWCC personnel, who routinely operate with a crew of as little as four personnel on a combatant craft. Every member of a SEAL team is vital.

22. Unvaccinated NSW personnel put conventional Navy forces at risk as well. Navy SEALs are one of the most versatile elements of the SOF across all branches of the military services, in part, because the Navy can deliver them to their mission locations through a variety of conventional means (*e.g.*, fixed-wing aircraft, helicopters, surface ships and submarines). All of these means of delivery are confined spaces in which social distancing is impractical. Because NSW personnel rely on conventional Navy forces to support their missions, any unvaccinated NSW personnel will put the crew of those conventional forces at unnecessary risk as well. The Navy must balance the risk to unvaccinated individuals and vaccinated personnel alike. That risk calculation led to the mandatory vaccination mandate and associated personnel policies pertaining to the COVID-19 pandemic. It is imperative for the entire force, including

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every member of NSW, to be vaccinated and ready to deploy and execute assigned missions on short notice.

23. The capabilities NSW personnel provide include crisis response, support to forward presence operations, support to conventional Naval forces at sea and in training, support to Law Enforcement agencies and clandestine insertion operations. EOD personnel provide critical safety and response to units using live ordnance; Navy divers, EOD and SEALs support underwater surveys and route clearances. SEALs conduct insertions and extractions by sea, air or land; they capture high-value enemy personnel and terrorists around the world, carry out small-unit direct-action missions against military targets and perform underwater reconnaissance and strategic sabotage. SEALs, SWCC, EOD and divers frequently deploy to foreign countries to train partners and allies and participate in exercises. Reducing the Navy's ability to apply long-standing, proven medical readiness principles to this small, elite community will clearly negatively impact the NSW force's ability to conduct their operations and could have significant negative effects to the NSW force's ability to respond to large-scale contingencies or crises. This would damage the national security interests of the United States and our foreign allies and partners.

24. These concerns apply if the injunction requires the Navy to maintain these 35 Plaintiffs in their current status while an appeal is pending. Of the 35 Plaintiffs, 18 are assigned to nine different parent commands and may deploy anywhere in the world in the immediate future to perform the type of missions described. 15 Plaintiffs are assigned to the NSW Center or a NSW Center subordinate command, with 14 of them assigned to NSW Advanced Training

Command (ATC);<sup>10</sup> some as instructors who necessarily have close contact with ATC students in courses to prepare them for NSW operations and some as students attending an advanced training course before returning to their current or prospective assignment. Two Plaintiffs are currently assigned to non-NSW training commands. Because the court's order prohibits them from being temporarily reassigned, the 14 unvaccinated personnel at NSW ATC have close contact with fellow instructors and students. These students then circulate among the larger NSW community as soon as their courses at ATC end. Simply put, close quarters contact during training creates the opportunity to contract COVID-19 from the unvaccinated instructors at ATC detachments. The unvaccinated instructors can spread COVID-19 to dozens of candidates in training, and qualified SEALs, SWCCs, and other personnel, including fellow instructors, at NSW ATC training courses who will promptly return to their primary units or interact with additional training classes.

25. In summary, the Navy's judgment is that COVID-19 vaccines are a critical defense against COVID-19 and mitigate risk both to our force and to our mission. This judgment takes into account the environments our service members operate in, the operations the Navy conducts, and the absence of other effective COVID-19 mitigation measures in the environments in which we operate. The COVID-19 virus has had a proven substantial impact on Navy unit readiness. The Court's order, which bars implementation of the vaccine requirement and requires the Navy to keep service members it has determined are not medically fit for deployment in a ready to deploy status, will undermine military readiness through the spread of disease and cause

<sup>&</sup>lt;sup>10</sup> ATC's mission is to provide standardized and accredited individual training and education for qualified NSW and support personnel, U.S. SOF (i.e., from other Services), partner nation SOF and other personnel, as required for NSW Operations. There are several ATC detachments. The largest detachment in Coronado, California provides a course of instruction to candidates (i.e., those seeking to obtain their SEAL or SWCC designation). It also provides training to those already designated as SEALs, SWCC or combat support personnel. Other ATC detachments provide training in specialized areas to NSW personnel, other SOF and partner nation SOF.

# Case a 1:22-24-20084-38VM BOG # 85-8 Filede 08/18/22 2 age ag 32 26 328 PAGE B # 31798

significant harm to military operations by allowing unvaccinated service members to remain in an unvaccinated status.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of January, 2022.

LESCHER

## Caseal:22:2Y-00084-38WM DOCI#185-8711 Fried:08/18/22 Pagead 3496348 PAGED #13799 DoDD 5100.01, December 21, 2010

#### ENCLOSURE 6

#### FUNCTIONS OF THE MILITARY DEPARTMENTS

1. <u>COMMON MILITARY DEPARTMENT FUNCTIONS</u>. For purposes other than the operational direction of the Combatant Commands, the chain of command runs from the President to the Secretary of Defense to the Secretaries of the Military Departments and, as prescribed by the Secretaries, to the commanders of Military Service forces.

a. Subject to the authority, direction, and control of the Secretary of Defense, the Secretaries of the Military Departments are responsible for, and have the authority necessary to conduct, all affairs of their respective Departments, including:

- (1) Recruiting.
- (2) Organizing.
- (3) Supplying.
- (4) Equipping (including research and development).
- (5) Training.
- (6) Servicing.
- (7) Mobilizing.
- (8) Demobilizing.
- (9) Administering (including the morale and welfare of personnel).
- (10) Maintaining.
- (11) Construction, outfitting, and repairs of military equipment.

(12) Construction, maintenance, and repair of buildings, structures, and utilities as well as the acquisition, management, and disposal of real property and natural resources.

b. Subject to the authority, direction, and control of the Secretary of Defense, the Secretaries of the Military Departments are also responsible to the Secretary of Defense for ensuring that their respective Departments:

(1) Operate effectively, efficiently, and responsively.

(2) Formulate policies and programs that are fully consistent with national security objectives and policies established by the President and the Secretary of Defense.

(3) Implement, in a timely and effective manner, policy, program, and budget decisions and instructions of the President or Secretary of Defense.

(4) Present and justify positions on the plans, programs, and policies of the Department of Defense.

(5) Prepare, submit, and justify budgets before Congress, in coordination with other USG departments and agencies, as applicable; and administer the funds made available for maintaining, equipping, and training the forces of their respective departments, including those assigned to the Combatant Commands. Among other things, budget submissions shall be informed by the recommendations of the Military Service Chiefs, Commanders of the Combatant Commands, and of Military Service component commanders of forces assigned to the Combatant Commands.

(6) Establish and maintain reserves of manpower, equipment, and supplies for the effective prosecution of the range of military operations and submit, in coordination with the other Military Departments, mobilization information to the Joint Chiefs of Staff.

(7) Develop integrated mobilization plans for the expansion of peacetime components to meet the needs of war.

(8) Perform Military Department functions necessary to fulfill the current and future operational requirements of the Combatant Commands, including the recruitment, organization, training, and equipping of interoperable forces.

(9) Provide forces to enhance military engagement, conduct security cooperation, build the security capacity of partner states, and deter adversaries to prevent conflict. These actions shall be coordinated with the other Military Departments, Combatant Commands, USG departments and agencies, and international partners, as required.

(10) Provide forces, military missions, and detachments for service in foreign countries as may be required to support the national interests of the United States, and provide, as directed, assistance in training, equipping, and advising the military forces of foreign nations.

(11) Coordinate with the other Military Departments and all of the other DoD Components to provide for more effective, efficient, and economical administration; eliminate duplication; and assist other DoD Components in the accomplishment of their respective functions by providing personnel, intelligence, training, facilities, equipment, supplies, and services, as may be required.

(12) Develop, garrison, supply, equip, and maintain bases and other installations, including lines of communication, and provide administrative and logistical support for all assigned forces and bases, unless otherwise directed by the Secretary of Defense.

(13) Provide, as directed, administrative and logistical support to the headquarters of the Combatant Commands, to include direct support of the development and acquisition of the command and control systems of such headquarters.

(14) Supervise and control Military Department intelligence activities, including the collection, production, and dissemination of military and military-related foreign intelligence and counterintelligence as required for execution of Military Department responsibilities.

(15) Afford the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict; the Commander, USSOCOM; the PCA; and the Commander, USCYBERCOM, an opportunity to coordinate on Military Department and Military Service personnel management policy and plans as they relate to accessions, assignments, compensation, promotions, professional development, readiness, retention, sustainment, and training of all SOF (for USSOCOM) and all cyber operations forces (for USCYBERCOM) personnel. This coordination shall not interfere with the title 10 authorities of the Military Departments or Military Services.

(16) Engage in such other activities as are prescribed by law, the President, or the Secretary of Defense.

2. <u>COMMON MILITARY SERVICE FUNCTIONS</u>. The Army, the Navy, the Air Force, the Marine Corps, and the Space Force, and the Coast Guard, when transferred to the Department of the Navy in accordance with sections 2, 3, and 145 of Reference (h), to include the Active and Reserve Components of each, under their respective Secretaries, shall provide conventional, strategic, and SOF to conduct the range of operations as defined by the President and the Secretary of Defense. Further, they shall perform the following common functions:

a. Develop concepts, doctrine, tactics, techniques, and procedures, and organize, train, equip, and provide land, naval, air, space, and cyberspace forces, in coordination with the other Military Services, Combatant Commands, USG departments and agencies, and international partners, as required, that enable joint force commanders to conduct decisive operations across the spectrum of conflict in order to achieve the desired end state.

b. Determine Military Service force requirements and make recommendations concerning force requirements to support national security objectives and strategy and to meet the operational requirements of the Combatant Commands.

c. Recommend to the Joint Chiefs of Staff the assignment and deployment of forces to the Combatant Commands established by the President through the Secretary of Defense.

d. Monitor and assess Military Service operational readiness and capabilities of forces for assignment to the Combatant Commands and plan for the use of the intrinsic capabilities of the other Military Services, USSOCOM, and USCYBERCOM that may be made available.

e. Develop doctrine, tactics, techniques, and procedures for employment by Military Service forces and:

(1) Assist the Chairman of the Joint Chiefs of Staff in the development of joint doctrine.

(2) Coordinate with the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the other Military Services, USG departments and agencies, partner security forces, and non-governmental organizations, in the development of the doctrine, tactics, techniques, and procedures necessary for participation in and/or command of joint, interagency, and multinational operations.

(3) Coordinate with the Commanders, USSOCOM and USCYBERCOM, in the development of the doctrine, tactics, techniques, and procedures employed by Military Service forces when related to special operations and cyber operations, respectively.

f. Provide for training for joint operations and joint exercises in support of Combatant Command operational requirements, including the development of Military Service joint training requirements, policies, procedures, and publications.

g. Provide logistical support for Military Service and all forces assigned to joint commands, including procurement, distribution, supply, equipment, and maintenance, unless otherwise directed by the Secretary of Defense.

h. Organize, train, and equip forces to contribute unique service capabilities to the joint force commander to conduct the following functions across all domains, including land, maritime, air, space, and cyberspace:

(1) Intelligence, surveillance, reconnaissance, and information operations, to include electronic warfare and MISO in order to provide situational awareness and enable decision superiority across the range of military operations.

(2) Offensive and defensive cyberspace operations to achieve cyberspace superiority in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(3) Special and cyber operations in coordination with USSOCOM, USCYBERCOM, and other Combatant Commands, the Military Services, and other DoD Components.

(4) Personnel recovery operations in coordination with USSOCOM and other Combatant Commands, the Military Services, and other DoD Components.

(5) Counter weapons of mass destruction.

(6) Building partnership capacity/security force assistance operations.

- (7) Forcible entry operations.
- (8) Missile Defense.

(9) Other functions as assigned, such as Presidential support and antiterrorism.

i. Organize, train, and equip forces to conduct support to civil authorities in the United States and abroad, to include support for disaster relief, consequence management, mass migration, disease eradication, law enforcement, counter-narcotics, critical infrastructure protection, and response to terrorist attack, in coordination with the other Military Services, Combatant Commands, National Guard, and USG departments and agencies.

j. Operate organic land vehicles, aircraft, cyber assets, spacecraft or space systems, and ships or craft.

k. Conduct operational testing and evaluation.

1. Provide command and control.

m. Provide force protection.

n. Consult and coordinate with the other Military Services on all matters of joint concern.

3. <u>INDIVIDUAL MILITARY DEPARTMENT FUNCTIONS</u>. The forces developed and trained to perform the primary functions set forth in sections 4 through 6 of this enclosure shall be employed to support and supplement the other Military Service, USSOCOM, and USCYBERCOM forces in carrying out their primary functions, wherever and whenever such participation shall result in increased effectiveness and shall contribute to the accomplishment of overall military objectives.

## 4. FUNCTIONS OF THE DEPARTMENT OF THE ARMY

a. The Department of the Army includes land combat, and service forces, and such aviation, water transport, and space and cyberspace forces as may be organic therein, and shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land, and to support the other Military Services and joint forces. The Army is responsible for the preparation of land forces necessary for the effective prosecution of war and military operations short of war, except as otherwise assigned. The Army is the Nation's principal land force and promotes national values and interests by conducting military engagement and security cooperation; deterring aggression and violence; and should deterrence fail, compelling enemy behavioral change or compliance. The Army shall contribute forces through a rotational, cyclical readiness model that provides a predictable and sustainable supply of modular forces to the Combatant Commands, and a surge capacity for unexpected contingencies.

b. <u>The Functions of the Army</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, the Army, within the Department of the Army, shall develop concepts, doctrine, tactics, techniques, and procedures, and organize, train, equip,

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and provide forces with expeditionary and campaign qualities to perform the following specific functions:

(1) Conduct prompt and sustained combined arms combat operations on land in all environments and types of terrain, including complex urban environments, in order to defeat enemy ground forces, and seize, occupy, and defend land areas.

(2) Conduct air and missile defense to support joint campaigns and assist in achieving air superiority.

(3) Conduct airborne and air assault, and amphibious operations. The Army has primary responsibility for the development of airborne doctrine, tactics, techniques, and equipment.

(4) Conduct CAO.

(5) Conduct riverine operations.

(6) Occupy territories abroad and provide for the initial establishment of a military government pending transfer of this responsibility to other authority.

(7) Interdict enemy sea, space, air power, and communications through operations on or from the land.

(8) Provide logistics to joint operations and campaigns, including joint over-the-shore and intra-theater transport of time-sensitive, mission-critical personnel and materiel.

(9) Provide support for space operations to enhance joint campaigns, in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(10) Conduct authorized civil works programs, to include projects for improvement of navigation, flood control, beach erosion control, and other water resource developments in the United States, its territories, and its possessions, and conduct other civil activities prescribed by law.

(11) Provide intra-theater aeromedical evacuation.

(12) Conduct reconnaissance, surveillance, and target acquisition.

(13) Operate land lines of communication.

#### 5. FUNCTIONS OF THE DEPARTMENT OF THE NAVY

a. The Department of the Navy is composed of naval, land, air, space, and cyberspace forces, both combat and support, not otherwise assigned, to include those organic forces and capabilities necessary to operate, and support the Navy and Marine Corps, the other Military Services, and joint forces. The Navy and Marine Corps comprise the Nation's principal maritime force. They

Change 1, 09/17/2020

## Case: 1:22:24:200843800 Docu#: 85-8711 File de 08/1/8/2/2 Page: g14995348 PAGE D2#: 3805 DoDD 5100.01, December 21, 2010

employ the global reach, persistent presence through forward-stationed and rotationally-based forces, and operational flexibility to secure the Nation from direct attack; secure strategic access and retain global freedom of action; strengthen existing and emerging alliances and partnerships; establish favorable security conditions; deter aggression and violence by state, non-state, and individual actors and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests.

b. <u>The Functions of the Navy</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, the Navy, within the Department of the Navy, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions:

(1) Conduct offensive and defensive operations associated with the maritime domain including achieving and maintaining sea control, to include subsurface, surface, land, air, space, and cyberspace.

(2) Provide power projection through sea-based global strike, to include nuclear and conventional capabilities; interdiction and interception capabilities; maritime and/or littoral fires, to include naval surface fires; and close air support for ground forces.

(3) Conduct ballistic missile defense.

(4) Conduct ocean, hydro, and river survey and reconstruction.

(5) Conduct riverine operations.

(6) Establish, maintain, and defend sea bases in support of naval, amphibious, land, air, or other joint operations as directed.

(7) Provide naval expeditionary logistics to enhance the deployment, sustainment, and redeployment of naval forces and other forces operating within the maritime domain, to include joint sea bases, and provide sea transport for the Armed Forces other than that which is organic to the individual Military Services, USSOCOM, and USCYBERCOM.

(8) Provide support for joint space operations to enhance naval operations, in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(9) Conduct nuclear operations in support of strategic deterrence, to include providing and maintaining nuclear surety and capabilities.

c. <u>The Functions of the Marine Corps</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, and pursuant to section 8063 of Reference (e), the Marine Corps, within the Department of the Navy, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces, normally

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employed as combined arms air ground task forces, to serve as an expeditionary force-inreadiness, and perform the following specific functions:

(1) Seize and defend advanced naval bases or lodgments to facilitate subsequent joint operations.

(2) Provide close air support for ground forces.

(3) Conduct land and air operations essential to the prosecution of a naval campaign or as directed.

(4) Conduct complex expeditionary operations in the urban littorals and other challenging environments.

(5) Conduct amphibious operations, including engagement, crisis response, and power projection operations to assure access. The Marine Corps has primary responsibility for the development of amphibious doctrine, tactics, techniques, and equipment.

(6) Conduct security and stability operations and assist with the initial establishment of a military government pending transfer of this responsibility to other authority.

(7) Provide security detachments and units for service on armed vessels of the Navy, provide protection of naval property at naval stations and bases, provide security at designated U.S. embassies and consulates, and perform other such duties as the President or the Secretary of Defense may direct. These additional duties may not detract from or interfere with the operations for which the Marine Corps is primarily organized.

d. The Functions of the Coast Guard. The Coast Guard is a unique Military Service residing within the Department of Homeland Security while simultaneously providing direct support to the Department of Defense under its inherent authorities under References (e) and (h). In addressing the Coast Guard when it is not operating in the [Department of the] Navy, this issuance is descriptive in nature and does not purport to be either directive or regulatory. As directed by the President, and in accordance with Memorandum of Agreement between the Department of Defense and Department of Homeland Security on the use of Coast Guard Capabilities and Resources in Support of the National Military Strategy (Reference (ab)), the Department of the Navy shall coordinate with the Department of Homeland Security regarding Coast Guard military functions in time of limited war or defense contingency, without transfer of Coast Guard authority to the Secretary of the Navy. As directed, the Department of the Navy will provide intelligence, logistical support, and specialized units to the Coast Guard, including designated ships and aircraft, for overseas deployment required by naval component commanders, maritime search and rescue, integrated port security, and coastal defense of the United States. The Coast Guard shall maintain a state of readiness to function as a specialized Military Service in the Department of the Navy in time of war or national emergency. If specified in a declaration of war by Congress or if directed by the President, the Coast Guard shall operate as a Military Service in the Department of the Navy, and shall continue to do so

## Case: 1:22:21:00084:38 M BOCU#: 85-8 Filed: 881-8/18/22 Page: 143 Pb 348 Page B # 4807 DoDD 5100.01, December 21, 2010

until the President transfers the Coast Guard back to the Department of Homeland Security by Executive order pursuant to section 3 of Reference (h).

(1) The Coast Guard shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions when providing direct or cooperative support to the Department of Defense:

(a) Conduct coastal sea control and maritime and air interception and interdiction operations.

(b) Conduct maritime homeland security and counterterrorism operations.

(c) Provide for port operations, security, and defense.

- (d) Provide maritime operational threat response.
- (e) Conduct counter-illicit trafficking operations.
- (f) Conduct military environmental response operations.
- (g) Conduct theater security cooperation operations.
- (h) Conduct search and rescue operations.
- (i) Conduct ice operations.
- (j) Provide for marine safety, including aids to navigation.

(2) The Coast Guard will coordinate with the Department of Defense, including the Department, of the Navy to provide specialized Coast Guard units, or obtain Navy units, including designated ships and aircraft, for deployment as requested by Military Service component or joint commanders.

#### 6. FUNCTIONS OF THE DEPARTMENT OF THE AIR FORCE

a. The Department of the Air Force is composed of air, space, and cyberspace forces, both combat and support, not otherwise assigned. The Air Force and Space Force are the Nation's principal air and space forces, and are responsible for the preparation of forces necessary for the effective prosecution of war. The Department of the Air Force shall organize, train, equip, and provide air, space, and cyberspace forces for the conduct of prompt and sustained combat operations, military engagement, and security cooperation in defense of the Nation, and to support the other Military Services and joint forces. The Air Force and Space Force will provide the Nation with global vigilance, global reach, and global power in the form of in-place, forward-based, and expeditionary forces possessing the capacity to deter aggression and violence by state, non-state, and individual actors to prevent conflict, and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests.

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b. <u>The Functions of the Air Force</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, the Air Force, within the Department of the Air Force, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions:

(1) Conduct nuclear operations in support of strategic deterrence, to include providing and maintaining nuclear surety and capabilities.

(2) Conduct offensive and defensive operations, to include appropriate air and missile defense, to gain and maintain air superiority, and air supremacy as required, to enable, the conduct of operations by U.S. and allied land, sea, air, space, and special operations forces.

(3) Conduct global precision attack, to include strategic attack, interdiction, close air support, and prompt global strike.

(4) Provide timely, global integrated intelligence, surveillance, and reconnaissance capability and capacity from forward deployed locations and globally distributed centers to support world-wide operations.

(5) Provide rapid global mobility to employ and sustain organic air and space forces and other Military Service and USSOCOM forces, as directed, to include airlift forces for airborne operations, air logistical support, tanker forces for in-flight refueling, and assets for aeromedical evacuation.

(6) Provide agile combat support to enhance the air and space campaign and the deployment, employment, sustainment, and redeployment of air and space forces and other forces operating within the air and space domains, to include joint air and space bases, and for the Armed Forces other than which is organic to the individual Military Services and USSOCOM in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(7) Conduct global personnel recovery operations including theater-wide combat and civil search and rescue, in coordination with the other Military Services, USJFCOM, USSOCOM, and DoD Components.

(8) Conduct global integrated command and control for air and space operations.

c. <u>The Functions of the Space Force</u>. In addition to the common military service functions listed in Paragraphs 2.a. through 2.n. of this enclosure, the Space Force, within the Department of the Air Force, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions:

(1) Provide freedom of operation for the United States in, from, and to space.

(2) Provide prompt and sustained space operations.

Change 1, 09/17/2020

- (3) Protect the interests of the United States in space.
- (4) Deter aggression in, from, and to space.
- (5) Conduct space operations.

7. <u>DEPARTMENT OF THE ARMY AND DEPARTMENT OF THE AIR FORCE: THE NGB</u>. The NGB is a joint activity of the Department of Defense. The NGB performs certain Military Service-specific functions and unique functions on matters involving non-federalized National Guard forces as set forth in Reference (i). Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 145 of 325 PAGEID #: 4810

#### UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1, on behalf of himself and all others similarly situated; U.S. NAVY SEALS 4-26; U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5; and U.S. NAVY DIVERS 1-3.

Plaintiffs,

٧.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; UNITED STATES DEPARTMENT OF DEFENSE; CARLOS DEL TORO, in his official capacity as United States Secretary of the Navy, Case No. 4:21-cv-01236-O

Defendants.

#### AMENDED NOTICE OF DEPOSITION

To: William K. Lescher c/o Andrew Carmichael United States Department of Justice Civil Division, Federal Programs Branch 1100 L Street, N.W. Washington, DC 20005

Please take notice that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiffs, by their attorneys, will take the deposition of William K. Lescher, in his official capacity as Vice Chief of Naval Operations for the United States Department of Defense, before a Certified Court Reporter. The deposition will take place on June 30, 2022, beginning at 8:00 a.m., at Naval Air Systems Command Washington Liaison Office, Naval Support Facility (NSF) Arlington, 701

South Courthouse Road, Suite 2000, Building 15, Arlington, Virginia 22204.



The deposition will be stenographically and electronically recorded and will be videotaped. The deposition will be used for discovery and/or evidentiary purposes to the full extent allowed

by the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

Dated: June 3, 2022

Respectfully submitted.

Kelly J. Shackelford Texas Bar No. 18070950 Jeffrey C. Mateer Texas Bar No. 13185320 Hiram S. Sasser, III Texas Bar No. 24039157 David J. Hacker Texas Bar No. 24103323 Michael D. Berry Texas Bar No. 24085835 Justin Butterfield Texas Bar No. 24062642 Danielle Runyan \* New Jersey Bar No. 027232004 Holly M. Randall \* Oklahoma Bar No. 34763 FIRST LIBERTY INSTITUTE 2001 W. Plano Pkwy., Ste. 1600 Plano, Texas 75075 Tel: (972) 941-4444 imateer@firstliberty.org hsasser@firstliberty.org dhacker@firstliberty.org mberry@firstliberty.org jbutterfield@firstliberty.org drunyan@firstliberty.org hrandall@firstliberty.org

Jordan E. Pratt

Florida Bar No. 100958\* \*\* FIRST LIBERTY INSTITUTE 227 Pennsylvania Ave., SE Washington, DC 20003 Tel: (972) 941-4444 jpratt@firstliberty.org \*Admitted pro hac vice /s/ Andrew B. Stephens Heather Gebelin Hacker Texas Bar No. 24103325 Andrew B. Stephens Texas Bar No. 24079396 HACKER STEPHENS LLP 108 Wild Basin Road South, Suite 250 Austin, Texas 78746 Tel.: (512) 399-3022 andrew@hackerstephens.com heather@hackerstephens.com

Attorneys for Plaintiffs

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 147 of 325 PAGEID #: 4812

\*\* Not yet admitted to the D.C. Bar, but admitted to practice law in Florida. Practicing law in D.C. pursuant to D.C. Court of Appeals Rule 49(c)(8) under the supervision of an attorney admitted to the D.C. Bar,

## CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I served the foregoing document on counsel of record

for each party.

/s/Andrew B. Stephens ANDREW B. STEPHENS Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 148 of 325 PAGEID #: 4813

#### UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

U.S. NAVY SEALs 1–3, on behalf of themselves and all others similarly situated; U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1, on behalf of himself and all others similarly situated; U.S. NAVY SEALS 4–26; U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1–5; and U.S. NAVY DIVERS 1–3,

Plaintiffs,

Case No. 4:21-cv-01236-O

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; UNITED STATES DEPARTMENT OF DEFENSE; CARLOS DEL TORO, in his official capacity as United States Secretary of the Navy,

Defendants.

## PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs hereby request that Defendants produce the following documents in accordance with the definitions and instructions set forth below at the office of Plaintiffs' counsel, First Liberty Institute, c/o Justin Butterfield, 2001 W. Plano Parkway, Suite 1600, Plano, Texas 75075, within 30 days after service of these requests.

Please be advised that Plaintiffs will be taking the deposition of Admiral William K. Lescher on June 30, 2022. Plaintiffs may seek to compel a second deposition of Admiral Lescher if Defendants do not fully comply with these requests and produce all responsive documents on or before the deadline set forth above.



#### DEFINITIONS

1. "Concerning" means having any relationship or connection to, regarding, relating, being connected to, commenting on, responding to, addressed to, sent to, containing, evidencing, showing, memorializing, describing, analyzing, reflecting, pertaining to, comprising, constituting, or otherwise establishing any reasonable, logical, or causal connection.

2. "Document" and "documents" are synonymous in meaning and equal in scope to the usage of the terms as defined in Federal Rule of Civil Procedure 34(a)(1)(A) and shall include all items subject to inspection and copying under those Rules, including any original, reproduction, copy, or draft of any kind of written or documented material, stored in any medium, including but not limited to audio and video tapes, correspondence, memoranda, interoffice communications, electronic mail, text messages, notes, diaries, calendars, personal digital assistant device entries, contract documents, estimates, vouches, minutes of meetings, invoices, checks, reports, notes of telephone conversations, notes of oral communications, computer-stored information that is retrievable in any form, writings, drawings, graphs, charts, photographs, and other data compilations, from which information can be obtained, and electronically stored information that is retrievable in any form, or translated if necessary, by Defendants through detection devices into a reasonably usable form, except that neither electronically stored voicemails nor the information stored in the memories of copiers, printers, and fax machines are "documents" under this definition.

3. The singular shall be construed to include the plural, and the plural shall be construed to include the singular, as necessary to bring within the scope of each request all documents that might otherwise be construed as nonresponsive to the request.

4. The connectives "and" and "or" and the phrase "and/or" shall be construed either disjunctively or conjunctively to bring within the scope of each request all documents that might otherwise be construed as nonresponsive to the request. The word "and" shall be construed to mean both "and" and "or," and vice versa, as necessary to bring within the scope of each request all documents that might otherwise be construed as nonresponsive to the request.

5. "Lescher Declaration" means the declaration of Admiral William K. Lescher signed on January 19, 2022 and submitted in support of Defendants' Application for a Partial Stay of the Injunction Issued by the United States District Court for the Northern District of Texas. A copy of the Lescher Declaration is attached hereto as Exhibit A.

"COVID-19" refers to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), coronavirus disease 2019 and/or the illness caused by the SARS-CoV-2 virus.

#### INSTRUCTIONS

1. In responding to these document requests, Defendants are required to furnish all responsive documents in their possession, custody, or control, or in the possession, custody, or control of their attorneys, agents, employees, independent contractors, and all other persons acting on behalf of each of them or any of them.

2. Each document request shall be responded to separately and fully, unless it is in good faith objected to, in which event the reasons for the objection shall be stated with specificity. If an objection pertains to only a portion of the request, or to a word, phrase, or clause contained therein, Defendants shall state the objection to that portion only and respond to the remainder of the request.

3. If, in responding to these document requests, Defendants claim any ambiguity in a document request, or in a definition or instruction applicable thereto, Defendants shall not rely

upon the ambiguity as a basis for refusing to respond, but shall set forth as part of their response the language deemed to be ambiguous and the interpretation used in responding to the request.

4. An original or one copy of each responsive document shall be produced. Any copy of a document that varies in any way from the original or from any other copy of the document, whether by reason of handwritten or other notation, highlighting, underlining, or other marks, or a draft or successive iteration thereof and all modifications thereto, shall constitute a separate document and must be produced, whether or not the original of such document is within Defendants' possession, custody, or control. If the same document exists in both electronic and non-electronic format, the electronically maintained document must be produced; provided, if the non-electronically maintained document varies in any way from the electronically maintained document as described above, both the electronically maintained and non-electronically maintained maintained documents shall be produced.

5. Documents shall be produced as they are kept in the ordinary course of business. Each document requested is to be produced in its original file folder, file jacket, or cover (or Defendants may, in the alternative, designate in writing the titles of such folder, jacket, or cover with respect to each document). The individual or department from whose files the document is being produced is to be indicated.

6. If there are no documents responsive to any particular request, Defendants shall state so in writing.

7. A request for documents shall be deemed to include a request for all transmittal sheets, cover letters, exhibits, enclosures, and attachments to the documents, in addition to the document itself, without abbreviation or expurgations. Documents attached to other documents or

materials shall not be separated unless information is provided sufficient to permit reconstruction of the grouping or context in which the document is maintained in the ordinary course of business.

8. If the documents requested differ from one office, division, or location to another, the requests require production of documents for each office, division, or location.

9. Each document requested shall be produced in its entirety and without redactions, deletions, or excisions, regardless of whether Defendants consider the entire document to be relevant or responsive to these requests.

10. For any document withheld under a claim of privilege, submit a privilege log that complies with FRCP 26(b)(5)(A) with your response to these requests.

11. These document requests are continuing in nature. Any document obtained, created, identified, or located after service of any response to these requests that would have been included in the responses had the document been available or had its existence been known at that time should be produced immediately.

12. For any document responsive to these requests that has been destroyed, lost, is otherwise unavailable, or is no longer in Defendants' present possession, custody, or control, identify with respect to each document: the author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document, including the location of such document when last in your possession, custody, or control, and the date and manner of its disposition.

13. The relevant time period for these document requests is October 1, 2019, through the time of trial, unless otherwise stated.

#### REQUESTS FOR PRODUCTION

#### **Document Request No. 1:**

Produce all documents relied on, reviewed, considered, cited, discussed, analyzed, consulted or referenced by Admiral William K. Lescher in drafting or preparing the Lescher Declaration.

#### Document Request No. 2:

Produce all documents reflecting communications by and between Admiral William K. Lescher and any other person concerning the Lescher Declaration, including all communications concerning each document produced in response to Document Request No. 1, all communications concerning the facts contained in the Lescher Declaration, and all communications concerning any and all opinions or conclusions contained in the Lescher Declaration.

#### Document Request No. 3:

Produce all documents concerning any meetings or telephone calls by and between Admiral William K. Lescher and any other person concerning the Lescher Declaration, including but not limited to, calendar appointments, notes, memos, visitor logs, and phone records.

#### Document Request No. 4:

Produce all documents in the possession, custody, or control of Admiral William K. Lescher between October 1, 2019 and the present concerning COVID-19, or the claims alleged in this lawsuit, the facts alleged in this lawsuit, the defenses asserted by Defendants in this lawsuit, or the facts, opinions, or conclusions contained in any declarations or other sworn statements submitted by Defendants in this lawsuit.

## Document Request No. 5:

Produce all documents reflecting communications by and between Admiral William K. Lescher between October 1, 2019 and the present and any other person concerning COVID-19, or the claims alleged in this lawsuit, the facts alleged in this lawsuit, the defenses asserted by Defendants in this lawsuit, or the facts, opinions, or conclusions contained in any declarations or other sworn statements submitted by Defendants in this lawsuit.

#### Dated: May 17, 2022

#### Respectfully submitted.

Kelly J. Shackelford Texas Bar No. 18070950 Jeffrey C. Mateer Texas Bar No. 13185320 Hiram S. Sasser, III Texas Bar No. 24039157 David J. Hacker Texas Bar No. 24103323 Michael D. Berry Texas Bar No. 24085835 Justin Butterfield Texas Bar No. 24062642 Danielle Runyan \* New Jersey Bar No. 027232004 Holly M. Randall \* Oklahoma Bar No. 34763 FIRST LIBERTY INSTITUTE 2001 W. Plano Pkwy., Ste. 1600 Plano, Texas 75075 Tel: (972) 941-4444 jmateer@firstliberty.org hsasser@firstliberty.org dhacker@firstliberty.org mberry@firstliberty.org jbutterfield@firstliberty.org drunyan@firstliberty.org hrandall@firstliberty.org

Jordan E. Pratt Florida Bar No. 100958\* \*\* FIRST LIBERTY INSTITUTE 227 Pennsylvania Ave., SE Washington, DC 20003 Tel: (972) 941-4444 jpratt@firstliberty.org

\*Admitted pro hac vice

\*\* Not yet admitted to the D.C. Bar, but admitted to practice law in Florida. Practicing law in D.C. pursuant to D.C. Court of Appeals Rule 49(c)(8) under the supervision of an attorney admitted to the D.C. Bar.

<u>/s/ Andrew B. Stephens</u>
Heather Gebelin Hacker Texas Bar No. 24103325
Andrew B. Stephens Texas Bar No. 24079396
HACKER STEPHENS LLP
108 Wild Basin Road South, Suite 250
Austin, Texas 78746
Tel.: (512) 399-3022
heather@hackerstephens.com
andrew@hackerstephens.com

Attorneys for Plaintiffs

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 156 of 325 PAGEID #: 4821

## CERTIFICATE OF SERVICE

I hereby certify that I caused to be served copies of the foregoing Plaintiffs' First Set of Requests for Production of Documents by electronic mail this 17th day of May 2022, upon counsel for Defendants.

> /s/Andrew B. Stephens ANDREW B. STEPHENS

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 157 of 325 PAGEID #: 4822

# EXHIBIT A

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 158 of 325 PAGE D2 #: 4823 Case 4:21-cv-01236-0 Document 87 Filed 01/24/22 Page 4 of 365 Page 50 Pag

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

U.S. NAVY SEALs 1-26; U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5; U.S. NAVY EXPLOSIVE ORDNANCE **DISPOSAL TECHNICIAN 1; and** U.S. NAVY DIVERS 1-3, Plaintiffs.

Defendants.

٧.

LLOYD J. AUSTIN, III, individually and in his official capacity as United States Secretary of Defense; UNITED STATES DEPARTMENT OF DEFENSE: CARLOS DEL TORO, individually and in his official capacity as United States Secretary of the Navy,

Case No. 4:21-CV-01236-O

#### DECLARATION OF WILLIAM K. LESCHER

I, William K. Lescher, hereby state and declare as follows:

I am an admiral<sup>1</sup> in the United States Navy, currently serving as the Vice Chief of 1.

Naval Operations (VCNO), located in Arlington, Virginia at the Pentagon. The position of

VCNO is appointed by the President, with the advice and consent of the Senate, and is the

second highest uniformed Officer in the Navy. I have served in this position since May 29,

2020. I make this declaration in support of the Government's motion for a stay of this Court's

preliminary injunction pending appeal. The statements made in this declaration are based on my

<sup>&#</sup>x27; The rank of "admiral" is the highest military rank in the Navy. The term "admirals" is also frequently referred to as "flag officers." Flag officers include the ranks of rear admiral (lower half), rear admiral (upper half), vice admiral and admiral. Flag officers comprise the most senior levels of uniformed leadership in the Navy.

#### Case: 1:22-cy-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 159 of 325 PAGED #: 4824 Case 4:21-cy-01236-O Document 87 Filed 01/24/22 Page 5 of 365 PageED #: 4824

personal knowledge, my military judgment and experience, and on information that has been provided to me in the course of my official duties.

#### **Preliminary Statement**

I have reviewed the preliminary injunction order issued by this Court on January 2. 3, 2022. I believe the Court's injunction will cause immediate harm to the Navy, and in particular to the operations of Naval Special Warfare (NSW) and Special Operations Forces (SOF), and to the national security of the United States. Operationally, in 2021, the Navy executed more than 30,000 steaming days and one million flying hours to protect America, deter conflict and keep the sea lanes open and free. The Court's injunction directly impacts the Navy's ability to carry out its responsibilities to protect and maintain the health and safety of our Force, in particular our ability to halt the spread of COVID-19 through a mandatory vaccination requirement. Unvaccinated or partially vaccinated service members are at higher risk to contract COVID-19, and to develop severe symptoms requiring hospitalizations that remove them from their units and impact mission execution. Vaccination against COVID-19 has proven to be essential in keeping Navy units on mission by mitigating the impact of COVID-19. Fully vaccinated naval forces are required to ensure readiness to carry out Navy missions throughout the world and, if required, to engage in combat operations. Restriction of the Navy's ability to reassign unvaccinated personnel in order to mitigate COVID-19 related risks to units preparing to deploy, or that are deployed, will cause direct and immediate impact to mission execution. Further, the harm caused by this injunction is not limited to 35 unvaccinated Plaintiffs. The heath, readiness, and mission execution of broader conventional Navy units and personnel who support these personnel are threatened as well.

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 160 of 325 PAGEID #: 4825 Case 4:21-cv-01236-O Document 87 Filed 01/24/22 Page 6 of 46 PageID 2/15

## Naval Background and Experience

3. As the Vice Chief of Naval Operations,<sup>2</sup> I work in coordination with the Chief of Naval Operations (CNO), the senior admiral in the U.S. Navy, <sup>3</sup> in the execution of his statutory duties and responsibilities as they pertain to the employment of the Navy. Those duties include recruiting, organizing, supplying, equipping, training, servicing, mobilizing, demobilizing, administering, and maintaining the Navy, as will assist in the execution of any power, duty, or function of the Secretary of the Navy or the Chief of Naval Operations. Additionally, the CNO delegated several specific responsibilities to me. I oversee programs and policies that impact Sailors and their families, including health affairs, and monitor and enact polices that promote good order and discipline in the Navy.

4. I have served in the United States Navy for nearly 42 years. A 1980 graduate of the United States Naval Academy, my experience includes command of the Vipers of Helicopter Anti-Submarine Light (HSL) Squadron-48, the Airwolves of HSL-40 and the Maritime Strike Wing Atlantic. As Commanding Officer, HSL-48, my responsibilities included training, preparing, and executing Seahawk helicopter detachment deployments on Navy ships deploying worldwide. As Commanding Officer, HSL-40, I was responsible for the training, evaluation, and maintenance of the Seahawk helicopter squadron that trains all East Coast Seahawk pilots in employment of this weapon system. As Commander, Maritime Strike Wing Atlantic, I was responsible for the material readiness and training of eight Helicopter Maritime Strike (HSM)

<sup>&</sup>lt;sup>2</sup> "The [VCNO] has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the [VCNO] in performing such duties have the same effect as those issued by the Chief of Naval Operations." 10 U.S.C. § 8035(c).

<sup>&</sup>lt;sup>3</sup> The CNO is the senior uniformed officer in the United States Navy. *See* 10 U.S.C. § 8033(b) ("The Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade. In the performance of his duties within the Department of the Navy, the Chief of Naval Operations takes precedence above all other officers of the naval service,").

#### Case 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 161 8f 365 Page 510 #: 64826 Case 4:21-cv-01236-0 Document 87 Filed: 01/24/22 Page 161 8f 365 Page 510 #: 64826

squadrons, the Weapons School, Fleet Replacement Squadron, and a total of 42 detachments deploying on Atlantic Fleet aircraft carriers and air capable ships, encompassing 68 aircraft and 1,900 personnel. Between command of the Vipers and Airwolves, I was the executive officer of Mine Countermeasures Command and Control Ship USS Inchon (MCS 12), a 20,000 ton vessel with a crew of 700. As the second in command, I was responsible for the supervision, training and development of the crew and the daily execution of the command mission, which included training and preparing the crew for deployment, maintaining and improving operational readiness and material condition of the ship. As a flag officer, I commanded Expeditionary Strike Group 5 (ESG-5) and Task Forces 51/59 (CTF 51/59) in Bahrain, leading multiple Amphibious Ready Groups, Marine Expeditionary Units and the afloat forward staging base USS Ponce (AFSB(1)-15) in execution of theater security events, combat operations, and emergent national taskings spanning the Middle East/Central Command region. My responsibilities as ESG-5 and CTF 51/59 included multiple events working with NSW forces embarked on my ships and interoperability exercises with partner countries. I also served as Joint Staff deputy director for resources and acquisition, deputy assistant Secretary of the Navy for budget, and Deputy Chief of Naval Operations for integration of capabilities and resources.

#### Specific Functions of the United States Navy

5. The United States Navy and Marine Corps comprise the Nation's principal maritime forces. Their missions are to provide globally deployable forces in order to "secure the Nation from direct attack; secure strategic access and retain global freedom of action; strengthen existing and emerging alliances and partnerships; establish favorable security conditions; deter aggression and violence by state, non-state, and individual actors and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests." *See* 

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#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 162 8f 365 PAGEDD #: 4827 Case 4:21-cv-01236-O Document 87 Filed 01/24/22 Page 8f 365 PAGEDD #: 4827

Department of Defense Directive (DoDD) 5100.01, Change 1, 09/17/2020, Encl. 6, ¶ 5.a. –b (attached hereto). Effective execution of all of these discrete functions is vital to the national security of the United States, and is accomplished by providing fully trained and qualified naval forces to joint commanders<sup>4</sup> to deter aggression and, if required, engage in combat operations and win decisively.

## Naval Special Warfare (NSW) and Special Operations Forces (SOF)

6. Naval Special Warfare (NSW) and Special Operations Forces (SOF) are composed of Navy SEALs<sup>5</sup> and Special Warfare Combatant-Craft Crewmen (SWCC). The NSW team is a multipurpose combat force organized and trained to conduct a variety of special operations missions in all environments. Navy SEALs conduct clandestine missions infiltrating their objective areas by fixed and rotary-wing aircraft, Navy surface ships, combatant craft, submarines and ground mobility vehicles. Service members designated as Navy SEALs consist of officers and enlisted members who have been designated pursuant to Navy and NSW policies. SWCC focus on infiltration and exfiltration of SEALs and other SOF to include from other Services, and they provide dedicated rapid mobility in maritime environments, as well as the ability to deliver combat craft via parachute drop. SWCC operate and maintain state-of-the-art surface craft to conduct special operations.

 In addition to SEALs and SWCC, combat support (CS) and combat service support (CSS) personnel are assigned to NSW units to support the mission. CS/CSS personnel

<sup>&</sup>lt;sup>4</sup> Joint commanders are the combatant vested with authority and responsibility for military operations within their area of responsibility. The Navy and other branches of the Armed Forces provide forces to the combatant commanders to execute those responsibilities and functions. The combatant commanders exercise authority, direction and control over the commands and forces assigned to them and employ those forces to accomplish missions assigned to the combatant commander. Department of Defense Directive (DoDD) 5100.01, Change 1, 09/17/2020, Encl. 1, ¶1.a through d.

<sup>5</sup> The term "SEAL" refers to "Sea, Air, Land."

#### Case: 1:22-cy-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 163 of 325 PAGED #: 4828 Case 4:21-cy-01236-O Document 87 Filed 01/24/22 Page 9 of 46 PageD 2#18

include officers and enlisted service members identified in Plaintiffs' complaint (i.e., Explosive Ordinance Disposal (EOD) personnel and Navy Divers), in addition to other officers and enlisted service members performing a variety of military functions (e.g., chaplains, medical personnel, mobile communications teams, tactical cryptologic support, etc.). Navy EOD personnel perform missions neutralizing explosive weapons, including various weapons of mass destruction. Their duties include detonating or demolishing hazardous munitions, neutralizing various ordnance, including sea mines, torpedoes or depth charges, performing parachute or helicopter insertion operations, and clearing waterways of mines in support of our military operations. Navy Divers perform a variety of military functions, including wreckage salvage operations and underwater repairs, harbor and waterway clearance operations, assisting in construction and demolition projects, executing search and rescue missions, performing deep submergence operations, and serving as technical experts for diving operations for numerous military special operations units.

8. Service members in the NSW force are responsible for performing special operations. Special operations require unique tactics, techniques, procedures and equipment. They are often conducted in hostile, austere or diplomatically sensitive environments, and are characterized by one or more of the following: time-sensitivity, clandestine nature, low visibility, working with or through host-nation forces, greater requirements for regional orientation and cultural expertise, and a higher degree of risk. These missions often require members of the NSW force to work in close quarters where social distancing is not possible. Small NSW teams may travel for an extended duration on boats, submersibles, helicopters, aircraft, or other vehicles that are less than six feet across, and/or which have limited ventilation. Service members may be in such close quarters while traveling that they must sit shoulder-to-shoulder.

#### Case: 1:22-cv-00084-MWM\_Doc #: 85-1 Filed: 08/18/22 Page: 164 of 325 PAGELD #: 4829 Case 4:21-cv-01236-0 Document 87 Filed: 01/24/22 Page 10 of 46 PageLD #: 4829

Additionally, members may be required to operate in subsea environments and may have to share diving rebreather devices and inhale one another's exhalation.

## Mandatory Vaccination Requirements in Response to COVID-19 Pandemic

9. On August 24, 2021, the Secretary of Defense directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces on active duty or in the Ready Reserve. The Secretary of Defense determined that mandatory COVID-19 vaccinations are necessary to protect the health and military readiness of the force. The Secretary of the Navy directed implementation of Secretary of Defense's COVID-19 vaccination mandate<sup>6</sup> via a Department-wide administrative message (ALNAV) on August 30, 2021. The ALNAV applies to both Services within the Department of the Navy (DON), the United States Navy and the United States Marine Corps. The ALNAV required all active duty DON Service members, who were not already vaccinated, exempted, or currently seeking an exemption, to be fully vaccinated with an FDA-approved COVID-19 vaccine within 90 days of the ALNAV, and all Reserve Component personnel to be fully vaccinated within 120 days. ALNAV 062/21 ¶ 4. Active duty Sailors and Marines were required to become fully vaccinated7 by November 28, 2021, and Reserve Component Sailors and Marines by December 28, 2021. The requirement to obtain full vaccination constitutes a lawful order under Article 92 of the Uniform Code of Military Justice (UCMJ), and failure to comply may result in punitive or adverse administrative action, or both. ALNAV 062/21 ¶ 5.

<sup>&</sup>lt;sup>6</sup> Secretary of Defense Memorandum, "Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency, and DoD Field Activity Directors," (August 24, 2021).

<sup>&</sup>lt;sup>\*</sup> Although refusal to receive the vaccine may subject a member to adverse administrative or disciplinary action, the vaccine will not be forcibly administered to any member who refuses.

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 165 of 325 BAGEID #: 4830 Document 87 Filed: 01/24/22 Page: 165 of 325 BAGEID #: 4830

10. The United States Navy issued service-specific guidance via a separate administrative message ("NAVADMIN") on September 1, 2021. NAVADMIN 190/21 outlines Navy policy concerning the mandatory vaccination of Navy service members, vaccination administration and reporting requirements, and general guidance related to logistics and distribution of vaccines. The policy reiterates that COVID-19 vaccination "is mandatory for all DoD service members who are not medically or administratively exempt" under existing Navy policy. NAVADMIN 190/21 ¶ 2, 3.a. Refusal to become fully vaccinated against COVID-19 without an approved or pending exemption constitutes a failure to obey a lawful order and is punishable under Article 92, UCMJ.

## The COVID-19 Pandemic Threat to Naval Forces

11. The judgment of each of the Military Services is that vaccines are the most effective tool the Armed Forces have to keep our personnel safe, fully mission capable and prepared to execute the Commander-in-Chief's orders to protect vital United States' national interests. As of January 5, 2022, 261,504 members of the Armed Forces have contracted the COVID-19 virus, resulting in 2,320 hospitalizations and 82 deaths. Eighty of 82 members who have died were unvaccinated. Of all active duty personnel who were required to be hospitalized because of COVID-19, 0.8% received a booster shot prior to hospitalization. Separately, there have only been six active duty personnel who have received a booster and had a breakthrough COVID-19 infection that required hospitalization. Among the active duty force, 12% of those required to be hospitalized have received a primary COVID-19 vaccine without the booster. Among Reserve and National Guard service members, 97% of those hospitalized with COVID were unvaccinated or partially vaccinated; 3% of hospitalized members received primary vaccination but no booster shot; 0.2% hospitalized members had received a booster shot.

#### Case 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 166 of 325 BAGELD #: 4831 Case 4:21-cv-01236-0 Document 87 Filed: 01/24/22 Page 12 of 46 PageLD #: 4831

Sending ships into combat without maximizing the crew's odds of success, such as would be the case with ship deficiencies in ordnance, radar, working weapons or the means to reliably accomplish the mission, is dereliction of duty. The same applies to ordering unvaccinated personnel into an environment in which they endanger their lives, the lives of others and compromise accomplishment of essential missions.

12. The environment in which Navy personnel operate -- in close quarters for extended periods of time -- make them particularly susceptible to contagious respiratory diseases such as COVID-19 and renders mitigation measures such as social distancing unrealistic. In mid-March 2020, the aircraft carrier USS THEODORE ROOSEVELT (CVN 71) was deployed to the Western Pacific Ocean, a vital geo-political center of gravity encompassing several of the world's largest militaries and five nations allied with the U.S. through mutual defense treaties. The leadership of USS THEODORE ROOSEVELT began to see several COVID-19 cases among the crew. By April 1, 2020, USS THEODORE ROOSEVELT had been pulled off mission and into Guam with approximately 1,000 crew removed from the ship, with a reduced crew remaining to maintain the nuclear reactor and other essential systems. By April 20, 2020, 4,069 Sailors had been removed from the ship out of a crew of approximately 4,800. The ship was unavailable for 51 days to maintain presence in a strategically important area which includes the world's busiest sea lanes, creating a national security vulnerability in an area vital to our national interests. When USS THEODORE ROOSEVELT finally got underway on May 21, 2020, approximately 1,800 Sailors remained in Guam. Tragically, one Sailor succumbed to the COVID-19 virus and died.

13. Even with approximately 97% of the Navy vaccinated, the COVID-19 virus can degrade units and impact mission. Last month, USS MILWAUKEE (LCS 5), with a 100%

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# Case: 1:22-cv-00084-MWM\_Doc #: 85-1 Filed: 08/18/22 Page: 16730f 325 BAGEID #: 4832

vaccinated 100-person crew, remained in port one week beyond its schedule because several members tested positive for COVID-19. Because the full crew was vaccinated, infected personnel were asymptomatic or had mild symptoms and the impact to mission accomplishment was substantially mitigated compared to the USS THEODORE ROOSEVELT's experience of more than 4,000 crew removed from the ship and a 51-day loss of mission. Given the hospitalizations and death statistics cited above, the MILWAUKEE's minor deployment delay would likely have been far worse with unvaccinated personnel. The MILWAUKEE is one example of a Navy manning model where each individual crew member has a high level of responsibility with little redundancy. The medical staff of the MILWAUKEE consists of only two Navy Hospital Corpsman, comparable to an Emergency Medical Technician in the civilian setting. There is little ability on ship to care for a service member with severe COVID symptoms. If a service member were to develop severe symptoms on this type of ship, it would require a return to port or an emergency medical evacuation by helicopter. Helicopter medical evacuation is not always viable due to the location of the ship and the limited range of helicopters. At the deployable unit level, NSW, EOD, and diver personnel operate in units that can be as small as a squad of four personnel. Medical evacuations in these small units can be even less practical and significantly more damaging than the loss of an equal number of crew on a ship the size of the MILWAUKEE.

14. The types of missions conducted by SEALs, SWCC, EOD and divers cannot be conducted remotely. A SEAL assigned to perform a counterterrorism mission in a foreign country cannot perform that task from home; a SWCC cannot drive a combatant craft and transport SEALs in a telework status; an explosive ordnance disposal technician—whose job it is to disarm and dispose of explosives—cannot perform that task remotely. Similarly, the arduous

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 168 of 325 $Bage ED_{2}$ #24833

training necessary to prepare NSW personnel for these missions cannot be performed remotely. It is not possible for a Navy Diver to remotely prepare compressed air and oxygen tanks for personnel to complete their training dives. A safety diver must be physically present during a high-risk training evolution that may require rescue divers or oxygen technicians. In particular, Navy Divers assigned to NSW must be able to operate a diving recompression chamber – a small confined space where the Navy Diver must be in the chamber to assist with the personnel casualty – which cannot be done remotely. SEAL trainers cannot oversee dangerous swim or survival training from a physically distanced location. NSW personnel also routinely interact with the greater Navy population, on ships and aircraft, and in dining facilities and office environments across the globe. They are required to deploy with no-notice. NSW, EOD and diver training and operations necessitate our service members interact in close-quarters, confined spaces, and under conditions where telework, social distancing, and mask-wearing are not reliable mitigation options.

## Immediate Harm to Readiness and Mission Accomplishment

15. The preliminary injunction forbids the Navy from applying MANMED § 15-105(3)(n)(9), NAVADMIN 225/21, NAVADMIN 256/21 and Trident Order #12. Order 26, ECF No. 66. MANMED § 15-105(3)(n)(9) states that personnel who choose not to receive required vaccinations will be disqualified from special operations duty. NAVADMIN 225/21 provides guidance for disposition of offenses involving Navy service members who are not fully vaccinated by the required deadlines. Navy Service members who refuse the COVID-19 vaccine, absent a pending or approved exemption, are required to be processed for administrative separation.<sup>8</sup> NAVADMIN 225/21 ¶ 2. A Navy Service member is considered to be "refusing the

<sup>&</sup>lt;sup>8</sup> Although processing for separation is required, this does not automatically result in a member actually being separated. Members processed for separation may ultimately be retained in the service.

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 169-of 325 BAGED2#: 4834 Case 4:21-cv-01236-0 Document 87 Filed: 01/24/22 Page 15 of 46 PageD2#: 4834

vaccine, if: (1) the individual has received a lawful order to be fully vaccinated, (2) is not or will not be fully vaccinated by the date required, and (3) does not have a pending or approved exemption request." Id. ¶ 3.c. The policy designates the Chief of Navy Personnel, a 3-star admiral, as the COVID-19 Consolidated Disposition Authority to ensure fair and consistent administrative processing across the service. Id. at ¶ 5.b. For disciplinary matters, authority to initiate disciplinary proceedings, either non-judicial punishment or court-martial, is withheld to the Vice Chief of Naval Operations. Id. NAVADMIN 256/21 provides additional guidance on administrative separation processing for those refusing the vaccine, as well as guidance on other applicable administrative actions. These other applicable administrative actions include: cancellation of government travel for training or other official purposes; temporary reassignment within the local area for unvaccinated personnel (with or without a medical exemption or religious accommodation); adverse fitness reports and evaluations; prohibition on executing permanent change of station orders; potential termination of special duty and incentive pays; potential recoupment of unearned bonuses; termination of and potential reimbursement for Navy-funded education and training; promotion and advancement delays; and removal of additional qualification designations or Navy Enlisted Classifications.9 See NAVADMIN 256/21 14.b.through 13. Trident Order # 12, which is directed to the NSW force, does not create any new requirements or adverse administrative actions. It consolidates and restates previously promulgated Navy implementing guidance.

16. The preliminary injunction forbids the Navy from "[t]aking any adverse

<sup>&</sup>lt;sup>9</sup> Navy Enlisted Classifications define the work performed by Navy enlisted members and the requirements to perform specific "ratings" (i.e., occupations). *See generally*, MANUAL OF NAVY ENLISTED MANPOWER AND PERSONNEL CLASSIFICATIONS AND OCCUPATIONAL STANDARDS, VOL II NAVY ENLISTED CLASSIFICATIONS (NAVPERS 18068F), April 21, 2021 (supplementing the enlisted rating structure in identifying personnel and billets [i.e., jobs] and skills, knowledge, aptitude, or qualifications that must be documented to identify both people and billets for management purposes).

#### Case 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 170 of 325 PAGED #: 4835 Case 4:21-cv-01236-0 Document 87 Filed: 01/24722 Page 16 of 46 PageD 2#: 4835

action against Plaintiffs on the basis of Plaintiffs' requests for religious accommodation." Order 26, ECF No. 66. The order specifically references actions that Plaintiffs allege are being taken against them while they await a decision on their religious accommodation requests, actions such as restrictions on travel, access to non-work activities, unpleasant assignments, and being relieved of leadership duties. Order 26, ECF No. 66. This aspect of the order is intrusive and harmful to Navy operations, including deployment decisions. In the Navy, "adverse action" refers to an action that is punitive or the action itself has a direct adverse impact on one's career such as a court martial or discharge. The Court's order, however, indicates that routine personnel actions, such as assignment, official travel and specific duties, are adverse decisions. Contrary to the Court's apparent understanding, temporarily reassigning personnel to other units because they are unvaccinated, regardless of the reason they are unvaccinated (e.g., medical exemption, religious accommodation, or pending exemption request) is not an adverse action but a step to protect the health of the whole unit and maintain mission readiness. The Court's injunction appears to require the Navy to leave unvaccinated NSW, EOD, and diver personnel in their units, performing their same duties and deploying on missions regardless of the known risk to personnel and mission. Such an injunction will degrade NSW, EOD, and diver mission readiness, breakdown good order and discipline within the NSW force, unnecessarily limit the Navy's ability to conduct daily operations and operational missions, and could clearly result in mission failure in contingencies and crises that cause harm to national security.

17. NSW personnel must be fully medically ready and at peak fitness given that their training and missions are physically demanding and arduous. It is vital that all members of the NSW force be medically fit to perform daily operations and to train or deploy on short notice. Regardless of their current assignment, all naval forces, NSW in particular, must be ready to

# Case 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 17170f 325 Page 202 #26836

respond to contingencies and crises around the world. All NSW personnel are expected to meet this requirement, whether in a training status, on instructional duty, or at a headquarters, as the mission of NSW is to be ready to provide maritime SOF to conduct full spectrum operations to support national objectives. The Navy could easily require Navy Special Warfare Command to mobilize personnel outside from any unit, regardless of the planned deployment cycles of a unit or the currently assigned duties of NSW personnel to respond to the full range of contingencies and crises. Medical conditions or illness create risk, both medical and operational, not only for the service member afflicted, but for other members of the unit. As a result, unvaccinated personnel in a unit degrade the force health protection conditions in the unit, placing personnel in the unit at risk and degrading the unit's ability to safely conduct operations, regardless of the scope of the operation. The following publicly available mission event illustrates how rapidly a NSW unit can go from steady state in the United States to deploying forward on a mission of the highest difficulty, requiring peak medical, physical and mental readiness. This example illustrates the rapid manner in which a contingency or crisis could unfold, and although more than a decade old, is used due to the unclassified classification of my declaration.

18. On April 8, 2009, armed Somali pirates boarded the U.S.-flagged container ship, *Maersk Alabama* in the Indian Ocean, taking the crew, composed of U.S. citizens, hostage and making ransom demands. USS BAINBRIDGE (DDG-96) was the first ship of the international counter-piracy task force to respond. BAINBRIDGE's commanding officer realized he needed additional capabilities beyond what he had available on the ship. In response, on short notice, a SEAL team flew 8,000 miles from the United States to USS BAINBRIDGE and were recovered onboard. By the evening of April 12, 2009, the situation escalated and SEALs on BAINBRIDGE eliminated the threat to the remaining hostage, *Maersk Alabama* Captain

## Case: 1:22 = cv = 00084 = MWM = DOCL #: 85 = 1 Filed: 08/18/422 Pape: <math>1:22 = cv = 0123 = 0.024 = 0.

Phillips, who was subsequently rescued. This is but one example, using a well-publicized mission, that illustrates how an unvaccinated member would put himself, his teammates, the conventional forces and the mission at great risk. While NSW personnel may be assigned to various units with various mission-sets, all naval forces must be ready to respond to global contingencies and crises on short notice.

19. If this type of crisis or contingency occurred today, with the Court's preliminary injunction in place, the Navy could be required to deploy a SEAL team with one or more unvaccinated members, risking a COVID-19 outbreak within that unit or on the host Navy destroyer. Destroyer crews, and others embarked aboard, sleep in confined shared berthing spaces, are in close proximity in passageways, and eat meals in a communal galley. An unvaccinated service member is not only more likely to contract COVID-19, but to experience significant disease symptoms, impact the mission and spread the disease to others.

20. Navy ships have limited health care facilities. A Sailor experiencing severe COVID symptoms would require the ship to pull into port instead of executing its mission. NSW forces often deploy in countries with little or no healthcare support structure and in remote areas where healthcare is scarce. This is why there has been a long-standing requirement for all members of the NSW force to be fully medically ready to deploy. A small number of SOF medical personnel provide limited medical support and patient movement; therefore, any encumbrance placed on that limited capability unnecessarily puts the mission and the force atrisk. While some SEALs are trained to perform emergency, life-saving procedures in remote and hostile environments, those personnel are not physicians or nurses. Unlike doctors and nurses, formal civilian medical licenses are not required for them. They do not generally have the capability, capacity or training to use a ventilator. Additionally, they do not have access to this

# Case 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 173 of 325 Page D2 #28838

equipment in the types of austere environments in which the NSW units operate. If a deployed team member contracts COVID-19, there is a strong possibility that the necessary equipment or treatment would not be readily available. Further, if medical evacuation is necessary for a member of the unit, this creates additional risk not only to the mission, but places those service members executing medical evacuation at a risk of harm to themselves such as when the member requires transport from a hostile, remote or diplomatically sensitive areas.

21. Redirecting these assets and their crew to perform preventable evacuations results in a degradation of the Navy's ability to accomplish its primary missions and incurs collateral impacts. Medical evacuations often require one or more member from the service member's unit to accompany the evacuated service member. The loss of even one member can degrade the effectiveness of small NSW units and may compromise the mission. This is similarly the case for SWCC personnel, who routinely operate with a crew of as little as four personnel on a combatant craft. Every member of a SEAL team is vital.

22. Unvaccinated NSW personnel put conventional Navy forces at risk as well. Navy SEALs are one of the most versatile elements of the SOF across all branches of the military services, in part, because the Navy can deliver them to their mission locations through a variety of conventional means (*e.g.*, fixed-wing aircraft, helicopters, surface ships and submarines). All of these means of delivery are confined spaces in which social distancing is impractical. Because NSW personnel rely on conventional Navy forces to support their missions, any unvaccinated NSW personnel will put the crew of those conventional forces at unnecessary risk as well. The Navy must balance the risk to unvaccinated individuals and vaccinated personnel alike. That risk calculation led to the mandatory vaccination mandate and associated personnel policies pertaining to the COVID-19 pandemic. It is imperative for the entire force, including

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every member of NSW, to be vaccinated and ready to deploy and execute assigned missions on short notice.

23. The capabilities NSW personnel provide include crisis response, support to forward presence operations, support to conventional Naval forces at sea and in training, support to Law Enforcement agencies and clandestine insertion operations. EOD personnel provide critical safety and response to units using live ordnance; Navy divers, EOD and SEALs support underwater surveys and route clearances. SEALs conduct insertions and extractions by sea, air or land; they capture high-value enemy personnel and terrorists around the world, carry out small-unit direct-action missions against military targets and perform underwater reconnaissance and strategic sabotage. SEALs, SWCC, EOD and divers frequently deploy to foreign countries to train partners and allies and participate in exercises. Reducing the Navy's ability to apply long-standing, proven medical readiness principles to this small, elite community will clearly negatively impact the NSW force's ability to conduct their operations and could have significant negative effects to the NSW force's ability to respond to large-scale contingencies or crises. This would damage the national security interests of the United States and our foreign allies and partners.

24. These concerns apply if the injunction requires the Navy to maintain these 35 Plaintiffs in their current status while an appeal is pending. Of the 35 Plaintiffs, 18 are assigned to nine different parent commands and may deploy anywhere in the world in the immediate future to perform the type of missions described. 15 Plaintiffs are assigned to the NSW Center or a NSW Center subordinate command, with 14 of them assigned to NSW Advanced Training

## Case: 1:22-cv-00084-MWM-BOGH#: 8587 Filed: 08/184222 Pape: 1751 of 325 Page ED2#30840

Command (ATC);<sup>10</sup> some as instructors who necessarily have close contact with ATC students in courses to prepare them for NSW operations and some as students attending an advanced training course before returning to their current or prospective assignment. Two Plaintiffs are currently assigned to non-NSW training commands. Because the court's order prohibits them from being temporarily reassigned, the 14 unvaccinated personnel at NSW ATC have close contact with fellow instructors and students. These students then circulate among the larger NSW community as soon as their courses at ATC end. Simply put, close quarters contact during training creates the opportunity to contract COVID-19 from the unvaccinated instructors at ATC detachments. The unvaccinated instructors can spread COVID-19 to dozens of candidates in training, and qualified SEALs, SWCCs, and other personnel, including fellow instructors, at NSW ATC training courses who will promptly return to their primary units or interact with additional training classes.

25. In summary, the Navy's judgment is that COVID-19 vaccines are a critical defense against COVID-19 and mitigate risk both to our force and to our mission. This judgment takes into account the environments our service members operate in, the operations the Navy conducts, and the absence of other effective COVID-19 mitigation measures in the environments in which we operate. The COVID-19 virus has had a proven substantial impact on Navy unit readiness. The Court's order, which bars implementation of the vaccine requirement and requires the Navy to keep service members it has determined are not medically fit for deployment in a ready to deploy status, will undermine military readiness through the spread of disease and cause

<sup>&</sup>lt;sup>10</sup> ATC's mission is to provide standardized and accredited individual training and education for qualified NSW and support personnel, U.S. SOF (i.e., from other Services), partner nation SOF and other personnel, as required for NSW Operations. There are several ATC detachments. The largest detachment in Coronado, California provides a course of instruction to candidates (i.e., those seeking to obtain their SEAL or SWCC designation). It also provides training to those already designated as SEALs, SWCC or combat support personnel. Other ATC detachments provide training in specialized areas to NSW personnel, other SOF and partner nation SOF.

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significant harm to military operations by allowing unvaccinated service members to remain in an unvaccinated status.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of January, 2022.

LESCHER

## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 177 of 325 PAGEID #: 4842 Case 4:21-cv-01236-O Document 8/ Filed 01/24/22 Page 23 of 46 PageID 2732 DoDD 5100.01, December 21, 2010

## ENCLOSURE 6

## FUNCTIONS OF THE MILITARY DEPARTMENTS

1. <u>COMMON MILITARY DEPARTMENT FUNCTIONS</u>. For purposes other than the operational direction of the Combatant Commands, the chain of command runs from the President to the Secretary of Defense to the Secretaries of the Military Departments and, as prescribed by the Secretaries, to the commanders of Military Service forces.

a. Subject to the authority, direction, and control of the Secretary of Defense, the Secretaries of the Military Departments are responsible for, and have the authority necessary to conduct, all affairs of their respective Departments, including:

- (1) Recruiting.
- (2) Organizing.
- (3) Supplying.
- (4) Equipping (including research and development).
- (5) Training.
- (6) Servicing.
- (7) Mobilizing.
- (8) Demobilizing.
- (9) Administering (including the morale and welfare of personnel).
- (10) Maintaining.
- (11) Construction, outfitting, and repairs of military equipment.

(12) Construction, maintenance, and repair of buildings, structures, and utilities as well as the acquisition, management, and disposal of real property and natural resources.

b. Subject to the authority, direction, and control of the Secretary of Defense, the Secretaries of the Military Departments are also responsible to the Secretary of Defense for ensuring that their respective Departments:

(1) Operate effectively, efficiently, and responsively.

# Case: 1:22-cv-00084-MWM-Docci#: 85-1 Filed: 08/18/422Pape: 1724 off325 Page: 122-cv-01236-WM-Docci#: 85-1 Filed: 08/18/422Pape: 122-cv-01236-WM-Docci#: 85-1 Filed: 122-cv-01236-WM-Docci#: 85-100-WM-Docci#: 85-100-WM-Docc#: 85-10

(2) Formulate policies and programs that are fully consistent with national security objectives and policies established by the President and the Secretary of Defense.

(3) Implement, in a timely and effective manner, policy, program, and budget decisions and instructions of the President or Secretary of Defense.

(4) Present and justify positions on the plans, programs, and policies of the Department of Defense.

(5) Prepare, submit, and justify budgets before Congress, in coordination with other USG departments and agencies, as applicable; and administer the funds made available for maintaining, equipping, and training the forces of their respective departments, including those assigned to the Combatant Commands. Among other things, budget submissions shall be informed by the recommendations of the Military Service Chiefs, Commanders of the Combatant Commands, and of Military Service component commanders of forces assigned to the Combatant Commands.

(6) Establish and maintain reserves of manpower, equipment, and supplies for the effective prosecution of the range of military operations and submit, in coordination with the other Military Departments, mobilization information to the Joint Chiefs of Staff.

(7) Develop integrated mobilization plans for the expansion of peacetime components to meet the needs of war.

(8) Perform Military Department functions necessary to fulfill the current and future operational requirements of the Combatant Commands, including the recruitment, organization, training, and equipping of interoperable forces.

(9) Provide forces to enhance military engagement, conduct security cooperation, build the security capacity of partner states, and deter adversaries to prevent conflict. These actions shall be coordinated with the other Military Departments, Combatant Commands, USG departments and agencies, and international partners, as required.

(10) Provide forces, military missions, and detachments for service in foreign countries as may be required to support the national interests of the United States, and provide, as directed, assistance in training, equipping, and advising the military forces of foreign nations.

(11) Coordinate with the other Military Departments and all of the other DoD Components to provide for more effective, efficient, and economical administration; eliminate duplication; and assist other DoD Components in the accomplishment of their respective functions by providing personnel, intelligence, training, facilities, equipment, supplies, and services, as may be required.

(12) Develop, garrison, supply, equip, and maintain bases and other installations, including lines of communication, and provide administrative and logistical support for all assigned forces and bases, unless otherwise directed by the Secretary of Defense.

(13) Provide, as directed, administrative and logistical support to the headquarters of the Combatant Commands, to include direct support of the development and acquisition of the command and control systems of such headquarters.

(14) Supervise and control Military Department intelligence activities, including the collection, production, and dissemination of military and military-related foreign intelligence and counterintelligence as required for execution of Military Department responsibilities.

(15) Afford the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict; the Commander, USSOCOM; the PCA; and the Commander, USCYBERCOM, an opportunity to coordinate on Military Department and Military Service personnel management policy and plans as they relate to accessions, assignments, compensation, promotions, professional development, readiness, retention, sustainment, and training of all SOF (for USSOCOM) and all cyber operations forces (for USCYBERCOM) personnel. This coordination shall not interfere with the title 10 authorities of the Military Departments or Military Services.

(16) Engage in such other activities as are prescribed by law, the President, or the Secretary of Defense.

2. <u>COMMON MILITARY SERVICE FUNCTIONS</u>. The Army, the Navy, the Air Force, the Marine Corps, and the Space Force, and the Coast Guard, when transferred to the Department of the Navy in accordance with sections 2, 3, and 145 of Reference (h), to include the Active and Reserve Components of each, under their respective Secretaries, shall provide conventional, strategic, and SOF to conduct the range of operations as defined by the President and the Secretary of Defense. Further, they shall perform the following common functions:

a. Develop concepts, doctrine, tactics, techniques, and procedures, and organize, train, equip, and provide land, naval, air, space, and cyberspace forces, in coordination with the other Military Services, Combatant Commands, USG departments and agencies, and international partners, as required, that enable joint force commanders to conduct decisive operations across the spectrum of conflict in order to achieve the desired end state.

b. Determine Military Service force requirements and make recommendations concerning force requirements to support national security objectives and strategy and to meet the operational requirements of the Combatant Commands.

c. Recommend to the Joint Chiefs of Staff the assignment and deployment of forces to the Combatant Commands established by the President through the Secretary of Defense.

d. Monitor and assess Military Service operational readiness and capabilities of forces for assignment to the Combatant Commands and plan for the use of the intrinsic capabilities of the other Military Services, USSOCOM, and USCYBERCOM that may be made available.

e. Develop doctrine, tactics, techniques, and procedures for employment by Military Service forces and:

(1) Assist the Chairman of the Joint Chiefs of Staff in the development of joint doctrine.

(2) Coordinate with the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the other Military Services, USG departments and agencies, partner security forces, and non-governmental organizations, in the development of the doctrine, tactics, techniques, and procedures necessary for participation in and/or command of joint, interagency, and multinational operations.

(3) Coordinate with the Commanders, USSOCOM and USCYBERCOM, in the development of the doctrine, tactics, techniques, and procedures employed by Military Service forces when related to special operations and cyber operations, respectively.

f. Provide for training for joint operations and joint exercises in support of Combatant Command operational requirements, including the development of Military Service joint training requirements, policies, procedures, and publications.

g. Provide logistical support for Military Service and all forces assigned to joint commands, including procurement, distribution, supply, equipment, and maintenance, unless otherwise directed by the Secretary of Defense.

h. Organize, train, and equip forces to contribute unique service capabilities to the joint force commander to conduct the following functions across all domains, including land, maritime, air, space, and cyberspace:

(1) Intelligence, surveillance, reconnaissance, and information operations, to include electronic warfare and MISO in order to provide situational awareness and enable decision superiority across the range of military operations.

(2) Offensive and defensive cyberspace operations to achieve cyberspace superiority in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(3) Special and cyber operations in coordination with USSOCOM, USCYBERCOM, and other Combatant Commands, the Military Services, and other DoD Components.

(4) Personnel recovery operations in coordination with USSOCOM and other Combatant Commands, the Military Services, and other DoD Components.

(5) Counter weapons of mass destruction.

(6) Building partnership capacity/security force assistance operations.

- (7) Forcible entry operations.
- (8) Missile Defense.

(9) Other functions as assigned, such as Presidential support and antiterrorism.

i. Organize, train, and equip forces to conduct support to civil authorities in the United States and abroad, to include support for disaster relief, consequence management, mass migration, disease eradication, law enforcement, counter-narcotics, critical infrastructure protection, and response to terrorist attack, in coordination with the other Military Services, Combatant Commands, National Guard, and USG departments and agencies.

j. Operate organic land vehicles, aircraft, cyber assets, spacecraft or space systems, and ships or craft.

k. Conduct operational testing and evaluation.

1, Provide command and control.

m. Provide force protection.

n. Consult and coordinate with the other Military Services on all matters of joint concern.

3. <u>INDIVIDUAL MILITARY DEPARTMENT FUNCTIONS</u>. The forces developed and trained to perform the primary functions set forth in sections 4 through 6 of this enclosure shall be employed to support and supplement the other Military Service, USSOCOM, and USCYBERCOM forces in carrying out their primary functions, wherever and whenever such participation shall result in increased effectiveness and shall contribute to the accomplishment of overall military objectives.

## 4. FUNCTIONS OF THE DEPARTMENT OF THE ARMY

a. The Department of the Army includes land combat, and service forces, and such aviation, water transport, and space and cyberspace forces as may be organic therein, and shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land, and to support the other Military Services and joint forces. The Army is responsible for the preparation of land forces necessary for the effective prosecution of war and military operations short of war, except as otherwise assigned. The Army is the Nation's principal land force and promotes national values and interests by conducting military engagement and security cooperation; deterring aggression and violence; and should deterrence fail, compelling enemy behavioral change or compliance. The Army shall contribute forces through a rotational, cyclical readiness model that provides a predictable and sustainable supply of modular forces to the Combatant Commands, and a surge capacity for unexpected contingencies.

b. <u>The Functions of the Army</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, the Army, within the Department of the Army, shall develop concepts, doctrine, tactics, techniques, and procedures, and organize, train, equip,

## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 182 of 325 PAGEID #: 4847 Case 4:21-cv-01236-O Document 87 Filed 01/24/22 Page 28 of 46 PageID 2737 DoDD 5100.01, December 21, 2010

and provide forces with expeditionary and campaign qualities to perform the following specific functions:

(1) Conduct prompt and sustained combined arms combat operations on land in all environments and types of terrain, including complex urban environments, in order to defeat enemy ground forces, and seize, occupy, and defend land areas.

(2) Conduct air and missile defense to support joint campaigns and assist in achieving air superiority.

(3) Conduct airborne and air assault, and amphibious operations. The Army has primary responsibility for the development of airborne doctrine, tactics, techniques, and equipment.

(4) Conduct CAO.

(5) Conduct riverine operations.

(6) Occupy territories abroad and provide for the initial establishment of a military government pending transfer of this responsibility to other authority.

(7) Interdict enemy sea, space, air power, and communications through operations on or from the land.

(8) Provide logistics to joint operations and campaigns, including joint over-the-shore and intra-theater transport of time-sensitive, mission-critical personnel and materiel.

(9) Provide support for space operations to enhance joint campaigns, in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(10) Conduct authorized civil works programs, to include projects for improvement of navigation, flood control, beach erosion control, and other water resource developments in the United States, its territories, and its possessions, and conduct other civil activities prescribed by law.

(11) Provide intra-theater aeromedical evacuation.

(12) Conduct reconnaissance, surveillance, and target acquisition.

(13) Operate land lines of communication.

## 5. FUNCTIONS OF THE DEPARTMENT OF THE NAVY

a. The Department of the Navy is composed of naval, land, air, space, and cyberspace forces, both combat and support, not otherwise assigned, to include those organic forces and capabilities necessary to operate, and support the Navy and Marine Corps, the other Military Services, and joint forces. The Navy and Marine Corps comprise the Nation's principal maritime force. They

## Case: 1:22-cv-00084-30-WM Docu#: 85-3-7Filen: 08/1/8/422 Page: 183-96-345 Paget D2#:38848 DoDD 5100.01, December 21, 2010

employ the global reach, persistent presence through forward-stationed and rotationally-based forces, and operational flexibility to secure the Nation from direct attack; secure strategic access and retain global freedom of action; strengthen existing and emerging alliances and partnerships; establish favorable security conditions; deter aggression and violence by state, non-state, and individual actors and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests.

b. <u>The Functions of the Navy</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, the Navy, within the Department of the Navy, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions:

(1) Conduct offensive and defensive operations associated with the maritime domain including achieving and maintaining sea control, to include subsurface, surface, land, air, space, and cyberspace.

(2) Provide power projection through sea-based global strike, to include nuclear and conventional capabilities; interdiction and interception capabilities; maritime and/or littoral fires, to include naval surface fires; and close air support for ground forces.

(3) Conduct ballistic missile defense.

(4) Conduct ocean, hydro, and river survey and reconstruction.

(5) Conduct riverine operations.

(6) Establish, maintain, and defend sea bases in support of naval, amphibious, land, air, or other joint operations as directed.

(7) Provide naval expeditionary logistics to enhance the deployment, sustainment, and redeployment of naval forces and other forces operating within the maritime domain, to include joint sea bases, and provide sea transport for the Armed Forces other than that which is organic to the individual Military Services, USSOCOM, and USCYBERCOM.

(8) Provide support for joint space operations to enhance naval operations, in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(9) Conduct nuclear operations in support of strategic deterrence, to include providing and maintaining nuclear surety and capabilities.

c. <u>The Functions of the Marine Corps</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, and pursuant to section 8063 of Reference (e), the Marine Corps, within the Department of the Navy, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces, normally

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 18409fr325 Bage Doc #: 85-1 Filed: 08/18/22 Page: 18409fr325 Bage Do Do Do 5100.01, December 21, 2010

employed as combined arms air ground task forces, to serve as an expeditionary force-inreadiness, and perform the following specific functions:

(1) Seize and defend advanced naval bases or lodgments to facilitate subsequent joint operations.

(2) Provide close air support for ground forces.

(3) Conduct land air operations essential to the prosecution of a naval campaign or as directed.

(4) Conduct complex expeditionary operations in the urban littorals and other challenging environments.

(5) Conduct amphibious operations, including engagement, crisis response, and power projection operations to assure access. The Marine Corps has primary responsibility for the development of amphibious doctrine, tactics, techniques, and equipment.

(6) Conduct security and stability operations and assist with the initial establishment of a military government pending transfer of this responsibility to other authority.

(7) Provide security detachments and units for service on armed vessels of the Navy, provide protection of naval property at naval stations and bases, provide security at designated U.S. embassies and consulates, and perform other such duties as the President or the Secretary of Defense may direct. These additional duties may not detract from or interfere with the operations for which the Marine Corps is primarily organized.

d. The Functions of the Coast Guard. The Coast Guard is a unique Military Service residing within the Department of Homeland Security while simultaneously providing direct support to the Department of Defense under its inherent authorities under References (e) and (h). In addressing the Coast Guard when it is not operating in the [Department of the] Navy, this issuance is descriptive in nature and does not purport to be either directive or regulatory. As directed by the President, and in accordance with Memorandum of Agreement between the Department of Defense and Department of Homeland Security on the use of Coast Guard Capabilities and Resources in Support of the National Military Strategy (Reference (ab)), the Department of the Navy shall coordinate with the Department of Homeland Security regarding Coast Guard military functions in time of limited war or defense contingency, without transfer of Coast Guard authority to the Secretary of the Navy. As directed, the Department of the Navy will provide intelligence, logistical support, and specialized units to the Coast Guard, including designated ships and aircraft, for overseas deployment required by naval component commanders, maritime search and rescue, integrated port security, and coastal defense of the United States. The Coast Guard shall maintain a state of readiness to function as a specialized Military Service in the Department of the Navy in time of war or national emergency. If specified in a declaration of war by Congress or if directed by the President, the Coast Guard shall operate as a Military Service in the Department of the Navy, and shall continue to do so

## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 185 of 325 PAGEID #: 4850 Case 4:21-cv-01236-O Document 87 Filed 01/24/22 Page 31 of 46 PageID 2740 DoDD 5100.01, December 21, 2010

until the President transfers the Coast Guard back to the Department of Homeland Security by Executive order pursuant to section 3 of Reference (h).

(1) The Coast Guard shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions when providing direct or cooperative support to the Department of Defense:

(a) Conduct coastal sea control and maritime and air interception and interdiction operations.

(b) Conduct maritime homeland security and counterterrorism operations.

(c) Provide for port operations, security, and defense.

(d) Provide maritime operational threat response.

(e) Conduct counter-illicit trafficking operations.

(f) Conduct military environmental response operations.

(g) Conduct theater security cooperation operations.

(h) Conduct search and rescue operations.

(i) Conduct ice operations.

(j) Provide for marine safety, including aids to navigation.

(2) The Coast Guard will coordinate with the Department of Defense, including the Department, of the Navy to provide specialized Coast Guard units, or obtain Navy units, including designated ships and aircraft, for deployment as requested by Military Service component or joint commanders.

6. FUNCTIONS OF THE DEPARTMENT OF THE AIR FORCE

a. The Department of the Air Force is composed of air, space, and cyberspace forces, both combat and support, not otherwise assigned. The Air Force and Space Force are the Nation's principal air and space forces, and are responsible for the preparation of forces necessary for the effective prosecution of war. The Department of the Air Force shall organize, train, equip, and provide air, space, and cyberspace forces for the conduct of prompt and sustained combat operations, military engagement, and security cooperation in defense of the Nation, and to support the other Military Services and joint forces. The Air Force and Space Force will provide the Nation with global vigilance, global reach, and global power in the form of in-place, forward-based, and expeditionary forces possessing the capacity to deter aggression and violence by state, non-state, and individual actors to prevent conflict, and, should deterrence fail, prosecute the full range of military operations in support of U.S. national interests.

Change 1, 09/17/2020

## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 186 of 325 PAGEID #: 4851 Case 4:21-cv-01236-O Document 87 Filed 01/24/22 Page 32 of 46 PageID 2741 DoDD 5100.01, December 21, 2010

b. <u>The Functions of the Air Force</u>. In addition to the common military service functions listed in paragraphs 2.a. through 2.n. of this enclosure, the Air Force, within the Department of the Air Force, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions:

(1) Conduct nuclear operations in support of strategic deterrence, to include providing and maintaining nuclear surety and capabilities.

(2) Conduct offensive and defensive operations, to include appropriate air and missile defense, to gain and maintain air superiority, and air supremacy as required, to enable, the conduct of operations by U.S. and allied land, sea, air, space, and special operations forces.

(3) Conduct global precision attack, to include strategic attack, interdiction, close air support, and prompt global strike.

(4) Provide timely, global integrated intelligence, surveillance, and reconnaissance capability and capacity from forward deployed locations and globally distributed centers to support world-wide operations.

(5) Provide rapid global mobility to employ and sustain organic air and space forces and other Military Service and USSOCOM forces, as directed, to include airlift forces for airborne operations, air logistical support, tanker forces for in-flight refueling, and assets for aeromedical evacuation.

(6) Provide agile combat support to enhance the air and space campaign and the deployment, employment, sustainment, and redeployment of air and space forces and other forces operating within the air and space domains, to include joint air and space bases, and for the Armed Forces other than which is organic to the individual Military Services and USSOCOM in coordination with the other Military Services, Combatant Commands, and USG departments and agencies.

(7) Conduct global personnel recovery operations including theater-wide combat and civil search and rescue, in coordination with the other Military Services, USJFCOM, USSOCOM, and DoD Components.

(8) Conduct global integrated command and control for air and space operations.

c. <u>The Functions of the Space Force</u>. In addition to the common military service functions listed in Paragraphs 2.a. through 2.n. of this enclosure, the Space Force, within the Department of the Air Force, shall develop concepts, doctrine, tactics, techniques, and procedures and organize, train, equip, and provide forces to perform the following specific functions:

(1) Provide freedom of operation for the United States in, from, and to space.

(2) Provide prompt and sustained space operations.

Change 1, 09/17/2020

- (3) Protect the interests of the United States in space.
- (4) Deter aggression in, from, and to space.
- (5) Conduct space operations.

7. <u>DEPARTMENT OF THE ARMY AND DEPARTMENT OF THE AIR FORCE: THE NGB</u>. The NGB is a joint activity of the Department of Defense. The NGB performs certain Military Service-specific functions and unique functions on matters involving non-federalized National Guard forces as set forth in Reference (i).

## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 188 of 325 PAGEID #: 4853

 From:
 Lescher, William K ADM USN VCNO (USA) [william.k.lescher.mil@us.navy.mil]

 To:
 Crandall, Darse Earle (Del) RADM USN NAVY JAG WASH DC (USA) [darse.e.crandall.mil@us.navy.mil]

Subject: Mtg w/OJAG Location: 4E642

 Start:
 1/12/2022 4:00:00 PM

 End:
 1/12/2022 4:30:00 PM

 Show Time As:
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Recurrence: (none)

SUBJECT: Document review

POC: LT Chun 614-7420



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## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 189 of 325 PAGEID #: 4854

 From:
 Lescher, William K ADM USN VCNO (USA) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26bd1b980b6f44abba84009925f929e2-william.k.l]

 Sent:
 6/16/2022 2:13:52 PM

 To:
 Lescher, William K ADM USN VCNO (USA) [william.k.lescher.mil@us.navy.mil]; Crandall, Darse Earle (Del) VADM USN NAVY JAG WASH DC (USA) [darse.e.crandall.mil@us.navy.mil]

Subject: Mtg w/OJAG Location: 4E642

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Gillingham, Bruce L RADM USN SURGEON GENERAL (USA) [bruce.l.gillingham.mil@mail.mil] 1/14/2022 8:50:41 AM

Del Toro, Carlos HON (USA) [carlos.deltoro.civ@us.navy.mil]; Gilday, Michael M ADM USN CNO (USA) [michael.m.gilday.mil@us.navy.mil]; Berger, David H Gen USMC CMC (USA) [david.h.berger@usmc.mil]; Berger, Meredith A HON (USA) [meredith.a.berger.civ@us.navy.mil]; Smith, Eric M Gen USMC ACMC (USA) [eric.m.smith@usmc.mil]; Lescher, William K ADM USN VCNO (USA) [william.k.lescher.mil@us.navy.mil]; Simon, Martin S (Marty) SES USN UNSECNAV DC (USA) [martin.s.simon.civ@us.navy.mil]; Hogue, Robert D SES USN SECNAV WASHINGTON DC (USA) [robert.d.hogue.civ@us.navy.mil]; Schwarz, ChristopherJ CAPT USN NAVLEADETHCTR NPT RI (USA) [christopher.j.schwarz2.mil@mail.mil];Sardiello, Carlos ARDML USN USFFC (USA) [carlos.a.sardiello.mil@us.navy.mil]; meredith.berger@navy.mil; christopher.w.grady.mil@us.navy.mil; Aquilino, John C ADM USN INDOPACOM (USA) [john.c.aquilino.mil@us.navy.mil]; Paparo, Samuel J Jr ADM USN COMPACFLT N0 (USA) [samuel.j.paparo.mil@us.navy.mil]; Ortiz, Melinda Elisa (Ortiz Melinda EHMC) CPO USN BUMED FCH VA (USA) [melinda.e.ortiz.mil@mail.mil]; liams, Kevin MLtGen\_USMC TECOM (USA) [kevin.jiams@usmc.mil]; robert.hedelund@usmc.mil; Nowell, John B Jr VADM USN DCNO N1 (USA) [john.b.nowell.mil@us.navy.mil]; Haeuptle, Andrew S SES USN DNS (USA) [andrew.s.haeuptle.civ@us.navy.mil]; Malloy, James Joseph VADM USN CENTCOM CCCG (USA) [james.j.malloy8.mil@mail.mil]; Merz, William Rhode (Bill) VADM USN CNO (USA) [william.r.merz.mil@mail.mil]; Aiken, James A (Jim) RADM USN USNAVSO-FOURTHFLT (USA) [james.a.aiken2.mil@us.navy.mil]; timothy.j.white@navy.mil; Williamson, Ricky Lee VADM USN DCNO N4 (USA) [ricky.l.williamson4.mil@us.navy.mil]; Tela, Stephen D CIV USN BUMED FCH VA (USA) [stephen.d.tela.civ@mail.mil]; michael.b.mcginnis; Brown, Kevin J CAPT USN USFFC (USA) [Kevin J.Brown@mail.mil]; Weiner, Matthew A CAPT USN BUMED FCH VA (USA) [matthew.a.weiner.mil@mail.mil]; Hall, Matthew T LCDR USN NAVHOSP JAX FL (USA) [matthew.t.hall24.mil@mail.mil]; Holcomb, Matthew J (Matt) CAPT USN ASSTSECNAV MRA DC (USA) [matthew.j.holcomb2.mil@us.navy.mil]; Case, Matthew CAPT USN BUMED FCH VA (USA) [matthew.case.mil@mail.mil]; Lindsey, Yancy B VADM USN CNIC WASHINGTON DC (USA) [yancy.b.lindsey.mil@us.navy.mil]; Place, Ronald JLTG USARMY DHA DIR OFC (USA); Barnes, Christopher E CDR USN OSD OUSD P-R (USA) [christopher.e.barnes3.mil@mail.mil]; Smith, David J SES OSD OUSD P-R (USA) [david.j.smith152.civ@mail.mil]; robert.p.burke@eu.navy.mil; Mueller, Troy J SES USN NNPP (USA) [troy.j.mueller.civ@us.navy.mil]; Rudder, Steven R LtGen USMC MARFORPAC (USA) [steven.r.rudder.mil@us.navy.mil]; Biehn, Jeremy O CDR USN BUMED FCH VA (USA) [jeremy.o.biehn.mil@mail.mil]; Thomas, Karl O VADM USN CNO (USA) [karl.o.thomas.mil@us.navy.mil]; Truesdale, Lisa M SES USN ASSTSECNAV MRA DC (USA) [lisa.m.truesdale.civ@us.navy.mil]; Roberts, Michael J MCPO USN BUMED FCH VA (USA) [michael.j.roberts5.mil@mail.mil]; Freedman, Rick RDML USN DCNO N4 (USA) [rick.freedman.mil@us.navy.mil]; james.hancock@usmc.mil; Via, Darin K RDML USN NAVMED\_EAST\_PORS VA (USA) [darin.k.via.mil@mail.mil]; Kuehner, Cynthia Ann RDML USN NAVMEDEDTRNCMDSATTX (USA); Kurtz, Christopher A CAPT USN BUMED FCH VA (USA) [christopher.a.kurtz.mil@mail.mil]; Malanoski, Michael PSES USN (USA) [michael.p.malanoski.civ@mail.mil]; Miller, Pamela C RDML USN INDOPACOM PCJ0 (USA) [pamela.c.miller4.mil@us.navy.mil]; Riggs, Mary C RADM USN DHA J-9 (USA); Sze, Donald Y RDML USN BUMED FCH VA (USA) [donald.y.sze.mil@mail.mil]; Roberts, Michael J MCPO USN BUMED FCH VA (USA) [michael.j.roberts5.mil@mail.mil]; ROSS, THOMAS W (Tommy) JR SES USN SECNAV WASHINGTON DC (USA) [thomas.w.ross41.civ@us.navy.mil]; Felder, Adrain D LCDR USN BUMED FCH VA (USA) [adrain.d.felder.mil@mail.mil]; Bealer, Joel R CDR USN BUMED FCH VA (USA) [joel.r.bealer.mil@mail.mil]; DellaVedova, Joseph P CIV USN BUMED FCH VA (USA) [joseph.p.dellavedova.civ@mail.mil]; Manning, Debra A CAPT

DellaVedova, Joseph P CIV USN BUMED FCH VA (USA) [joseph.p.dellavedova.civ@mail.mil]; Manning, Debra A CAPT USN BUMED FCH VA (USA) [debra.a.manning.mil@mail.mil]; karl.thomas@fe.navy.mil; frederick.kacher2@navy.mil; Shaffer, Gayle D RADM USN BUMED FCH VA (USA) [gayle.d.shaffer2.mil@mail.mil]; Morlock, Marcy M CAPT USN BUMED FCH VA (USA) [marcy.m.morlock.mil@mail.mil]; secnav78 [secnav78.fct@us.navy.mil]; Gillingham, Bruce L RADM USN SURGEON GENERAL (USA) [bruce.l.gillingham.mil@mail.mil]

Subject: Attachments:

Naval Medical Intelligence Report - 14 January 2022

ents: COVID19 State Surveillance Medical Intel\_06JAN2022.pdf; Naval\_Med\_Intel\_Report\_14 JAN 2022.pdf; COVID19 Country Surveillance Medical Intel\_06JAN2022.pdf; smime.p7s

Mr. Secretary, CNO, CMC, ACMC, VCNO,

Attached is this week's edition of BUMED's Naval Medical Intelligence Report produced by our Scientific Panel. Below is a quick look at some of the key topics for the week:

UPDATE: Post-Immunization COVID-19 Infections



## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 191 of 325 PAGEID #: 4856

**BLUF & IMPACT:** For the weeks of 21 DEC – 11 JAN, the occurrence of COVID-19 among immunized active-duty Sailors and Marines remains very low. There have been 152 severe cases in unvaccinated Sailors and Marines, while only 22 severe cases in partially vaccinated Sailors and Marines, and 6 severe (hospitalized) cases in fully vaccinated Sailors and Marines for the time period 17 December 2020 – 28 December 2021 (One fully vaccinated case previously classified as hospitalized has been reclassified as not hospitalized after further review). Vaccines have an overall effectiveness of 64%. Of note, last week 96% of Navy cases and 91% of USMC cases occurred in fully immunized individuals.

## Active Component Influenza Vaccinations

For week 1: Navy Active Component (87.9%) and Marine Corps Active Component (86.4%). Unvaccinated individuals may obtain their influenza vaccination at the same time they receive a COVID-19 primary or booster dose.

## UPDATE: CDC COVID-19 Isolation and Quarantine Recommendations in Consideration of Omicron

People with COVID-19 should isolate for 5 days and if they are asymptomatic or their symptoms are resolving (without fever for 24 hours), and follow that by 5 days of wearing a mask when around others to minimize the risk of infecting people they encounter. The change is motivated by science demonstrating that the majority of SARS -CoV-2 transmission occurs early in the course of illness, generally in the 1-2 days prior to onset of symptoms and the 2-3 days after. For people who are unvaccinated or are more than six months out from their second mRNA dose (or more than 2 months after the J&J vaccine) and not yet boosted, CDC now recommends quarantine for 5 days followed by strict mask use for an additional 5 days. Alternatively, if a 5-day quarantine is not feasible, it is imperative that an exposed person weara well-fitting mask at all times when around others for 10 days after exposure. Individuals who have received their booster shot do not need to quarantine following an exposure, but should wear a mask for 10 days after the exposure. Quarantined individuals MAY become SARS-CoV-2 positive, creating a use case for testing, while isolated individuals ARE SARS-CoV-2 positive and are able to exit isolation without testing based on our understanding of the risk of transmissibility.

## Scientific Highlights of Operational Importance

- New research suggests the Omicron variant is five times likelier to cause reinfections. Larger amounts of data are emerging as the Omicron variant cases continue to spike in the U.S. Early data appears to demonstrate that Omicron is less severe in illness progression, but the reasons for this are not yet known.

- A third dose of the Pfizer vaccine greatly decreased the likelihood of testing positive for SARS-CoV-2, and the CDC recommends booster shots for all adults.

- One of the main circulating influenza viruses has changed, and the current flu vaccines do not match it well, however the vaccine is required of all active duty service members and is still expected to mitigate severe illness.

Also attached is this week's U.S. State Medical Surveillance Report (06 Jan 22), produced by our Preventive Medicine and Health Analysis Teams. COVID-19 incidence is increasing significantly in the majority of the country, and the Omicron variant is now present in every state. Due to local transmission rates, every state and county of interest is now classified as high-risk. The sudden increase in COVID-19 incidence is consistent with reports of the high transmissibility of the Omicron variant. However, despite the increasing COVID -19 incidence, the daily death count has decreased, further evidence that the Omicron variant causes less severe illness. Continued adherence to existing public health measures and maximizing vaccinations rates is imperative to initiate a downward trajectory in the incidence of disease and transition to lower risk classifications throughout the country.

SUMMARY: COVID-19 incidence is rising (278%) nationwide, and the risk level remains high throughout the country. In contrast to the rising case incidence, the death rate in the United States fell from 0.40 to 0.37 per hundred thousand people. 46 states and the District of Columbia, 22 new (AK, AZ, CA, CO, ID, IN, KS, KY, MD, MI, MN, MT, NE, NH, NM, OK, OR, PA, UT, VT, WI, and WY), rose in case incidence this week while 2 states, 1 new (ME), experienced a decline in case incidence. All states and counties are now classified as high-risk of transmission, and the Omicron variant is present in every state. This week, nearly all states and counties of interest experienced substantial surges in case incidence. The Omicron variant is now present nationwide. This report does not include North Dakota and Rhode Island due to data reporting irregularities.

Health Protection Conditions (HPCONs): ALPHA: 0; BRAVO: 47 (-3); BRAVO+: 22 (-5); CHARLIE: 12 (+8).

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 192 of 325 PAGEID #: 4857

V/r, Bruce

Bruce L. Gillingham, MD, CPE, FAOA RADM, MC, USN Surgeon General, U.S. Navy Chief, Bureau of Medicine and Surgery Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 193 of 325 PAGEID #: 4858 NAVAL MIEDICAL INTELLIGENCE REPORT



MEDICAL KNOWLEDGE FOR OPERATIONAL ADVANTAGE

# 14 January 2022

Previous weekly reports available here: Navy Medicine Science & Technology Panel Archive Currently recommended clinical practice guidelines (CPG) and COVID-19 readiness guidance (CRG) can be found here: Navy Medicine Updated Guidance

# **Executive Summary**

## **UPDATE:** Post-Immunization COVID-19 Infections

BLUF & IMPACT: For the weeks of 21 DEC - 11 JAN, the occurrence of COVID-19 among immunized active-duty Sailors and Marines remains very low. There have been 152 severe cases in unvaccinated Sailors and Marines, while only 22 severe cases in partially vaccinated Sailors and Marines, and 6 severe (hospitalized) cases in fully vaccinated Sailors and Marines for the time period 17 December 2020 - 28 December 2021 (One fully vaccinated case previously classified as hospitalized has been reclassified as not hospitalized after further review). Vaccines have an overall effectiveness of 64%. Of note, last week 96% of Navy cases and 91% of USMC cases occurred in fully immunized individuals.

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#### Scientific Highlights of Operational Importance

- New research suggests the Omicron variant is five times likelier to cause reinfections. Larger amounts of data are emerging as the Omicron variant cases continue to spike in the U.S. Early data appears to demonstrate that Omicron is less severe in illness progression, but the reasons for this are not yet known.
- A third dose of the Pfizer vaccine greatly decreased the likelihood of testing positive for SARS-CoV-2, and the CDC recommends booster shots for all adults.
- One of the main circulating influenza viruses has changed, and the current flu vaccines do not match it well. however the vaccine is required of all active duty service members and is still expected to mitigate severe illness.



Prepared by the Navy Medicine Scientific Panel Editor-in-Chief: LCDR Joshua Swift, joshua.m.swift.mil@mail.mil UNCLASSIFIED // FOR OFFICIAL USE ONLY

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 194 of 325 PAGEID #: 4859

# **Table of Contents**

(Click topic titles to navigate to the full summary and article links)

**Actionable Operational Topics** 

**UPDATE:** Post-Immunization COVID-19 Infections

**UPDATE:** Influenza Vaccination

UPDATE: CDC COVID-19 Isolation and Quarantine Recommendations

**Public Health** 

**UPDATE: How Severe Are Omicron Infections?** 

UPDATE: Pfizer Booster Vaccination Effectiveness

Safety and Immunogenicity of COVID-19 and Influenza Vaccines Given Simultaneously

**COVID-19 Vaccines and Omicron** 

**Emerging Threats** 

No updated situation to report

Virology, Genomics, & Immunology

Novavax COVID-19 Vaccine Found To Be Safe and Effective

Flu Vaccines Do Not Match the Main Circulating Flu Virus Strain

Neutralization of Omicron Variant by Sera From Vaccinated Persons

Severity of SARS-CoV-2 Reinfections As Compared With Primary Infections

A Vaccine Against RSV, a Childhood Killer

COVID-19 Can Trigger Self-Attacking Antibodies, Even in Mild or Asymptomatic Cases

Real-World Data Confirms Pfizer Vaccine Is Safe for Kids Ages 5-11

**Clinical Practices** 

Concerning Antimicrobial Resistance Trends in E Coli Urinary Tract Infections in Females

**Mental Health** 

One-Year Mental Health Outcomes in a Cohort of COVID-19 Survivors and Secondary traumatic stress, anxiety, and depression among emergency healthcare workers in the middle of the COVID-19 outbreak

A New Suicide Hotline, 988, Will Launch in July 2022 and Offer Expanded Services

Perceptions of Firearm-Related Harm among US Adults Living in Firearm-Owning Households: A Nationally Representative Study

Understanding the Clinical Characteristics of Lesbian, Gay, and Bisexual Military Service Members and Adult Beneficiaries within an Inpatient Psychiatric Sample

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Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 195 of 325 PAGEID #: 4860

Diagnostics

1.4

No updated situation to report

Therapies

FDA Authorizes Additional Oral Medication To Treat Mild/Moderate COVID-19

<u>NIH Updates Outpatient Treatment Guidelines for Mild/Moderate COVID-19 + Patients at Risk for Progression to</u> Severe Disease

Innovations

No updated situation to report

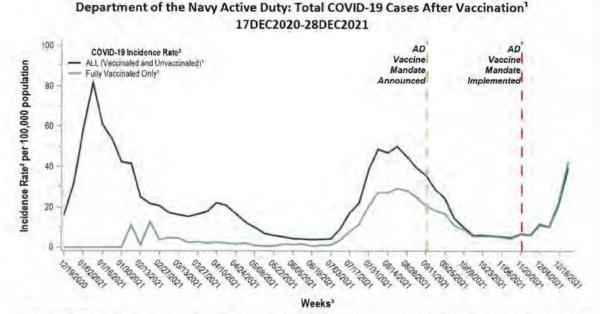
## **Full Summary**

## 1. Actionable Operational Topics

#### Short Term:

UPDATE: Post-Immunization COVID-19 Infections

**BLUF & IMPACT:** For the week of 21 – 28 December, the occurrence of COVID-19 among immunized active-duty Sailors and Marines remains very low. There have been 152 severe cases in unvaccinated Sailors and Marines, while only 22 severe cases in partially vaccinated Sailors and Marines, and 6 severe (hospitalized) cases in fully vaccinated Sailors and Marines for the time period 17 December 2020 – 28 December 2021 (One fully vaccinated case previously classified as hospitalized has been reclassified as not hospitalized after further review). Vaccines have an overall effectiveness of 64%. Of note, last week 96% of Navy cases and 91% of USMC cases occurred in fully immunized individuals. \*Note: Data is from 28 DEC 2021 as the analysis is undergoing updates to account for Omicron and the booster vaccines.



<sup>1</sup> Two vaccine doses were considered complete for the Pfizer-BioNTech and Moderna COVID-19 vaccines, and one vaccine dose was considered complete for the J&J/Janssen COVID-19 vaccine. Individuals were considered fully vaccinated 14 days after receipt of the final dose. COVID-19 vaccines with an error in the Medical Readiness Reporting System were removed from this analysis.

\* Incidence rate was calculated by dividing the case counts in the total group and the vaccinated groups by the person days of all active duty service members in the vaccination category by week multiplied by 100,000. For example, weekly incidence rate in the vaccinated =(weekly vaccinated cases) / (weekly person days in vaccinated) x 100,000.

<sup>3</sup> Numbered weeks aligns with the Center for Disease Control and Prevention (CDC) reporting intervals in the Morbidity and Mortality Weekly Report (MMWR).

Data Source: Medical Readiness Reporting System, Armed Forces Health Surveillance Division COVID-19 Master Positive List. Prepared by the EpiData Center Department, Navy and Marine Corps Public Health Center, 29DEC2021.

Incidence Rate Trend: It is expected that as a greater percentage of the population is immunized, a higher percentage of cases will include breakthrough cases in immunized individuals. This is due mainly to a decreasing pool of susceptible non-immunized individuals and evolving variants.

Prepared by the Navy Medicine Scientific Panel Editor-in-Chief: LCDR Joshua Swift, joshua.m.swift.mil@mail.mil UNCLASSIFIED // FOR OFFICIAL USE ONLY

#### Department of the Navy Active Duty: COVID-19 Vaccine Effectiveness' by Time Period and Vaccine Manufacturer 17DEC2020-28DEC2021 and 15JUN2021-28DEC2021

Time Period	Vaccination Status <sup>2</sup>	COVID-19 Vaccine Effectiveness <sup>1</sup> : Pfizer-Bio/Tech	COVID-18 Vaccine Effectiveness': Moderna	COVID-19 Vaccine Effectivenass*: J&J Janssen	Overall COVID-19 Vaccine Effectiveness'
Overall (17DEC2020 -28DEC2021)	Fully immunized: >=14 days after final dose	71%	88%	58%	64%
Delta (15JUN2021 -28DEC2021)	Fully immunized: >=14 days after final dose	61%	80%	60%	59%

\* COVID-19 vaccine effectiveness calculations by manufacturer were adjusted to reflect when the vaccinations were available. For Pfizer-BioNTech and Moderna the analysis date was 17DEC2021, and for J&JUanssen the analysis date was 01MAR2021. Vaccine effectiveness was calculated using the following formula: (Unvaccinated Incidence Rate - Vaccinated Incidence Rate)/(Unvaccinated Incidence Rate) x 100.

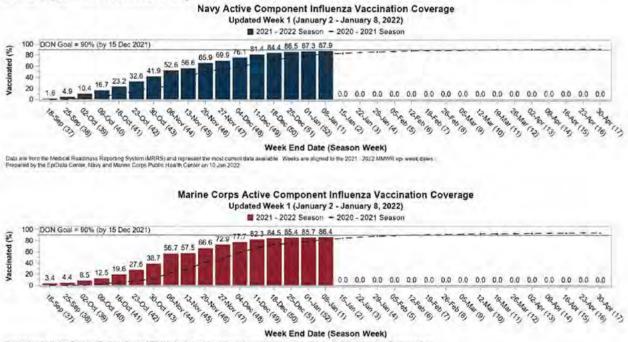
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Data Source: Medical Readiness Reporting System, Armed Forces Health Surveillance Division COVID-19 Master Positive List.

Prepared by the EpiData Center Department, Navy and Marine Corps Public Health Center, 29DEC2021.

#### **UPDATE:** Influenza Vaccination

**BLUF:** As of 8 January, 87.9% of Sailors and 86.4% of Marines have been vaccinated against influenza. The Department of the Navy goal was 90% vaccinated by 15 December 2021.



Data are from the Medicial Readmank Reporting System (MRRS) and represent the most current data available. Weeks are aligned to the 2021. 2022 MMWR epi week dates Prepared by the EpiData Center, Navy and Manne Corps Public Health Center on 10 Jan 2022.

#### UPDATE: CDC COVID-19 Isolation and Quarantine Recommendations (Link)

**BLUF:** Given what we currently know about COVID-19 and the Omicron variant, CDC is shortening the recommended time for isolation for the public. People with COVID-19 should isolate for 5 days and if they are asymptomatic or their symptoms are resolving (without fever for 24 hours), follow that by 5 days of wearing a mask when around others to minimize the risk of infecting people they encounter. The change is motivated by science demonstrating that the majority of SARS-CoV-2 transmission occurs early in the course of illness, generally in the 1-2 days prior to onset of symptoms and the

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2-3 days after. For people who are unvaccinated or are more than six months out from their second mRNA dose (or more than 2 months after the J&J vaccine) and not yet boosted, CDC now recommends quarantine for 5 days followed by strict mask use for an additional 5 days. Alternatively, if a 5-day quarantine is not feasible, it is imperative that an exposed person wear a well-fitting mask at all times when around others for 10 days after exposure. Individuals who have received their booster shot do not need to quarantine following an exposure, but should wear a mask for 10 days after the exposure.

Quarantined individuals MAY become SARS-CoV-2 positive, creating a use case for testing, while isolated individuals ARE SARS-CoV-2 positive and are able to exit isolation without testing based on our understanding of the risk of transmissibility.

#### 2. Public Health

#### Short Term:

#### UPDATE: How Severe Are Omicron Infections? (Link)

**BLUF:** Larger amounts of data are emerging as the Omicron variant cases continue to spike in the U.S. Early data appears to demonstrate that Omicron is less severe in illness progression, but the reasons for this are not yet known. It is difficult to determine whether lower severity is a function of the virus, or whether vaccination and recovery from natural infection may play a role. Significantly more information on Omicron, immunity, and breakthrough infections will be forthcoming as increased data is compiled.

#### Summary:

- Limited data on hospitalizations of Omicron variant cases exist world-wide, sometimes giving opposing data as to the severity of the variant. Overall, the numbers are too small to draw any firm conclusions about the severity of disease caused by Omicron. However, the rapidly spreading variant could dangerously strain health-care systems, even if the risk of sever disease or death is relatively low for any individual.
- Initial laboratory studies suggest that Omicron may evade some COVID vaccine-induced immunity. Early data
  from the UK Health Security Agency suggest that the vaccines are not as protective against Omicron infections as
  they have been against other variants, although the number of cases studied was too small be sure about how much
  protection has decreased.
- However, vaccines could continue to protect many recipients from severe disease and death from COVID-19, and
  additional boosters may offer enhanced immunity in the wake of variant outbreaks.

#### Impact: High.

#### UPDATE: Pfizer Booster Vaccination Effectiveness (Link; Link; Link)

**BLUF:** A third dose of the Pfizer vaccine greatly decreased the likelihood of testing positive for SARS-CoV-2, and the CDC recommends booster shots for all adults. Booster doses are recommended for persons in the age range of DoD personnel.

#### Summary:

- A November 30, 2021 Israeli study included 227,380 RT-PCR tests performed on those who had received 2 doses and 272,852 tests on those who had received 3 doses of Pfizer vaccine, with 14,989 (6.6%) and 4,941 (1.8%) positive test results in each group, respectively. Comparing those who received a booster and those who received 2 doses, there was an estimated 86% reduction in the odds of testing positive for SARS-CoV-2 28-65 days following receipt of the booster. Authors concluded further data from this population is needed to determine the duration of immunity following the booster (first link).
- On November 29, 2021, the CDC expanded its booster recommendations to include everyone ages 18 and older when they are 6 months after initial Pfizer or Moderna series or 2 months after initial J&J vaccine (second link).
- On Jan 5, 2022, the CDC further expanded its booster recommendations of the Pfizer-BioNTech COVID-19
  vaccine to include those 12 years of age and older and reduced the time from series completion to booster to 5
  months (third link).

Impact: Moderate

#### Safety and Immunogenicity of COVID-19 and Influenza Vaccines Given Simultaneously (Link)

**BLUF:** COVID-19 and influenza vaccines given at the same time appear to be safe and effective. Immunization against SARS-CoV-2 and seasonal influenza may be done simultaneously.

#### Summary:

A November 11, 2021 phase 4 U.K. trial included 679 participants in six cohorts that received either Astra-Zeneca
or Pfizer SARS-CoV-2 vaccine plus one of 3 influenza vaccines. Of the 679, 340 participants received influenza
vaccine and a second dose of COVID-19 vaccine at day 0 followed by placebo at day 21, and 339 participants
received placebo and a second dose of COVID-19 vaccine at day 0 followed by influenza vaccine at day 21. Most
systemic reactions to vaccination were mild or moderate. Rates of local and unsolicited systemic reactions were
similar between the randomly assigned groups. One serious adverse event, hospitalization with severe headache,
was considered related to the trial intervention. Authors concluded administration of COVID-19 vaccine plus an
age-appropriate influenza vaccine raises no safety concerns and preserves antibody responses to both vaccines.

#### Impact: Moderate.

#### COVID-19 Vaccines and Omicron (Link; Link)

**BLUF:** Omicron is the predominant variant source of COVID-19 infections. Preliminary data demonstrates reduced effectiveness of the Pfizer-BioNTech and Moderna vaccine against infection. However, booster doses appear to enhance protection against infection and progression to severe disease and are strongly recommended.

#### Summary:

- A January 7, 2022 publication reported that a two-shot course of mRNA vaccines or the one-shot J&J vaccine seem to be less effective against the Omicron variant, especially for infection. Data so far indicates that mRNA vaccines (Pfizer-BioNTech or Moderna) offer the most promising protection against both infection and hospitalization, in line with the CDC's recommendations. Current figures suggest that vaccines offer 30 to 40 percent protection against infection and around 70 percent protection against hospitalization without boosters. Newer data is confirming that a third dose increases antibody production and boosts effectiveness against infection to around 75 percent, and 88 percent for severe disease (first link).
- A December 31, 2021 UK Health Security Health Agency study on vaccine effectiveness against Omicron found the risk of hospitalization is lower for Omicron cases after 2 and 3 doses of vaccine, with an 81% reduction in the risk of hospitalization after 3 doses compared to unvaccinated Omicron cases. After 3 doses of vaccine, the risk of hospitalization for a symptomatic case identified with Omicron through community testing was estimated to be reduced by 68% when compared to similar individuals with Omicron who were not vaccinated. Combined with the protection against becoming a symptomatic case, this gives a vaccine effectiveness against hospitalization of 88% for Omicron after 3 doses of vaccine. Although waning is seen in the effectiveness against symptomatic disease, there is insufficient data to assess the duration of protection against hospitalization, which is expected to last longer (second link).

#### Impact: High.

#### 3. Emerging Threats

No updated situation to report.

#### 4. Virology, Genomics, & Immunology

#### Short Term:

Novavax COVID-19 Vaccine Found To Be Safe and Effective (Link; Link)

BLUF: An investigational COVID-19 vaccine made by Novavax was found to be 90 percent effective at preventing COVID-19 illness, according to results from a Phase 3 clinical trial. During the first few months of 2021 when the study

was conducted, the predominant circulating strain was Alpha. The assessment did not include Delta or Omicron. Novavax submission for FDA Emergency Use Authorization is expected in early CY22 with no projected timeline for FDA decision.

#### Summary:

- The results indicate this vaccine is highly efficacious and very safe with many attractive features. It is made from a
  small piece of protein, like many currently licensed vaccines in the U.S. and has convenient refrigerator storage
  requirements, so it will be an important addition to the COVID-19 vaccine portfolio in the U.S. and countries
  where supply is lacking.
- Most side effects were mild to moderate and transient. Fever was very rare. The most common side effects
  included pain and tenderness at the injection site, headache, muscle aches and fatigue that lasted a day on average.
  None of the recipients developed serious reactions such as heart inflammation (myocarditis) or blood clots.
- A phase 3, randomized, observer-blinded, placebo-controlled trial in the United States and Mexico during the first half of 2021 published December 15, 2021 included 29,582 participants who received at least 1 dose of NVX-CoV2373, an adjuvanted, recombinant spike protein nanoparticle vaccine (19,714 received vaccine and 9,868 received placebo; second link). Vaccine efficacy against any variant of concern or interest was 92.6% (95% CI, 83.6 to 96.7)."

#### Impact: High.

#### Flu Vaccines Do Not Match the Main Circulating Flu Virus Strain (Link: Link)

**BLUF:** One of the main circulating influenza viruses has changed and the current flu vaccines do not match it well, an indication they may not prevent infection but are still likely to prevent severe illness. According to the CDC, influenza kills anywhere between 12,000 and 52,000 people a year and puts as many as 700,000 people into the hospital. Flu vaccines are required of all active duty service members and are expected to mitigate severe illness.

#### Summary:

- The vaccine mismatch may help explain an outbreak of flu at the University of Michigan last month affecting more than 700 people. More than 26% of those who tested positive were vaccinated against flu, the same percentage as those who tested negative, indicating the vaccine was not effective in preventing infection. The changes in the H3N2 virus this year are reminiscent of the mutations that rendered the vaccine so weak in 2014-2015.
- While cases of 2a2 H3N2 infections are quickly rising in the U.S. and other parts of the world, it is possible other clades of H3N2 will become predominant in the future, or that H1N1 or influenza B viruses might dominate later in the 2021-2022 season. It's not yet clear how well the vaccines might match those strains.
- In light of the major mismatch, experts still recommend the flu vaccine. Although early indicators allude that the flu vaccines may not prevent infection this year, it still helps protect against severe illness and death.

#### Impact: High.

#### Neutralization of Omicron Variant by Sera From Vaccinated Persons (Link; Link)

**BLUF:** Less than 25% of vaccine recipients had detectable neutralizing antibodies against the omicron variant. If antibody neutralization reflects vaccine effectiveness, mitigation strategies may require significant modification. The impact of T Cell-mediated immunity, thought to play a critical role in SARS-CoV-2 immunity, is not considered in this report.

#### Summary:

- A December 16, 2021 sequencing study found only 20% and 24% of BNT162b2 [Pfizer vaccine] recipients had
  detectable neutralizing antibody against the Omicron variant, while none of the Coronavac [Sinovac, a Chinese
  COVID-19 vaccine] recipients had detectable neutralizing antibody titer against either Omicron isolate. For Pfizer
  recipients, the geometric mean neutralization antibody titers (GMT) of the Omicron variant isolates (5.43 and 6.42)
  were 35.7-39.9-fold lower than that of the ancestral virus (229.4), and the GMT of both Omicron variant isolates
  were significantly lower than those of the Beta and Delta variants. Authors concluded the Omicron variant may be
  associated with lower COVID-19 vaccine effectiveness (first link).
- Another publication from December 23, 2021 found that administration of a booster Pfizer dose as well as
  vaccination of previously infected individuals generated an anti-Omicron neutralizing response, with titers 6 to 23
  fold lower against Omicron than against Delta. Thus, Omicron escapes most therapeutic monoclonal antibodies and

to a large extent vaccine-elicited antibodies. Omicron remains however neutralized by antibodies generated by a booster vaccine dose (second link).

Taken together, these preliminary findings demonstrate the ability of the Omicron variant to escape antibody
neutralization from vaccines after a prolonged period and the efficacy of boosters to re-establish enhanced
immunity with new variant outbreaks.

#### Impact: Moderate.

#### Severity of SARS-CoV-2 Reinfections As Compared With Primary Infections (Link)

**BLUF:** COVID-19 reinfections tend to be less severe than primary infections, and the odds of severe, critical, or fatal disease at reinfection is one-tenth that of primary infections. While the effectiveness of natural immunity compared to vaccine-induced immunity is still being determined, clinicians should be aware that cases of COVID-19 in recovered individuals are seldom severe.

#### Summary:

- A November 24, 2021 letter described an investigation of the risk of severe disease (leading to acute care hospitalization), critical disease (leading to hospitalization in an ICU), and fatal disease caused by reinfections as compared with primary infections in 353,326 persons with positive PCR test. The odds of severe disease at reinfection were 0.12 times that at primary infection.
- The odds of the composite outcome of severe, critical, or fatal disease at reinfection were 0.10 times that at primary
  infection. Reinfections had 90% lower odds of resulting in hospitalization or death than primary infections. Four
  reinfections were severe enough to lead to acute care hospitalization. None led to hospitalization in an ICU, and
  none ended in death. Reinfections were rare and were generally mild.

#### Impact: Moderate.

#### On-the-Horizon:

#### A Vaccine Against RSV, a Childhood Killer (Link)

**BLUF:** Millions of people per year are hospitalized by respiratory syncytial virus (RSV) and tens of thousands die. After decades of failure, four vaccines are now in late-stage trials (Figure 4).

#### Summary:

- Researchers have been trying for decades to develop a vaccine for RSV. Four candidates and one monoclonal
  antibody treatment are in late-stage clinical trials. RSV infects most children by age three and most adults many
  times over, but natural immunity is not long lasting. Infections are usually most severe in infants under two months
  old who are encountering the virus for the first time. A vaccine or treatment would drastically reduce hospital and
  intensive-care admissions for this most vulnerable group
- <u>Monoclonal antibodies</u>: One way to protect newborns is by injecting them with antibodies targeting the virus. AstraZeneca and Sanofi have partnered to test a monoclonal antibody called Nirsevimab directed against stabilized prefusion F protein, which proved effective at reducing RSV infections in a phase III trial in healthy premature and full-term term infants.
- <u>mRNA</u>: The success and speed of the COVID-19 vaccines' development created awareness at every level, renewed
  interest to participate in clinical trials, and brought new platforms like mRNA vaccines that might be more efficient
  ways to stimulate the immune system.
- Moderna's mRNA-based RSV vaccine was in development before SARS-CoV-2 appeared, giving the technology a
  head start. The COVID-19 vaccine benefited from the RSV program, and then it flipped, with the RSV program
  benefiting from efficiencies gained from the COVID-19 program.

#### Impact: High.

### COVID-19 Can Trigger Self-Attacking Antibodies, Even in Mild or Asymptomatic Cases (Link)

BLUF: SARS-CoV-2 infection can trigger a damaging immune response that lasts well beyond the initial infection and recovery—even among people who had mild symptoms or no symptoms at all.

#### Summary:

- When people are infected with a virus or other pathogen, their bodies unleash proteins called antibodies that detect foreign substances and keep them from invading cells. In some cases, however, people produce autoantibodies that can attack the body's own organs and tissues over time.
- Investigators found that people with prior infection with SARS-CoV-2, the virus that causes COVID-19, have a
  wide variety of autoantibodies up to six months after they have fully recovered. Prior to this study, researchers
  knew severe cases of COVID-19 can stress the immune system so much that autoantibodies are produced. This
  study is the first to report not only the presence of elevated autoantibodies after mild or asymptomatic infection, but
  their persistence over time.
- Interestingly, some of the autoantibodies have been linked to autoimmune diseases that typically affect women more often than men. However, men had a higher number of elevated autoantibodies than women in this study.

#### Impact: Moderate.

#### Over-the-Horizon: Real-World Data Confirms Pfizer Vaccine Is Safe for Kids Ages 5-11 (Link)

**BLUF:** New U.S. data based on nearly 9 million doses of the Pfizer COVID-19 vaccine delivered to kids ages 5 to 11 shows no major safety issues, according to researchers at the CDC. Although pediatric deaths from COVID-19 remain rare, hundreds of American children have died from the illness since the pandemic began. Pfizer is currently the only approved vaccine for kids in this age range.

#### Summary:

- The report was based on data collected by the agency's Vaccine Adverse Reporting System (VAERS). It relies on
  smartphone messages from parents and other guardians of children to alert the CDC of any health events occurring
  after a child's vaccination.
- During a six-week period after vaccine approval (Nov. 3 through Dec. 19), VAERS received 4,249 reports of adverse events after Pfizer vaccination in kids ages 5-11. More severe effects were exceedingly rare. Out of about 8.7 million vaccinations delivered during the study period, only 100 such reports were received by VAERS.
- There were only 15 preliminary reports of the rare heart condition known as myocarditis, an inflammation of the heart that has also been noted, in rare cases, among teens and young people who've received the COVID-19 vaccine.

#### Impact: High.

#### 5. Clinical Practices

#### Short Term:

Concerning Antimicrobial Resistance Trends in E Coli Urinary Tract Infections in Females (Link)

**BLUF:** Urinary tract infections (UTIs) are among the most common community-onset bacterial infections and affect 10-12% of adult women each year. The increasing prevalence of infections caused by *E. coli* with extended-spectrum betalactamases (ESBL+) is of significant global concern given the implications for the empiric treatment of UTIs. This study highlights the need to educate physicians on best prescribing practice.

#### Summary:

A study was conducted of over 1.5 million females ≥12 years old across the U.S who had *E coli* isolated from their urine cultures and antibiotic susceptibilities available in the outpatient setting between 2011-2019. Details about the type of antibiotic susceptibility (minimum inhibitory concentration (MIC) interpretive breakpoints) was analyzed over time.

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# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 203 of 325 PAGEID #: 4868

- Twenty percent of the *E. coli* isolates were non-susceptible to the most commonly prescribed antibiotics, and 14% were non-susceptible to 2 or more antibiotics typically used for UTIs with 6.4% of the isolates ESBL-producing *E. coli*. ESBL+ isolates are not effectively treated with commonly prescribed antibiotics. There was regional variation; the highest number of isolates with antimicrobial resistance were from the East South Central region and Pacific Coast. There were areas of high non-susceptibility at the county level, notably in states bordering Mexico.
- National guidelines from the Infectious Diseases Society of America recommend when the antimicrobial resistance
  rate is >20% in a given region, the antibiotic should cease to be used for empiric treatment.

#### Impact: Low

#### 6. Mental Health

#### Short Term:

One-Year Mental Health Outcomes in a Cohort of COVID-19 Survivors (Link) and Secondary traumatic stress, anxiety, and depression among emergency healthcare workers in the middle of the COVID-19 outbreak: A cross-sectional study (Link)

**BLUF:** At 6 and 12 months post-hospital discharge from severe COVID-19 infection, 44% and 45% of patients self-rated in the clinical range in one or more: depression, fatigue, trauma-invoking distress, and anxiety with 28% needing psychotropic medication (roughly similar rates of antidepressant, anxiolytic, and hypnotics). Similarly, in a prospective study of 363 emergency nurses and ancillary staff performed in Turkey in April 2021, 72% showed secondary traumatic stress (STS), 41% anxiety, and 56% depression.

#### Summary:

- All hospitalized patients (18 years and older) with confirmed COVID-19 admitted to IRCCS San Raffaele Hospital Emergency Department in Milan, Italy were consecutively enrolled in the study starting February 25, 2020 with follow-up at 1, 6, and 2 months (April-June 2020, August-November 2020 and April-May 2021). Of the 486 eligible, 402 were evaluated at 1 month, 216 at 6 months and 192 at 12 months, with 95 evaluated at all three time points.
- Females and those with a positive psychiatric history displayed increased scores in all the psychopathological domains. In all models, only psychopathology at 1 month dictated the entire 12 month psychopathology (sex and time did not). Males showed increasing depressive and anxiety symptoms over time, while these decreased in females. There was significant reduction of post-traumatic symptoms over time (regardless of sex).
- Clinical severity or care setting of COVID-19 did not affect psychopathology at 6 and 12 months.
- This is the first study to extend our understanding of the Mental Health impact of COVID-19 hospitalization to 1
  year follow-up. Psychological sequelae of COVID-19 is notable, predicted at 1 month, worsens in males which
  make up a majority of Service members and often requires medication treatment.
- For emergency personnel, STS, anxiety and depression scores were high. Having financial difficulties and low job
  satisfaction were the most important factors in development of STS, anxiety and depression. Years of experience,
  comorbidities, living with an elderly relative, working with COVID-19 patients, nights or type of institution were
  not related. Women and younger participants reported increased anxiety, but it was lower in parents and those
  vaccinated against COVID-19.
- Participants with coping strategies to include hobbies, healthy nutrition, and reading books had lower levels of STS, anxiety, and depression. Exercise and sports were associated with lower STS and depression while breathing exercises were associated with lower anxiety and depression
- The mental health and wellness of emergency healthcare workers should be evaluated regularly and psychological, social and financial supports considered.

#### Impact: Moderate.

#### On-the-Horizon:

A New Suicide Hotline, 988, Will Launch in July 2022 and Offer Expanded Services (Link)

**BLUF:** By July, the United States will switch to an expanded suicide hotline for which people can call a three-digit number (988) to get help. 988 is meant to emulate 911 in simplicity and seriousness. 988 will eventually become the number called when a person is experiencing a behavioral-health crisis, obviating the need for police to show up at the scene of an emergency for which they may not be trained. This will be a gradual rollout.

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#### Summary:

- 988 is not a nationwide calling code right now. Congress left it up to states to design 988, so roll out will vary.
   However, a new federal law mandates that, as of July 16, 2022, every U.S. state must have in place a call system to make it easier for people to seek immediate and appropriate for mental health or substance use crises.
- There are limited info concerning OCONUS. At the moments, Veterans and Service members may reach the <u>Veterans Crisis Line</u> - <u>1-800-273-8255</u> by pressing 1 after dialing, chatting online at <u>www.veteranscrisisline.net</u>, or texting 838255.

#### Impact: Moderate.

Perceptions of Firearm-Related Harm Among U.S. Adults Living in Firearm-Owning Households: A Nationally Representative Study (Link)

**BLUF:** In a nationally representative survey of 4030 U.S. adults living in firearm-owning households completed in summer 2019 (National Firearms Survey, excluded AD military personnel), respondents were more likely to report that unintentional injuries are more common than self-inflicted (especially suicide) or assault-related injuries although the opposite is true for all members of the household.

- When asked about risk in specific populations, 77% of respondents perceived unintentional harm to be most likely
  for all populations except those with drug or alcohol addiction or mental health issues: 77% for children under 10,
  57% for adolescents 10-17, and 72% persons with Alzheimer's or another form of dementia.
- When asked about those with MH issues, 41% perceived intentional self-inflicted injury as most likely, 34%
  ranked unintentional injury and 26% ranked firearm-related assault as the most likely for this group.
- When queried about those with drug alcohol or drug addiction, 44% of respondents perceived unintentional firearm-related harm was most likely.
- Impact: firearms are found in 1/3 of U.S. households. Having a firearm in the home has been shown to increase risk of death from unintentional, intentional self-inflicted (especially suicide) and assault-related injury for all members of the household. The current messaging from Suicide Prevention focuses on securing firearms (storing them locked, unloaded, and separate from ammunition) as a safety issue. Addressing the disparity between relative risks of firearm injury and perception provides the opportunity for adjusting prevention messaging for maximum effectiveness.

#### Impact: Moderate.

# Understanding the Clinical Characteristics of Lesbian, Gay, and Bisexual Military Service Members and Adult Beneficiaries within an Inpatient Psychiatric Sample (Link)

**BLUF:** To identify demographic characteristics associated with suicide risk in sexual minority patients, 186 U.S. service members and 23 adult beneficiaries with a suicide-related crisis leading to psychiatric inpatient hospitalization were recruited from two MTFs and one VA hospital. After controlling for age and gender, LGB participants reported higher uncontrollable suicidal ideation, significantly lower family support, higher perceived burdensomeness, but lower acquired capacity for suicide than their heterosexual peers with similar rates of depression, hopelessness, non-family support, family and non-family stress, dissatisfied belongingness and fearlessness about death.

- Overall 17.8% identified as lesbian/gay/bisexual (LGB); they were younger (25 vs 31), female (59% vs 31%), never married (59% vs 34%) and more likely to be enlisted (90% vs 80%) than their heterosexual peers.
- After controlling for age and gender, LGB participants reported significantly lower family support, higher
  perceived burdensomeness, but lower acquired capacity for suicide than their heterosexual peers. There was no
  significant difference reported with regard to depression, hopelessness, non-family support, family or non-family
  stress, dissatisfied belongingness or fearlessness about death. LGB participants were also twice as likely to report
  uncontrollable suicidal ideation and a lifetime history of multiple interrupted suicide attempts (18% vs 4%), but the
  latter was mitigated when adjusted for age and gender.
- Recent data from DoD shows about 6.3% of active duty U.S. service members identify as LGB compared to about 2.3% of the U.S. general population. Military peers, supervisors, chaplains and other programs in the military community may play a special role in providing increased individualized support.

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 205 of 325 PAGEID #: 4870

Impact: Moderate.

#### 7. Diagnostics

No updated situation to report.

#### 8. Therapies

#### Short Term:

FDA Authorizes Additional Oral Medication to Treat Mild/Moderate COVID-19 (Link)

**BLUF:** On 23 December, the FDA issued a issued an emergency use authorization (EUA) for Merck's molnupiravir for the treatment of mild to moderate COVID-19 in adults with positive SARS-CoV-2 viral testing, or those who are at high risk for progression to severe COVID-19. This adds to the arsenal of treatment options for outpatients and the medication does not require intravenous administration, making it easier for outpatient providers to get to their patients.

#### Summary:

- Primary data supporting the EUA for molnupiravir are from MOVe-OUT. a randomized, double-blind, placebocontrolled clinical trial studying the drug for the treatment of non-hospitalized patients with mild to moderate COVID-19 at high risk for progression to severe COVID-19 and/or hospitalization. A 5-day course is the prescribed dose for COVID-19. Side effects observed in the trial included diarrhea, nausea and dizziness.
- This drug is not authorized for use in patients younger than 18 years of age because molnupiravir may affect bone
  and cartilage growth and it not authorized for the pre-exposure or post-exposure prevention of COVID-19.
- Animal studies indicated molnupiravir may cause fetal harm, therefore, molnupiravir is not recommended for use during pregnancy.

#### Impact: High

#### NIH Updates Outpatient Treatment Guidelines for Mild/Moderate COVID-19 Positive Patients at Risk for Progression to Severe Disease (Link)

**BLUF:** The majority of circulating COVID-19 virus in the U.S. as of January is the Omicron variant. This variant has numerous mutations in the spike protein and recent data predict the monoclonal antibodies previously recommended for outpatient treatment of mild/moderate infection may have markedly reduced susceptibility to cocktails. The NIH COVID-19 Treatment Panel has revised their guidelines based on the new data and recent approvals of two new oral anti-virals.

#### Summary:

- On December 22 and 23, 2021, the FDA issued EUAs that allow 2 new oral antiviral agents to be used in this
  patient population: ritonavir-boosted nirmatrelvir (Paxlovid) and molnupiravir. Both of these drugs are now
  included in the latest NIH outpatient treatment guidelines.
- Nirmatrelvir is packaged with ritonavir (as Paxlovid). Ritonavir has significant and complex drug-drug
  interactions, primarily due to the ritonavir component of the combination so prescribing physicians need to
  carefully review concomitant medications for potential interactions.
  - The monoclonal antibody cocktails consistent of 1) bamlanivimab plus etesevimab and 2) casirivimab plus imdevimab are no longer recommended for outpatient use.
  - Sotrovimab is now the only available anti-SARS-CoV-2 mAb that is anticipated to have activity against the Omicron VOC. Some Navy MTFs have some supply of this as of the week of 3 Jan. Infectious Disease Service and Pharmacy leadership have distributed guidance regarding eligibility criteria given the limited supplies.

#### Impact: High

#### 9. Innovations

No updated situation to report.

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# Appendix

#### **Supporting Figures**

#### **Figure 1**

\*Note: Data is from 28 DEC 2021 as the analysis is undergoing updates to account for Omicron and the booster vaccines.

Department of the Navy Active Duty: New COVID-19 Case Occurrence by Vaccination Status1 Cases Identified Since 21DEC2021 Report

			Serv	ice			
		Marine C	orpa	Diary		Tota	1
Vaccination Status' and Severity		Flumber of Flew COVID-19 Cases		Namber of New DOVID-10 Cases		Number of New COVID-19 Cases	*
Vaccination Status'	Severe Case <sup>3</sup>				_		
Unvaccinated prior to the COVID-18 incident date	No	21	5.43%	26	2.35%	47	3.149
	Yes-Hospitalized	0	0.00%	0	0.00%	0	0.009
	Yes-Death	0	0.00%	0	0.00%	0	0.009
Partially immunized': COVID-19 incident date <14 days	No						
after first dose		6	1.55%	1	0.09%	7	0.479
	Yes-Hospitalized	0	0.00%	0	0.00%	0	0.009
	Yes-Death	0	0.00%	0	0.00%	0	0.009
Partially immunized': COVID-19 incident date >=14	No						
days after first dose		4	1.03%	12	1.08%	16	1.079
	Yes-Hospitalized	0	0.00%	0	0.00%	0	0.009
	Yes-Death	0	0.00%	0	0.00%	0	0.009
Partially immunized': COVID-19 incident date <14 days	No						
after final dose		2	0.52%	1	0.09%	3	0.209
	Yes-Hospitalized	0	0.00%	0	0.00%	0	0.009
	Yes-Death	0	0.00%	0	0.00%	0	0.009
Fully immunized': COVID-19 incident date >=14 days	No						
after final dose		354	91.47%	1.068	96.39%	1,422	95.129
	Yes-Hospitalized	0	0.00%	0	0.00%	0	0.009
And the second	Yes-Death	0	0.00%	0	0.00%	0	0.009
Total		387	100.00%	1,108	100.00%	1,495	100.009

The vaccine doses wire considered complete for the PitterEin/Tech and Modernal COVID-19 vaccines; and the vaccine dose was considered complete for the UL/Unesen COVID-19 vaccine fully vaccinated 14 days after receiptor the final case. DOVID-15 vaccines with an error in the Medical Readiness Reporting System wire minored from this analysis.

\* Severe COVID-19 case defined as posphalcation or death reported in the Acned Forois Health Surveylance Division COVID-19 Master Positive List Determine to the of the state and the observation and the state of the

Figure 2

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 207 of 325 PAGEID #: 4872

			Serv	lce			
		Marine C	orps	Navy	1	Tota	1
Vaccination Status' and Severity	a	Ntmber of COVID-15 Crises		himber of COVID-15 Cases		Number of COVID-19 Cases	%
Vaccination Status!	Severe Case <sup>2</sup>						
Unvaccinated prior to the COVID-19 Incident date	No	10.230	70.91%	13,661	62.48%	23,891	65.83%
	Yes-Hospitalized	64	0.44%	88	0.40%	152	0.42%
	Yes-Death	2	0.01%	7	0.03%	9	0.02%
Partially immunized': COVID-19 incident date <14 days	No						
after first dose		626	4.34%	811	3.71%	1.437	3.96%
	Yes-Hospitalized	12	0.08%	8	0.04%	20	0.06%
	Yes-Death	0	0.00%	0	0.00%	0	0.00%
Partially Immunized': COVID-19 incident date >=14	No						
days after first dose	and a second	266	1.84%	351	1.61%	617	1.70%
	Yes-Hospitalized	0	0.00%	0	0.00%	0	0.00%
	Yes-Death	0	0.00%	1	0.00%	1	0.00%
Partially immunized': COVID-19 incident date <14 days	No						
after final dose		155	1.07%	182	0.83%	337	0.93%
	Yes-Hospitalized	2	0.01%	0	0.00%	2	0.01%
	Yes-Death	0	0.00%	0	0.00%	0	0.00%
Fully immunized': COVID-19 incident date >=14 days	No						
after final dose		3,058	21.27%	6,751	30.88%	9,819	27.06%
	Yes-Hospitalized	2	0.01%	4	0.02%	6	0.02%
	Yes-Death	0	0.00%	0	0.00%	0	0.00%
Total		14,427	100.00%	21,864	100.00%	36,291	100.00%

#### Department of the Navy Active Duty: Total COVID-19 Case Occurrence by Vaccination Status' 17DEC2020-28DEC2021

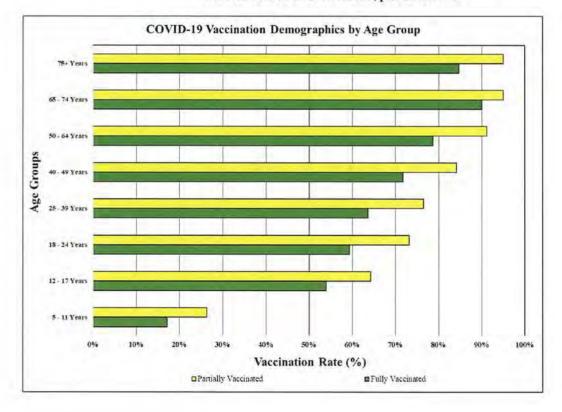
Number of AD Sailors Vaccinated or Unvaccinated as of 28DEC2021: Fully Immunized: 324833, Partially Immunized: 3288, Unvaccinated: 7426 Number of AD Marines Vaccinated or Unvaccinated as of 28DEC2021: Fully Immunized: 176659, Partially Immunized: 4117, Unvaccinated: 8397

<sup>1</sup>Two vaccine dozes were considered complete for the Pfizer-BioNTech and Moderne COVID-19 vaccines, and one vaccine doze was considered complete for the J&J/Lanssen COVID-19 vaccine, individuals were considered fully vaccines and an event in the Medical Readiness Reporting System were removed from this analysis.

<sup>2</sup>Severe COV/D-19 case defined as hospitalization or death reported in the Armed Forces Health Surveillance Division COV/D-19 Master Positive List. Data Source: Medical Readiness Reporting System, Armed Forces Health Surveillance Division COV/D-19 Master Positive List. Prepared by the EpiData Center Department, Navy and Marine Corps Public Health Center, 29DEC2021.

#### **Figure 3**

#### United States COVID-19 vaccination status stratified by age groups. Data current as of 12 JAN 2022, per the CDC\*.



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\*Data taken from: COVID-19 Vaccination and Case Trends by Age Group, United States | Data | Centers for Disease Control and Prevention (cdc.gov)

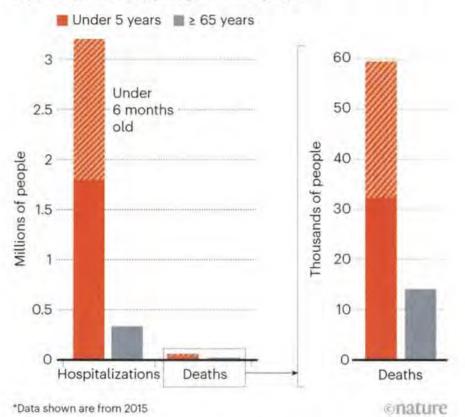
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Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 209 of 325 PAGEID #: 4874

Figure 4

# **COMMON SCOURGE**

Despite most infections being mild, respiratory syncytial virus (RSV) hospitalizes millions of people a year\* and can be deadly, especially in the very young and older people.



Sources: Under 5, Shi, T. et al. Lancet **390**, 946–958 (2017); over 65, Shi, T. et al. J. Infect. Dis. **222**, S577–583 (2020)

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## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 210 of 325 PAGEID #: 4875

#### **BUMED Scientific Panel**

#### Chair:

CAPT Matthew Weiner, MSC, USN

## Members and Contributors:

CAPT Janine Danko, MC, USN CAPT Bryan Schumacher, MC, USN CDR Theron Hamilton, MSC, USN CDR Tracy Krauss, NC, USN CDR Nick Martin, MC, USN CDR Peter Seguin, MC, USN CDR Robyn Treadwell, MC, USN CDR Tim Whiting, NC, USN LCDR Joshua Swift, MSC, USN Dr. Chris Myers Dr. Francis Obuseh Dr. Jill Phan

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# STATEMENT OF

# ADMIRAL WILLIAM K. LESCHER

# VICE CHIEF OF NAVAL OPERATIONS

# BEFORE THE

# HOUSE ARMED SERVICES COMMITTEE SUBCOMMITTEE ON READINESS

# ON LEARNING FROM AND PREVENTING FUTURE TRAINING MISHAPS

MARCH 23, 2021

NOT FOR PUBLICATION UNTIL RELEASED BY THE HOUSE ARMED SERVICES COMMITTEE SUBCOMMITTEE ON READINESS



Chairman Garamendi, Ranking Member Lamborn, and distinguished members of the House Armed Services Subcommittee on Readiness, thank you for the opportunity to appear before you today to discuss Navy mishap trends, our lessons learned, and the proactive steps we are taking to better understand and control risk, improve safety outcomes, and increase the combat effectiveness of our force.

Our nation requires a Navy that is ready to deploy globally in defense of U.S. interests. 2020 provided a strong example of how the U.S. Navy is executing that imperative. While large portions of world activity were curtailed with the pandemic, the Navy's operational tempo continued at a high pace, highlighted by eight major Carrier Strike Group and Expeditionary Strike Group deployments. In 2020, Naval Aviation flew over 700,000 flight hours and Navy Afloat forces amassed over 23,000 total steaming days. In a number of instances, U.S. Naval Forces' deployments were extended to support high priority Secretary of Defense tasking. One such unit, the USS Nimitz (CVN 68) Carrier Strike Group, returned last month from the longest aircraft carrier deployment in modern history.

This performance strongly aligns with CNO Gilday's message to the force: "Failing to maintain our advantage at sea will leave America vulnerable. Mission One for every Sailor active or reserve, uniformed and civilian—is the operational readiness of today's Navy." In alignment with this direction, the Navy is bringing a strong sense of urgency in addressing the critical topics of this hearing, working comprehensively to improve readiness generation outcomes and our safety culture.

## Get Real - Get Better: Enabling a Culture of Excellence

The Navy has learned hard lessons over the past few years from major mishaps. Our improvement path is aligned to the "Get Real, Get Better" approach—proven in the Navy's work to transform Strike Fighter readiness, improve private shipyard depot maintenance performance, and drive better outcomes in other key mission areas. The "Get Real" element demands rigorous self-assessment, strong characterization of current performance, and detailed root cause analysis to identify the conditions or behaviors that led to a mishap. This "Get Real" element illuminates performance and capabilities as they are, as actually measured, rather than what leaders aspire performance to be. The "Get Better" element applies these root cause insights to develop, implement, and track action plans that drive improvement in the organization's operational and safety performance, using a strong cadence of measurement and accountability.

A recent example is the Navy's response to the 2017 USS Fitzgerald and USS John S. McCain mishaps. Two major reviews – the Comprehensive Review (CR) and Strategic Readiness Review (SRR) – identified root causes of the mishaps and made 111 recommendations aimed at driving Navy readiness improvement and preventing such consequential mishaps in the future.

The Navy's Readiness Reform & Oversight Council (RROC) executed action plans to address all 111 CR/SRR recommendations with a governance structure to monitor and measure progress. With the support of this committee, the Navy invested in and employed meaningful reforms in how we man our surface fleet, train our crews, schedule and execute workups and deployment, and how we equip and maintain our surface force.

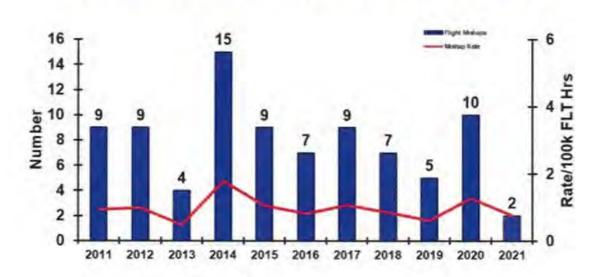
Improvements have been made in (1) Surface Warfare Officer training; (2) Use of ship simulators to train shipboard teams in Navigation, Seamanship, and Ship Handling; and in

Combined Integrated Air and Missile Defense and Anti-Submarine Warfare training; (3) Readiness for Sea Assessments; (4) Force Generation Models; (5) Shipboard manpower requirements; and (6) Comprehensive Fatigue and Endurance Management Program.

This structured "Get Better" approach requires ongoing measurement of improvement self-talk against actual performance. Specific examples of measured outcomes include: (1) Establishment of Commander 7<sup>th</sup> Fleet (C7F) weekly Fleet Management Coordination Board, which more closely manages OPTEMPO; (2) Type Commander (TYCOM) semi-annual assessments of Basic & Advanced Phase performance versus entitlement, where for 2020 both Commander, Naval Air Force Pacific (CNAP) and Commander, Naval Surface Force Pacific (CNSP) completed 100% of Basic Phase training within entitlement (CNSP up from 38% in fiscal year 2019); (3) Readiness generation improvements where 100% of forces deployed with full readiness certifications; and (4) Forward Deployed forces achieving a 0% certification expiration rate, compared to 2015-2017 rates of 6-40% expiration.

## USS Bonhomme Richard

In July 2020, USS Bonhomme Richard (BHR) suffered a catastrophic shipboard fire during a maintenance period in San Diego, CA. The BHR fire marked the 15<sup>th</sup> significant fire onboard a U.S. Navy vessel in the past 12 years, demonstrating that previous leadership interventions of the type the Fleet Commanders aggressively employed following the BHR fire have not in the past resolved root causes sufficiently to drive enduring change in the frequency of shipboard fire mishaps. Early this year, I directed the Fleet Commanders, working with the Naval Safety Center, Naval Reactors, Naval Sea Systems Command and Naval Installations Command, to conduct a detailed review of these shipboard fires. The goal is to illuminate systemic issues regarding the standards, culture and environment driving daily discipline in shipboard stowage, cleanliness and readiness, and to recommend actions that establish the necessary culture and practices required to change Navy fire safety outcomes in an enduring way. This probe into systemic root causes of long-term shipboard fire safety performance completes in July and is designed to provide a foundation to broadly improve all Navy safety performance outcomes.



# Class A Aviation Flight Mishaps

Figure 1: Naval Aviation Class A Mishaps (flight)

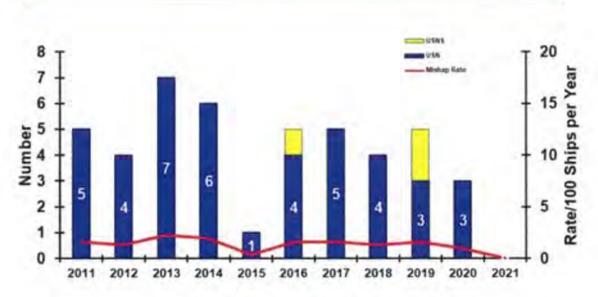
## Naval Aviation Safety Update

Naval Aviation and the Naval Safety Center have fully reviewed the analysis and recommendations of the National Commission on Military Aviation Safety (NCMAS) that examined mishaps between fiscal year 2013-2018. The U.S. Navy is working closely with the Department of Defense to provide a department wide response to NCMAS. In the interim, Naval Aviation continues the work to continually improve our safety culture. In 2019, Naval Aviation had its best year in the last decade for total mishaps (287 Class A-D mishaps/ 33.8 mishaps per 100,000 flight hours) and was the first time in 10 years where total mishaps did not increase. The 2020 A-D mishap totals dropped to 280 and there were zero Class A fatalities, while the overall mishap rate (36.4 per 1000,000 flight hours) was slightly higher than 2019. Class C Aviation Ground Mishaps (AGM) were the driver of the increased mishap rate in 2020.

Aviation Ground Mishaps: As part of Naval Aviation's Culture of Excellence Campaign, Naval Aviation began a campaign in 2020 to deep dive root causes of AGM, such as procedural compliance and human factors. Naval Aviation is leveraging data analytics, training and leadership intervention to bend the curve on AGMs. Specific initiatives include:

- (1) <u>Fleet Readiness Analytics Group (FRAG)</u>: The FRAG is applying internal and external data analytics to identify trends, readiness impacts and drivers associated with mishaps. The FRAG is aligned with our maintenance, safety, and operations processes to identify catalysts that can enable positive change.
- (2) <u>Safety Support Group (SSG) Pilot</u>: Naval Aviation is executing this new program where TYCOM, Wing and Naval Safety Center subject matter experts conduct nonotice quality assurance visits to flight lines and commands.
- (3) <u>Maintenance ASAP</u>: Implemented as a daily feedback tool to provide squadron leadership with insight into maintenance practices, risks and improvement opportunities in their commands.

**Physiological Event (PE):** In 2017, the U.S Navy temporarily grounded our fleet of T-45 trainer aircraft after a series of unexplained Physiological Events (PE) where instructors and students reported hypoxia-like symptoms during flight. In response, the Navy stood up the Physiological Episodes Action Team (PEAT) to study PE and implement improved safety equipment and training to avoid hypoxia events. This comprehensive work led to mechanical fixes, increased aircrew education, and PE specific policy changes. As of March 2021, T-45 PE rates are down 94% since July 2017, and F/A-18 and E/A-18G PE rates are down 77% since November 2017.



# **Class A USN/USNS Afloat Mishaps**

Figure 2. Navy Surface Force Class A Mishaps (Afloat)

# Surface Force Safety Update

The Surface Force overall mishap rate is also trending down, benefitting from increased reporting of lower-level events and near misses to raise risk awareness. Between 2011 and today, surface force hazard reports (HAZREP) and lessons learned annual submissions have increased from 108 annually in 2011 to six times that number in 2020. This increase in risk

awareness is having a positive impact on the surface community's safety culture. Additionally, the surface fleet has developed and implemented key safety initiatives to address better crew coordination, improve decision-making and better manage crew fatigue to include:

Afloat Bridge Resource Management Workshop (ABRMW): ABRMWs are underway events where senior community leaders train ship leadership from theory to practice on operational safety fundamentals, and observe how Commanding Officers make day-to-day risk decisions. Since 2018, ships that completed ABRMW have had zero Class A or B mishaps.

**Fire Safety Assessment (FSA):** After the USS Bonhomme Richard fire, the Surface Fleet TYCOM developed and executed a no-notice/after-hours Fire Safety Assessment (FSA) program with Senior Department of the Navy civilians and post major command officers (O-6). The FSA program puts TYCOM experts on ships and provides a real-time picture of current shipboard fire-readiness across the waterfront. In an FSA, TYCOM Force Safety and Force Damage Control Assessment (DCA) leadership assesses ships in no-notice visits. Since program inception in September 2020, the Navy has identified and corrected deficiencies during 56 assessments.

**Operational Safety Risk Indicator (OSRI)**: The mission of OSRI is to assess comprehensive safety and readiness (Man, Train, & Equip) indicators of surface ships to meet operational tasking. OSRI serves within existing command structures to facilitate effective use of resources, collaboration to achieve mission effectiveness, and streamline decisionmaking. The goal of OSRI is to provide: (1) Consistent cross-stakeholder information flow by working from the bottom-up and horizontally to avoid stope-piped information; (2) Improved process discipline; (3) Integrated, consistent, and hierarchical metrics; (4) Full transparency of data, information, and activities; (5) Data-informed recommendations for risk mitigation, including re-apportionment of resources, recommended intervention points, and key actions; and (6) Integrated and effective governance of data collection/maintenance, data analysis, and data sharing to work across different commands, sustain operations, and develop new predictive models as new information and methods are introduced.

## Submarine Force Safety Update

**Mishap Rates - Improving:** From 1980 to 2010 our submarine force averaged approximately three collisions, allisions (striking a stationary or non-moving object), and/or groundings per year. From 2011 to 2020, they averaged less than one per year, and in 2020, there were zero collisions and/or groundings.

Learning from "Near Miss" Events: The Submarine Force uses an innovative, near miss analysis approach to improve safety across the fleet that includes: (1) Leveraging a Windows-based "singular reporting" structure; (2) Analysis of near misses and near miss trends; (3) Providing near miss briefs to Flag leadership, staffs, and operational units; (4) Tracking briefing outcomes through a rigorous Force Improvement process. The trends are analyzed, briefed to leadership, and shared with all submarines and support staffs.

## Conclusion

The intensified nature of the military competitive environment drives the Navy to aggressively improve status quo practices and behaviors in order to remain the most ready and lethal Navy in the world. We are working hard to identify and attack mishap drivers and root causes, to instill a strong culture of near miss reporting and learning, and to implement disciplined approaches to measure performance, identify precursor events, and correct off-track performance. I look forward to the continued partnership with this committee to continuously improve readiness and keep our Sailors safe, and to ensure our Navy is properly and predictably resourced, manned, trained and equipped to answer the nation's call.

# Notes from the Field

# Outbreak of COVID-19 Among a Highly Vaccinated Population Aboard a U.S. Navy Ship After a Port Visit — Reykjavik, Iceland, July 2021

Tammy E. Servies, MD<sup>1</sup>; Eric C. Larsen, MD<sup>1</sup>; Rodney C. Lindsay, MPH<sup>1</sup>; Jonathan S. Jones, MS<sup>1</sup>; Regina Z. Cer, MS<sup>2</sup>; Logan J. Voegtly, MS<sup>2,3</sup>; Matthew R. Lueder, MS<sup>2,3</sup>; Francisco Malagon, PhD<sup>2,3</sup>; Kimberly A. Bishop-Lilly, PhD<sup>2</sup>; Asha J. Riegodedios, MSPH<sup>4</sup>

On July 27, 2021, a fully vaccinated\* crew member on a U.S. Navy ship who had been symptomatic with cough and congestion for 4 days was evaluated in the ship's onboard medical department and received a positive test result<sup>†</sup> for SARS-CoV-2, the virus that causes COVID-19. The ship had approximately 350 personnel on board<sup>§</sup>; COVID-19 vaccination rate was >98%. The ship had been on an 8-week deployment with port visits in Norway (July 13-14) and in Reykjavik, Iceland (July 18-21). Masking and physical distancing mandates on the ship were relaxed while at sea but were immediately reimplemented upon identification of the crew member's positive test result. During the deployment, personnel had permission to go ashore only during the Iceland port visit and only if they were fully vaccinated. Before July 27, no one had been evaluated at the onboard medical department for respiratory symptoms. Although reported COVID-19 incidence was low in Iceland just before the port visit (17.5 per 100,000 population on July 18), incidence increased approximately elevenfold, to 219.5 per 100,000 on July 27 with emergence of the B.1.617.2 (Delta) variant.\*\* At the onset of the COVID-19 pandemic, outbreaks on some U.S. Navy ships led to attack rates greater than 25% (1) of the crew in the confined environment. In this outbreak during Delta variant predominance, the combination of a high vaccination rate with prevention strategies resulted in a lower (6.3%) attack. rate of COVID-19 than seen at the onset of the pandemic.

After identification of the initial case on July 27, all ship personnel were notified to report to the onboard medical

department if they had any COVID-19-like signs or symptoms,<sup>††</sup> resulting in diagnoses of an additional 11 COVID-19 cases that day. The ship immediately instituted prevention measures, including mask use, physical distancing, increased cleaning, isolation of the 12 initial patients, testing of 69 close contacts,§§ and testing and quarantine of six unvaccinated persons (two of whom were also close contacts). On July 28 and 29, six additional cases were identified through testing. Nasal swabs from these 18 persons with positive antigen test results were sent off the ship for reverse transcription-polymerase chain reaction (RT-PCR) testing and all were positive for SARS-CoV-2.55 Further analysis determined 17 of the 18 specimens were Delta variant AY.9 lineage; 16 of the 17 were identical.\*\*\* During this same time frame at the end of July, Delta AY.9 was identified in 8% of specimens in Iceland and fewer than 1% of specimens in Norway and the United States.<sup>†††</sup> The 18 infected persons were removed from the ship on July 31 to reduce the ship's health care requirements and to prevent further transmission. Four additional cases of COVID-19 were identified during August 1-7 (including three diagnosed aboard the ship and one postdeployment) with onset July 28–August 5. The overall attack rate was 6.3%. The ship returned to its home port on August 3, concluding its deployment as scheduled.

Among the 22 infected personnel identified, all were fully vaccinated, and all were symptomatic. Most (91%) were aged <40 years (average age = 30.2 years). No patient required hospitalization or supplemental oxygen and no deaths occurred. Before the outbreak was identified on July 27, 13 (59%) of the 22 infected personnel had been symptomatic for a median of 3 days (range = 1–5 days) aboard the ship with no masking or physical distancing protocols in place (Figure). During the 15-day outbreak period (July 22–August 5), 91 personnel received rapid antigen testing.

<sup>\*</sup> Fully vaccinated was defined as 2 weeks after receipt of a single dose of Ad.26. COV2.5 (Janssen [Johnson & Johnson]) vaccine or the second dose of either BNT162b2 (Pfizer-BioNTech) or mRNA-1273 (Moderna) vaccines.

<sup>&</sup>lt;sup>†</sup> The Abbott BinaxNOW COVID-19 Ag Card rapid antigen test was used to test personnel aboard the ship. During the deployment, personnel evaluated at the clinic for COVID-19–like symptoms were tested when seen by the ship's medical department.

<sup>&</sup>lt;sup>§</sup> During July 18–August 3, the total number of crew members fluctuated between 346 and 355.

<sup>&</sup>lt;sup>5</sup> This outbreak occurred 1 month before the August 24, 2021, memo by the U.S. Secretary of Defense mandating vaccines in service members. However, personnel were nor authorized to depart the ship for liberty without being fully vaccinated.

<sup>\*\*</sup> https://www.covid.is/data/ (Accessed December 16, 2021)

<sup>&</sup>lt;sup>††</sup> Fever, chills, rigors, myalgia, headache, sore throat, loss of taste or smell, cough, shortness of breath, or difficulty breathing.

S§ A close contact was defined as anyone within 6 feet of an infected person for a cumulative total of ≥15 minutes within a 24-hour period.

<sup>55</sup> Samples were sent to the U.S. Naval Hospital in Rota, Spain, for RT-PCR testing and then sent to Naval Medical Research Center – Frederick on Fort Detrick, Maryland, for genome sequencing and phylogenetic analysis.

<sup>\*\*\*</sup> One of the 17 Delta variant samples had an additional mutation in ORF10 (G29645T, ORF10) resulting in a lysine versus a valine at amino acid V30L. The final sample was not assigned a lineage because of insufficient consensus genome length.

<sup>&</sup>lt;sup>††</sup> Reported data from Outbreak.info's AY.9 Lineage Report. https://outbreak. info/situation-reports?pango%C2%A0=%C2%A0AY.9&loc%C2%A0=% C2%A0ISL&loc%C2%A0=%C2%A0NOR&loc%C2%A0=%C2%A0US A&selected%C2%A0=%C2%A0ISL&overlay%C2%A0=%C2%A0false (Accessed December 31, 2021).

## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 222 of 325 PAGEID #: 4887

Speed Morbidity and Mortality Weekly Report

Only one case was identified >14 days after the Iceland port visit, demonstrating very limited spread of infection despite exposure to symptomatic personnel for a median of 3 days in the confined shipboard spaces. In previous U.S. Navy shipboard outbreaks, before COVID-19 vaccines were available, SARS-CoV-2 spread was rapid and extensive, with attack rates of 26.6% (1,271 of 4,779 personnel) on one ship (*I*) and 36.3% (121 of 333) on another (Navy and Marine Corps Public Health Center, unpublished data, 2020). These attack rates were approximately four and six times higher, respectively, than that described in this report.

#### Summary

#### What is already known about this topic?

At the onset of the COVID-19 pandemic, outbreaks on some U.S. Navy ships led to attack rates >25% in the confined environment.

#### What is added by this report?

During July 2021, an outbreak of Delta variant aboard a U.S. Navy, ship after a port visit in Iceland resulted in a 6% attack rate. The ship's population was >98% immunized, and although prevention measures (e.g., mask use, extra cleaning, and distancing procedures) were relaxed during the underway period, they were reimplemented upon identification of the first case.

What are the implications for public health practice?

Vaccination, in combination with other prevention strategies, resulted in a much lower attack rate of COVID-19 than seen in the early months of the pandemic.

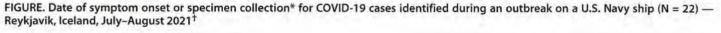
The findings in this report are subject to at least four limitations. First, shipboard testing was limited to rapid antigen testing, which has a lower sensitivity than RT-PCR testing in asymptomatic persons (2). Second, testing relied on persons to report symptoms and close contacts, which is subject to recall bias. Third, this was an outbreak of Delta variant and findings might not be applicable to B.1.1.529 (Omicron) or other variant outbreaks. Finally, this outbreak occurred in a highly vaccinated, young, healthy population, thus limiting generalizability to the overall U.S. population.

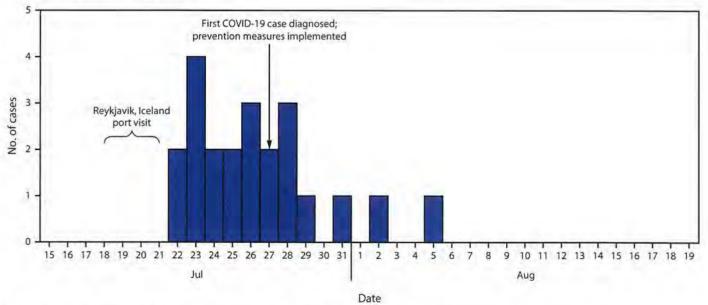
This outbreak in the enclosed environment of a ship suggests that high vaccination rates, in combination with COVID-19 prevention measures, can substantially reduce the spread of SARS-CoV-2, despite the high transmissibility of the Delta variant and introduction of SARS-CoV-2 into a congregate setting. Infections among vaccinated persons did occur, which is expected (3), but symptoms were mild. Vaccination, in coordination with multicomponent prevention strategies, are critical to limiting SARS-CoV-2 transmission and COVID-19–related illness.

#### Acknowledgments

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Corresponding author: Tammy Servies, tammy.e.servies.mil@mail.mil.





\* Whichever occurred earlier; for all but one case, symptom onset preceded specimen collection.

<sup>†</sup> Prevention measures included mask use, physical distancing, increased cleaning, canvassing for mild symptoms, and increased testing.

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 223 of 325 PAGEID #: 4888

Morbidity and Mortality Weekly Report

<sup>1</sup>Navy Environmental and Preventive Medicine Unit 7. Rota, Spain; <sup>2</sup>Naval Medical Research Center – Frederick, Fort Detrick, Maryland; <sup>3</sup>Leidos, Reston, Virginia; <sup>4</sup>Navy and Marine Corps Public Health Center, Portsmouth, Virginia.

All authors have completed and submitted the International Committee of Medical Journal Editors form for disclosure of potential conflicts of interest. Kimberly A. Bishop-Lilly reports support from the Armed Forces Health Surveillance Division, Global Emerging Infections Surveillance Branch. No other potential conflicts of interest were disclosed.

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# U.S. Navy Aircraft Carrier Prevents Outbreak at Sea in Midst of COVID-19

CDR Veronica E. Bigornia, MD, MPH, MC, USN

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## ABSTRACT

Background:

The USS Harry S Truman Strike Group deployed from Norfolk, VA in November 2019 with a crew of 5,461 personnel and successfully returned to home port in June 2020 with zero cases of COVID-19.

#### Methods:

Senior Medical Officer's observations and description of the evolution of the pandemic, impact to the crew of the USS Harry S Truman, a nuclear-powered aircraft carrier, and the public health principles and outbreak prevention protocols used to prevent an outbreak at sea.

#### **Results:**

The USS Harry S Truman Carrier Strike Group was composed of 4,810 personnel from Carrier Strike Group 8, Harry S Truman, Destroyer Squadron 28, and Carrier Air Wing One. The medical department of 52 personnel was made up of doctors, physician assistants, nurses, independent duty corpsman, and hospital corpsman. Our escorts were one destroyer, crew size 308 and one cruiser, crew size 343, each with one independent duty corpsman and one hospital corpsman for medical staff. The total number of personnel was 5,461, all of whom returned to home port with no cases of COVID-19.

#### **Conclusions:**

Outbreak with a respiratory pathogen in the shipboard environment could debilitate a crew and decrease mission effectiveness of a US Navy warship with implications to national security. Prevention of an outbreak at sea requires identification and mitigation of vulnerabilities, testing capability for identification of the pathogen, preparation for quarantine and isolation for immediate containment, and commitment from the entire crew for success.

The USS Harry S. Truman Strike Group deployed from Norfolk, VA, in November 2019 with a crew of 5,461 personnel and successfully returned to home port in June 2020 with zero cases of corona virus infection (COVID-19). As Senior Medical Officer, I saw a dedicated crew exercise an unyielding, admirable commitment to the prevention of an outbreak at sea from a rapidly evolving infectious agent.

We were operating in the northern Arabian Sea when reports began of an outbreak of severe respiratory illnesses in China in December 2019.<sup>1</sup> In early January, the agent was identified as a coronavirus and named novel coronavirus; by January 30, 2020, the WHO declared a global emergency with cases throughout Asia, Europe, and the United States.<sup>1</sup> In mid-January, we were preparing for a port call

USS Harry S. Truman, Naval Air Forces Atlantic, FPO, AE 09524, USA The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the U.S. Navy, the Department of Defense, or the U.S. Government.

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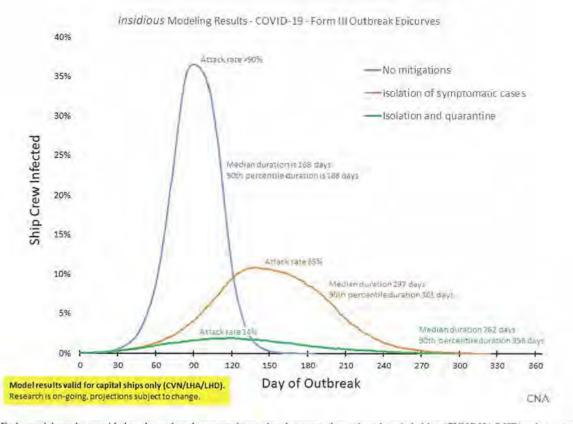
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Published by Oxford University Press on behalf of the Association of Military Surgeons of the United States 2021. This work is written by (a) US Government employee(s) and is in the public domain in the US. in Duqm, Oman. With no official guidance and unreliable Internet access, I had limited information on the extent of this threat but did know Oman had no known cases of this novel virus and a well-established public health infrastructure.<sup>2</sup> I recommended we proceed with our first liberty of the deployment after 60 days at sea. Our port call was uneventful due to controls placed over our population. Two hotels were authorized with rooms and day passes limited to a percentage of each department; a controlled system of shuttle transportation provided accountability for all sailors. The authorized location for the rest of the crew was pier side for a "sandbox port call." We returned to Duqm in February for a second port call with the same arrangements; only this time, the threat had evolved into COVID-19, a new disease caused by severe acute respiratory syndrome coronavirus 2.1 There were two reported cases in the Omani capital city of Muscat, several hundred miles away, associated with travelers from Iran.<sup>2</sup> I deemed the risk low based on the absence of local cases, and our port call was again uneventful.

On March 11, 2020, the WHO upgraded COVID-19 to pandemic status,<sup>1</sup> merely a week since we left what would be our last visit to a foreign port. There was no guidance out for this unprecedented situation, and I was the sole advisor afloat as the public health authority for the strike group. Using what resources I could access, a plan tailored for the shipboard environment was developed, focusing on our points

EXHIBIT

U.S. Navy Aircraft Carrier Prevents Outbreak at Sea in Midst of COVID-19



**FIGURE 1.** Early model results provided to the author demonstrating outbreak progression onboard capital ships (CVN/LHA/LHD) using crew size and configuration of USS Harry S. Truman. This early model was discovered to have an error that extends the outbreak in time as the CDC tables were misinterpreted and the latent period (non-infectious—mode  $\sim$ 3 days) conflated with the incubation period (pre-symptoms—mode  $\sim$ 5 days), adding 2 days to each disease generation. Corrected results indicated that the disease will ramp up quicker than the chart indicates and will take less time to "burn through" the ship, returning to operations more rapidly than indicated by the curves. Model results at the time indicated that quarantine was effective at slowing the disease but unsustainable in large outbreaks as nearly the entire ship quickly ends up in quarantine. This early effort hints at this outcome, and the quarantine burden became more apparent in later modeling efforts.

of vulnerability to COVID-19. Humans were the known primary vector, and all arrivals were screened in our flight deck battle dressing station with travel history questions and temperature checks. The C2 carrier-onboard-delivery bringing supplies and incoming personnel was another vector, and as the pandemic progressed, we stopped receiving nonessential personnel. Those deemed critical or essential to mission were allowed on board with strict precautions, including pre-embarkation quarantine for up to 21 days and testing when it became available. Carrier-onboard-delivery aircrew was not allowed into the skin of the ship except for a dedicated facility followed by disinfection. We provided box meals for consumption in the aircraft or on the flight deck while awaiting departure. The aircrews' final onboard landing ended in 14 days of quarantine as we crossed the Atlantic, Our transit through the Suez Canal required three different sets of Egyptian pilots to board, navigate for a distance of the canal, then change out with the next set of pilots. Each change increased our risk of exposure, but running aground was unacceptable. All parties took the preventive measures of wearing masks for the first time, social distancing as allowable, and sailors literally following the visitors and sanitizing passage ways and handrails as they transited to and from the bridge. We made it through safely and at the same time realized the usual social courtesies and customs must give way to the new normal of a pandemic age.

Evidence of virus surviving for up to 3 days on surfaces resulted in spraying of packages with disinfectant and transfer to the aircraft elevator to air dry before moving down into the hangar bay.<sup>3</sup> Personnel handling supplies were protected with surgical masks, gloves, and hand sanitizer to use when complete with handling of material. Medical evacuations leaving to shore posed another vector for aircrew transporting the patients then returning to ship. Infection control protocols for patient transfer and disinfection of the aircraft cabin and equipment upon return were instituted, and a novel use of our radiation decontamination showers was tested on aircrew returning from a medical evacuation, who reported the water was extremely cold, but the best shower they had on board.

Heroic efforts were given to the prevention of an outbreak at sea should defenses be breached. COVID-19 was known to be a highly infectious respiratory pathogen, transmitted person to person by droplet with prolonged, close exposure, (<6 feet for >15 minutes). Modeling data projecting spread of an infectious disease on a U.S. Navy ship indicated immediate isolation of symptomatic sailors, and quarantine of high-risk close contacts would increase the probability of outbreak control to 70% and decrease the total number of infections by 75% (Figure 1).4 A contained outbreak on a carrier was projected to last 100 days with a peak at day 42 and result in 60 infected. 30 symptomatic, 6 debilitated, and 3 critical based on a population of 5,657.4 Medical staff prepared the three-bed ICU and an isolation room to accommodate four patients. Quarantine berthing was set up to accommodate 30 patients, with additional quarantine spaces identified to expand for the projected maximum of 133 patients in guarantine and 16 patients in isolation based on the same model of a contained outbreak on a CVN.<sup>4</sup> Protocols for care of patients in isolation and quarantine were developed with attention to habitability, morale, food, and sanitation needs as well as medical monitoring while maintaining infection control practices.

Rapidly augmented with equipment for RT-PCR detection of severe acute respiratory syndrome coronavirus 2 as well as 21 other respiratory pathogens, we could identify the enemy with precision. Supplied with critical care equipment, surgical and N95 masks, gloves, gowns, thermometers, and disinfectant, we were armed for a different battle, but a battle nonetheless. The rules of outbreak prevention apply at sea and on land; with consistent, unyielding application of those rules, modified for the ship, we protected our population. It was difficult to social distance in tight quarters of a ship. It was uncomfortable to ask high-level visitors to submit to screening and temperature checks and possibly be denied boarding. It was awkward to wear masks when we were a clean ship. By April 2020, we were the sole "clean" carrier available and remained at sea, ready to respond to the call to defend our nation from outside threats, while our loved ones fought the pandemic at home.<sup>5</sup> Preparing to join the fight on land, we practiced social distancing, wearing masks, and routine disinfection of high touch surfaces with diluted bleach solution twice a day by all hands.

The USS Harry S. Truman Carrier Strike Group returned to the east coast of the United States in June 2020 untouched by the pandemic. This was accomplished by the dedication of all hands, strong leadership exercising decisive action, and the benefit of lessons learned by our shipmates across the Navy and around the world. We continue the fight in our home port of Norfolk, VA, committed to keeping COVID-19 off our ship.

#### FUNDING

I received no funding for this work.

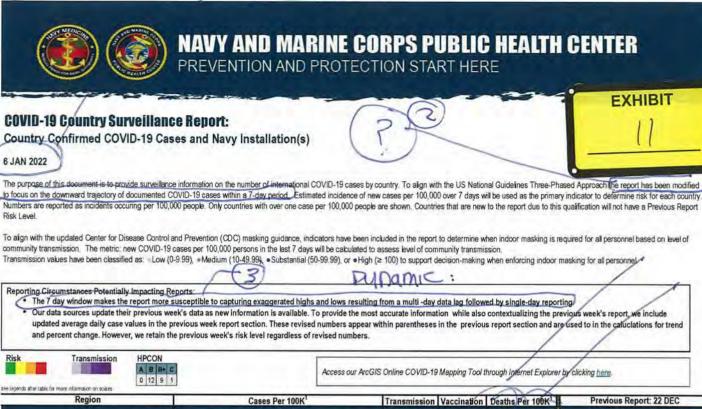
#### CONFLICTS OF INTEREST STATEMENT

I have no financial conflicts of interest to disclose.

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Case: 1:22-cv-00084-MWM Doc #:85-1 Filed: 08/18/22 Page: 227 of 325 PAGEID #: 4892



	Region		-			Cases Per 100K <sup>1</sup>		Transmission	Vaccination	Deaths	er 100K		Previous	Report: 22	DEC
Country <sup>2</sup>	Installations	HPCON Level <sup>3</sup>	Risk Level	Total Cases	Avg Daily Cases <sup>4</sup>	Percent Change from Previous Report <sup>5</sup>	8 Week Trend of New Cases	Masking <sup>6</sup>	Population Fully Vaccinated	Total Deaths	Avg Daily Deaths <sup>4</sup>	Risk Level <sup>7</sup>	Avg Daily Cases (Revised) <sup>8</sup>	Masking	Population Fully Vaccinated
INDOPACOM										X	$\left( \right)$				
Australia*				2,715	183.03	1007% 🛧		Required	79.5%	9	0.04		16.53	Required	79.0%
Bangladesh*				974	0.38	171% 🚸			52.6%	17	0.00		0.14	Concern Cardinal of	52.6%
Bhutan			-	350	0.17	0% +	~~		75.9%	0	0.00		0.17		75.6%
Brunei Darussala	am		-	3,587	2.21	22% 🔶	~		91.8%	23	0.00		1.81		91.8%
Cambodia*				731	0.05	25% 🔶		-	84.2%	18	0.00	1	0.04	200	84.0%
China*				7	0.01	0% *	-	-	87.2%	0	0.00		0.01		84.8%
Fiji				6,253	37.19	3899% 🔶		Required	73.4%	79	0.10	1 1	0.93		73.3%
French Polynesia	a			16,657	4.71	474% 🔶	~		61.5%	228	0.00		0.82		60.2%
Guam (US territo MCAG/C NAVBAS USNH G	amp BLAZ SE Guam	В В+ В		12,029	44.65	690% 🛧		Required	75.6%	163	0.26		3.59 (5.65)		74.9%
India*				2,569	3.00	500% 💠	1		62.0%	35	0.02	-	0.5		59.7%
Indonesia*			-	1,576	0.09	12% 4		-	60.8%	53	0.00		0.08		55.2%
	sebo kosuka v Sanno ugi	8 8 8 8 8 8 8 8 8 8 8 8		1,370	0.69	431% 🛧			80.3%	14	0.00		0.13		79.5%
Laos				1,601	11.97	-31% 🔹	~~	Required	50.8%	6	0.11	1	17.35	Required	50.8%
Malaysia*				8,680	10.12	-11% 🔶		Required	79.4%	99	0.08		11.38	Required	79.2%
Maldives*		-		18,220	35.67	64% 🔶	~	Required	73.0%	50	0.03	8	21.74	Required	72.9%
Mongolia			-	12,144	11.38	26% 🔺		Required	68.1%	64	0.04		9.06	Required	68.0%
Wyanmar				983	0.31	-14% 🔹			38.0%	36	0.01		0.35	1	30.7%
Nepal*				2,901	1.01	40% 🛧			49.1%	41	0.01		0.72	1	35.2%
New Caledonia				4,605	10.45	59% 🔶	5	Required	63.7%	99	0.00		6.55		63.3%
New Zealand*				302	1.22	-8% 🔹	1		77.6%	1	0.00		1.33	£	77.5%
Papua New Guin	63			412	0.10	43% 🐥	~		3.2%	7	0.00		0,07	1	3.1%
Philippines*		1		2,656	4.22	3736% 🐥			50.5%	48	0.06		0.11		50.5%
Singapore*				4,866	8.99	63% 🔺	-	Required	88.0%	14	0.02		5.52	1	87.0%
South Korea" CFA Chir	nhae	в		1,276	7.76	-40% *		Required	86.3%	11	0.12		12.99	Required	85.2%
Sri Lanka*			-	2,764	2.21	-30% 🔹	~		74.4%	71	0.08		3.17		74.3%
ori Lanka															

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 228 of 325 PAGEID #: 4893

_											V				
		UBOON	-	475	Avg	Percent Change	- and a construction		Population	1 miles	Avg	1 miles	Avg Daily	1	Populatio
Country <sup>2</sup>	Installations	HPCON			Daily	from Previous	8 Week Trend of	Masking <sup>6</sup>	Fully	Total	Daily	Risk	Cases	Masking	Fully
		Level <sup>3</sup>	Level	Cases	Cases	Report <sup>5</sup>	New Cases		Vaccinated	Deaths	Deaths <sup>4</sup>	Level	(Revised)		Vaccinate
'hailand*				3,211	3.75	-16% 🔹	-		73.0%	31	0.02		4.44		72.1%
imor-Leste				1,535	0.10	233% 🔺	~		49.5%	9	0.00		0.03	-	48.5%
letnam				1,884	18.19	-4% 🌵	~	Required	79.3%	35	0.24		18.98	Required	77.1%
UCOM \															
Ihania	1	-	_	7,359	15.48	58% 🛧	5 1	Benderd	40.08	440	0.00	_	0.70	1 Concession	
Albania		-	_	32,843	457.51	166% 4		Required Required	40.2%	112	0.06		9.78 171.8	Required	39.0% 73.2%
Armenia				11,672	2.50	-52% *	<	Requireu	32.3%	270	0.09		5.22	Required	30.5%
ustria*				14,563	51.55	71% 🔺	~	Required	73.3%	154	0.18		30,15	Required	72.5%
zerbaijan				6,160	4.37	-45% 🔹			50.6%	84	0.11		8.01	Required	50.3%
lelarus				7,443	11.01	-26% 🖤	/	Required	52.0%	60	0.17		14.78	Required	43.0%
lelgium*		-		18,890	128,67	111% 🛧	~	Required	76.6%	246	0.20		60.88	Required	76.4%
iosnia and H	erzegovina	_		8,944	24.08	77% 🛧	~	Required	27.1%	410	0.65		13.58	Required	27.1%
ulgaria roatia*		_	-	10,921 17,833	48.56 113.34	137% 4		Required	27.6%	447 308	0.99	_	20.46	Required	27.6%
yprus				15,711	362.83	566% 4		Required Required	55.4% 74.2%	54	0.92	-	71.97 54.5	Required Required	55.0% 71.5%
enmark*				15,478	324.46	69% 4		Required	82.8%	58	0.19		73.03 (191.6	and the second se	82.0%
stonia		-	1.000	18,569	78.26	75% 🛧		Required	63.7%	146	0.22		44.74	Required	63.2%
aroe Islands				13,990	381.05	315% 🔺		Required	84.5%	31	0.58		91.84	Required	82.0%
inland*				5,235	129.85	253% 🐥		Required	78.5%	29	0.20		36.82	Required	77.9%
rance*		}		16,839	304.39	266% 🔶	-	Required	78.6%	192	0.32		83.27	Required	77.8%
eorgia*		-		23,658	53.84	-20% 🔹	~	Required	34.6%	351	1.19		67.68	Required	33.1%
ermany* ibraltar*		_		8,846 27,138	44.25 338.66	-3% 🔹		Required	73.8%	136 294	0.30		45,45 131,51	Required	72.8%
ireece*			-	13,256	345.92	701%		Required Required	72.4%	294	0.00	-	43.16	Required	71.1%
	Souda Bay	B+		10,200	040.02	TOTA T		nednied	12.4%	202	0.05		43.10	Required	11.1%
reenland			-	5,972	242.36	940% 🔶		Required	71.2%	2	0.00	-	23.31	Required	71.1%
ungary				13,113	29.92	-27% 🔹	~	Required	65.1%	409	0.87		41.11	Required	64.8%
eland				10,000	361.86	470% 🔺		Required	78.2%	12	0.08		63.51	Required	83.8%
eland*		-		18,125	400.77	297% 🔶		Required	78.2%	122	0.12		100.9	Required	77.9%
rael*			()	16,775	91.53	782% 🐥		Required	71.1%	97	0.02		10.38	Required	69.7%
aly*		2		11,158	212.72	409% 🚸		Required	80.5%	228	0.28		41.82	Required	79.5%
	Signonella	B+		10.00					Designed a		1.1				
	Naples	B+	-	11742	****				-			_			
atvia iechtenstein				14,743 16,858	51.57 103.38	30% 🔶	~	Required	70.4%	242	0.45		39.79	Required	69.8%
ithuania*		_	-	19,186	70.64	25% 4		Required Required	71.5%	271	0.75	-	117.29 56.68	Required	68.2% 70.8%
uxembourg*	6			17,592	164.89	159% 4		Required	73.2%	149	0.03	-	63.71	Required	72.3%
alta				12,984	240.71	320% 4	-	Required	86.5%	110	0.19	-	57.37	Required	85.0%
loldova				9,354	10.05	13% 🐥		Required	24.6%	255	2.34		8.92	Required	24.6%
onaco				14,082	185.71	37% 🔺		Required	67.5%	105	1.10		135.9	Required	67.5%
ontenegro*				28,704	311.17	992% 🔶		Required	45.3%	387	0.61		28.5	Required	44.9%
etherlands*				18,888	102.83	30% 🔺	~	Required	77.6%	123	0.15		79	Required	72.9%
огway*				7,824	89.40	10% 🔺	~	Required	78.4%	25	0.12		81.05	Required	78.2%
alestinian Te	erritory			9,464	4.78	-28% 🔹	1		39.6%	99	0.10	2	6.62		38.7%
oland*		1		10,987	31.08	-34% 🔹	~	Required	57.5%	260	1.12		47.2	Required	56.7%
	Redzikowa	C		11000		1000							10.00		
ortugal* omania*				14,668 9,408	237.24	408% *	-	Required	90.6%	186	0.15		45.68	Required	89.1%
	Devesela	B+		3,400	11.69	231%		Required	41.7%	304	0.16		3.59		41.2%
ussian Fede		Di	-	7,133	12.41	-34% 🔹		Required	50.7%	210	0.57		18.69	Required	49.5%
an Marino				26,021	436.55	136% 4	$\geq$	Required	71.7%	303	1.68	-	185.29	Required	49.5%
erbia				15,029	37.68	189% 4	</td <td>Required</td> <td>48.2%</td> <td>146</td> <td>0.27</td> <td>-</td> <td>13.02</td> <td>Required</td> <td>47.9%</td>	Required	48.2%	146	0.27	-	13.02	Required	47.9%
ovakia*				25,394	58.33	-39% *	~	Required	49.9%	308	0.71		95	Required	49.6%
ovenia*				22,849	100.27	75% 🔶	~	Required	60.2%	271	0.36		57.42	Required	59.8%
pain*	and the second			14,812	241.29	261% 🛧		Required	85.4%	192	0.15		66.92	Required	83.7%
	STA Rota	B+		-			-				-			1	
weden*				13,703	101.92	188% 🔺	-	Required	76.4%	153	0.10		35.41	Required	76.0%
witzerland*	1		-	16,563	213.41	111% 🔶	-	Required	68.6%	143	0.22		101.18	Required	68.2%
urkey*				11,651	60.52	173% 🔺	-	Required	67.0%	100	0.20		22.14	Required	66.7%
vaine nited Kingdo		_		8,781 20,533	9.42 270.83	-40% *		Required	34.0%	234	0.48	-	15,71	Required	33.3%
	200			20,000	210.03	10376 🌩		Required	76.0%	221	0.25		129.29	Required	75.6%
INTCOM															
ghanistan			· · · · ·	416	0.08	33% 🔶			10.4%	19	/ 0.00		0.06	1	11.0%
hrain				17,461	49.21	900% 🛧		Required	68.9%	85	( 0.01 )	1	4.92	2	68.5%
	rBase	B+		2.20					and the second	1	12				
NSA E	Bahrain	B+							1.0.0						
ypt				388	0.80	-10% 🔹	~~		33.9%	22	0.02		0.89		30.3%
In				7,479	1.84	-31% *			70.3%	159	0.04		2.67		69.5%
q				5,330	0.74	-13% 🔹			20.9%	62	0.01		0.85	1000	20.1%
ordan*				10,374	0.00	-100% 🔹			42.2%	122	0.00		33.34	Required	41.8%
azakhstan		14	-	5,791	2.13	-20% 🔹			47.4%	98	0.04	100	2.65		46.9%
uwait				10,056	23.65	1351% 🛧	_	Required	77.2%	59	0.00		1.63		76.8%
yrgyzstan				2,884	0.98	81% 🛧			18.7%	44	0.02		0.54		18.1%
ebanon*				10,890	57.36	145% 🐥		Required	33.9%	134	0.26		23.42	Required	32.0%

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 229 of 325 PAGEID #: 4894

HPCON	Risk	Total	Avg	Percent Change	8 Week Trend of	Sec. 2	Population	Total	Avg	Risk	Avg Daily		Populatio
Country Installations		Cases	Daily Cases <sup>4</sup>	from Previous Report <sup>5</sup>	New Cases	Masking	Fully Vaccinated	Deaths	Daily Deaths <sup>4</sup>	Level'	Cases	Masking <sup>6</sup>	Fully Vaccinate
Oman		6,161	3.26	624% 🛧	-		59.8%	83	0.00		0.45		59.8%
Pakistan*		600	0.33	136% 🛧			43.9%	13	0.00		0.14		39.9%
Saudi Arabia		1,650	4.51	1189% 🔶		-	71.0%	26	0.01		0.35	1	70.5%
Syria Fajikistan	_	295 188	0.18	-51% 🔹	~		12.5%	17	0.02		0.37	1	6.5%
Juited Arab Emirates	-	7,931	25.95	0% * 840% <del>*</del>	~	Required	38.0%	1 22	0.00		0 2.76	-	44.9%
Uzbekistan	-	604	0.32	-43% *		Nequired	55.4%	5	0.00		0.56		54.7%
Yemea		35	0.01	0% *	V	1.	1.8%	7	0.00		0.01		1.8%
NORTHCOM								-					
Bahamas		6,768	77.93	831% 4		Required	39.8%	184	0.15	1	8.37	Required	39.6%
Bermuda	-	11,010	197.73	556% 🔺		Required	74.7%	175	0.91	1	30.16	Required	74.4%
British Virgin Islands		12,533	328.10	1466% 🛧		Required	60.6%	133	0.48		20.95	Required	60.3%
Canada*		6,401	105.73	320% 🔺	-	Required	83.6%	82	0.10		24.4 (25.17)	Required	82.9%
Mexico*		3,158	8.16	383% 🛧		Required	62.9%	235	0.10	1	1.69	10000	62.9%
Puerto Rico (US territory) & ""	_	10,663	269.03	343% 🛧		Required	77.3%	10,663	269.03		29.38 (60.79)	Required	76.5%
urks and Caicos Islands Inited States*		9,374 17,535	104.89 174.65	800% +		Required	74.5%	68 253	0.00		11.65	Required	74.5%
See COVID19 State Surveillance Medical Intel Report for Installation HPCON details		17,000	174.00	2/07 4		Required	73.9%	203	0.37		44.99 (46.15)	Required	72.6%
SOUTHCOM						-			-			-	-
Anguilla	-	11,847	98.10	178% 🔶	001	Required	66.6%	40	0.95	-	35.24	Providence	66.6%
Intigua and Barbuda		4,625	33.43	847%		Required	63.1%	40	0.95		35.24	Required	66.6% 63.0%
rgentina*		13,210	114.67	849% 4		Required	84.1%	262	0.15	8	12.08	Required	82.6%
ruba		22,840	699.33	1794% 🛧		Required	79.2%	171	0.00		36.93	Required	78.7%
arbados		10,515	105.23	686% 🐥		Required	54.2%	92	0.15		13.39	Required	54.0%
alize		8,879	93.81	1406% 🔶		Required	56.8%	155	0.29		6.23		56.7%
olivia		5,486	56.99	229% 🔺		Required	50.2%	172	0.23		17.33	Required	45.5%
razil*		10,580	4.01	154% 🔶	~		77.8%	294	0.04	1	1.6 (1.58)		77.4%
ayman Islands		14,629	246.81	294% 4	~	Required	88.1%	18	0.22		62.64	Required	88.1%
hile* olombia*		9,573	8.52	30% 🔺		Required	90.2%	207	0.09		6.53		89.4%
osta Rica*		10,369	22.24	518% 🔺		Required	74.9%	259 146	0.08		3.72		73.9%
uba	-	8,551	4.91	705% 4		Required	92.3%	73	0.00	-	0.61	12	76.6%
NAVBASE Guantanamo Bay B		14000							10000		1 222.1		
ominica		9,824	101.98	197% 💠	~~	Required	42.6%	65	0.40		34.33	Required	40.5%
ominican Republic		4,039	23.20	1241% 🔶	-	Required	63.4%	40	0.01	500	1.73		63.2%
cuador*		3,184	8.42	115% 🔺		Required	79.2%	194	0.03	1	3,91		78.5%
Salvador		1,891	0.71	-10% 🕈	~~		68.8%	59	0.01		0.79		68.6%
alkland Islands renada	_	2,800	4.76	NA	1		74.6%	0	0.00		0		74.6%
uatemala		6,340 3,593	139.29	17990% <b>4</b> 207% <b>4</b>	-	Required	36.5% 36.0%	179 92	0.00		0.77		36.3%
uyana	-	5,290	39.77	608% 4		Required	52.0%	135	0.01		1.34	1000	35.2%
aiti		233	0.35	400% 4	-	Required	1.1%	7	0.16		0.07	-	51.4%
enduras	-	3,893	0.00	-100% *	>~~		48.9%	107	0.00		0,1		49.0%
maica		3,293	19.95	1346% 4	~ ~ `	Required	24.1%	84	0.09		1.38		23.8%
ontserrat		1,520	88.57	2997% 4		Required	31.1%	20	0.00		2.86		30.7%
caragua		268	0.09	-18% 🔹			72.8%	3	0.00		0.11		69.1%
inama"		11,856	41.60	462% 🔺		Required	69.2%	175	0.07		7.4	Required	69.0%
iraguay		6,692	11.38	547% 🔶		Required	48.1%	236	0.08		1.76		47.7%
ru*		7,105	13.43	146% 🐥		Required	73.5%	624	0.15		5.45		71.5%
int Kitts and Nevis		6,583	153.91	4297% 🐥		Required	51.7%	53	0.00		3.5	1	51.3%
int Lucia		7,636	44.03	683% 🛧		Required	30.3%	167	0.78		5.62	C	30.1%
int Vincent and the Grenadines		5,441	24.32	210% 4	~	Required	30.1%	75	0.26		7.85	Required	29.8%
inname	_	9,531	82.25	1500% 🛧		Required	44.3%	205	0.10		5.14		44.1%
inidad and Tobago*		6,754	34.65	-29% *	~	Required	51.0%	213	1.52		48.53	Required	50.2%
uguay nezuela		12,289	62.41 0.85	-41% *	~	Required	79.5% 64.1%	179	0.05		9.32	Required	79.3%
RICOM		1,003	0.00	-4178 ¥			64.1%	19	0.01	1.2	1.43	1	64.1%
	_	640	0.00	104						1			
geria* ngola		512 272	0.92 3.66	48% <b>4</b> 618% <b>4</b>	-		15.8%	15	0.02		0.62	-	15.7%
nin gola		212	0.71	7000%			22.6%	6	0.01		0.51	-	21.4%
tswana*		9,638	59.34	36% 4		Required	48.6%	106	0.00	-	43.76	Required	10.9%
rkina Faso		92	0.71	173% 4		nedanco	5.2%	2	0.08		0.26	nequired	2.1%
rundi		278	5.84	122% 4			0.0%	0	0.00		2.63		0.0%
bo Verde	-	8,362	156.94	5387% 4		Required	53.9%	65	0.10		2.86		53.9%
Imeroon		423	0.00	-100% *	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~		3.1%	7	0.00		0.2		3.0%
entral African Republic		262	0.88	NA	->>	-	9.1%	2	0.00		0	1	9.1%
ad		39	0.43	NA			1.7%	1	0.00		0	-	1.7%
omoros		856	20.82	1083% 🔶		Required	37.8%	19	0.08	1200	1.76	1	31.8%
ongo		395	3.15	179% 🔶	-/		13.0%	7	0.01		1.13	L	13.0%
ongo DRC		92	0.85	-31% 🔹	$\sim$		0.3%	1	0.00	-	1.23		0.2%

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 230 of 325 PAGEID #: 4895

	Risk Level	Total Cases	Avg Daily Cases <sup>4</sup>	Percent Change from Previous Report <sup>5</sup>	8 Week Trend of New Cases	Masking <sup>6</sup>	Population Fully Vaccinated	Total Deaths	Avg Daily Deaths <sup>4</sup>	Risk Level <sup>7</sup>	Avg Daily Cases (Revised)	Masking <sup>6</sup>	Populatio Fully Vaccinate
ôte d'ivoire		292	4.72	1867% 4		-	18.3%	3	0.01		0.24	-	12.2%
jibouti NSA Djibouti B+		1,421	3.23	587% 🔺	-		10.9%	19	0.00		0.47		10.9%
guatorial Guinea		1,023	2.52	4100% 4			17.2%	13	0.00		0.06		17.2%
ritrea		233	0.87	61% 4	~		0.0%	2	0.02		0.54	10000	0.0%
hiopia	_	390	3.33	350% 🛧			7.9%	6	0.01		0.74		7.8%
abon		1,962	17.95	1240% 🐥		Required	17.2%	13	0.01		1.34	-	17.2%
ambia		442	1.46	630% 🔺			10.0%	15	0.01	1	0.2		9.8%
hana*		487	3.19	538% 🔶			18.2%	4	0.01		0.5		8.4%
uinea		262	2.26	NA			17.7%	3	0.00		0		12.5%
uinea-Bissau		340	0.41	583% 🔶	1	1	19.4%	8	0.00		0.06		19.3%
enya*		579	4.18	43% 🛧	-		12.7%	10	0.01		2.92		10.8%
esotho		1,412	12.13	-35% 🔹		Required	30.1%	32	0.05		18.7	Required	30.1%
beria		139	1.66	564% 🐥			19.6%	6	0.00		0.25		15.2%
bya		5,779	8.62	15% 🔺	~	Required	26.6%	85	0.14		7.5	Required	26.2%
adagascar		194	1.14	42% 🔶			2.9%	4	0.02		8.0		2.1%
alawi*		417	3.37	24% 🔺			7.6%	13	0.03		2.72		7.0%
ali		116	1.72	213% 🔶		and the owner of	4.3%	3	0.01		0,55		4.1%
auritania		986	11.80	1129% 🔺		Required	29.0%	19	0.04		0.96		23.3%
auritius"	ļ	1,858	3.48	15% 🔺	~		74.4%	19	0.00		3.03		72.0%
brocco		2,680	7.24	1107% 🐥		Required	66.0%	41	0.01		0.6		65.9%
ozambique*		658	9.72	158% 🔶	-	Required	26.8%	7	0.03	1225	3,77		24.4%
amibia"		6,034	21.87	-41% 🔹	~	Required	15.6%	147	0.32		36.81	Required	15.0%
ger	1	33	0.17	467% 🛧	~		2.0%	1 -	0.00		0.03		2.0%
geria*		122	0.36	-23% 🔹			4.9%	2	0.00		0.47		4.2%
wanda		928	9.11	449% 🔶		Required	57.3%	11	0.01		1.66		51.6%
to Tome and Principe		1,876	14.29	7045% 🔶		Required	38.7%	28	0,27		0.2		38.7%
enegal*		471	1.82	1922% 🐥			7.9%	12	0.00		0.09		7.7%
aychelles		26,791	249.13	637% 🔺		Required	83,3%	137	0.00		33.82	Required	83.2%
erra Leone*		94	0.76	300% 🔶			9.2%	2	0.00		0.19		9.2%
omalia		157	0.67	644% 🔺			7.4%	9	0.00		0.09		6,7%
outh Africa*		5,968	14.92	-52% 🔹	-	Required	31.8%	156	0.15		31.07	Required	31.1%
outh Sudan		143	0.90	-25% 🔹			2.0%	1	0.00		1.2		2.0%
udan		110	0.25	-4% 🔹	~~		8.9%	8	0.00		0.26		8.9%
inzania		53	0.31	675% 🔶			3.4%	1	0.00		0.04		2.6%
ogo		402	6.35	630% 🚸			16.4%	3	0.01		0.87		16.1%
Inisia		6,271	11.34	500% 🛧		Required	58.3%	219	80.0		1.89		53.9%
ganda*		336	3.64	658% 🔶			17.7%	7	0.01		0.48	1	17.7%
mbia		1,512	21.08	260% 🔺	-	Required	4.3%	21	0.04		5,85	-	4.3%
mbabwe		1,496	11.23	-55% 🔹	~	Required	27.4%	35	0.15	-	25.12	Required	27.0%

Masking Indicators - Transmission Classification (New cases per 100,000 persons in the past 7 days)

HIGH	≥100	Indoor Masking Required
SUBSTANTIAL	50 to 99.99	Indoor Masking Required
MEDIUM	10 to 49.99	
LOW	0 to 9.99	

**Risk Levels** 

(Average of new daily cases per 100,000 population)

HIGH	≥7.5	Average known cases reported per day in last week per 100,000 individuals are greater than or equal to 7.5
SIGNIFICANT	5 to 7.49	Average known cases reported per day in last week per 100.000 individuals are greater than 5 and less than 7.5
MODERATE	1 to 4.99	Average known cases reported per day in last week per 100,000 individuals are greater than 1 and less than 5
LOW	0 to 0.99	Average known cases reported per day in last week per 100,000 Individuals are less than 1

Risk level definitions may change for alignment with CDC, OSD, JS (e.g., Memo from JS on COVID-19 Medical Risk Algorithm dated 21FEB2020), and COCOM (e.g., NORTHCOM Global Campaign Plan 3551.13) guidance. HPCONs reference DoD Instruction 6200,03, Public Health Emergency Management (PHEM) within the DoD.

Risk levels for naval operational forces from respective combatant commands supersedes this assessment from the Navy and Marine Corps Public Health Center,

#### **HPCON** levels

(Average of new daily cases per 100,000 population)

HPCON levels are determined by delegated authorities who use local public health conditions, public health surveillance data, CDC guidance, information from national, state, and local public health authorities, advice from the Public Health Emergency Officer and bcal MTF director or commander to assess appropriate HPCON status. Case counts play a large role in informing HPCON level decisions, but are not the sole metric from which HPCON evels are determined. More information about how HPCON levels are determined and appropriate actions to take for each HPCON designation can be found in GUIDANCE-FOR-COMMANDERS-RISK-BASED-RESPONSES-AND-IMPLEMENTATION-OF-THE-HEALTH-PROTECTION-CONDITION-FRAMEWORK-DURING-THE-COVID-19-PANDEMIC

Delta (D)	≥ 61	Widespread Community Transmission; Onsite capacity limited to less than 15%. Cancel all non-mission-essential activities. Strongly consider declaring a local public health emergency.
Charlie (C)	31 to 60.99	Sustained Community Transmission: Onsite capacity limited to less than 25% Re-scope, modify, or potentially cancel exercises. Consider declaring a local public health emergency.
Bravo+ (B+)	16 to 30.99	Elevated Community Transmission: Onsite capacity limited to less than 40% Be prepared to limit access to installations by visitors or cancel events/exercises, Indoor common areas and large venues may be closed
Bravo (B)	2 to 15.99	Increased Community Transmission: Onsite capacity limited to less than 50%. Medically vulnerable individuals and any personnel with whom they reside should shelter in place and be permitted to telework if possible.
Alpha (A)	0 to 1.99	Minimal Community Transmission: Onsite capacity limited to less than 100%. Emphasize personal hygiene and require physical distancing. Utilize telework and fexible scheduling to meet occupancy standards where possible.

Sources of information

4

Masking Requirement: https://www.cdc.gov/mmwr/volumes/70/wr/pdis/mm7030e2-H.pdi

2 SECDEF Criteria: COVID19 - 20210728 DSD Updated Mask Guidelines For All DOD Installations and Other Facilities

https://www.defense.gov/Explore/Spotlight/Coronavirus-DOD-Response/

3 HPCON Guidance: GUIDANCE-FOR-COMMANDERS-RISK-BASED-RESPONSES-AND-IMPLEMENTATION-OF-THE-HEALTH-PROTECTION-CONDITION-FRAMEWORK-DURING-THE-COVID-19-PANDEMIC

https://www.defense.gov/Expbre/Spotight/Coronavirus-DOD-Response/

DOS: https://travel.state.gov/content/travel/en/traveladvisones/traveladvisones.html/

5. CDC: https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html

6 WHO: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/

NCMI Country Risk Assessment Database: https://www.ncmi.detnck.army.mil/ 7

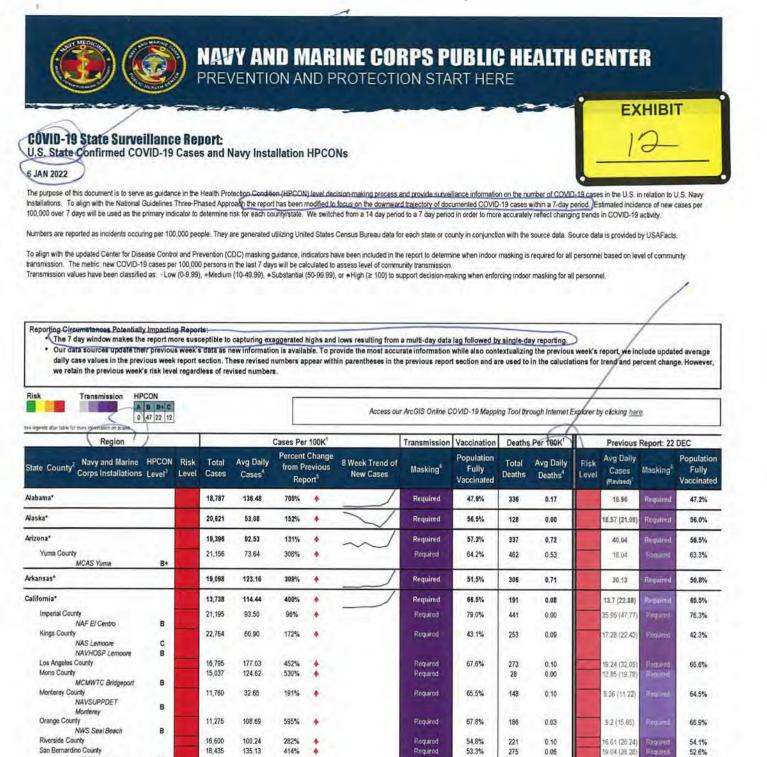
8. Our World in Data (cases/deaths): https://ourworldindata.org/coronavirus

9 CDC (US Territory cases/deaths). https://data.cdc.gov/Case-Surveilance/United-States-COVID-19-Cases-and-Deaths-by-State-cv9mtq-cb36

10 Country Ministries of Health and Disease Surveillance agencies.

11 NMCPHC COVID-19 Page: https://www.med.navy.mil/sites/nmcphc/program-and-policy-support/Pages/Novel-Coronavirus.aspx

12 Other sources of information to include open source media for important supplemental information.



Required

Require

57 6%

67.5%

134

142

0.06

0.07

9.31 (31.29)

81 (24 45

MCLB Barstow

Base San Diego County

NAWS China Lake

Twentynine Palms Main

NAVHOSP 29 Paims

MCB Camp Pendleton

MCRD San Diego

NAVHOSP Camp

Pendleton Naval Medical Center

San Diego NB Coronado

NB Point Loma

NB San Diego

Ventura County

MCAS Miraman

B+

в

в

В

B+

B+

B+

в

в

в

Bt

B

13.514

13.329

129.77

99.86

315%

308%

56 3%

66.7%

# Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 233 of 325 PAGEID #: 4898

State County <sup>2</sup> Navy and Marine Corps Installations	HPCON Risk Level <sup>3</sup> Level	Total Cases	Avg Daily Cases <sup>4</sup>	Percent from Pr Rep	revious	8 Week Trend of New Cases	Masking <sup>®</sup>	Population Fully Vaccinated	Total Deaths	Avg Daily Deaths <sup>4</sup>	Risk Level	Avg Daily Cases (Revised)	Masking <sup>®</sup>	Populatic Fully Vaccinate
Naval Base Ventura County	в		_							1			100	
Colorado*		16,718	133.60	262%	+		Required	66.5%	179	0.34		22 (36.93)	Required	65.7%
Connecticut"		15,271	198.36	242%	+		Required	75.0%	260	0.47		57.94	Required	74.2%
New London County NAVSUBASE New London	c	14,327	143.72	131%	*		Required	75.5%	201	0.54		62.22	Required	74.7%
Delaware*		19,681	261.50	261%	*		Required	64.5%	235	0.15		72.37	Required	63,5%
District of Columbia*		14,948	300.79	490%	+	1	Required	67.9%	173	0.22		50,95	Required	66.9%
JB Anacostia NDept Potomac Annex NSA Washington	B B B													
Florida*	100	20,301	218.29	398%	*	/	Required	63.6%	291	0.04		31.18 (43.81)	Required	62.9%
Bay County NSA Panama City	в	18,880	57.40	1091%	+		Required	49.3%	225	0.00		4.82		48.8%
Brevard County		14,727	118.59	1577%	*		Required	61.5%	152	0.00		7 07		60.9%
NOTU Cape Canaveral Duval County	B+	18,465	124.26	1337%	+		Required	58.3%	155	0.00	-	8,65	Report	57.6%
MCSF Blount Island NAS Jacksonville NS Mayport	B B							tin for						
Escambia County NAS Pensacola	c	17,947	96.89	1043%	*		Required	52.2%	222	0.00	1	8:48	Passand	51.6%
Monroe County NAS Key West	в	16,650	183.80	809%	+		Required	74.8%	70	0.00		20.21	Required	74.2%
Orange County NSA Orlando	в	18,738	216.24	1393%	+		Required	65.8%	94	0.00		14.48	Required	65.0%
Santa Rosa County NAS Whiting Field Milton	в	18,464	69.91	1287%	*		Required	48.3%	158	0.00		5.04		47,8%
eorgia*		13,901	141.36	599%	*	/	Required	51.3%	297	0.27		20.21	Required	50.6%
Camden County NAVSUBASE Kings	в	11,707	54.09	527%	+		Required	46.6%	181	0.00		8.62	Required	46.0%
Bay Dougherty County MCLB Albany	B+	11,262	100.37	3337%	*		Required	28.6%	491	0.32		2.92		27.9%
awaii*		8,719	190.28	348%	*	/	Required	64.0%	77	0.12		42.45	Required	62.9%
Honolulu County Joint Base Pearl Harbor- Hickam	в	9,036	212.45	297%	+	_	Required	1.10	83	0.12		53,46	Required	
MCB Hawaii Kauai County PMRF Kauai	B	6,005	139.12	626%	+		Required		25	0.00		19 17	Roquinió	
laho*		18,048	38.28	108%	4	20/	Required	46.4%	234	0.28		18.44	Required	46.0%
Kootenai County ARD Beyview	в	19,665	43.37	75%	*	$\sim \sim$	Required	41.1%	296	0.17		24 83	Required	40.8%
linois*		17,860	186.08	132%	+	/	Required	64.5%	247	0.52		80.31	Required	63.9%
Lake County NS Great Lakes	c	15,249	144.68	135%	+		Required	73.8%	179	0.23		61.55	Requires	73.0%
ndiana"		19,170	126.46	97%	4	/	Required	52.1%	286	0.69		64.07	Required	51.7%
Martin County		16,080	48.76	21%	+		Required	47.4%	205	0.00		40.4	Required	47.2%
NSA Crane wa*	C	18,617	64.99	-1%	*	$\overline{\Lambda}$	Required	59.2%	249	0.00		32.12 (65.87)	Required	58.5%
ansas*	-	18,343	107.58	98%	+	~~ /	Required	57.3%	240	1.82		54.4	Required	56.5%
entucky*		19,824	112.05	123%	+	~	Required	54.4%	274	0.51		50,27	Required	53.8%
	-			-			A started at the	-						California.
puisiana* Plaquemines Parish		18,696 19,947	191.44 223.55	859% 612%	*		Required	50.5% 58.9%	323	0.12		19.97	Required	49.9%
NAS JRB New Orleans	в	10,047	223,00	01276	+		nequies	50.579	177	0.00		31.41	Required	58.2%
aine*		11,026	53.18	-22%	+	N	Required	76.1%	116	0.68		68.06	Required	75.3%
Washington County NCTAMS Det Cutier	в	8,955	31.87	-41%	+		Required	69.2%	127	0.91		53.72	Request	68.5%
York County NSY Portsmouth	в	11,629	55.04	-21%	*		Required	77.9%	92	0.28		69.9	Required	77.0%
aryland"		12,669	188.34	129%	+	/	Required	70.6%	198	0.57				
Anne Arundel County		12,039	176.69	NA	0		Required	73.3%	146	0.59	-			
NSA Annapolis Charles County	B	12,740	254.73	NA.			Required	63.1%	166	0.09		Maryb	and Data Lag	
Montgomery County NSA Bethesda		11,087	257.19	NA			Required	83.5%	168	0.18			and and	
NSA Bethesda St. Marys County	в	11,890	226.41	NA			Required	64.6%	159	0.13				

## Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 234 of 325 PAGEID #: 4899

State County <sup>2</sup> Navy and Marine HPCO Corps Installations Level <sup>2</sup>	N Risk Level	Total Cases	Avg Daily Cases <sup>4</sup>	Percent Change from Previous Report <sup>5</sup>	8 Week Trend of New Cases	Masking <sup>t</sup>	Population Fully Vaccinated	Total Deaths	Avg Daily Deaths <sup>4</sup>	Risk Level	Avg Daily Cases (Revised)	Masking <sup>®</sup>	Populatio Fully Vaccinate
Massachusetts*		15,381	119.20	64%	~	Required	74.9%	294	0.28		72.89	Required	74.0%
Middlesex County		13,246	107.73	78%	/	Required	76.3%	256	0.18		60.45	Florau ad	75.5%
Nichigan"		17,782	135.71	115% 🔶	~	Required	57.0%	294	1.00		63.03	Required	56.4%
finnesota*	_	18,533	88.52	57% 🔶	V	Required	65.7%	188	0.51		56.33	Required	65.0%
Aississippi*		19,021	148.05	664% 🔶		Required	48.7%	353	0.35		19.38	Required	48.0%
Harrison County CBC Gullport B	. 1	17,795	92.41	876%		Required	52.0%	273	0.14		9,47	Requiried	51.3%
Jackson County Lauderdale County NAS Meridian B		18,380 17,713	105.54 94.05	1315% 🔶 1034% 🔶		Required Required	44.1% 48.4%	276 437	0.30 0.19		7.46 8.29	Romand Pergurad	43.6% 47.7%
lissouri*		16,857	99.96	105% 🔶	~	Required	53.1%	262	0.07		48.71	Required	52.7%
Iontana*		18,662	40.13	193% 🔺	5/	Required	54.1%	272	0.09		13.69	Required	53.7%
lebraska*		17,802	58.62	52% 🔺	M	Required	60.1%	173	0.06		26.58 (38.48)	Required	59.4%
evada*		16,793	102.33	291% +	/	Required	56.7%	275	0.35		26.15	Required	56.0%
Churchill County NAS Falion C		18,130	44.16	83%		Required	46,5%	369	0.57		24.09	Required	45.9%
ew Hampshire*		15,069	103.94	15% 🔶	~~	Required	67.4%	145	0.40		90.13	Required	66.4%
lew Jersey*		18,852	330.63	345% 🔶	1	Required	70.8%	328	0.38		74.13	Required	70.0%
Monmouth County		20,635	302.82	237%		Required	64.4%	295	0.37		89.99	Required	63.7%
NWS Earle NJ C Ocean County		20,808	249.77	225% 🔺		Required	51.6%	409	0.35		76 75	Fogured	51.1%
ew Mexico*	6	17,127	86.22	65% 🔺	~	Required	66.5%	281	0.69		52.16	Required	65.7%
ew York*		19,136	345.75	267% 🔺	/	Required	72.1%	307	0.51		94.21	Required	71.1%
Saratoga County Naval Support Unit Saratoga Springs		14,102	182.22	168% 🔶		Required	76.4%	117	0.19		67 87	Required	75.5%
orth Carolina*		16,617	127.93	285% 🔺	/	Required	57.0%	186	0.21		33.2	Required	56.2%
Craven County	1	15,416	65.74	176% 🔶		Required	58.0%	161	0.00		23 78	Requirea	57.4%
MCAS Cherry Point B+ Onslow County MCB Camp Lejeune B+		16,395	50.95	128%		Required	56.5%	141	0.07		22 3	Required	55.9%
MCAS New River B+ lorth Dakota*				-	North Dakota Data La	Ig				-	44.95	Required	52.1%
		47.000	450.05	40.09/	/	and the local division of the local division			4.00	-			
hio*		17,906	168.25	102% 🔺	-	Required	55.5%	254	1.09	-	83.34	Required	54.9%
klahoma*		18,220	72.79	120%		Required	53.7%	299	0.00		19.09 (33.15)	Required	53.1%
regon*		10,324	65.81	248%		Required	66.6%	135	0.27		18.93	Required	66.1%
ennsylvania*		16,556	159.87	179% 🔶		Required	64.2%	289	0.86		57,33	Required	63.3%
Cumberland County NSA Mechanicsburg C		15,052	116.09	97% 🔶		Required	65.1%	288	0.96		58.81	Required	63.9%
Philadelphia County NSA Philadelphia C		14,921	201.92	433% 🔺		Required	63.0%	270	0.42		37.91	Pequed.	62.1%
hode Island* Newport County NS Newport C					Rhode Island Data La	ę					68.03 (121.46) 74.14	Required Required	75.8% 74.8%
outh Carolina"		19,641	185.06	741%	/	Required	53.4%	285	0.34		22	Required	52.7%
Beaufort County MCRD Parris Island B		15,453	111.76	699%		Required	65.0%	169	0.30		13.98	Róqurát	64.2%
MCAS Beaufort B Berkeley County NWS Charleston B		15,177	141.85	798%		Required	45.4%	160	0.25		15.8	Poqueok	44.9%
outh Dakota*		20,165	50.80	35% 🔺	N	Required	57.4%	280	0,39		37.59	Required	56.5%
nnessee"		21,423	155.62	413% 🛧	1	Required	51.6%	307	0.45		30.32	Required	51.0%
Shelby County		19,007	268.70	737%		Required	52.1%	290	0.26		32.12	Required	51.4%
NSA Midsouth Memphis B		16,512	127.98	455%	1	Required	57.2%	258	0.15	-	23.07	Required	56.5%
Bexar County		10,012	139.40	793%	_	Required	57.2%	258	0.15	-	15.61	Required	64.2%
Jim Wells County NAS Kingsville B		18,895	84.69	433%		Required	51.3%	452	0.00		15.88		50.8%
Nueces County		18,065	78.98	1136% 🔺		Required	54.9%	314	80.0		6,39		54.2%
NAS Corpus Christi B Tarrant County NAS JRB Fort Worth B		19,120	137.33	819% 🔺		Required	53.7%	214	0.15		14.95	Required	53.1%
tah*		20,475	117.11	284%	/	Required	59.0%	119	0.16		30.51	Required	58.0%

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 235 of 325 PAGEID #: 4900

State County <sup>2</sup> Navy and Marine Corps Installations		Risk Level	Total Cases	Avg Daily Cases <sup>4</sup>		Change revious port <sup>5</sup>	8 Week Trend of New Cases	Masking <sup>®</sup>	Population Fully Vaccinated	Total Deaths	Avg Daily Deaths <sup>4</sup>	Risk Level	Avg Daily Cases (Revised)	Masking	Population Fully Vaccinated
Vermont*			10,328	120.70	85%	4	~~~	Required	77.8%	75	0.37		65.27	Required	76.7%
Virginia*			13,780	168.83	339%	+	)	Required	68.3%	183	0.20		38.5	Required	67.5%
Arlington County King George County NSA South Potomac	в		11,736 13,299	200.98 189.51	177% 416%	*		Required Required	71.2% 44.1%	119 101	0.00 0.53		72.5 36.73	Request Request	70.9% 44.0%
Norfolk City NSA Norfolk	B+		12,133	150.95	614%	٠		Required		152	0.06		21 13	Required	
Portsmouth City Naval Medical Center Naval Medical Center Portsmouth NSA Norfolk NSY	B+ C		16,249	218.83	771%	*		Required		271	0.00		25.12	Required	
Stafford County MCB Quantico	в		14,423	253.88	451%	+		Required	52.8%	76	0.09		46.07	Ringsated	52.2%
Virginia Beach Oty NAS Oceana NAVPHIBASE Little Creek	B+ B+		13,806	188.55	530%	+		Required		134	0.22		29.94	Regorea	
York County NWS Yorktown	B+		9,915	111.72	434%	+		Required	56.1%	127	0.21		20.92	Require	55.5%
Washington*	-		11,666	95.21	229%	*	/	Required	68.1%	130	0.16		28.93	Required	67.4%
Island County NAS Whidbey Island NAS Whidbey Island Sea Plane Base	B+ B+		6,071	56,88	197%	*		Required	63.2%	67	0.34		19.13	Required	62.7%
Jefferson County NAVMAG Indian Island	в		4,792	58.08	245%	+		Required	74.5%	65	0.00		16.85	Required	73.7%
King County Kitsap County Bremerton Keypart NUWC Naval Hospital NBK NBK Bangor	8+ 8+ 8+ 8+		9,511 7,809	117 79 76.72	260% 263%	:		Required Required	77.3% 63.1%	95 97	0.08 -0.05		32,75 21,15	Required Pergund	76.5% 62.5%
Snohomish County NS Everett	в		10,391	113.08	304%	+		Required	66.7%	103	0.10		28,01	Required	65.0%
Vest Virginia*			18,954	128.66	119%	*		Required	55.3%	299	0.58		58.72	Required	71.6%
Visconsin*			19,619	113.83	66%	4	~	Required	62.2%	193	0.40		50.45 (68.67)	Required	61.5%
Vyoming*			20,283	61.02	261%	4	v/	Required	47.7%	272	1.14		16.91	Required	47.1%

All case and deall numbers are reported as per 100K people.
 Only counties within 25 miles of a lated installation or specifically requested are shown:
 Orry counties within 25 miles of a lated installation or specifically requested are shown:
 Ourset Health Protection Condition (#PCOM) Status indicated per Public Health Emergency Management (PHEM) DoD Instruction 6200.03. Red indicates that status changed since the last report.
 Dark Count calculation with year of a period.
 Partoes show increase, decrease, and no change of the percent change value:
 Items wrenge daily cases compared to the previous report.
 Corn any ovide a scele for community frammission and recommends all people wear masks when transmission reaches the statustal level. Maak Guidance for all DoD Installations and Other Facilities details that all DoD personnel should comply with DOS making guidance. See sources of information for more information.
 Due to the complexity of collecting accurate realiting dati on the impact of Could Science of Could Science and Counter Science and Could Science Science and Counter Science Science Science Science Science Science

#### Masking Indicators - Transmission Classification (New cases per 100,000 persons in the past 7 days)

HIGH	≥100	Indoor Masking Required
SUBSTANTIAL	50 to 99.99	Indoor Masking Required
MEDIUM	10 to 49.99	
LOW	0 to 9.99	

**Risk Levels** 

es per 100 000 population

erage of new daily cases per 100,000 population)		
HIGH	≥7.5	Average known cases reported per day in last week per 100,000 individuals are greater than or equal to 7.5
SIGNIFICANT	5 to 7.49	Average known cases reported per day in last week per 100.000 individuals are greater than 5 and less than 7.5
MODERATE	1 to 4.99	Average known cases reported per day in last week per 100,000 individuals are greater than 1 and less than 5
LOW	0 to 0.99	Average known cases reported per day in last week per 100,000 Individuals are less than 1

AVE # New CONES

Risk level definitions may change for alignment with CDC, OSD, JS (e.g., Memo from JS on COVID-19 Medical Risk Algorithm dated 21FEB2020), and COCOM (e.g., NORTHCOM Global Campaign Plan 3551.13) guidance. HPCONs reference DoD Instruction 6200.03, Public Health Emergency Management (PHEM) within the DoD.

Risk levels for naval forces from respective USNORTHCOM commands/installations supersedes this assessment from the Navy and Marine Corps Public Health Center.

k.

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 236 of 325 PAGEID #: 4901

#### HPCON Levels

(Average of new daily cases per 100,000 population)

HPCON levels are determined by delegated authorities who use local public health conditions, public health surveillance data, CDC guidance, information from national, state, and local public health authorities, advice from the Public Health Be detailed and being the designed automate the base base point rearrest and the base and the b AND-IMPLEMENTATION-OF-THE-HEALTH-PROTECTION-CONDITION-FRAMEWORK-DURING-THE-COVID-19-PANDEMIC .

Delta (D)	≥ 61	Widespread Community Transmission: Onsite capacity limite to less than 15%. Cancel all non-mission-essential activities Strongly consider declaring a local public health emergency
Charlie (C)	31 to 60.99	Susteined Community Transmission: Onsite capacity limited less than 25%. Re-scope, modify, or potentially cancel exercises. Consider declaring a local public health emergence
Bravo + (B+)	16 to 30.99	Elevated Community Transmission: Onsite capacity limited t less than 40%. Be prepared to limit access to installations b visitors or cancel events/exercises. Indoor common areas an large venues may be closed.
Bravo (B)	2 to 15.99	Increased Community Transmission: Onsite capacity limited less than 50%. Medically vulnerable individuals and any personnel with whom they reside should shelter in place and be permitted to telework, if possible.
Alpha (A)	0 to 1.99	Minimal Community Transmission: Onsite capacity Immed to less than 100%. Emphasize personal hygiene and require physical distancing. Utilize telework and flexible scheduling to meet occupancy standards where possible

Sources of information

https://www.cdc.gov/mmwr/volumes/70/wi/pdfs/mm7030e2-H.pdf Masking Requirement:

- SECDEF Criteria: COVID19 20210728 DSD Updated Mask Guidelines For All DOD Installations and Other Facilities 2
- https://www.defense.gov/Explore/Spotlight/Coronavirus-DOD-Response/
- 3. Masking Guidance: GUIDANCE-FOR-COMMANDERS-RISK-BASED-RESPONSES-AND-IMPLEMENTATION-OF-THE-HEALTH-PROTECTION-CONDITION-FRAMEWORK-DURING-THE-COVID-19-PANDEMIC https://www.defense.gov/Explore/Spotlight/Coronavirus-DOD-Response/
- USAFacts (cases/population): <u>https://usafacts.org/visual/zations/corgnavrus-covid-19-spread-mapy</u>
   c4i (HPCON): <u>https://c4isuite.alfp.cnc.navy.mil/my.policy</u>
- 6 CDC: https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html
- 7 Vaccinations: https://covid.cdc.gov/covid-data-tracker/#county-view.[Vaccinations]Administered\_Dose1\_Pop\_Pct\_all https://data.cdc.gov/Vaccinations/COVID-19-Vaccinations-in-the-United-States-County/8xke-amph/data
- 8. Other sources of information to include open source media for important supplemental information.

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 237 of 325 PAGEID #: 4902

Cite as: 595 U.S. \_\_\_\_ (2022)

1

KAVANAUGH, J., concurring

### SUPREME COURT OF THE UNITED STATES

#### No. 21A477

#### LLOYD J. AUSTIN, III, SECRETARY OF DEFENSE, ET AL. v. U. S. NAVY SEALS 1–26, ET AL.

#### ON APPLICATION FOR A PARTIAL STAY

#### [March 25, 2022]

The application for a partial stay presented to JUSTICE ALITO and by him referred to the Court is granted. The district court's January 3, 2022 order, insofar as it precludes the Navy from considering respondents' vaccination status in making deployment, assignment, and other operational decisions, is stayed pending disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this order shall terminate automatically. In the event the petition for a writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

JUSTICE THOMAS would deny the application for a partial stay.

JUSTICE KAVANAUGH, concurring.

I concur in the Court's decision to grant the Government's application for a partial stay of the District Court's preliminary injunction for a simple overarching reason: Under Article II of the Constitution, the President of the United States, not any federal judge, is the Commander in Chief of the Armed Forces. In light of that bedrock constitutional principle, "courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs." Department of Navy v. Egan, 484



#### AUSTIN v. U. S. NAVY SEALS 1-26

#### KAVANAUGH, J., concurring

U. S. 518, 530 (1988). As the Court has long emphasized, moreover, the "complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments." *Gilligan* v. *Morgan*, 413 U. S. 1, 10 (1973). Therefore, it is "difficult to conceive of an area of governmental activity in which the courts have less competence." *Ibid*.

In this case, the District Court, while no doubt well-intentioned, in effect inserted itself into the Navy's chain of command, overriding military commanders' professional military judgments. The Court relied on the Religious Freedom Restoration Act. See 42 U. S. C. §2000bb-1(b). But even accepting that RFRA applies in this particular military context, RFRA does not justify judicial intrusion into military affairs in this case. That is because the Navy has an extraordinarily compelling interest in maintaining strategic and operational control over the assignment and deployment of all Special Warfare personnel—including control over decisions about military readiness. And no less restrictive means would satisfy that interest in this context.

The Court "should indulge the widest latitude" to sustain the President's "function to command the instruments of national force, at least when turned against the outside world for the security of our society." Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579, 645 (1952) (Jackson, J., concurring). That fundamental principle applies here. As Admiral William Lescher, Vice Chief of Naval Operations, explained: "Sending ships into combat without maximizing the crew's odds of success, such as would be the case with ship deficiencies in ordnance, radar, working weapons or the means to reliably accomplish the mission, is dereliction of duty. The same applies to ordering unvaccinated personnel into an environment in which they endanger their lives, the lives of others and compromise accomplishment of essential missions." App. to Application for Partial Stay 110a.

#### Cite as: 595 U.S. \_\_\_\_ (2022)

#### KAVANAUGH, J., concurring

In sum, I see no basis in this case for employing the judicial power in a manner that military commanders believe would impair the military of the United States as it defends the American people.

Cite as: 595 U.S. \_\_\_\_ (2022)

1

ALITO, J., dissenting

#### SUPREME COURT OF THE UNITED STATES

#### No. 21A477

#### LLOYD J. AUSTIN, III, SECRETARY OF DEFENSE, ET AL. v. U. S. NAVY SEALS 1–26, ET AL.

#### ON APPLICATION FOR A PARTIAL STAY

#### [March 25, 2022]

JUSTICE ALITO, with whom JUSTICE GORSUCH joins, dissenting.

By rubberstamping the Government's request for what it calls a "partial stay," the Court does a great injustice to the 35 respondents—Navy Seals and others in the Naval Special Warfare community—who have volunteered to undertake demanding and hazardous duties to defend our country. These individuals appear to have been treated shabbily by the Navy, and the Court brushes all that aside. I would not do so, and I therefore dissent.

In August 2021, the Secretary of the Navy made COVID-19 vaccination mandatory and threatened severe consequences, including dishonorable discharge and confinement, for anyone who refused.<sup>1</sup> Later Navy directives told service members that they could apply for religious exemptions, see Electronic Case Filing in U. S. Navy Seals 1-26 v. Biden, No. 4:21-cv-01236 (ND Tex., Jan. 3, 2022) (ECF), Doc. 44-1, p. 40 (Trident Order #12), but this program, as

<sup>&</sup>lt;sup>1</sup>See Decl. of W. Lescher in No. 4:21-cv-01236 (ND Tex.), ECF Doc. 87, p. 10 (explaining that the Navy's vaccination policy was that refusing to be vaccinated would constitute the refusal to obey "a lawful order under Article 92 of the Uniform Code of Military Justice," which is punishable by dishonorable discharge and confinement for two years).

#### AUSTIN v. U. S. NAVY SEALS 1-26

#### ALITO, J., dissenting

described by the District Court, was largely "theater" designed to result in the denial of almost all requests. U. S. Navy Seals 1-26 v. Biden, \_\_\_\_\_ F. Supp. 3d\_\_\_\_ (ND Tex. 2022), App. to Application for Partial Stay 31a (App.).

The exemption procedure that the Navy set up included no fewer than 50 steps, and during the first 35 steps, none of the various officials who processed requests gave any consideration to their merit. Decl. of A. Stephens, Exh. 1, ECF Doc. 62, at 10-26. Instead, a form letter rejecting each request was prepared and sent to seven offices for review. App. 40a.<sup>2</sup> A package of rejection letters was then assembled, together with a memo asking the vice admiral who served as a deputy chief of naval operations to sign the rejection letters. Ibid. Only at step 35 was someone in this chain told to read the exemption requests, but it appears that this individual was not given an opportunity to recommend that a request be granted. See ECF Doc. 62, at 7. Instead, this person's sole task was to record pertinent information on a spreadsheet and send the package on to the vice admiral. Id., at 7-8.

Given the nature of this procedure, the results it produced are not surprising. Although more than 4,000 exemption requests had been submitted by February 15, 2022, not a single one had been approved when the complaint in this case was filed. See Application for Partial Stay 9, and n. 3 (Application) (citing ECF Doc. 129, at 16, n. 2 (Feb. 23, 2022)).

Respondents are among the many recipients of form rejection letters, and according to their declarations and testimony, some of them were told outright that pressing for a

<sup>&</sup>lt;sup>2</sup>Both the District Court and the Court of Appeals concluded based on the record that the Navy did not have a template for approving an exemption. See U. S. Navy Seals v. Biden, 27 F. 4th 336, \_\_\_\_ (CA5 2022) (per curiam), App. 6a; id., at 40a. In the Reply filed in this Court, the Solicitor General claims that there was an approval template, Reply Brief 12, n. 6, but no such document been supplied to this Court.

#### Cite as: 595 U.S. \_\_\_\_ (2022)

#### ALITO, J., dissenting

religious exemption would end their naval careers. A respondent identified as Navy Seal 2 stated that a superior officer advised him that "'all religious accommodation requests will be denied" because "'senior leadership ... has no patience or tolerance for service members who refuse COVID-19 vaccination for religious reasons and want them out of the SEAL community." U. S. Navy Seals v. Biden, 27 F. 4th 336, (CA5 2022) (per curiam), App. 9a. This officer allegedly added that "'even if a legal challenge is somehow successful, the senior leadership of Naval Special Warfare will remove [his] special warfare designation." Ibid. According to Navy Seal 5, he was told that "there [would] be a blanket denial of all religious accommodation requests regarding COVID-19 vaccination." Ibid. Navy Seal 8 declared that his "'chain of command ... made it clear that [his] request [would] not be approved and . . . provided [him] with information on how to prepare for separation from the U.S. Navy." Ibid. Navy Seal 11 stated that a command master chief told him that "'anyone not receiving the COVID-19 vaccine is an "acceptable loss" to the Naval Special Warfare (NSW) community." Ibid.

Forced to choose between violating their religious beliefs and the punishment that the Navy threatened, respondents brought this suit, claiming that the Navy's denial of their exemption requests violated the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, 42 U. S. C. §2000bb *et seq.* See Complaint in ECF Doc. 1. The District Court found that these claims were likely to succeed, and it issued a preliminary injunction prohibiting the Navy from taking adverse actions against respondents due to their unvaccinated status. App. 56a. But the court made clear that its order did not require the Navy "to make any particular personnel assignments" and left "[a]ll strategic decisions . . . in the hands of the Navy." *Id.*, at 60a.

The Government appealed and asked the U.S. Court of

#### AUSTIN v. U. S. NAVY SEALS 1-26

#### ALITO, J., dissenting

Appeals for the Fifth Circuit to stay the preliminary injunction, but the Fifth Circuit refused and issued a detailed opinion. 27 F. 4th 336.

The Government then applied to this Court for what it characterizes as a "partial stay," and the Court now issues a stay that uses precisely the language that the Government proposed. As I will explain, the Court's order essentially gives the Navy *carte blanche* to warehouse respondents for the duration of the appellate process, which may take years. There is no justification for this unexplained and potentially career-ending disposition.

#### Π

In order to obtain a stay, the Government must show, among other things, that it is likely to succeed in defeating respondents' RFRA and free exercise claims, *Hilton* v. *Braunskill*, 481 U. S. 770, 776 (1987), and it cannot make that showing.

#### A

Under the clear terms of RFRA, all components of the Federal Government are forbidden to burden a person's exercise of religion unless the Government can demonstrate that the burden represents the least restrictive means of furthering a compelling interest. 42 U.S.C. §2000bb-1(b); Holt v. Hobbs, 574 U.S. 352, 357 (2015). The Government does not claim that Article II imperatives absolve the Navy's chain of command from complying with RFRA, and it concedes that the statute applies to the military. Application 28 (citing Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 726-727 (2014)). Indeed, even the form disapproval letter for religious accommodation requests in the District Court record explains that RFRA applies to the Navy, and it is the Navy's position that "only those interests of the highest order can overbalance legitimate claims to the free exercise of religion." ECF Doc. 62, at 27-28.

#### Cite as: 595 U.S. \_\_\_\_ (2022)

#### ALITO, J., dissenting

Here, it is not disputed that compliance with the vaccination requirement would impose a substantial burden on respondents' free exercise of religion. Therefore, the two remaining questions are (1) whether the Navy's mandatory vaccination program furthers compelling interests and (2) whether the denial of respondents' exemptions represents the least restrictive means of furthering such interests.

As to the first question, I agree that the Navy has a compelling interest in preventing COVID-19 infection from impairing its ability to carry out its vital responsibilities, as well as a compelling interest in minimizing any serious health risk to Navy personnel. But the Navy's summary rejection of respondents' requests for religious exemptions was by no means the least restrictive means of furthering those interests. This is so for at least two reasons.

First, all the evidence available at this stage suggests that the Navy gave no real consideration to respondents' requests, and the Navy had no compelling need to proceed in that fashion. I cannot believe that this Court would tolerate such treatment in other contexts. Suppose, for example, that a federal agency processed employee complaints about discrimination on the basis of race, sex, or disability using a 50-step process in which rejection was presumed until the very last step, and suppose that the record showed that this procedure nearly always resulted in the denial of a claim. We would be outraged—and rightfully so. Why, then, is the Court willing to brush aside what appears to have occurred here?

Second, even if we ignore what the Navy did and accept the justification for the denials that Justice Department lawyers later provided in court, the relief that the Court now awards goes well beyond anything that can possibly be regarded as the least restrictive means of further compelling Navy interests. Focusing primarily on the Seals, the Government stresses certain characteristics of Seal missions, including small unit size, the frequent need to work

#### AUSTIN v. U. S. NAVY SEALS 1-26

#### ALITO, J., dissenting

at very close quarters, and the remote and often inaccessible locations in which such missions are carried out. Due to those characteristics, the Government argues, there is a heightened danger that the COVID-19 virus will spread, as well as a special need to minimize the risk that a mission will be compromised by a sick team member who is unable to perform assigned tasks with maximum effectiveness.

In order to win at trial, it would not be enough for the Government to posit that sending an unvaccinated Seal on such a mission *might* produce such consequences. A court could not simply defer to the Navy's opinion, and mere "conjecture" or "speculation" would not be enough. See *Ramirez* v. *Collier*, 595 U. S. \_\_\_, \_\_\_\_ (2022) (slip op., at 13–15); *Fulton* v. *Philadelphia*, 593 U. S. \_\_\_, \_\_\_ (2021) (slip op., at 14). The Government would bear the burden of showing that mandatory vaccination is the least restrictive means of furthering the interest it asserts in light of the present nature of the pandemic, what is known about the spread of the virus and the effectiveness of the vaccines, prevalent practices, and the physical characteristics of Navy Seals and others in the Special Warfare community.

Whether the Government will be able to make the requisite showing remains to be seen, but for the purposes of considering interim relief that is sought in an emergency application, I am willing to accept the Navy's need to refrain from sending unvaccinated Seals on the types of missions the Government has described. But participating in such missions is not the only thing that respondents do, and the relief that the Government sought and that the Court now awards goes much further. Using the terminology selected by the Government, the Court stays the preliminary injunction with respect to decisions about "deployment," "assignment," and "other operational decisions."

The Government has not told us what these terms mean, but without any contrary guidance, we must assume that they will be interpreted in accordance with the definitions

#### Cite as: 595 U.S. \_\_\_\_ (2022)

#### ALITO, J., dissenting

in the Department of Defense Dictionary of Military and Associated Terms (DOD Dictionary).<sup>3</sup> And as defined in that dictionary, the terms seemingly allow the Navy to do just about anything it wants short of punishing respondents and drumming them out of the service.

"Deployment" is defined as "[t]he movement of forces into and out of an operational area,"<sup>4</sup> and an "operational area" seems to mean any "geographic are[a]" where the Navy might carry out "a strategic, operational, tactical, service, training, or administrative military mission."<sup>5</sup> Thus, sending a respondent somewhere for training or administrative purposes may constitute a deployment.

The term "assignment" appears to include detailing an individual to perform any duties on something more than a temporary basis.<sup>6</sup> And an "operational decision" apparently can include the carrying out of any "strategic, operational, tactical, service, training, or administrative military mission."<sup>7</sup>

Putting all this together, it appears that the Court's order allows the Navy to use respondents' unvaccinated status as a reason for directing them to perform whatever duties or functions the Navy wants, including sitting alone in a room

<sup>6</sup>The DOD Dictionary does not define "assignment," but the term "assign" is given this complex definition:

"1. To place units or personnel in an organization where such placement is relatively permanent, and/or where such organization controls and administers the units or personnel for the primary function, or greater portion of the functions, of the unit or personnel. 2. To detail individuals to specific duties or functions where such duties or functions are primary and/or relatively permanent." *Id.*, at 20.

<sup>7</sup>The specific term "operational decision" is not defined, but the definition of "operation" includes "the carrying out of a strategic, operational, tactical, service, training, or administrative military mission." Id., at 159.

<sup>&</sup>lt;sup>3</sup>See DOD Dictionary (Nov. 2021), https://www.jcs.mil/Portals/36/ Documents/Doctrine/pubs/dictionary.pdf.

<sup>&</sup>lt;sup>4</sup>Id., at 62.

<sup>&</sup>lt;sup>5</sup>*Id.*, at 159.

#### AUSTIN v. U. S. NAVY SEALS 1-26

#### ALITO, J., dissenting

pushing paper or reading manuals for the duration of the appellate process. It is squarely within the judicial power of Article III to assess whether the Government has shown that it has a compelling interest in obtaining this breadth of equitable relief pending appeal. The Government has not done so.

I would not rubberstamp the Government's proposed language. While I am not sure that the Navy is entitled to any relief at this stage, I am also wary, as was the District Court, about judicial interference with sensitive military decision making. Granting a substantial measure of deference to the Navy, I would limit the order to the selection of the Special Warfare service members who are sent on missions where there is a special need to minimize the risk that the illness of a member due to COVID-19 might jeopardize the success of the mission or the safety of the team members. This, I believe, was the aim of the District Court, and respondents themselves understand the preliminary injunction that way. See Response in Opposition 1 (stating that the injunction "does not require the Navy to deploy any of the thirty-five plaintiffs" (footnote omitted)).

#### B

Respondents are also likely to prevail on their claims under the Free Exercise Clause. Under our case law, if the Federal Government or a State treats conduct engaged in for religious reasons less favorably than similar conduct engaged in for secular reasons, that treatment is unconstitutional unless the relevant jurisdiction can satisfy "strict scrutiny," which is essentially the same as the standard imposed by RFRA. See *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 878–879 (1990); *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 533 (1993).

That "[o]ur review of military regulations challenged on First Amendment grounds" is deferential does not "render

#### Cite as: 595 U.S. \_\_\_\_ (2022)

#### ALITO, J., dissenting

entirely nugatory in the military context the guarantees of the First Amendment." *Goldman* v. *Weinberger*, 475 U. S. 503, 507 (1986). "This Court has never held... that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service." *Chappell* v. *Wallace*, 462 U. S. 296, 304 (1983).

Here, the Navy treated service members who applied for medical exemptions more favorably than those who sought religious exemptions. For one thing, requests for medical exemptions were seriously considered, and quite a few were granted, at least on a temporary basis. Application 7-8; 27 F. 4th, at , App. 20a ("[T]he Navy acknowledges that it has granted hundreds of medical exemptions from the COVID-19 vaccine, at least 17 of which were temporary medical exemptions for those in Naval Special Warfare"). In addition, service personnel with medical exemptions are not restricted as severely as respondents will be under the Court's order. App. 42a. Indeed, the District Court found that under Navy policy those participating in clinical trials and those with medical contraindications and allergies to vaccines remained deployable, unlike those seeking religious accommodations. Id., at 50a (citing ECF Doc. 17-2, at 66). The Navy has no interest in different treatment for accommodation requests that produce otherwise identical outcomes. I would therefore specify in the Court's order that the Navy must provide equal treatment for all unvaccinated service members.

III

Today, the Court brushes aside respondents' First Amendment and RFRA rights. But yesterday, the Court handed down another decision that illustrates the strong protection for religious liberty that is provided by the framework that applies under RFRA and strict scrutiny. The decision in question, *Ramirez* v. *Collier*, involved a convicted murderer awaiting execution and his rights under

#### AUSTIN v. U. S. NAVY SEALS 1-26

10

#### ALITO, J., dissenting

the Religious Land Use and Institutionalized Persons Act of 2000, 14 Stat. 803, 42 U. S. C. §2000cc *et seq.*, which, among other things, essentially requires prisons to comply with the RFRA standard. Ramirez argued that his exercise of religion will be burdened unless Texas allows his pastor to lay hands on him and pray aloud while he is being executed. Ramirez was less than punctilious and consistent in requesting a religious accommodation, see *Ramirez*, 595 U. S., at \_\_\_\_ (slip op., at 4–5); *id.*, at \_\_\_ (THOMAS, J., dissenting) (slip op., at 8), but the Court's decision forgave all that. Texas objected to Ramirez's request on the ground that the pastor's conduct might interfere with the execution, but the Court held that the State failed to discharge its burden to substantiate the likelihood of such harm. *Id.*, at \_\_\_ (slip op., at 12).

The contrast between our decision in *Ramirez* yesterday and the Court's treatment of respondents today is striking. We properly went to some lengths to protect Ramirez's rights because that is what the law demands. We should do no less for respondents.

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 250 of 325 PAGEID #: 4915

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SUBJ/U.S. NAVY COVID-19 STANDARDIZED OPERATIONAL GUIDANCE 5.0

REF/A/NAVADMIN/OPNAV/021344ZJUN21// REF/B/NAVADMIN/OPNAV/042044ZMAY21// REF/C/NAVADMIN/OPNAV/221712ZDEC21// REF/D/MEMO/OSD/30DEC2021// REF/E/DOC/SECDEF/24AUG2021// REF/F/ALNAV/SECNAV/302126ZAUG21// REF/G/NAVADMIN/CNO/311913ZAUG21// REF/H/NAVADMIN/OPNAV/241805ZNOV21// REF/I/DOC/NMCPHC/27DEC2021// REF/J/DOC/NMCPHC/14MAY2021// REF/K/DOC/NMCPHC/19MAR2021// REF/L/MEMO/OSD/20DEC2021// REF/M/NAVADMIN/OPNAV/301952ZAPR21// REF/N/MEMO/OSD/10JAN2022// REF/O/NAVADMIN/OPNAV/041827ZAUG21// REF/P/NAVADMIN/OPNAV/231718ZAUG21//

NARR/REF A IS NAVADMIN 110/21, U.S. NAVY COVID-19 STANDING GUIDANCE UPDATE 1. REF B IS NAVADMIN 088/21, SARS-COV-2 VACCINATION AND REPORTING POLICY. REF C IS NAVADMIN 289/21, GUIDANCE ENCOURAGING COVID-19 VACCINE BOOSTER. REF D IS USD P&R FORCE HEALTH PROTECTION (FHP) SUPPLEMENT 15 REVISION 3 DOD GUIDANCE FOR CORONAVIRUS DISEASE 2019 LABORATORY TESTING SERVICES AVAILABLE AT https://www.defense.gov/Spotlights/Coronavirus-DOD-Response//Latest-DOD-Guidance/. REF E IS THE SECRETARY OF DEFENSE MEMO MANDATING CORONAVIRUS DISEASE 2019 VACCINATION FOR DEPARTMENT OF DEFENSE SERVICE MEMBERS. REF F IS ALNAV 062/21, 2021-2022 DEPARTMENT OF THE NAVY MANDATORY COVID-19 VACCINATION POLICY. REF G IS NAVADMIN 190/21, 2021-2022 NAVY MANDATORY COVID-19 VACCINATION AND REPORTING POLICY. REF H IS NAVADMIN 268/21, REQUIRED COVID-19 TESTING FOR UNVACCINATED SERVICE MEMBERS. REF I IS NAVY AND MARINE CORPS PUBLIC HEALTH CENTER COVID-19 OMICRON VARIANT AND BOOSTER EFFECTIVENESS. REF J IS NAVY AND MARINE CORPS PUBLIC HEALTH CENTER U.S. NAVY FORCE HEALTH PROTECTION WITH CONSIDERATIONS FOR VACCINE EFFICACY. REF K IS NAVY AND MARINE CORPS PUBLIC HEALTH CENTER DOCUMENT ASSESSING REAL

COVID-19 RISK. REF L IS USD P&R FORCE HEALTH PROTECTION (FHP) SUPPLEMENT 23 REVISION 3 DOD GUIDANCE FOR CORONAVIRUS DISEASE 2019 VACCINATION ATTESTATION, SCREENING, TESTING, AND VACCINATION VERIFICATION AVAILABLE

AThttps://www.defense.gov/Spotlights/Coronavirus-DOD-Response//Latest-DOD-Guidance/.

REF M IS NAVADMIN 086/21, UPDATED GUIDANCE TO COMMANDERS ON ADJUSTING HEALTH PROTECTION CONDITIONS AND BASE SERVICES DURING COVID-19 PANDEMIC (CORRECTED COPY).

REF N IS USD P&R FORCE HEALTH PROTECTION (FHP) SUPPLEMENT 20 REVISION 1 DOD GUIDANCE FOR PERSONNEL TRAVELING DURING THE CORONAVIRUS DISEASE 2019 PANDEMIC



#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 251 of 325 PAGEID #: 4916

AVAILABLE AT https://www.defense.gov/Spotlights/Coronavirus-DOD-Response//Latest-DOD-Guidance/. REF 0 IS NAVADMIN 165/21, SOVEREIGN IMMUNITY POLICY. REF P IS NAVADMIN 180/21, UPDATE TO COVID-19 REPORTING REQUIREMENTS.

POC/OPNAV/CAPT STEVEN TARR III, (703) 614-9250//EMAIL: STEVEN.TARR1.MIL(AT)US.NAVY.MIL

RMKS/ 1. Purpose. This NAVADMIN provides updated COVID-19 standardized operational guidance and cancels and replaces references (A) and (B). As a result of our umblinking focus on personnel safety, our sailors and civilians have proven resilient to the COVID-19 global pandemic. Vaccinations, vaccine boosters, command engagement, and personal accountability continue to form the foundation of our success. Although Commanding Officers hold ultimate responsibility for the health and welfare of their crews, in the case of a persistent pandemic every member of every command must take personal ownership and responsibility of the promulgated measures required to keep COVID-19 in check.

2. Applicability. This guidance applies to all service members (active duty and ready reserve) who are members of, or support, operational units as defined by the applicable Navy Component Commander (NCC) per paragraph 4.e below. Non-operational forces, civilian employees and contractor personnel should follow the latest Department of Defense (DOD) Force Health Protection, Center for Disease Control (CDC) and state/local area guidance. Additionally, host nation and/or higher-echelon Commanders guidance may apply.

3. Evolving Guidance. The fight against COVID-19 has been dynamic. Both the data and the response to the data continue to evolve and the CDC is the authority for COVID-19 measures for the general population. The CDC does not provide Navy-specific guidance. The Navy Surgeon General is the authority for Navy COVID-19 measures and advises the CNO on how best to apply CDC guidance across the spectrum of Navy operating environments. To date, the Navy has met or exceeded CDC guidance and continues to experience a much lower incidence of adverse effects than the general population. Accordingly, and except as noted below in this NAVADMIN, evolving CDC guidance related to virus behavior should first be evaluated by the Navy Surgeon General prior to Fleet implementation. Questions regarding applicable COVID-19 measures may be directed to the point of contact (POC) listed above.

4. Definitions. All CDC definitions regarding COVID-19 apply and are kept current on the CDC website: https://www.cdc.gov/.

The following additional Navy definitions are provided:

4.a. Immunized / Vaccinated: Interchangeable terms for an individual who has completed a primary vaccine series as defined in reference (C). Term applies two weeks after the final dose is received. During the time period from initial dose until two weeks after the final dose, an individual is considered partially immunized/vaccinated.

4.b. Vaccine Booster: The vaccine booster is a time-based reinforcement of the initial vaccine in order to prevent decreasing immunity. A vaccine booster is authorized greater than 5 months after a Pfizer/BioNTech or a Moderna mRNA two-dose vaccine series, and greater than 2 months after a Johnson and Johnson single-dose vaccine. Booster guidance is subject to change and the most up to date information is available on the CDC website.

4.c. High-risk personnel: Those individuals designated by a medical provider who meet CDC criteria for increased risk of severe illness. Qualifying conditions are included on the CDC website.

4.d. Commander: For the purposes of this NAVADMIN, the term Commander includes Commanding Officers, Officers-in-Charge, Masters, and Aircraft Commanders.

4.e. Operational and non-operational forces: For the purposes of this NAVADMIN, operational forces and non-operational forces are defined by the applicable NCC. For operational forces, this might include deployed forces,

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 252 of 325 PAGEID #: 4917

to fall within the intent and context of this NAVADMIN. 4.f. Restriction of movement (ROM): DOD term for limiting personal interaction to reduce risk to a broader population. Personnel executing directed ROM remain in a duty status and will not be charged leave. ROM-sequester is the Navy term for preemptive ROM in order to reduce risk of infection in advance of movement. 4.g. Health protection measures (HPM): Comprehensive term for mitigation measures that reduce the spread of COVID-19. This includes physical distancing, wearing of masks, and enhanced environmental cleaning. Recommended HPMs are included on the CDC website. 4.h. Viral test: For the purposes of this NAVADMIN, and unless specifically stated otherwise, a COVID test is defined as receiving a test that measures antigen produced by the body's immune response (antigen test) or a test that detects the actual presence of the virus (Polymerase Chain Reaction (PCR) test).

forces in sustainment, or other operational elements that the NCC determines

4.1. Close contact: A person who was less than 6 feet away from another, infected person (laboratory-confirmed or a clinical diagnosis) for a cumulative total of 15 minutes or more over a 24-hour period (for example, three individual 5-minute exposures for a total of 15 minutes).

5. COVID-19 infected personnel and close contacts.

5.a. Actions for personnel suspected of being infected.

5.a.1. Symptomatic. (Test immediately those individuals exhibiting COVID-19 symptoms. If symptomatic and positive, isolate the individual per paragraph 5.a.3. and identify close contacts per reference (D); if symptomatic and negative, consult a medical provider prior to returning to work. 5.a.2. Close contacts. Asymptomatic close contacts should be tested 2-5 days after exposure, if testing is available (see paragraph 6). Close contacts may remain on duty but must wear a mask for 10 days. If symptoms develop, test per paragraph 5.a.1.

5.a.3. Isolation. Isolate individuals who test positive for 5 days or until symptoms are clearing, whichever is longer, including 24 hours with no fever and without fever-reducing medication (day 0 is date of positive test or symptom onset, whichever occurred first). Isolation may be conducted either ashore or afloat. Once released, individuals will wear a mask for an additional 5 days (minimum 10 days total). No exit testing is required and, absent symptoms, prior positives should not be PCR tested for 90 days (per paragraph 6.c).,

5.b. Actions for unvaccinated personnel.

5.b.1. Per references (E), (F) and (G), all operational Navy units are assumed to be 100 percent vaccinated. Unvaccinated uniformed personnel should only include those with an approved waiver, those awaiting waiver disposition, or those processing for separation. With the exception of separation orders, unvaccinated personnel will not execute orders until the COVID-19 Consolidated Disposition Authority (CCDA) has completed disposition of their case.

#### 6. COVID-19 Testing.

6.a. Testing Priority. Personnel exhibiting COVID like symptoms are the highest priority for testing. If testing asymptomatic close contacts per paragraph 5.a.2. stresses testing supplies, or if operations preclude testing (e.g., small, remote teams or depleted supplies), Commanders are authorized to forego testing of asymptomatic close contacts.
6.b. Testing of unvaccinated personnel. Unvaccinated personnel shall follow

the testing requirements of reference (H) and paragraph 6.c. below. 6.c. Testing of individuals previously infected with COVID-19. Individuals previously infected with COVID-19 may be asymptomatic and continue to test positive by PCR for up to 90 days from date of initial diagnosis due to the presence of persistent non-infectious viral fragments. Therefore, prior COVID positives are exempt from testing protocols for 90 days from the earlier of symptom onset or first positive test (90-day rule). Individuals exhibiting new or persistent symptoms during the 90-days following infection should be evaluated by a medical provider. 6.d. Surveillance / ship-wide testing. Surveillance or ship-wide testing is

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 253 of 325 PAGEID #: 4918

neither required nor recommended and has previously generated large numbers of unmanageable persistent positives.

6.e. Test procurement. To ensure uninterrupted operations, and as feasible, Commands will coordinate with their supporting supply activities to obtain testing supplies 60 days in advance of need.

7. Requirements for Operational units.

7.a. Vaccine booster. To promote maximum protection, NCCs should continue the campaign for COVID-19 vaccine boosters. Because all studies are converging on the need for a vaccine booster to ensure enduring protection, it has essentially become the next-shot in a series and will likely become mandatory in the near future. There is no shortage of vaccine booster doses for those eligible.

7.b. Medical screening. Medical screening will include newly reporting personnel and a command-wide monthly data review and assessment, as directed by the applicable NCC. An additional pre-deployment screening will be completed within 7 days of deployment. Medical screening shall be conducted by medical providers and reported to the unit Commander to assist in assessing risk and mitigations. Screening will include, at a minimum, a review of vaccination and vaccine booster status, an assessment of COVID-19 exposure history (those under the 90-day rule), and a review and assessment of those with underlying risk factors (high-risk determination). Unvaccinated Navy personnel shall not be assigned to operational units. 7.c. Military Sealift Command (MSC). MSC shall medically screen Civil Service Mariners and contract personnel for deployment on MSC vessels in accordance with existing MSC Quality Management System processes and procedures. Unvaccinated personnel should not be assigned to operational units, with exceptions approved and mitigated by Commander, MSC.

7.d. Vaccinated High-risk personnel. The decision to operate and deploy with vaccinated high-risk personnel rests with the Commander, as advised by medical providers, who must report intentions to their immediate superior in command (ISIC). High-risk personnel shall be PCR viral tested within 3 days of embarking.

7.e. Pre-deployment ROM-sequester. Vaccinated individuals should not normally be required to ROM- sequester ahead of planned operations. In rare circumstances, the applicable NCC may direct a ROM-sequester in response, for example, to unanticipated virus behavior or in response to Geographic Combatant Commander (GCC) and/or host nation requirements. Foreign clearance guidance is available at https://www.fcg.pentagon.mil/.

7.f. Underway HPM. As a result of demonstrated vaccine effectiveness, a 100% vaccinated operational force and a healthy demographic, serious illness or death resulting from COVID-19 for vaccinated individuals is statistically very unlikely, and modeling contained in references (I), (J), and (K) indicates this will continue in the context of current variants. However, the increasing contagious nature of evolving variants can result in unmanageable numbers of even mild symptomatic positives that may pose general health and operational unit risk, i.e. risk to force (RTF) or risk to mission (RTM), regardless of symptom severity. The following HPM, at a minimum, is required:

7.f.1. Medical screening as outlined above in paragraph 7.b. 7.f.2. Wearing masks for the first 10 days (analogous with paragraph 5 requirements) after leaving port if more than 25% of the total crew meets the requirements for, but has not yet received, the vaccine booster. At Commanders discretion, masks may be removed if there is no evidence of COVID infection for 10 days (no positive symptomatic and no isolations). At the onset of COVID on board, and if still greater than 25% have not received the vaccine booster, return to wearing masks until there is no longer evidence of COVID. Although all vaccinated personnel have demonstrated protection against serious illness or death, this percentage indicates decreasing immunity and the potential for increasing numbers of symptomatic individuals requiring isolation.

7.f.3. Educate and reinforce self-monitoring for symptoms and prompt reporting.

7.f.4. Educate and reinforce frequent handwashing and social distancing, when applicable.

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#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 254 of 325 PAGEID #: 4919

7.f.5. Aggressively isolate COVID-19 positive individuals per paragraph 5 above.

7.f.6. Ensure adequate ventilation in spaces routinely manned. 7.f.7. Educate and reinforce focused cleaning efforts on high-touch surfaces, at least daily or more frequently, depending upon usage (e.g., tables, hatch latches, ladderwells, phones, watch console keyboards and buttons, toilets, faucets, sinks, etc.). Although remote, there is evidence of surface spread of COVID-19 and other viruses with similar symptoms. 7.g. Considerations for adding or relaxing HPM. NCCs and Commanders should consider for any unit the operational impact resulting from the number of sailors in isolation, either ashore or afloat, regardless of percentage of immunized personnel, boosted personnel, or severity of symptoms. Commanders may elevate HPM at any time and retain the latitude to temporarily apply alternate HPM in lieu of isolation to support safe operations. An example might be a rapid spread that compels a Commander to utilize asymptomatic or mildly symptomatic positives to manage watch-bill impact while recovering others in isolation, applying additional alternate measures as needed to minimize spread. The following should be considered before adjusting HPM:

7.g.1. Overall number of individuals in isolation and trend. The general rule of thumb for a COVID outbreak trending in a favorable direction is that the number of those exiting isolation matches (flattening curve) or exceeds (lowering curve) those entering isolation, combined with the assessment that the total number of symptomatic individuals is manageable and improving, and watch-bill (operational) impact is manageable and improving. 7.g.2. Proximity of a units access to shore and afloat Medical Treatment Facilities (MTF) within a medically relevant timeline, balanced with paragraph

7.f HPM and onboard trend. Rule of thumb is within 1-week of an MTF for 100percent vaccinated crew with a manageable COVID-positive case load; moving to a more restrictive, 72 hours or less, if a growing or concerning case load; or, moving to a less restrictive, beyond 1-week, if a small or no case load. 7.h. Port visits. Liberty is an important mission and should be pursued within the context of this NAVADMIN. Geographic NCCs (GNCC) will set conditions for foreign port off-base liberty in coordination with country teams and local authorities, taking into account host country requirements, vaccination and booster status, sovereign immunity per paragraph 8 below, COVID-19 prevalence and mission requirements.

7.i. Aircraft operations. On a case-by-case basis, aircrews and aircraft maintainers may be exempt from this guidance in order to meet emergent operational or NATOPS currency requirements. Exemptions and mitigation plans. must be approved by the Squadron Commander. For aviation units embarked on surface ships, mitigation plans will be coordinated with the

ships health protection plan and approved by the ships Commanding Officer. 7.j. Post-deployment. Personnel returning to homeports from deployment shall follow CDC and U.S. Department of State travel and testing requirements. If return travel includes foreign countries, personnel shall adhere to the requirements of those countries as well. Updated travel information is on the following website:

https://travel.state.gov/content/travel.html.

7.k. Visitors embarking underway vessels and Navy aircraft. All visitors are required to be vaccinated in accordance with reference (L), and, if eligible, have received a vaccine booster. Masks will be worn during transit; and for ships, 10 days once onboard.

#### 8. Sovereign immunity.

8.a. It is U.S. Government policy to protect the sovereign immunity of warships, naval auxiliaries, and aircraft, including protecting crew information to the maximum extent possible. Within the context of COVID-19, host nations may request or require crew or ship information exceeding that authorized by U.S. policy or international law. NCCs will ensure appropriate training and guidance on protecting U.S. sovereign immunity and the protection of health information as part of OPSEC/personal security.
8.b. GNCCs should determine in advance those host nations that may challenge our sovereign immunity and, as able, avoid them. See reference (0) for

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 255 of 325 PAGEID #: 4920

additional guidance. In all cases, GNCCs shall authorize the minimum information necessary in order to meet operational requirements. The Navy Declaration of Health (NAVMED 6210/3) is the only authorized form for providing health information to foreign officials. If required by the host nation, and with GNCCs concurrence, Commanders at their discretion may include on the NAVMED 6210/3 that their unit is 100% vaccinated, those disembarking will have tested negative within the required timeframe, and those disembarking have received a vaccine booster.

8.c. Exception to Policy (ETP). On a case-by-case basis, and to support operations, OPNAV may grant an exception to policy (ETP) in deference to the varying impacts of COVID-19. Any action that may constitute or require a waiver of sovereign immunity must be coordinated by the applicable GNCC with OPNAV N3N5 for ETP approval no later than 5 days ahead of need. To avoid precedence beyond COVID-19, any ETP will be messaged to the host nation as explicitly linked to the pandemic. Requests shall include justification for port selection; host nation mitigation and testing requirements; alternate port options; impact to mission if the request is denied; medical, legal, collection and privacy risk; and feedback from country team coordination.

Notifications and requests may be sent via record message traffic, email to the POC provided above, or both.

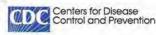
8.d. Guidance for Commanders. Per the direction of their GNCCs, Commanders shall comply with domestic and foreign quarantine regulations for port entry and document compliance on NAVMED 6210/3. Absent GNCC approval in advance, Commanders will not submit to host nation COVID-19 testing nor provide individual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

9. Reporting procedures. Reporting procedures are amended as follows and will be incorporated in the next revision of reference (P). OPREP-3 Navy Blue messages for COVID cases that do not result in death, request for assistance, or operational impact may instead be reported via SharePoint. If unable to report via SharePoint, a single daily OPREP-3 Navy Unit SITREP summarizing all COVID cases onboard is required. SharePoint information is used to produce daily reports to Senior Navy and DoD Leadership.

10. Released by VADM W. R. Merz, Deputy Chief of Naval Operations for Operations, Plans and Strategy, OPNAV N3/N5.//

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#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 256 of 325 PAGEID #: 4921





## Obesity, Race/Ethnicity, and COVID-19

Obesity is a common, serious, and costly chronic disease. Having obesity puts people at risk for many other serious chronic diseases and increases the risk of severe illness from COVID-19. Everyone has a role to play in turning the tide against obesity and its disproportionate impact on racial and ethnic minority groups.

## Adult Obesity is Increasing

The 2020 CDC Adult Obesity Prevalence Maps<sup>1</sup> show that obesity remains high – sixteen states now have an a<u>dult obesity prevalence at or above 35</u> percent: Alabama, Arkansas, Delaware, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia. This is up from twelve states in 2019.

# Obesity Worsens Outcomes from COVID-19

Adults with excess weight are at even greater risk during the COVID-19 pandemic:

- Having obesity increases the risk of severe illness from COVID-19. People who are overweight may also be at increased risk.
- Having obesity may triple the risk of hospitalization due to a COVID-19 infection.
- Obesity is linked to impaired immune function.<sup>2,3</sup>
- Obesity decreases lung capacity and reserve and can make ventilation more difficult.<sup>4</sup>
- A study of COVID-19 cases suggests that risks of hospitalization, intensive care unit admission, invasive mechanical ventilation, and death are higher with increasing BMI.<sup>5</sup>
  - The increased risk for hospitalization or death was particularly pronounced in those under age 65.<sup>5</sup>
- More than 900,000 adult COVID-19 hospitalizations occurred in the United States between the beginning of the pandemic and November 18, 2020. Models estimate that 271,800 (30.2%) of these hospitalizations were attributed to obesity.<sup>6</sup>

Children diagnosed with obesity may suffer worse outcomes from COVID-19. In a study of COVID-19 cases in patients aged 18 years and younger, having obesity was associated with a 3.07 times higher risk of hospitalization and a 1.42 times higher risk of severe illness (intensive care unit admission, invasive mechanical ventilation, or death) when hospitalized.<sup>7</sup>

## Obesity Disproportionately Impacts Some Racial and Ethnic Minority Groups

Combined data from 2018-2020 show notable racial and ethnic disparities:

- Non-Hispanic Black adults had the highest prevalence of self-reported obesity (40.7%), followed by Hispanic adults (35.2%), non-Hispanic White adults (30.3%), and non-Hispanic Asian adults (11.6%).
- 0 states among 35 states and territories with sufficient data had an obesity prevalence of 35 percent or higher among non-Hispanic Asian adults.



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2020 Adult Obesity Prevalence Maps

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 257 of 325 PAGEID #: 4922

- 7 states among 49 states and territories with sufficient data had an obesity prevalence of 35 percent or higher among non-Hispanic White adults.
- 22 states among 49 states and territories with sufficient data had an obesity prevalence of 35 percent or higher among Hispanic adults.
- 35 states and the District of Columbia among 48 states and territories with sufficient data had an obesity prevalence of 35 percent or higher among non-Hispanic Black adults.

Hispanic and non-Hispanic Black adults have a higher prevalence of obesity and are more likely to suffer worse outcomes from COVID-19. Racial and ethnic minority groups have historically not had broad opportunities for economic, physical, and emotional health, and these inequities have increased the risk of getting sick and dying from COVID-19 for some groups. Many of these same factors are contributing to the higher level of obesity in some racial and ethnic minority groups.

## What Can be Done

Obesity is a complex disease with many contributing factors. Neighborhood design, access to healthy, affordable foods and beverages, and access to safe and convenient places for physical activity can all impact obesity. The racial and ethnic disparities in obesity underscore the need to address social determinants of health such as poverty, education, and housing to remove barriers to health. This will take action at the policy and systems level to ensure that obesity prevention and management starts early, and that everyone has access to good nutrition and safe places to be physically active. Policy makers and community leaders must work to ensure that their communities, environments, and systems support a healthy, active lifestyle for all.

## What CDC, Partners, States, and Communities are Doing

Our work with partners, states, and communities makes it easier for everyone to move more and eat a healthy diet where they live, learn, work, and play. Together, we work to remove barriers and promote health and wellness for all by:

- Bringing communities together to plan and carry-out local, culturally tailored interventions to address poor nutrition, and physical inactivity and tobacco use
- Promoting healthier food and beverage choices in childcare, schools, workplaces, hospitals, and public venues
- Making healthy foods more available by connecting local producers with retailers and organizations such as childcare, schools, hospitals, and food hubs
- Promoting nutrition standards in early care and education settings, food pantries, and faith-based organizations



- Designing communities that connect sidewalks, bicycle routes, and public transportation with homes, early care and
  education settings, schools, parks, and workplaces
- · Ensuring screening for obesity and access to healthy lifestyle programs for children and their families

The epidemic of obesity is impacting the severity of the COVID-19 pandemic. Given the added risks associated with COVID-19, we need to support all individuals, especially members of racial and ethnic minority groups, to live active healthy lives.

## Steps to Take Now

Systemic change takes time, as does long-term weight loss. In addition to the steps everyone should take to slow the spread of COVID-19, individuals can help protect themselves and their families during this pandemic by:

## Eating a healthy diet

#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 258 of 325 PAGEID #: 4923

Eating a healthy diet with plenty of fruits and vegetables, lean protein, and whole grains as well as the appropriate amount of calories is important for your health, and can help with weight loss and preventing weight gain.<sup>8</sup> Good nutrition can help support optimal immune function.<sup>9,10</sup> A healthy diet can help prevent or support self-management of diseases such as heart disease and type 2 diabetes<sup>8</sup>, which also increase the risk of severe illness from COVID-19.



### Being active

People who do little or no physical activity are more likely to get very sick from COVID-19 than those who are physically active. Regular physical activity helps you feel better, sleep better, and reduce anxiety. It can also help with preventing weight gain and when combined with calorie reduction, helps with weight loss.<sup>11</sup> Physical activity can also help prevent diseases that increase a person's chances of having severe illness from COVID-19 such as heart disease and type 2 diabetes.<sup>11</sup> Emerging research suggests it may also help boost immune function.<sup>12,13</sup>

## Getting enough sleep

Insufficient sleep has been linked to depression, as well as chronic diseases<sup>14</sup> that may increase the risk of severe illness from COVID-19 such as heart disease, type 2 diabetes, and obesity.

## Coping with stress

Stress during an infectious disease outbreak can sometimes cause changes in sleep or eating patterns, increased use of alcohol and tobacco, or worsening of chronic health problems.



Over time, these actions can help individuals with obesity improve their overall health. And if they result in even modest weight loss, there are health benefits, such as

improvements in blood pressure, blood cholesterol, and blood sugars.<sup>15</sup> And with a healthy BMI, the risk of severe illness from COVID-19 is reduced.<sup>5</sup>

## References

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#### Resources

- Food assistance programs and food system guidance during COVID-19
- · Policy resources to support social determinants of health
- Health Equity Resource Toolkit for State Practitioners Addressing Obesity Disparities
- COVID-19: Health Equity Considerations and Racial and Ethnic Minority Groups What We Can Do
- Strategies to support healthy food systems, create activity-friendly environments, and prevent obesity.
- · Healthy Eating for a Healthy Weight
- · Physical Activity for a Healthy Weight
- Adult BMI Calculator
- CDC's Division of Nutrition, Physical Activity, and Obesity (DNPAO)
- DNPAO's State and Local Programs

Page last reviewed: May 20, 2022



















## INTRODUCTION

The Department of Defense (DoD) Health of the Force report represents a coordinated effort by the Defense Health Agency and the Army, Navy, and Air Force public health centers to provide a snapshot of active component (AC) Service member health and well-being. It is meant to be a resource for military leaders and decision makers to help identify changes in the health status of AC Service members, emerging health problems, and gaps in prevention and treatment efforts. It may also be of interest to program planners, health practitioners, researchers, and others interested in the well-being of Service members.

The current report focuses on ten subject areas: acute and cumulative traumatic injury, traumatic brain injury, noise-induced hearing injury, heat illness, behavioral health (BH), sexually transmitted infections (STIs), sleep disorders, obesity, acute respiratory illnesses, and coronavirus disease 2019 (COVID-19). It is based on data from calendar year 2020. The intent of the annual *DoD Health of the Force* report is to provide timely, concise, and useful information to generate ideas and drive progress toward enhancing the vitality and lethality of our fighting force.

### ORGANIZATION OF THIS REPORT

This report is divided into two sections, Health Metrics and Service Profiles. The Health Metrics section provides health index measures for each of the ten subject areas; the Service Profiles section compares measures across Services.

Methodology is critical to understanding and using health care metrics, especially because of the growing number of sources of health care data. The appendices of this report present detailed information about the methods used to analyze data in each of the ten subject areas as well as specific limitations associated with the data analysis.

## LIMITATIONS

There are many challenges associated with processing and interpreting health care data.<sup>1,2</sup> Variability in the collec-tion, collation, and processing of data; differences in study design and analytic methods; and the inherent intrica-cies of defining and measuring health itself contribute to complexity that cannot be fully resolved or explained in a summary report. Accordingly, this report is meant to be an adjunct to, rather than a substitute for, other reports related to Service member health, deployability, readiness, and total force fitness. Specific limitations include those associated with using electronic medical records for surveillance data (e.g., missing data, underrepresentation of conditions that do not come to the attention of the health care delivery system, miscoding) and failure to account for potentially important covariates such as age and sex when comparing Service populations. In 2020, the COVID-19 pandemic impacted the military health system as well as the entire world. Restrictions on appointments, in-per-son staffing, and social distancing, as well as changes to health care-seeking behavior as a result of these restric-tions, would be expected to cause a decrease in the ascertainment of many medical conditions in 2020.

This report is meant to evolve over time. It is anticipated that specific measures will change over time to account for data-related limitations and changing paradigms related to public health surveillance. Input related to improv-ing this report is critical and welcomed.

## HIGHLIGHTS

- There were 211 acute and 948 cumulative traumatic injuries per 1,000 AC Service members in 2020. Sprains and strains were the most common acute injuries, and the lower extremities were the most commonly affected body region. The rate of acute injuries decreased by 30% between 2016 and 2020. The rate of cumulative traumatic injuries was similar between 2016 and 2019, but decreased 18.9% between 2019 and 2020.
- In 2020, a total of 16,914 (1.3%) of AC Service members had an encounter for traumatic brain injury. The majority (74.5%) of these were mild in severity, followed by 24.7% moderate, 0.5% severe, and 0.28% penetrating.
- The prevalence of noise-induced hearing injury was 4.1% in 2020. Prevalence was higher in male (4.4%) compared to female Service members (2.7%) and increased with increasing age group among both sexes.
- A total of 1,667 AC Service members (0.13%) suffered from heat exhaustion in 2020, and 476 (0.04%) suffered from heat stroke. The percentage of AC Service members affected by heat exhaustion increased from 2017 to 2018 and decreased from 2019 to 2020, whereas the percentage affected by heat stroke remained stable between 2016 and 2020. Overall, heat illnesses were more common among younger Service members and those in the Marine Corps.
- In 2020, 8.7% of AC Service members had a behavioral health (BH) disorder. The prevalence of BH disorders remained stable between 2016 and 2020. Adjustment disorder was the most common BH disorder among both male and female AC Service members.
- Approximately 25 per 1,000 AC Service members were diagnosed with or tested positive for a sexually transmitted infection (STI) (chlamydia, gonorrhea, or trichomoniasis) in 2020. Chlamydia was the most common STI (21 per 1,000), followed by gonorrhea (4 per 1,000), and trichomoniasis (1 per 1,000). The incidence of chlamydia and gonorrhea increased between 2016 and 2019, but decreased between 2019 and 2020. Younger and female Service members had higher rates compared to their respective counterparts.
- In 2020, 12% of AC Service members had a sleep disorder. The prevalence of sleep disorders remained stable between 2016 and 2020. The most common sleep disorder among male Service members was sleep apnea; the most common sleep disorder among female Service members was insomnia.
- The overall prevalence of obesity was 19% among AC Service members in 2020. The overall prevalence of obesity increased slightly between 2016 and 2020. Overall obesity prevalence was higher among male (20%) compared to female (15%) and older compared to younger Service members.
- On average, 20 per 1,000 AC Service members were diagnosed with acute respiratory infections each month during 2020, with rates highest in March and lowest in May (39 and 6.5 per 1,000, respectively). On average, female Service members had higher monthly rates of acute respiratory infections and respiratory symptoms compared to male Service members. Those in the youngest age group had the highest rates of acute respiratory infections, but those in the oldest age group had the highest rates of respiratory symptoms.
- The overall incidence of reported or laboratory-confirmed COVID-19 infection was 5.9% in 2020. Service members in the younger age groups had a higher incidence of COVID-19 than those in the older age groups.

Injury

## **Acute and Cumulative Traumatic Injury**

Injuries consistently rank among the top health care bur-dens in the DoD. In this report, non-battle injury was eval-uated using two broad categories: acute injury (which includes musculoskeletal and other types of injury) and cumulative traumatic injury (musculoskeletal injury result-ing from repeated microtrauma).

Acute injuries and cumulative traumatic musculoskeletal injuries were identified in inpatient and outpatient medical records using the International Classification of D iseases, Tenth Revision, Clinical Modification (ICD-10-CM) injury codes described in the Army Public Health Center's taxonomy of injuries for public health monitoring and reporting.<sup>3</sup> The taxonomy defines body regions and nature-of-injury groups (i.e., the type of anatomic or physiologic disruption that occurred to the body region, such as a fracture, dislocation, open wound, burn, internal organ injury, or poisoning). Both acute and cumulative traumatic injuries were described by body region and nature-of-injury groups (e.g., fracture, open wound, sprain, musculo-skeletal tissue damage).

In 2020, there were 278,580 acute and 1,251,989 cumulative traumatic injuries among AC Service members, with rates of 211 per 1,000 and 948 per 1,000 AC service members, respectively. Injury rates were higher in females as compared to males in all Services and in both injury categories. Acute and cumulative traumatic injury rates were highest in the oldest age group among both sexes. Cumulative traumatic injury rates were markedly higher among older Service members, especially males, where the rate among males aged 45 years or older was more than triple that of males less than 25 years.

Among AC Service members who suffered **acute injuries**, the top five body regions and the top five nature-of-injury categories were similar for all Services and accounted for 99% and 81% of injuries, respectively. **The rate of acute injuries decreased by 30% between 2016 and 2020**.

During 2020, 3,012 (1.4%) of the acute injury cases were hospitalized, and 1,700 (0.31%) of the cumulative traumatic cases were hospitalized. These hospitalizations resulted in 13,741 total bed days for acute injury and 5,571 total bed days for cumulative traumatic injury.

Among AC Service members who suffered **cumulative traumatic injuries**, the most commonly injured body regions were the trunk (43%) and lower extremities (34%). Musculoskeletal tissue damage (e.g., cervical disc disorders, pain in joints, tendonitis, bursitis, chondromalacia) was the most common nature-of-injury category, accounting for 88% of all cumulative traumatic injuries. **The rate of cumulative traumatic injuries decreased by 19% from 2019 to 2020.** 

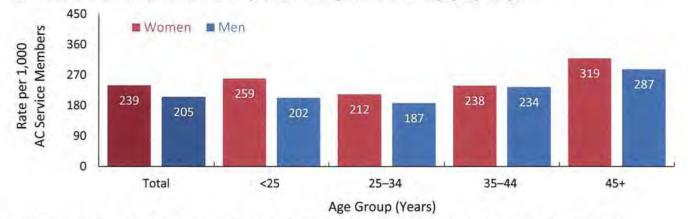
Non-combat musculoskeletal injuries have been found to be associated with increased limited duty days, decreased readiness, and increased medical costs to the U.S. government.<sup>4,5</sup> Of particular concern are injuries sustained during physical training, which is one of the leading cause of injuries in Service members. Many of these types of injuries are preventable and can be mitigated by proper training techniques, use of protective equipment, and program and policy implementation to address risk factors.<sup>6-8</sup>



Injury

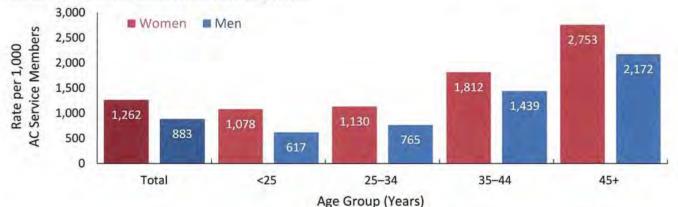
#### Incidence of Acute Injury by Sex and Age Group, AC Service Members, 2020

Overall, acute injury rates were higher for female compared to male Service members (239 and 205 per 1,000, respectively). Among both male and female Service members, acute injury rates were highest in the oldest age group (45+ years).



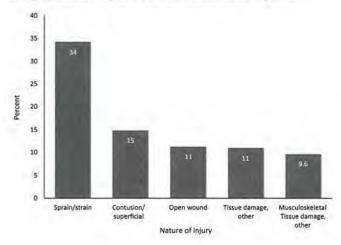
#### Incidence of Cumulative Traumatic Injury by Sex and Age Group, AC Service Members, 2020

Cumulative traumatic injury rates were higher for older compared to younger Service members and higher for female compared to male Service members (1,262 and 883 per 1,000, respectively).



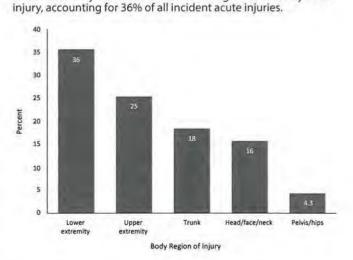
#### Nature of Acute Injury, Top Five Categories, AC Service Members, 2020

Sprains and strains was the most common nature-of-injury category, accounting for 34% of all incident acute injuries.



Categories, AC Service Members, 2020 Lower extremity was the most common region affected by acute

Body Region of Acute Injury, Top Five

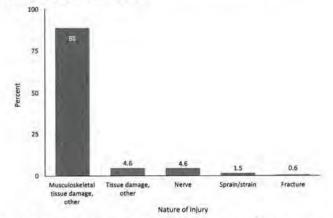


2020 HEALTH OF THE DOD FORCE

Injury

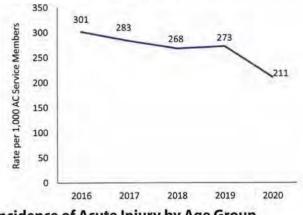
#### Nature of Cumulative Traumatic Injury, AC Service Members, 2020

Musculoskeletal tissue damage, other was the most common nature-of-injury category, accounting for 88% of all incident cumulative traumatic injuries.



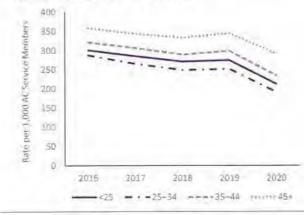
#### Incidence of Acute Injury, AC Service Members, 2016–2020

The rate of acute injuries decreased from 301 per 1,000 to 211 per 1,000 (30%) between 2016 and 2020.



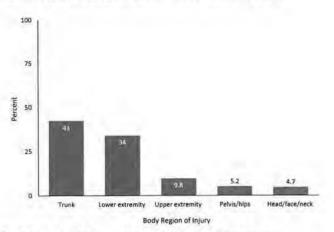
#### Incidence of Acute Injury by Age Group, AC Service Members, 2016–2020

The rate of acute injuries decreased among Service members in all age groups between 2016 and 2020.



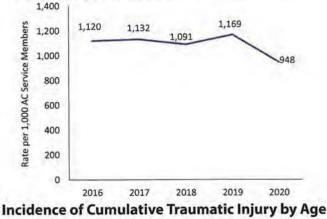
#### Body Region of Cumulative Traumatic Injury, Top Five Categories, AC Service Members, 2020

The trunk (43%) and lower extremity (34%) were the most common regions affected by cumulative traumatic injury.



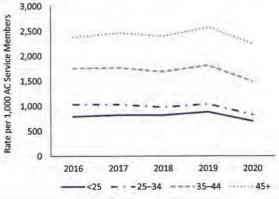
#### Incidence of Cumulative Traumatic Injury, AC Service Members, 2016–2020

The rate of cumulative traumatic injuries was similar between 2016 and 2019, but decreased from 1,169 per 1,000 to 948 per 1,000 (19%) between 2019 and 2020.



Group, AC Service Members, 2016–2020

The rate of cumulative traumatic injuries increased among Service members in all age groups between 2016 and 2019 before decreasing in 2020.



2020 HEALTH OF THE DOD FORCE

Traumatic Brain Injury

## aumatic Brain Injury

Traumatic brain injury (TBI) is structural alteration of age group. The association between increasing age and the brain or physiological disruption of brain function caused by an external force.9 TBI is the most common traumatic injury in the U.S. military and can be attributed to both deployment and non-deployment causes, including blast-related injuries, motor vehicle accidents, falls, contact sports, training activities, and combative actions.<sup>10</sup> The effects of TBI vary depending upon the severity of the injury and may include physical (headaches, sleep disturbances), cognitive (concentration and attention problems), and emotional (anxiety, depression) dysfunction. TBI can contribute to prolonged and permanent disability and may lead to military duty limitations or separation from service.

In 2020, a total of 16,914 AC Service members (1.3%) had medical encounters for TBI. Overall, similar percentages of male and female AC Service members had an encounter for TBI (1.3% and 1.4%, respectively). Male Service members aged 45 years or older (2.4%) were more than twice as likely to have an encounter for TBI as their counterparts aged 34 years or younger (1.1%). However, the percentage of female Service members with encounters for TBI did not increase with increasing prevalence of TBI among male Service members may be related to these members seeking medical care at the end of their service in order to document their eligibility for Veterans disability compensation or follow-up medical care after separation, which could contribute to the identification of TBIs that were sustained earlier in service. Among those with TBI encounters, the most common severity was mild (74.5%) followed by moderate (24.7%), severe (0.5%), and penetrating (0.28%). The annual prevalence of TBI remained stable from 2017 to 2019 and decreased slightly in 2020.

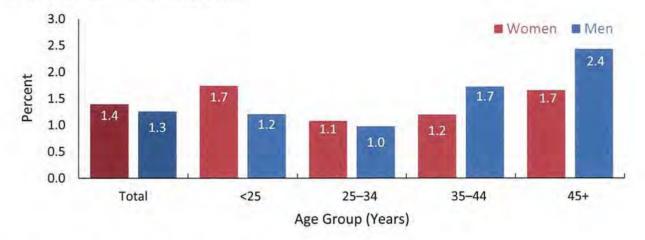
A previous MSMR report evaluating TBI diagnoses from 2001 to 2016 found that incidence rates were highest among those aged 24 years or younger and among Service members in the Army or Marine Corps.<sup>11</sup> Prevention, awareness, and education about mild TBI is important since many TBIs are sustained as a result of non-combat related activities such as motor vehicle crashes or sports injuries.<sup>10</sup> Early detection, diagnosis, and treatment of mild TBIs will result in the best clinical outcome and help to prevent long-term neurological injury.



Traumatic Brain Injury

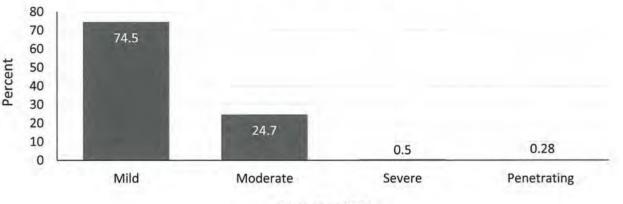
#### Prevalence of TBI by Sex and Age Group, AC Service Members, 2020

Among male Service members, those aged 45 years or older were more likely to have an encounter for TBI than those in younger age groups. Among female Service members, those in the youngest and the oldest age groups were more likely to have an encounter for TBI compared to those in intermediate age groups.



#### Severity of TBI, AC Service Members, 2020

Mild TBI was the most commonly diagnosed severity, accounting for 75% of all TBI diagnoses.

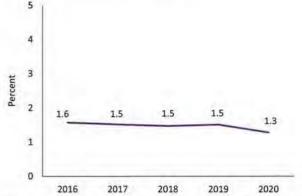


Severity of TBI

Traumatic Brain Injury

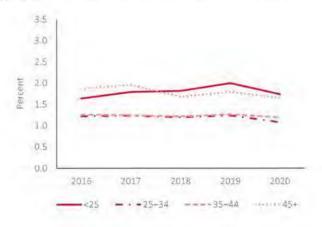
#### Prevalence of TBI, AC Service Members, 2016-2020

The prevalence of TBI remained relatively stable between 2016 and 2019 but decreased slightly in 2020.



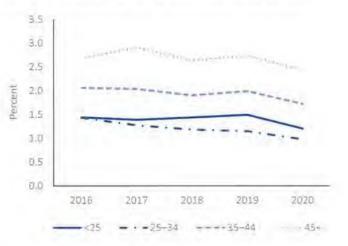
#### Prevalence of TBI by Age Group, Female AC Service Members, 2016-2020

Between 2016 and 2020, the percentages of female Service members who had encounters for TBI remained stable for those less than 45 years old and decreased slightly for those aged 45 years or older.



#### Prevalence of TBI by Age Group, Male AC Service Members, 2016-2020

Between 2016 and 2020, the percentages of male Service members who had encounters for TBI decreased in all age groups.



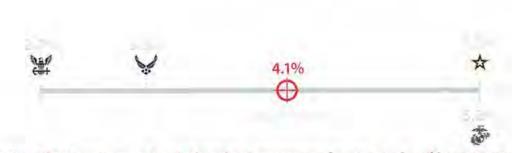
Noise-induced Hearing Injury

## **Noise-induced Hearing Injury**

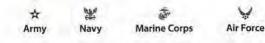
Noise-induced hearing injury refers to acoustic trauma that can be caused by single exposure to an intense "impulse" sound such as an explosion or weapons fire, or by continuous or intermittent noise exposure over an extended period of time. Steady state exposures include military vehicles and aircraft, military equipment, and tools found in both military and civilian industrial environments.<sup>12</sup> Service members may also experience harmful noise exposure from recreational sources including motorcycles, target shooting and hunting, snowmobiles, and power tools.13 Noise-induced hearing injury can significantly affect the health and operational effectiveness of Service members. Epidemiological estimates suggest that noise-induced hearing injuries are a growing problem among military personnel as well as the general population.<sup>14</sup> The Veteran's Benefits Administration reported that auditory disabilities were the second-most common service-related disability type among veterans in 2020, accounting for 13% of all disabilities.15 Common types of noise-induced hearing injuries include tinnitus, a ringing or buzzing noise in one or both ears, and sensorineural hearing loss, which is hearing loss caused by damage to the inner ear. It should be noted that sensorineural hearing loss is typically considered a form of noise-induced hearing loss; however, for the purposes of this report, the two conditions are defined separately.

In 2020, a total of 53,958 AC service members (4.1%) had medical encounters for noise-induced hearing injuries. The prevalence of noise-induced hearing injuries was higher among male compared to female Service members (4.4% and 2.7%, respectively). Service members in the oldest age group had the highest prevalence of noise-induced hearing injuries in both sexes. Tinnitus (2.4%) was the most common specific noise-induced hearing injury sustained by service members in 2020, followed by sensorineural hearing loss (1.6%). The annual prevalence of noise-induced hearing injuries decreased slightly between 2016 and 2020.

Previous studies have shown that rates of noise-induced hearing injuries are higher among male Service members, those 40 years or older, and those in combat-related occupations.<sup>16</sup> Hearing injuries can be reduced or prevented by the use of and compliance with hearing protection devices, distance and physical barriers to noise exposure, and follow-up audiological tests.<sup>17,18</sup>



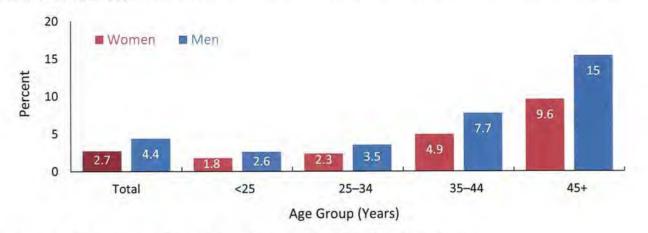
Overall, 4.1% of AC Service members had medical encounters for noise-induced hearing injuries in 2020. Rules ranged from 2.7% to 5.2% across Services.



Noise-induced Hearing Injury

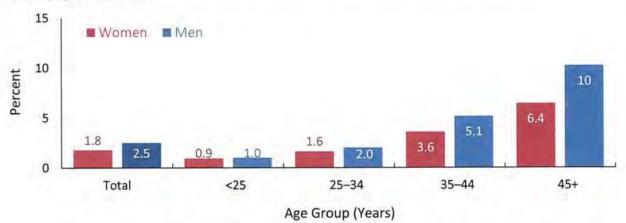
### Prevalence of Noise-induced Hearing Injury by Sex and Age Group, AC Service Members, 2020

The prevalence of noise-induced hearing injuries was higher among male (4.4%) compared to female Service members (2.7%) and increased with increasing age in both sexes.



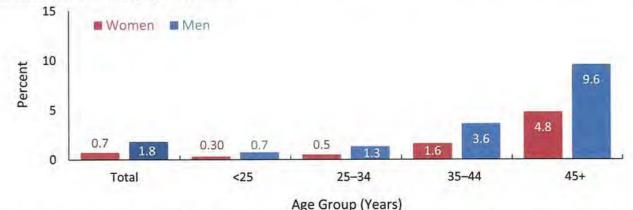
### Prevalence of Tinnitus by Sex and Age Group, AC Service Members, 2020

The prevalence of tinnitus was higher among males (2.5%) compared to female Service members (1.8%), and the prevalence increased with increasing age in both sexes.



#### Prevalence of Sensorineural Hearing Loss<sup>a</sup> by Sex and Age Group, AC Service Members, 2020

The prevalence of sensorineural hearing loss was higher among males (1.8%) compared to female Service members (0.7%), and prevalence increased with increasing age in both sexes.

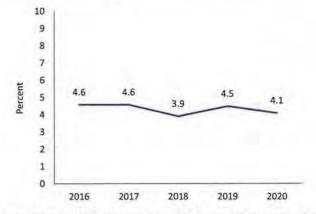


\*Sensorineural hearing loss is typically considered a form of noise-induced hearing loss; however, for the purposes of this report, the two conditions are defined separately.

Noise-induced Hearing Injury

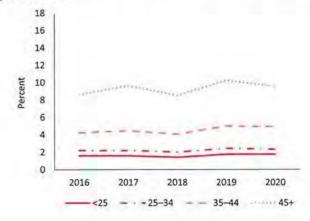
# Prevalence of Noise-induced Hearing Injury, AC Service Members, 2016–2020

The prevalence of noise-induced hearing injuries among Service members decreased slightly between 2016 and 2020.



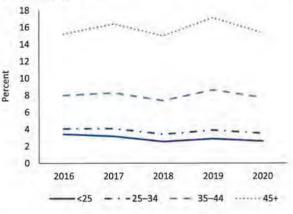
## Prevalence of Noise-induced Hearing Injury by Age Group, Female AC Service Members, 2016–2020

Between 2016 and 2020, the prevalence of noise-induced hearing injuries increased slightly among female Service members 35 years or older.



# Prevalence of Noise-induced Hearing Injury by Age Group, Male AC Service Members, 2016–2020

Between 2016 and 2020, the prevalence of noise-induced hearing injuries decreased slightly among male Service members less than 45 years old.



2020 HEALTH OF THE DOD FORCE

Heat Illness

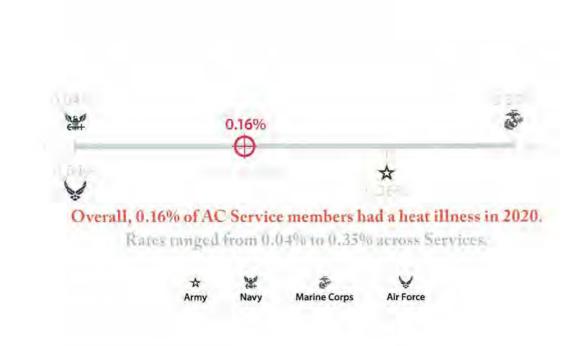
# **Heat Illness**

Heat illness refers to a group of disorders that occur when the elevation of core body temperature surpasses the compensatory limits of thermoregulation. The Armed Forces routinely perform surveillance for the most common of these disorders, namely heat exhaustion and heat stroke. Heat exhaustion is caused by the inability to maintain adequate cardiac output because of strenuous physical exertion and environmental heat stress and is often accompanied by acute dehydration. Heat stroke is a debilitating illness characterized clinically by severe hyperthermia (i.e., a core body temperature of 104°F/40°C or greater), profound central nervous system dysfunction (e.g., delirium, seizures, or coma), and additional organ and tissue damage. The onset of heat stroke requires aggressive clinical treatments including rapid cooling and supportive therapies such as fluid resuscitation to stabilize organ function and prevent multiorgan system failure, which is the ultimate case of mortality due to heat stroke.

In 2020, a total of 1,667 AC Service members (0.13%) were diagnosed with heat exhaustion, and 476 (0.04%) were diagnosed with heat stroke. Overall, heat illnesses were more common among Service members under 25 years old, who accounted for 71% of all cases. Male Service members (0.17%) were slightly more affected by heat illnesses compared to female members (0.12%). The percentages of AC Service members affected by heat exhaustion increased slightly between 2017 and 2018, leveled off in 2019, and then decreased between 2019 and 2020, while the percentages affected by heat stroke remained stable throughout the period.

During 2020, 121 (25%) heat stroke cases were hospitalized and 22 (1.3%) heat exhaustion cases were hospitalized. These hospitalizations resulted in 349 total bed days for heat stroke and 44 total bed days for heat exhaustion.

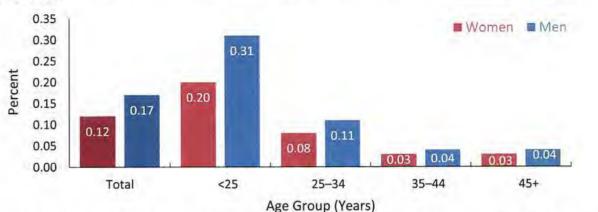
Rates of heat illness have previously been found to be highest among recruit trainees and those serving in combat specific occupational fields.<sup>19</sup> Efforts at preventing heat illnesses need to focus especially on these groups of Service members, who may engage in higher levels of demanding physical exertion during warm weather. In particular, trainees at basic training installations may not be acclimated to the heat or may not be physically fit.



Heat Illness

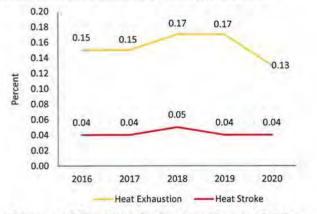
### Incidence of Heat Illness by Sex and Age Group, AC Service Members, 2020

Younger Service members had higher incidence of heat illness compared to older members, and males had higher incidence compared to females.



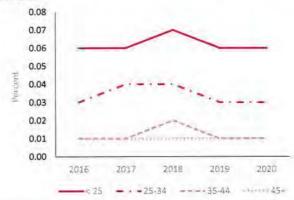
### Incidence of Heat Stroke and Heat Exhaustion, AC Service Members, 2016–2020

The percentages of Service members affected by heat exhaustion increased slightly between 2017 and 2018, leveled off in 2019, and then decreased in 2020, while the percentages who experienced heat stroke remained stable during the five-year period.



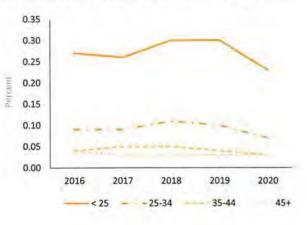
### Incidence of Heat Stroke by Age Group, AC Service Members, 2016–2020

The percentages of Service members from all age groups who experienced heat stroke remained relatively stable between 2016 and 2020.



# Incidence of Heat Exhaustion by Age Group, AC Service Members, 2016–2020

The percentages of Service members under 25 years old who experienced heat exhaustion increased slightly between 2017 and 2018, leveled off in 2019, and then decreased in 2020.



**Behavioral Health** 

# **Behavioral Health**

Like injury, behavioral health (BH) conditions are a leading cause of morbidity among AC Service members, accounting for over 2 million (11% of total) outpatient encounters and nearly 18,000 inpatient encounters (29% of total) in 2020.<sup>20,21</sup>

To determine the proportion of AC Service members (including those who were deployed) with a BH diagnosis during a given 12-month period, the annual prevalence of BH conditions was calculated. A Service member was identified as having a BH disorder if they had at least two inpatient, outpatient, or in-theater encounters for a BH condition of any type within 365 days with at least one of the diagnoses occurring during 2020.<sup>6</sup>

Prevalence estimates of specific BH conditions (adjustment disorders, alcohol-related disorders, substance-related disorders, anxiety disorders, bipolar disorder, depressive disorder, psychoses, and posttraumatic stress disorder [PTSD]) during 2020 were also calculated.<sup>22</sup> To be considered a case, two encounters for the same BH condition within a 365-day period were required.

To determine the proportion of AC Service members that had ever been diagnosed with a BH condition, the "lifetime" prevalence of BH disorders was calculated. Service members on active duty during December 2020 were used for this analysis and were considered to have a lifetime history of a BH condition if they had two BH disorder diagnoses of the same type within 365 days at any time between 2002 and 2020.

Overall, 8.7% of AC Service members had medical encounters for a BH disorder in 2020. The annual prevalence of BH disorders remained relatively stable from 2016 to 2020, fluctuating between 8.3% and 8.7%. Female Service members were more likely to have medical encounters for BH disorders (14%) when compared to male members (7.5%). Service members in the youngest age category (less than 25 years) had the highest prevalence of BH disorders in both sexes.

Almost 12% of Service members with any BH disorder were hospitalized, resulting in a total of 158,827 bed days in 2020. Cases of psychoses had the highest hospitalization rate (29%), followed by bipolar disorder (19%). However, cases of depressive disorders had the highest total number of bed days (46,350), followed by alcohol-related disorders (39,129).

### Among both male and female AC Service members, adjustment disorder was the leading BH diagnosis in 2020 followed by anxiety disorder and depressive disorder.

Among AC Service members on active duty during December 2020, 27% of female and 16% of male members (18% overall) had a history (lifetime prevalence) of a BH disorder. The lifetime prevalence of BH disorders ranged from 11% to 21% across Services.

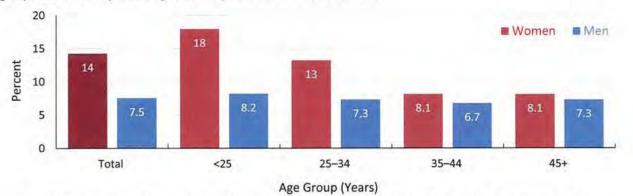
A previous *MSMR* report looking at trends of BH diagnoses between 2007 and 2016 found incidence of most BH conditions to be higher in female Service members, except for alcohol- and substance-related disorders which were higher in male members.<sup>23</sup> The *MSMR* report also found the incidence of several BH conditions to be higher among Army members and those in motor transport occupations. To provide help for Service member with BH issues or concerns, the MHS offers several resources including free hotlines (e.g., Military OneSource, DoD Safe Helpline, Military Crisis Line),<sup>24</sup> outreach centers (e.g., Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury Outreach Center), and connections to additional support programs (e.g., National Resource Directory).



**Behavioral Health** 

# Prevalence of BH Disorders by Sex and Age Group, AC Service Members, 2020

Female Service members were more likely to be diagnosed with BH disorders compared to male members, and those in the youngest age group were more likely to be diagnosed compared to older Service members.



### Annual and Lifetime Prevalence of BH Disorders by Sex and Condition, AC Service Members, 2020

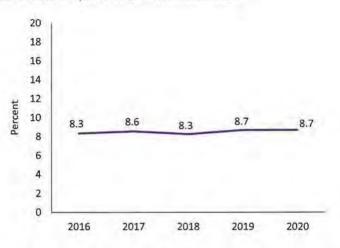
Overall, 18% of Service members (27% of female and 16% of male members) received diagnoses of a BH disorders between 2002 and 2020. The percentages were higher for female compared to male Service members for most BH disorders.

Women Men								
	-						2020 14	Lifetime 27
Any BH Disorder							7.5	16
A State of Street		_	-	-			8,6	18
Adjustment Disorders	-						4.0	8.5
Anviete Disease		_					5.6	11
Anxiety Disorders	-						2.3	5.0
Depressive Disorders							5.4	10
Depressive Disorders	-						2.4	4.5
PTSD	-						2.9	3.9
	-						1.3	2.0
Alcohol-related Disorders							1.1	2.2
							1.5	3.3
Bipolar Disorder							0.32	0.35
bipolar bisoraci	1						0.10	0.13
Substance-related Disorders	1						0.13	0.21
							0.19	0.28
Psychoses							0.10	0.10
							0.10	0.10
	0	5	10	15 Percent	20	25	30	

**Behavioral Health** 

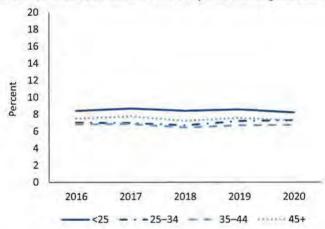
### Prevalence of BH Disorders, AC Service Members, 2016–2020

The prevalence of BH disorders remained relatively stable between 2016 and 2020.



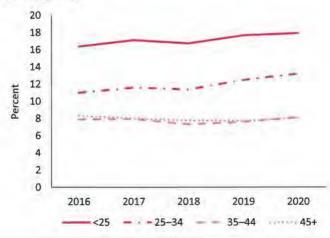
### Prevalence of BH Disorder by Age Group, Male AC Service Members, 2016–2020

Between 2016 and 2020, the prevalence of BH disorders remained relatively stable among male Service members in all age groups.



#### Prevalence of BH Disorder by Age Group, Female AC Service Members, 2016–2020

The prevalence of BH disorders increased slightly between 2016 and 2020 among female Service members under age 34, and remained relatively stable for those in the oldest age groups.



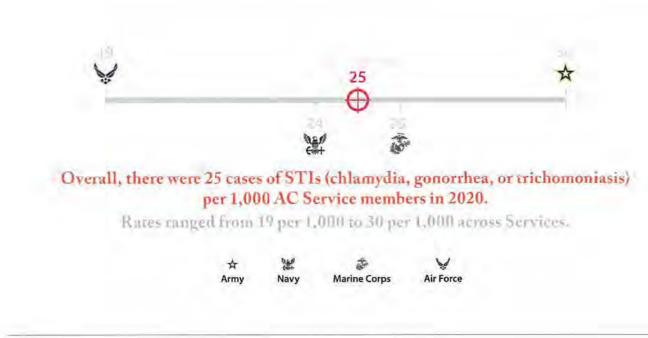
Sexually Transmitted Infections

# **Sexually Transmitted Infections**

Sexually transmitted infections (STIs) are relevant to Service members because of their relatively high incidence, adverse impact on individual readiness, and potential for serious medical sequelae if left untreated.<sup>25</sup> Two of the most common bacterial STIs are caused by *Chlamydia trachomatis* (chlamydia) and *Neisseria gonorrhoeae* (gonorrhea). Trichomoniasis, caused by the parasite *Trichomonas vaginalis*, is another common STI. The overall incidence and time trends related to these three STIs (chlamydia, gonorrhea, and trichomoniasis) among AC Service members in 2020 are reported here.

In 2020, 25 per 1,000 AC Service members were diagnosed with or tested positive for one of the three STIs. Female Service members had higher rates of STIs compared to male members, particularly among the younger age groups. Chlamydia was most common (21 per 1,000), followed by gonorrhea (3.7 per 1,000) and trichomoniasis (0.7 per 1,000). Among both male and female Service members, STIs were most common in the youngest age groups. AC Service members less than 25 years of age were almost three times more likely to have an STI compared to those aged 25–34 years. The annual incidence rates of chlamydia and gonorrhea among AC Service members increased between 2016 and 2019, but decreased from 2019 to 2020. These trends were primarily attributed to Service members under age 25. Rates of trichomoniasis decreased between 2016 and 2020.

Previous studies have demonstrated increases in the incidence rates of chlamydia and gonorrhea among AC Service members during the past five years,<sup>25</sup> with consistently higher rates among female Service members. The decline in STI rates in 2020 is likely related to the COVID-19 pandemic, since there were limitations on appointments during this time and Service members may have avoided coming in for appointments. The pandemic may have also caused a temporary reduction in sexual risk behaviors as sexual networks may have been limited as a result of social distancing recommendations. However, at the time of the analvsis, no data were available to test this hypothesis. Higher rates of most STIs among female compared to male Service members can likely be attributed to implementation of the Services' screening programs. Continued behavioral risk reduction interventions are needed to counter the increasing incidence of some STIs and maintain any decreases.

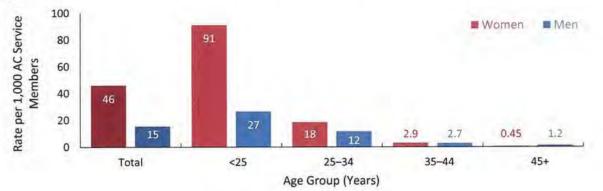


Health Metrics Sexually

Sexually Transmitted Infections

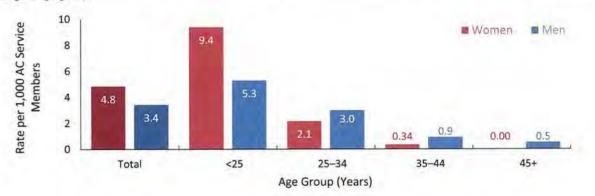
### Incidence of Chlamydia by Sex and Age Group, AC Service Members, 2020

In 2020, female Service members had higher rates of chlamydia compared to male members, particularly among those in younger age groups.



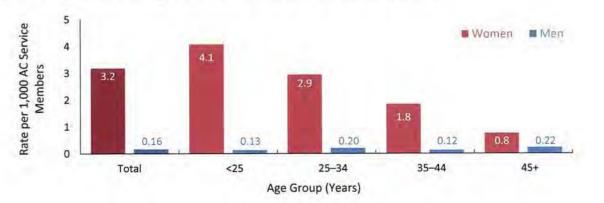
### Incidence of Gonorrhea by Sex and Age Group, AC Service Members, 2020

In 2020, female Service members had higher overall rates of gonorrhea compared to male members; this difference was driven by those in the youngest age group.



### Incidence of Trichomoniasis by Sex and Age Group, AC Service Members, 2020

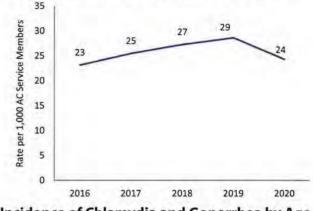
Overall, female Service members had higher rates of trichomoniasis compared to male members.



Sexually Transmitted Infections

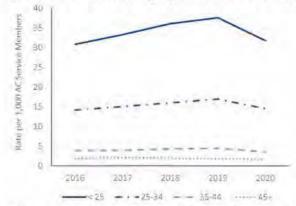
### Incidence of Chlamydia and Gonorrhea, AC Service Members, 2016–2020

The incidence of chlamydia and gonorrhea increased from 2016 to 2019, and decreased slightly between 2019 and 2020.



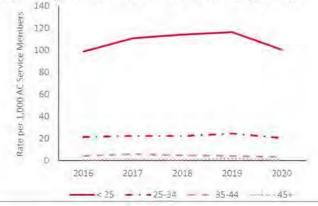
# Incidence of Chlamydia and Gonorrhea by Age Group and Sex, AC Male Service Members, 2016–2020

Among male Service members in the youngest age groups, the incidence of chlamydia and gonorrhea increased between 2016 and 2019 and then decreased slightly between 2019 and 2020.

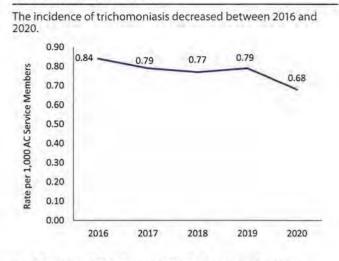


#### Incidence of Chlamydia and Gonorrhea by Age Group and Sex, AC Female Service Members, 2016–2020

The incidence of chlamydia and gonorrhea increased between 2016 and 2019 and then decreased slightly between 2019 and 2020 among female Service members less than 25 years old.

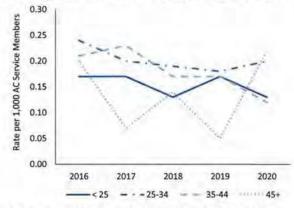


### Incidence of Trichomoniasis, AC Service Members, 2016–2020



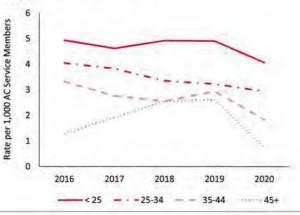
### Incidence of Trichomoniasis by Age Group, AC Male Service Members, 2016–2020

The incidence of trichomoniasis decreased between 2016 and 2020 among male Service members less than 35 years old.



### Incidence of Trichomoniasis by Age Group, AC Female Service Members, 2016–2020

Between 2016 and 2020, the incidence of trichomoniasis decreased among female Service members under 45 years old. Among those 45 years or older, the incidence of trichomoniasis increased from 2016 to 2019 and then decreased between 2019 and 2020.



2020 HEALTH OF THE DOD FORCE

Sleep Disorders

# **Sleep Disorders**

The American Academy of Sleep Medicine recommends at least seven hours of sleep per night for adults aged 18–60 years.<sup>26</sup> Lack of sleep can impair cognitive function, decreasing performance and increasing the risk for injury and accidents. Insufficient sleep is also associated with a number of chronic diseases including diabetes, heart disease, obesity, and depression.<sup>27</sup> The overall prevalence and time trends related to sleep disorders (including sleep apnea, insomnia, hypersomnia, circadian rhythm disorders, narcolepsy, parasomnia, and sleep-related movement disorders) among AC Service members in 2020 are reported here, along with the prevalence of the most commonly diagnosed sleep disorders.

In 2020, 12% of AC Service members had a medical encounter for at least one sleep disorder. Proportions were similar for male and female Service members (13% and 11%, respectively). The most commonly diagnosed sleep disorders were sleep apnea and insomnia (6.8% and 4.5%, respectively). Male Service members were more likely to have an encounter for sleep apnea than female members (7.6% and 3.2%, respectively), while a greater percentage of female than male Service members had a medical encounter for insomnia (6.3% and 4.1%, respectively).

The prevalence of sleep disorders among AC Service members remained relatively stable during 2016–2020. However, the prevalence of sleep disorders among male Service members 45 years or older increased slightly from 45% in 2016 to 49% in 2020.

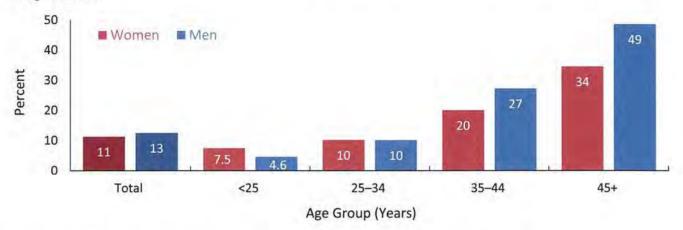
Previous studies have demonstrated increases in the incidence rates of some conditions, including sleep disorders, when comparing rates during the early, middle, and last phases of Service members' careers.<sup>12</sup> These increases were independent of age and thought to be due in part to increased reporting during separation and retirement physicals.<sup>28</sup> The impact of career phase was not evaluated here and may be important to consider in the future.



**Sleep Disorders** 

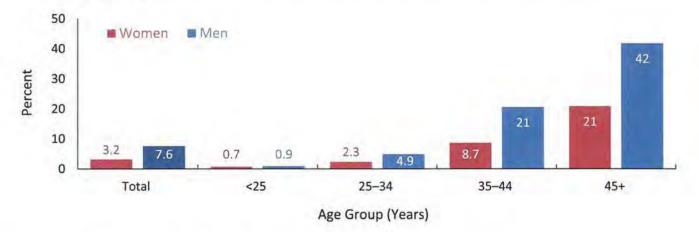
### Prevalence of Sleep Disorders by Sex and Age Group, AC Service Members, 2020

The prevalence of sleep disorders was similar among male (13%) and female Service members (11%) and increased with increasing age among both sexes.



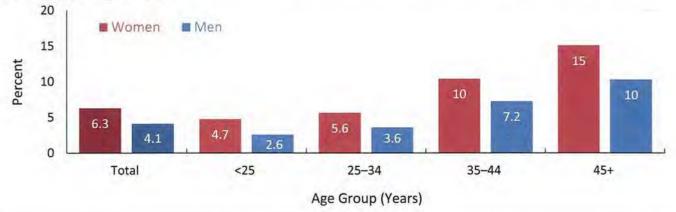
### Prevalence of Sleep Apnea by Sex and Age Group, AC Service Members, 2020

The prevalence of sleep apnea was higher for male (7.6%) compared to female Service members (3.2%), and the prevalence increased with increasing age among both sexes.



### Prevalence of Insomnia by Sex and Age Group, AC Service Members, 2020

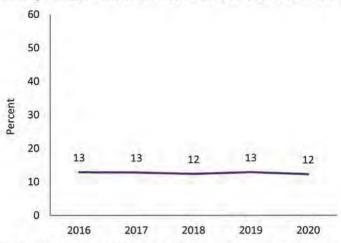
The prevalence of insomnia was higher for female (6.3%) compared to male Service members (4.1%), and the prevalence increased with increasing age among both sexes.



Sleep Disorders

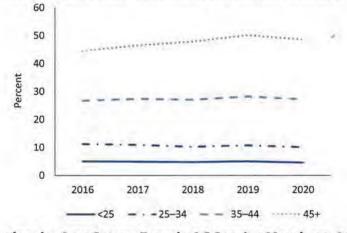
### Prevalence of Sleep Disorders, AC Service Members, 2016–2020

The prevalence of sleep disorders among Service members remained relatively stable between 2016 and 2020.



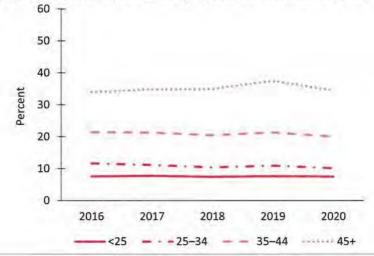
#### Prevalence of Sleep Disorders by Age Group, Male AC Service Members, 2016–2020

The prevalence of sleep disorders among male Service members remained relatively constant for all age groups between 2016 and 2020, except for those 45 years or older, for whom prevalence increased slightly from 45% in 2016 to 49% in 2020.



#### Prevalence of Sleep Disorders by Age Group, Female AC Service Members, 2016–2020

Between 2016 and 2020, the prevalence of sleep disorders remained relatively stable among female Service members under 45 years old. Among those in the oldest age group, prevalence increased slightly between 2016 and 2019 and then decreased slightly in 2020.



Obesity

# Obesity

Obesity negatively impacts physical performance and military readiness and is associated with long-term health problems such as hypertension, diabetes, coronary heart disease, stroke, cancer, and risk for allcause mortality. Studies also suggest that health care utiliza-tion is higher among obese Service members than their normal-weight counterparts.<sup>29</sup>

The Clinical Data Repository (CDR) vital sign table and Genesis vitals table within the MHS Data Repository (MDR) were used to identify all records for AC Service members with a height and weight measurement available on the same day; pregnant Service members were excluded. Body mass index (BMI) was calculated utilizing the latest height and weight record in a given year. In accordance with the Centers for Disease Control and Prevention (CDC), a BMI ≥30 was considered obese.<sup>30</sup>

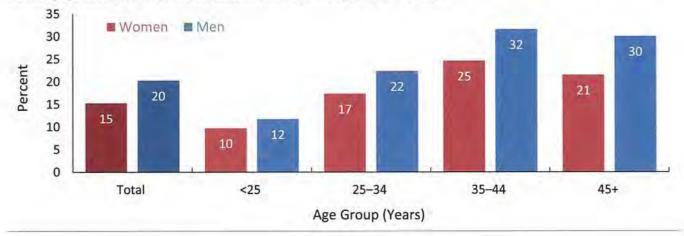
The overall prevalence of obesity among AC Service members was 19% in 2020. Obesity rates were higher among male (20%) compared to female Service members (15%). The lowest prevalence of obesity was in Service members less than 25 years old (11%) and the highest was among those aged 35–44 years (30%). The overall prevalence of obesity increased slightly between 2016 and 2020.

Prior studies have demonstrated an increasing trend of obesity among Service members in all branches and sociodemographic groups.<sup>31,32</sup> To combat this concerning rise, there should be an increased focus on evidence-based initiatives to reduce obesity such as programs to provide healthier food and beverage options on military bases, technology-based approaches to improving fitness, and sustainable weight management training and follow-up services.<sup>33</sup>



#### Prevalence of Obesity by Sex and Age Group, AC Service Members, 2020

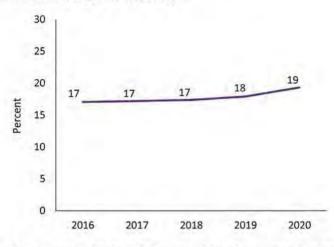
Obesity rates were higher among male (20%) compared to female Service members (15%). The prevalence of obesity increased with increasing age through 35–44 years then decreased among those aged 45 years or older.



Obesity

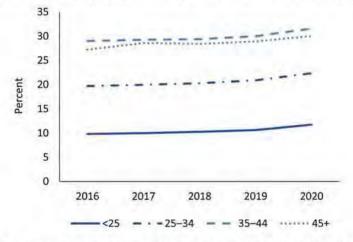
### Prevalence of Obesity, AC Service Members, 2016–2020

The prevalence of obesity increased from 17% in 2016 to 19% in 2020.



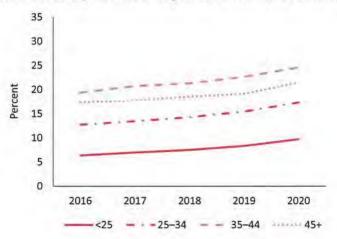
#### Prevalence of Obesity by Age Group, Male AC Service Members, 2016–2020

Between 2016 and 2020, the prevalence of obesity increased among male Service members in all age groups.



#### Prevalence of Obesity by Age Group, Female AC Service Members, 2016-2020

Between 2016 and 2020, the prevalence of obesity increased among female Service members in all age groups.



Acute Respiratory Illnesses

# **Acute Respiratory Illnesses**

Outbreaks and epidemics of acute respiratory illnesses can have adverse effects on individual and military unit readiness. The Armed Forces have long recognized the special risks of respiratory illnesses among Service members who live in congregate settings, mix with Service members from other geographic regions, undergo the stresses of military training and operations, and travel to foreign countries. To counter the threat of such illnesses, the Armed Forces have for many years emphasized both preventive measures as well as continuous surveillance for respiratory infections. Vaccines are required for or offered to new Service members to prevent a variety of respiratory diseases caused by bacteria (diphtheria, pertussis, and meninginfections) and viruses (adenovirus, ococcal influenza, measles, mumps, rubella, varicella, and most recently, COVID-19). This report summarizes temporal trends of specific respiratory infections and syndromes as well as specific symptoms of respiratory illness. For this metric, data are also presented separately for recruits.

On average, 20 per 1,000 AC Service members were diagnosed with acute respiratory infections each month during 2020, with rates highest in March (39 per 1,000) and lowest in May (6.5 per 1,000). Female Service members had higher monthly rates of acute respiratory infections and respiratory symptoms compared to male members. Those in the youngest age category (less than 25 years old) had the highest rates of acute respiratory infections, but those in the oldest age group had the highest rate of respiratory symptoms. Com-pared to AC Service members overall, recruits had higher average monthly rates of acute respiratory infections (53 per 1,000), but lower average rates of respiratory symptoms (9.3 per 1,000) in 2020.

Monthly rates of respiratory infections among AC Service members remained relatively stable between

2016 and 2019, but decreased sharply in April 2020. Recruits had consistently higher rates of acute respiratory infections compared to AC Service members, with an even more pronounced decline in April 2020. The decline in April 2020 coincides with the beginning of the COVID-19 pandemic, when Military Treatment Facilities (MTFs) began limiting access to non-essential services.34 The required use of face masks and social distancing likely also reduced rates of other respiratory infections besides COVID-19 during this time period. Monthly rates of respiratory symptoms were relatively stable among AC Service members between 2016 and 2019, but spiked in March 2020, again coinciding with the COVID-19 pandemic. Recruits had higher rates of respiratory symptoms compared to AC Service members throughout most of the period, except in 2020. There were noteworthy patterns of seasonal increases (in winter) and declines (in summer) for both AC Service members overall and for recruits.

A total of 270,314 Service members had at least one acute respiratory infection diagnosis in 2020. Of these Service members, 1,204 (0.5%) were hospitalized, resulting in 5,774 total bed days.

Rates among trainees were likely higher because of the spread of infections among trainees in congregate settings during basic training, strict requirements for sick trainees to receive medical care, and more thorough surveillance of trainees, including collection of specimens to identify etiologic pathogens. For both the trainees and AC service members, the rates of diagnoses of respiratory symptoms were considerably lower than the rates of specific acute respiratory illnesses. This observation indicates that health care providers recorded specific diagnoses much more often than nonspecific symptom diagnoses during encount-ers for acute respiratory illnesses.



# On average, 20 per 1,000 AC Service member per month were diagnosed with acute respiratory infections in 2020.

Average monthly rates varied by Service and ranged from 18 to 23 per 1,000 AC Service members.



# On average, 12 per 1,000 AC Service members per month were diagnosed with respiratory symptoms in 2020.

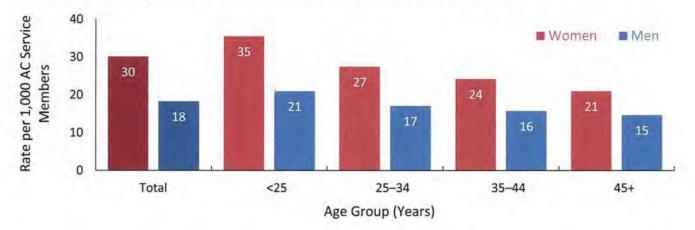
Average monthly rates varied by Service and ranged from 8.2 to 15 per 1,000 AC Service members.



Acute Respiratory Illnesses

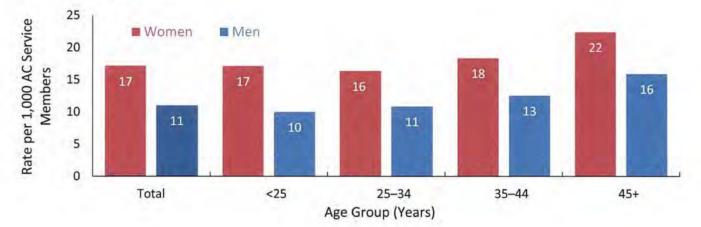
## Average Monthly Incidence of Acute Respiratory Infections by Sex and Age Group, AC Service Members, 2020

Service members in the younger age groups had higher average monthly rates of acute respiratory infections than those in the older groups. Compared to male Service members, female members had higher rates within each age group.



# Average Monthly Incidence of Respiratory Symptoms by Sex and Age Group, AC Service Members, 2020

Female Service members had higher rates of respiratory symptoms compared to male members. Rates were highest among Service members aged 45 years or older.



Acute Respiratory Illnesses

#### Incidence of Acute Respiratory Infections, AC Service Members and Recruit Trainees, 2016–2020

Monthly rates of respiratory infections among AC Service members remained relatively stable between 2016 and 2019, but declined in April 2020. Recruits had consistently higher rates of acute respiratory infections compared to AC Service members, with an even more pronounced decline in April 2020.



#### Incidence of Respiratory Symptoms, AC Service Members and Recruit Trainees, 2016–2020

Similar to acute respiratory infections, rates of respiratory symptoms displayed seasonal increases in winter months and declines in summer months. Monthly rates of respiratory symptoms were relatively stable among AC Service members between 2016 and 2019, spiked in March 2020, and then decreased through May 2020. Recruits had higher rates of respiratory symptoms compared to AC Service members throughout most of the period, except in 2020.



COVID-19

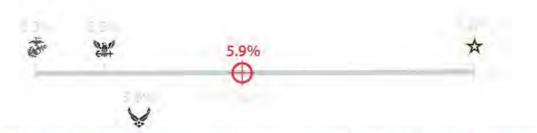
# COVID-19

COVID-19 is an infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Continuous person-to-person spread of the virus has occurred worldwide since December 2019. On January 31, 2020, the U.S. Secretary of Health and Human Services declared a public health emergency in the U.S. in response to the spread of COVID-19.35 COVID-19 spreads primarily through respiratory droplets produced when an infected person breathes, coughs or sneezes, and is more likely to infect people in close contact with one another. Infected individuals may be asymptomatic or experience mild to severe illness.<sup>36</sup> By the end of 2020, over 19.7 million cases had been reported domestically.37 The COVID-19 pandemic has significantly affected military operations through movement restrictions, workspace capacity limits, and testing protocols for Service members.38

The overall incidence of reported or laboratoryconfirmed COVID-19 infection was 5.9% in 2020. Female Service members (6.5%) had a higher incidence of COVID-19 infection compared to male members (5.8%). Younger Service members had a higher incidence of COVID-19 infection than those in older age groups.

A total of 412 (0.5%) AC Service members were hospitalized for COVID-19 in 2020, resulting in 2,512 total bed days. However, this is likely an underestimate since it relied on the diagnosis of COVID-19 using ICD-10 code U07.1, which did not become available until several weeks after the beginning of the pandemic.

Surveillance of COVID-19 among Service members and other DoD personnel is ongoing. Information and resources on latest DoD policy, guidance, and resources, as well as case counts, information about vaccine availability, and travel restrictions for DoD installations are available at <u>https://www.defense.gov/explore/spotlight/coronavirus/</u>.



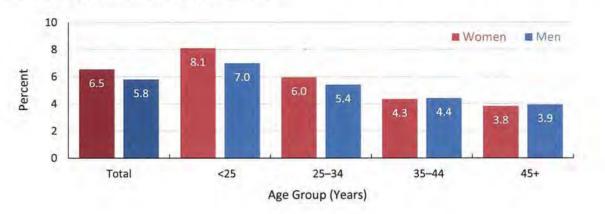
Overall, 5.9% of AC Service members were infected with COVID-19 in 2020. Rates ranged from 5.3% to 6.6% across Services.



COVID-19

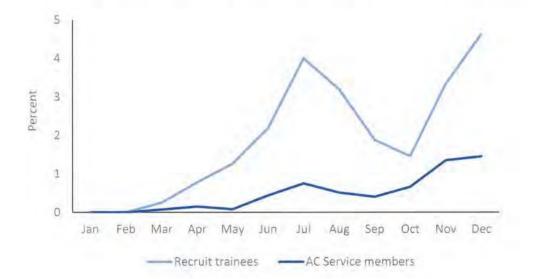
### Incidence of COVID-19 by Sex and Age Group, AC Service Members, 2020

Service members in the younger age groups had a higher incidence of COVID-19 than those in the older age groups. Female Service members (6.5%) had a higher incidence compared to males (5.8%).



### Incidence of Reported or Laboratory-Confirmed COVID-19 Infection by Month, AC Service Members, 2020

Monthly incidence of COVID-19 peaked in July 2020 and December 2020 for AC Service members and recruits. Incidence was higher among recruits compared to overall AC Service members since the start of the pandemic.



Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 291 of 325 PAGEID #: 4956

**Service Profiles** 



# Service Profile (2020):<sup>a</sup>

Population: Approximately 473,000 Army Service members 77% under 35 years old, 15% female

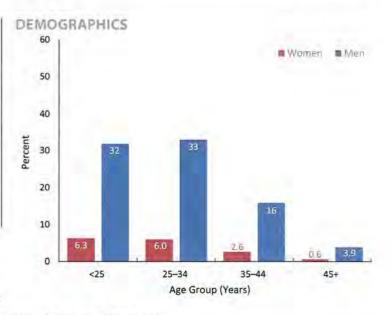


# HEALTH INDEX MEASURES<sup>b</sup>

MEASURE	ARMY VALUE <sup>c</sup>	DOD AVERAGE	DOD RANGE
Acute Injury (rate per 1,000)	269	211	147-269
Cumulative Traumatic Injury (rate per 1,000)	1,257	948	599-1,257
TBI (%)	2.0	1.3	0.7-2.0
Noise-induced Hearing Injury (%)	5.2	4.1	2.7-5.2
Heat Illness (%)	0.26	0.16	0.04-0.35
Behavioral Health 1-Year (%)	10	8.7	7.3-10.2
Behavioral Health Lifetime (%)	21	18	11-21
STIs (rate per 1,000)	30	25	19-30
Sleep Disorders (%)	16	12	6.9-15.8
Obesity (%)	19	19	9.8-24.8
Acute Respiratory Illness (average rate per 1,000 per month)	20	20	18-23
Respiratory Symptoms (avgerage rate per 1,000 per month)	14	12	8.2-15.3
COVID-19 (%)	6.6	5.9	5.3-6.6

# ADDITIONAL INFORMATION

Injury rates including TBI and noise-induced hearing were found to be higher in the Army than in the other Services. Mission-specific training and operational requirements likely contribute to the risk for injury among Soldiers. Rates of BH conditions, STIs, and sleep disorders were also higher among Soldiers than in Sailors, Airmen, and Marines. Given the potential for each of these conditions to contribute to decreased performance, disability, and separation, further exploration of potential causes and interventions is warranted.



Number of AC Service members, June 2020; see Appendix for details.

2020 HEALTH OF THE DOD FORCE

<sup>&</sup>quot;See Appendix for details regarding measure computations.

Values ≥ 10 are rounded to the nearest integer. Bold values represent Service values above the DoD average.

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 292 of 325 PAGEID #: 4957

# **Service Profiles**



# Service Profile (2020):<sup>a</sup>

Population: Approximately 335,000 Navy Service members 77% under 35 years old, 20% female

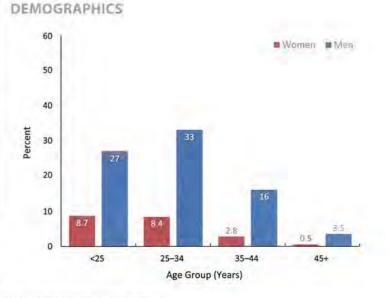


# **HEALTH INDEX MEASURES<sup>b</sup>**

MEASURE	NAVY VALUE <sup>c</sup>	DOD AVERAGE	DOD RANGE
Acute Injury (rate per 1,000)	147	211	147-269
Cumulative Traumatic Injury (rate per 1,000)	599	948	599-1,257
TBI (%)	0.7	1.3	0.7-2.0
Noise-induced Hearing Injury (%)	2.7	4.1	2.7-5.2
Heat Illness (%)	0.04	0.16	0.04-0.35
Behavioral Health 1-Year (%)	8.5	8.7	7.3-10.2
Behavioral Health Lifetime (%)	17	18	11-21
STIs (rate per 1,000)	24	25	19-30
Sleep Disorders (%)	11	12	6.9-15.8
Obesity (%)	25	19	9.8-24.8
Acute Respiratory Illness (average rate per 1,000 per month)	18	20	18-22
Respiratory Symptoms (average rate per 1,000 per month)	8.2	12	8.2-15.3
COVID-19 (%)	5.5	5.9	5.3-6.6

# ADDITIONAL INFORMATION

While injury, sleep disorders, and BH conditions remain important threats to Navy readiness, this report highlights obesity as an important health concern among Sailors. Obesity contributes to hypertension, diabetes, coronary heart disease, stroke, cancer, all-cause mortality, and increased health care costs. It also contributes to failure of Sailors to meet physical fitness standards.



Number of AC Service members, June 2020; see Appendix for details.

<sup>1)</sup>See Appendix for details regarding measure computations,

2020 HEALTH OF THE DOD FORCE

Values > 10 are rounded to the nearest integer. Bold values represent Service values above the DoD average.

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 293 of 325 PAGEID #: 4958

Service Profiles



# Service Profile (2020):<sup>a</sup>

Population: Approximately 329,000 Air Force Service members 77% under 35 years old, 21% female



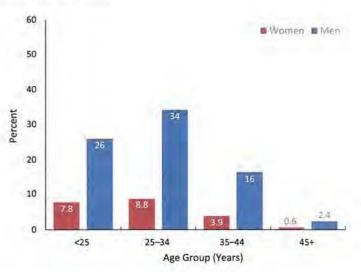
# **HEALTH INDEX MEASURES<sup>b</sup>**

MEASURE	AIR FORCE VALUE <sup>c</sup>	DOD AVERAGE	DOD RANGE
Acute Injury (rate per 1,000)	186	211	147-269
Cumulative Traumatic Injury (rate per 1,000)	894	948	599-1,257
TBI (%)	0.7	1.3	0.7-2.0
Noise-induced Hearing Injury (%)	3.3	4.1	2.7-5.2
Heat Illness (%)	0.04	0.16	0.04-0.35
Behavioral Health 1-Year (%)	7.5	8.7	7.3-10.2
Behavioral Health Lifetime (%)	18	18	11-21
STIs (rate per 1,000)	19	25	19-30
Sleep Disorders (%)	12	12	6.9-15.8
Obesity (%)	20	19	9.8-24.8
Acute Respiratory Illness (average rate per 1,000 per month)	23	20	18-23
Respiratory Symptoms (average rate per 1,000 per month)	15	12	8.2-15.3
COVID-19 (%)	5.6	5.9	5.3-6.6

# ADDITIONAL INFORMATION

In this analysis, acute respiratory infections, respiratory symptoms, obesity, and lifetime BH disorders were found to affect Airmen at higher than average rates. Airmen should continue to take preventive measures to protect against respiratory infections. Future efforts to address obesity and efforts to better understand the interplay of obesity with other comorbidities also have the potential to improve the readiness of Airmen.





<sup>&</sup>quot;Number of AC Service members, June 2020; see Appendix for details.

<sup>&</sup>lt;sup>6</sup>See Appendix for details regarding measure computations.

Values ≥ 10 are rounded to the nearest integer, Bold values represent Service values above the DoD average.

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 294 of 325 PAGEID #: 4959

Service Profiles



# Service Profile (2020):<sup>a</sup>

Population: Approximately 183,000 Marine Corps Service members 88% under 35 years old, 9.0% female



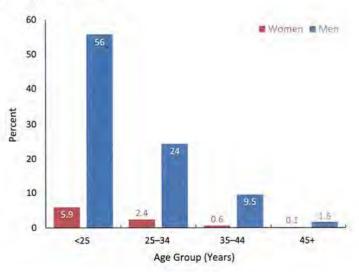
# **HEALTH INDEX MEASURES<sup>b</sup>**

MEASURE	MARINE CORPS VALUE <sup>c</sup>	DOD AVERAGE	DOD RANGE
Acute Injury (rate per 1,000)	222	211	147-269
Cumulative Traumatic Injury (rate per 1,000)	885	948	599-1,257
TBI (%)	1.5	1.3	0.7-2.0
Noise-induced Hearing Injury (%)	5.2	4.1	2.7-5.2
Heat Illness (%)	0.35	0.16	0.04-0.35
Behavioral Health 1-Year (%)	7.3	8.7	7.3-10.2
Behavioral Health Lifetime (%)	11	18	11-21
STIs (rate per 1,000)	26	25	19-30
Sleep Disorders (%)	6.9	12	6.9-15.8
Obesity (%)	9.8	19	9.8-24.8
Acute Respiratory Illness (average rate per 1,000 per month)	21	20	18-23
Respiratory Symptoms (average rate per 1,000 per month)	8.4	12	8.2-15.3
COVID-19 (%)	5.3	5.9	5.3-6.6

# ADDITIONAL INFORMATION

Marines had relatively low rates of BH diagnoses, sleep disorders, and obesity compared to the other Services. However, heat illnesses, TBI, and noise-induced hearing injuries emerged as important areas of focus for prevention efforts. Attention to reducing these injuries as well as acute injuries in the field and in recruit training has the potential to improve health and readiness of Marines.





\*Number of AC Service members, June 2020; see Appendix for details. -See Appendix for details regarding measure computations.

Values ≥ 10 are rounded to the nearest integer. Bold values represent Service values above the DoD average.

Methods

# METHODS

# **Acute and Cumulative Traumatic Injury**

Data were derived from records routinely maintained in the Defense Medical Surveillance System (DMSS). These records document ambulatory encounters and hospitalizations of AC Service members in fixed military and civilian (if reimbursed through the MHS) treatment facilities worldwide. Acute and cumulative traumatic injuries were identified using ICD-10-CM diagnosis codes from the U.S. Army Public Health Center's (APHC) 2021 Injury Taxonomy.<sup>3</sup> Service members were identified as having an injury if they had a qualifying injury diagnosis in any position of an inpatient or outpatient medical encounter. A 60-day gap rule was used to identify incident injuries. To be counted as a new case, at least 60 days must have passed since the last qualifying injury for the same nature of injury and body region affected, as defined by the injury taxonomy. Encounters with a documented "war"- or "battle"-related cause of injury were excluded from the analysis. Causes of injuries were assessed based on North Atlantic Treaty Organization Standard Agreement (STANAG) 2050 and ICD-10-CM "external cause of injury" codes. The denominator was all AC Service members during June of the year of interest.

Among those who were identified as an incident acute or cumulative traumatic injury case in 2020, hospitalization status and total number of hospital bed days were determined. An individual was counted as being hospitalized for an acute or cumulative traumatic injury if they had an inpatient encounter in 2020 with an injury diagnosis in the primary diagnostic position. Bed days were calculated among all inpatient encounters with an injury diagnosis in the primary diagnostic position in 2020. In addition, for all incident injuries, the frequency and percentage of the nature of injury and body region affected were described.

- The transition from International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) to ICD-10-CM in October 2015 presented a significant artifact for acute injury surveillance. ICD-10-CM has more than 15 times the number of acute injury codes than ICD-9-CM, and they are far more specific. It is not possible to directly compare rates of highly specific acute injuries captured in ICD-10-CM to the non-specific injuries captured in ICD-9-CM. For this reason, rates of acute injuries captured under ICD-9-CM were not reported here.
- 2. This report is meant to describe nondeployment-related injuries; however, some deployment-related injuries may have been captured if the war- or battle-related cause of injury was not documented.
- Diagnosing an acute injury is subjective and provider-dependent. Incident and subsequent diagnoses rendered by different providers introduces error that can result in both undercounting and overcounting of injuries.
- 4. It is not always possible to differentiate incident injuries from reinjuries using surveillance data. The 60-day gap rule is sufficient for the vast majority of injuries, which are generally not severe, but may lead to overcounting of severe injuries if the subsequent encounters are erroneously coded as incident injuries.

Methods

# **Noise-Induced Hearing Injury**

Data were derived from records routinely maintained in the DMSS. A case of noise-induced hearing injury was defined as having an inpatient, outpatient, or Theater Medical Data Store (TMDS) medical encounter with a diagnosis for sensorineural hearing loss (ICD-9: 389.10, 389.11, 389.15-389.18; ICD-10: H90.3, H90.41, H90.42, H90.5), noise-induced hearing loss (ICD-9: 388.10-388.12; ICD-10: H83.3\*, S09.31\*), tinnitus (ICD-9: 388.3, 388.30-388.32; ICD-10: H93.1\*), or significant threshold shift (ICD-9: 794.15, ICD-10: R94.120) in any diagnostic position.<sup>39</sup> A Service member could be counted as a case of noise-induced hearing injury once per calendar year for each of the specific types of injury, and could be counted as a case of noise-induced hearing injury (any type) once per year. The denominator was all AC Service members during June of the year of interest.

# Limitations:

- 1. Data from audiometric testing were not included.
- 2. Hearing injuries associated with blasts or head injuries, such as ear drum perforation, were not included.

# TBI

Data were derived from records routinely maintained in the DMSS. A case of TBI was defined as having an inpatient, outpatient, or TMDS medical encounter with a diagnosis of TBI in any diagnostic position.<sup>40</sup> For the full list of ICD-9 and ICD-10 codes used in the analysis, please refer to the Armed Forces Health Surveillance Division (AFHSD) surveillance case definition.<sup>40</sup> Note that for this analysis, the "personal history of traumatic brain injury" codes were not included because the intent was to capture Service members who had an encounter for a prevalent TBI. However, the ICD-10 codes indicating "subsequent encounter" and "sequelae" for a TBI were included. A Service member could be counted as a case of TBI once per calendar year, with more severe cases being counted over more mild cases (i.e., penetrating cases were counted over severe cases, which were counted over moderate cases, and moderate cases were counted over mild cases). The denominator was all AC Service members during June of the year of interest.

Among those who were identified as a TBI case in 2020, hospitalization status and total number of hospital bed days were determined. An individual was counted as being hospitalized for a TBI if they had an inpatient encounter in 2020 with a TBI diagnosis in the primary diagnostic position. Bed days were calculated among inpatient encounters with a TBI diagnosis in the primary diagnostic position in 2020.

- 1. Cases were identified using administrative records of medical care if reimbursed through the MHS. Records of care outside of this system would not be captured.
- Ascertainment of the severity of the TBI relies on accurate coding and documentation by the medical provider.

Methods

# **Heat Illness**

Data were derived from records routinely maintained in the DMSS. A case of heat illness was defined as having an inpatient or outpatient medical encounter with a diagnosis for heat stroke (ICD-9: 992.0; ICD-10: T67.0\*) or heat exhaustion (ICD-9: 992.3–992.5; ICD-10: T67.3\*–T67.5\*) in the first or second diagnostic position or by having a reportable medical event report for heat illness. A service member could be counted as a case of heat illness once per calendar year. Heat stroke was prioritized over heat exhaustion if the individual had indication of both occurring in the same year. These methods are consistent with those applied in the annual *MSMR* reports on heat illness.<sup>19</sup> The denominator was all AC Service members during June of the year of interest.

Among those who were identified as a heat illness case in 2020, hospitalization status and total number of hospital bed days were determined. An individual was counted as being hospitalized for a heat illness if they had an inpatient encounter in 2020 with a heat illness diagnosis in the primary diagnostic position. Bed days were calculated among inpatient encounters with a heat illness diagnosis in the primary diagnostic position in 2020.

- 1. Similar heat-related clinical illnesses are likely managed and reported differently at different locations and in different clinical settings.
- 2. Heat illness during deployment was not ascertained.
- 3. Reporting guidelines for heat illnesses were modified in the 2017 and 2020 revisions of the Armed Forces guidelines. In these updated guidelines, the heat injury category was removed, leaving only case classifications for heat stroke and heat exhaustion. This may cause some variations in reporting.

Methods

# **BH Disorders**

Data were derived from records routinely maintained in the DMSS. Health care encounters of deployed Service mem-bers are documented in records that are maintained in the Theater Medical Data Store (TMDS), which is included in the DMSS. It is important to note that because the TMDS has not fully transitioned to ICD-10-CM, ICD-9-CM codes appear in this analysis.

Service members were identified as having a BH disorder if they had at least two BH disorder diagnoses (ICD-9-CM: 290–319.; ICD-10-CM: F01-F99) within 365 days in any diagnostic position. However, diagnoses for postconcussion syndrome, intellectual disabilities, nicotine dependence, and pervasive and specific developmental disorders were excluded (ICD-9: 299.\*, 305.1, 310.2, 315.\*, 317.\* –319.\*; ICD-10-CM: F07.81, F70–F79, F17.\*, F80.\*–F82.\*, F84.\*, F88–F89).<sup>23</sup> Diagnoses could occur in inpatient, outpatient, or in-theater medical encounters. At least one of these diagnoses had to occur during of the year of interest. The denominator was all AC Service members during June of the year of interest.

For specific BH conditions (adjustment disorders, alcohol-related disorders, anxiety disorders, bipolar disorder, depressive disorders, psychoses, PTSD, and substance-related disorders), ICD-9-CM and ICD-10-CM codes from the AFHSD

surveillance case definitions were used.<sup>22</sup> A Service member was considered to have a specific BH condition if they had two diagnoses for the same condition within 365 days of each other. At least one of these diagnoses had to occur during of the year of interest. The denominator was all AC Service members during June of the year of interest.

History ("lifetime" prevalence) of a BH disorder was also measured. Service members were considered to have a history of BH disorder if they had two BH disorder diagnoses within 365 days at any time between 2002 and 2020 and were in service during December 2020 (the last month of the surveillance period). The denominator was all AC Service members during December 2020.

Among those who were identified as a BH disorder case in 2020, hospitalization status and total number of hospital bed days were determined. An individual was counted as being hospitalized for a BH disorder if they had an inpatient encounter in 2020 with a BH disorder diagnosis in the primary diagnostic position. Bed days were calculated among inpatient encounter ters with a BH disorder diagnosis in the primary diagnostic position in 2020.

- Service members do not always seek or receive care for a BH condition within the MHS, and BH disorders may be underestimated here.
- 2. Some diagnoses may be miscoded or incorrectly transcribed on centrally transmitted records.
  - Some encounters (e.g., screening visits) may have been erroneously diagnosed or miscoded as BH disorders.

Methods

# STIs

Diagnoses of STIs were ascertained from medical administrative data and reports of notifiable medical events routinely maintained in the DMSS for surveillance purposes. STI cases were also derived from positive laboratory test results recorded in the Health Level 7 (HL7) chemistry and microbiology databases maintained by the Navy and Marine Corps Public Health Center at the EpiData Center.

An incident case of chlamydia or trichomoniasis was defined by any of the following: 1) a case defining diagnosis of chlamydia (ICD-9: 099.41, 099.5\*; ICD-10: A56.\*) or trichomoniasis (ICD-9: 131.\*; ICD-10: A59.\*) in the first or second diagnostic position of a record of an outpatient or in-theater medical encounter, 2) a confirmed notifiable disease report (for chlamydia only), or 3) a positive laboratory test for chlamydia or trichomoniasis (any specimen source or test type). An incident case of gonorrhea was similarly defined by 1) a case-defining diagnosis (ICD-9: 098.\*; ICD-10: A54.\*) in the first or second diagnostic position of a record of an inpatient, outpatient, or in-theater encounter, 2) a confirmed notifiable disease report for gonorrhea, or 3) a positive laboratory test for gonorrhea (any specimen source or test type). For each type of STI, an individual could be counted as having a subsequent case only if there were more than 30 days between the dates on which the case-defining diagnoses were recorded. These case definitions were derived from those used in the *MSMR* annual STI report.<sup>25</sup>

The denominator was all AC Service members during June of the year of interest.

- STI cases may not be captured if coded in the medical record using symptom codes (e.g., urethritis) rather than STI-specific codes.
- 2. Cases may be underestimated because some affected Service members may be diagnosed and treated through nonreimbursed, non-military care providers (e.g., county health departments or family planning centers). In addition, laboratory tests that are performed in a purchased care setting, a shipboard facility, a battalion aid station, or an in-theater facility are not captured.
- 3. Differences in rates between Services may be at least partially due to different practices regarding screening, testing, treatment, and reporting.

Methods

# **Sleep Disorders**

Data were derived from records routinely maintained in the DMSS; TMDS data were included. Service members were identified as having a sleep disorder if they had a qualifying diagnosis (**Table 1**) in any diagnostic position during the year of interest. It is important to note that because the TMDS has not fully transitioned to ICD-10-CM, ICD-9-CM codes appear in this analysis. The denominator was all AC Service members during June of the year of interest.

### Limitations:

- 1. Service members do not always seek care for sleep disorders, and sleep disorders may be underrepresented here.
- 2. Increased screening associated with required medical encounters such as retirement and separation physicals may result in an increased frequency of diagnoses of sleep disorders.

	ICD-9-CM	ICD-10-CM
Any sleep disorder	780.5*, 327.00–327.02, 327.09, 327.10–327.15, 327.19, 327.2*, 327.3*, 327.4*, 327.5*, 327.8, 347.*, 307.4*	G47*, F51*
Insomnia	780.52, 327.00, 327.01, 327.09	G47.0*
Hypersomnia	327.10-327.14, 327.19, 780.54	G47.1*
Circadian rhythm sleep disorders	327.30–327.37, 327.39, 780.55	G47.2*
Sleep apnea	327.20-327.27, 327.29, 780.51, 780.53, 780.57	G47.3*
Narcolepsy	347.00, 347.01, 347.10, 347.11	G47.4*
Parasomnia	327.40-327.44, 327.49	G47.5*
Sleep-related movement disorders	327.51–327.53, 327.59	G47.6*

# Table 1. ICD-9-CM/ICD-10-CM codes used to identify sleep disorders.

\*Represents any subsequent digit/character.

Methods

# Obesity

The CDR vital sign table and Genesis vitals table within the MDR were used to identify all records for AC Service members with a height and weight measurement available on the same day. Female Service members with an ICD-9-CM or ICD-10-CM code for pregnancy during any inpatient or outpatient encounter in the same year were excluded. Height and weight data were then matched to the AFHSD DMSS to identify the date of birth, sex, and Service for all records. If the Service member could not be identified in the DMSS or any demographic information was missing from the DMSS, then the height and weight record was excluded. Only the latest height and weight record for each Service member per year was retained. BMI was then calculated from height and weight. Records with BMI measurements less than 12 and greater than 45 and records with erroneous heights or weights (e.g., a weight of 8 pounds) were excluded from the analysis. Cases of obesity were assigned using BMI greater than or equal to 30, according to the CDC definition of obesity.<sup>30</sup>

The CDR and Genesis vitals data were used to assess BMI because not all Services had complete height and weight records available from Service members' Physical Fitness Tests (PFTs). BMIs calculated from CDR data were reviewed by APHC and U.S. Air Force School of Aerospace Medicine (USAFSAM) in a previous analysis and found to be comparable to BMIs from PFTs. This method of estimating obesity is similar to the Defense Health Agency's Better Health Prevalence Measure of overweight and obesity.<sup>41</sup>

# Limitations:

- 1. Service members with higher lean body mass may be misclassified as obese based on their BMI.
- 2. Not all Service members had a height or weight measurement available in the CDR Vital sign data each year.
- BMI measures should be interpreted with caution, as some of them can be based on self-reported height and weight.

# **Respiratory Conditions**

Data were derived from records routinely maintained in the DMSS. Service members were identified as having an acute respiratory infection if they had an inpatient, outpatient, or TMDS encounter with a qualifying diagnosis (**Table 2**) in the first diagnostic position. For cases of respiratory symptoms, an individual was required to have an inpatient, outpatient, or TMDS encounter with a qualifying diagnosis (**Table 3**) in any diagnostic position. For both acute respiratory infections and respiratory symptoms, at least 14 days had to have passed between encounters to count as a new case. The denominator was AC Service members in service during the month and year of interest. To calculate rates among recruits, the denominator was the number of people with a recruit training period overlapping with the month and year of interest. To qualify as a case for a recruit, the qualifying encounter also needed to have occurred within the recruit basic training period.

Among those who were identified with an acute respiratory infection in 2020, hospitalization status and total number of hospital bed days were determined. An individual was counted as being hospitalized for an acute respiratory infection if they had an inpatient encounter in 2020 with an acute respiratory infection in the primary diagnostic position. Bed days were calculated among inpatient encounters with an acute respiratory infection diagnosis in the primary diagnostic position in 2020.

- 1. Laboratory confirmation of cases was not ascertained.
- 2. Rates could be overestimated if miscoded as screening encounters.
- 3. Rates could be underestimated because of service members not seeking care for mild illness.

Methods

# Table 2. ICD-9-CM/ICD-10-CM codes used to identify acute respiratory infections.

	ICD-9-CM	ICD-10-CM
Nasopharyngitis	460*	J00*
Sinusitis	461*	J01*
Acute pharyngitis	462*	J02*
Acute laryngitis and tracheitis	464.0, 464.10, 464.20, 464.30, 464.50	J04*
Acute obstructive laryngitis and epiglottitis	464.01, 464.11, 464.21, 464.31, 464.4, 464.51	J05*
Acute upper respiratory infections of unspecified site	465*	J06*
Influenza due to certain identified flu viruses	488*	J09*
Influenza due to other identified flu virus	487*	J10*
Influenza due to unidentified flu virus	NA	J11*
Viral pneumonia not elsewhere classified	480*	J12*
Pneumonia due to Streptococcus pneumoniae	481*	J13*
Pneumonia due to Haemophilus influenzae	482.2	J14*
Bacterial pneumonia not elsewhere classified	482*	J15*
Pneumonia due to other infectious organisms	484*, 483.0, 483.1, 483.8	J16*
Pneumonia in diseases classified elsewhere	517.1, 484.8, 484.7, 115.95, 115.15, 073.0	J17*
Pneumonia unspecified organism	486, 485	J18*
Acute bronchitis	466	J20*
Acute bronchiolitis	466.1*	J21*
Unspecified acute lower respiratory tract infection	519.8	J22*
Acute tonsillitis	463, 034.0	J03*
Peritonsillar abscess	475	J36
Retropharyngeal and parapharyngeal abscess	478.22, 478.24	J39.0
Other abscess of pharynx	478.21	J39.1
Diphtheria	032.0, 032.1, 032.3, 032.9	A36.0, A36.1, A36.2 A36.9
Scarlet fever	34.1	A38*
Whooping cough	033.0, 033.9, 033.8	A37*
Adenovirus	NA	B34.0
Measles	055.0, 055.1, 055.2, 055.8, 055.9	B05*
Rubella	056.00, 056.01, 056.09, 056.79, 056.9	B06*
Streptococcus group A	41.01	B95.0
Streptococcus pneumoniaeas the cause of disease classified elsewhere	41.09	B95.3
Mycoplasma pneumoniae	41.81	B96.0
Klebsiella pneumoniae	41.3	B96.1
Haemophilus influenzae	41.5	B96.3
Adenovirus	79	B97.0
Coronavirus	NA	B97.2*, B34.2, U07.
Respiratory syncytial virus (RSV)	79.6	B97.4
Otitis media	381.0*, 382.00, 382.01	H65.0*, H65.1*, H66.00*. H66.01*

\*Represents any subsequent digit/character. NA, not applicable.

Methods

# Table 3. ICD-9-CM/ICD-10-CM codes used to identify respiratory symptoms.

	ICD-9-CM	ICD-10-CM	
Cough	786.2	R05	
Dyspnea	786.02, 786.05, 786.09	R06.0*	
Wheezing	786.07	R06.2	
Sneezing	NA	R06.7	
Sore throat	784.1	R07.0	
Pleurodynia	786.52	R07.81	
Pleurisy	511.*	R09.1	
Abnormal sputum	786.4	R09.3	
Nasal congestion	NA	R09.81	
Postnasal drip	784.91	R09.82	
Fever	780.60	R50.9	

\*Represents any subsequent digit/character NA, not applicable.

Methods

# COVID-19

Cases of COVID-19 were identified using the AFHSD surveillance case list of MHS beneficiaries with COVID-19. This list is updated daily and comprises Composite Health Care System (CHCS) Health Level 7 (HL7)-formatted and MHS Genesis laboratory positive antigen and PCR positive test results extracted by the Navy and Marine Corps Public Health Center EpiData Center, as well as medical event reports of laboratory confirmed and probable COVID-19 infections reported to the Disease Reporting System Internet (DRSi), and validated by the U.S. Army Public Health Center and the U.S. Air Force School of Aerospace Medicine. The COVID-19 incident date is defined as the date of onset reported in DRSi, or the earliest positive PCR or antigen test specimen collection date. For this analysis, cases were included if they occurred within 90 days of an active component Service member demographic record maintained in the DMSS. The denominator was AC Service members in service during June of 2020. To calculate rates among recruits, the denominator was the number of people with a recruit training period overlapping with 2020. To qualify as a case for a recruit, the COVID-19 incident date needed to have occurred within the recruit basic training period.

Among those who were identified as a case of COVID-19, hospitalization status and total number of hospital bed days were determined. An individual was counted as being hospitalized for COVID-19 if they had an inpatient encounter in 2020 with a diagnosis of COVID-19 (ICD-10: U07.1) in the primary diagnostic position. Bed days were calculated among inpatient encounters with a COVID-19 diagnosis in the primary diagnostic position in 2020.

- Services members tested for COVID-19 outside of the MHS system were not captured and the number of infections was likely underestimated in this report.
- Hospitalizations for COVID-19 were likely underestimated in this report because the ICD-10 code for COVID-19 (ICD-10: U07.1) was not in use until several weeks after the beginning of the COVID-19 pandemic.

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 305 of 325 PAGEID #: 4970

Appendix

Methods

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#### Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 306 of 325 PAGEID #: 4971

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# HEALTH OF THE FORCE 2020

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 308 of 325 PAGEID #: 4973



SECRETARY OF DEFENSE 1000 DEFENSE PENTAGON WASHINGTON, DC 20301-1000

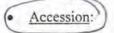
JUN 0 6 2022

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

SUBJECT: Policy Regarding Human Immunodeficiency Virus-Positive Personnel Within the Armed Forces

In view of significant advances in the diagnosis, treatment, and prevention of Human Immunodeficiency Virus (HIV), it is necessary to update DoD policy with respect to individuals who have been identified as HIV-positive. Individuals who have been identified as HIVpositive, are asymptomatic, and who have a clinically confirmed undetectable viral load (hereinafter, "covered personnel") will have no restrictions applied to their deployability or to their ability to commission while a Service member solely on the basis of their HIV-positive status. Nor will such individuals be discharged or separated solely on the basis of their HIVpositive status. This definition of "covered personnel" will be added to the affected DoD Instructions.

Accordingly, effective immediately I direct the following actions:



 DoD Instruction 6130.03, "Medical Standards for Military Service: Appointment, Enlistment, or Induction," volume 1, section 5: Disqualifying Conditions, 5.23.b., is revised by adding the following language in boldface: "Presence of human immunodeficiency virus or laboratory evidence of infection for false-positive screening test(s) with ambiguous results by supplemental confirmation test(s) is not, in itself, disqualifying with respect to covered personnel (including Military Service Academy cadets and midshipmen, contracted SROTC cadets and midshipmen, and other participants in in-service commissioning programs) seeking to commission while a Service member). Such covered personnel will be evaluated on a case-bycase basis."

DoD Instruction 6485.01, "Human Immunodeficiency Virus (HIV) in Military Service Members," section 3.a., is revised to read: "It is DoD policy to ... Deny eligibility for Military Service to persons with laboratory evidence of HIV infection for appointment (other than covered personnel who are seeking to commission while a Service member), enlistment, pre-appointment, or initial entry training for Military Service pursuant to DoDI 6130.03."

Retention: DoD Instruction 6130.03, "Medical Standards for Military Service: Retention," volume 2, section 5.23.b.(1), is revised by adding the following language in boldface: "A Service member with laboratory evidence of Human Immunodeficiency Virus infection will





be referred for appropriate treatment and a medical evaluation of fitness for continued service in the same manner as a Service member with other chronic or progressive illnesses, including evaluation on a case-by-case basis? Covered personnel will not be discharged or separated solely on the basis of their HIV-positive status.

- <u>Deployability</u>: Covered personnel are not non-deployable solely for the reason that they are HIV-positive. Decisions on the deployability of covered personnel will be made on a caseby-case basis and must be justified by the Service member's inability to perform the duties to which he or she would be assigned. DoD Instruction 1332.45, "Retention Determinations for Non-Deployable Service Members," will be implemented consistent with this direction.
- The Director of Administration and Management will make the revisions directed above in the cited DoD Instructions.
- The Under Secretary of Defense for Personnel and Readiness will convene a working group, chaired by his designee and composed of members named by himself, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Office of the Secretary of Defense, and the General Counsel of the DoD. The working group shall:
  - Develop proposed standards for conducting the case-by-case determinations directed above. Included in such standards will be the period during which, and method by which, covered personnel must exhibit an undetectable viral load and be symptom free. The Under Secretary of Defense for Personnel and Readiness will report those proposed standards to me within six months from the date of this memorandum.
  - Consider such additional matters as may be referred to it by the Under Secretary of Defense for Personnel and Readiness.
- The Secretaries of the Military Departments and the Commanders of the Combatant Commands, will, as necessary, revise their respective regulations, policies, and other guidance consistent with this memorandum and no later than 60 days from the date of this memorandum.
- The Secretaries of the Military Departments will report to the Under Secretary of Defense for Personnel and Readiness on a semi-annual basis beginning six months from the date of this memorandum: (1) the number of HIV-positive Service members in their respective Services who have been separated; and (2) the number of HIV-positive individuals, who are asymptomatic with a clinically confirmed undetectable viral load, and who have been refused accession.

p.butz

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 310 of 325 PAGEID #: 4975

ROUTINE R 281524Z JUN 22 MID200001895078U FM CNO WASHINGTON DC TO NAVADMIN INFO CNO WASHINGTON DC BT UNCLAS NAVADMIN 142/22 PASS TO OFFICE CODES: FM CNO WASHINGTON DC//N1// INFO CNO WASHINGTON DC//N1// MSGID/NAVADMIN/CNO WASHINGTON DC/N1/JUN// SUBJ/FISCAL YEAR 2022 ACTIVE COMPONENT ENLISTED FORCE MANAGEMENT ACTIONS// REF/A/DOC/COMNAVPERSCOM/23AUG06// REF/B/DOC/COMNAPERSCOM/06JUN20/ REF/C/DOC/COMNAVPERSCOM/06JUN20/ NARR/REF A IS MILPERSMAN 1300-500, REASSIGNMENT FOR HUMANITARIAN REASONS (HUMS). REF B IS 1910-108, SEPARATION BY REASON OF CONVENIENCE OF THE GOVERNMENT -EARLY RELEASE TO FURTHER EDUCATION. REF C IS MILPERSMAN 1910-102, SEPARATION BY REASON OF CHANGES IN SERVICE OBLIGATION (ACTIVE DUTY AND INACTIVE NAVY RESERVISTS). Intent RMKS/1. The purpose of this NAVADMIN is to announce implementation of key force management (FM) personnel policy actions in the enlisted active component (AC) to ensure Navy remains fully manned and operationally ready. As the Navy shifts into an environment of sustainment, retention of every capable Sailor will be critical to 🖉 the operational readiness of the Navy. Due to the uncertainty regarding COVID-19 Pandemic vaccination losses and the recruiting environment, where competition for talent is especially tough, the IS IM Navy is opening the aperture for additional FM personnel policy levers to retain Sailors. This requires retention of the right talent, at a time of uncertainty to ensure sustainment of the force. 2. Early Separation Cancellation. Retention of every capable Sailor will be critical to the operational readiness of the Navy. Therefore all enlisted early out programs and time in grade requirement waivers are cancelled. Service commitments such as) 010 enlistment contracts, service obligations for accepting permanent change of station orders, advancements, bonuses, training, etc., are expected to be fulfilled. Service Members experiencing difficulty in fulfilling obligated service requirements are encouraged to work with their chain of command and respective detailers to examine available alternatives to complete their obligation, to include reassignments to other duties for humanitarian reasons, in line with reference (a). Unless otherwise directed, this policy expires 30 September 2023. a. Commanding Officers retain 90-day early out authority for policy outlined in references (b) and (c).

b. Service Members previously granted approval, or who have an existing request pending at Commander, Navy Personnel Command



(COMNAVPERSCOM) as of the release of this NAVADMIN, will not be affected by this policy change.

c. Sailors pursuing commissions in the Navy and other branches of Service can still submit such requests, each request will be handled on a case by case basis

d. United States Space Force applicants are not affected by this policy change.

3. Voluntary Extension Opportunity. The Navy is accepting applications from enlisted personnel, except COVID-19 vaccination refusers, who desire to delay their separation or retirement. Service Members with an approved separation or retirement date before 30 September 2022 are eligible to submit a request to their detailer to have their separation or retirement date delayed between 6 and 12 months. All Service Members interested in extending, are invited to apply, but priority for approval will be given to those Service Members filling sea duty and critical billets. Requests must be received by 30 lune 2022. Command endorsed requests to delay a separation or retirement date should be initiated through the appropriate PERS-40 detailer. Approved extension request, will not go beyond 30 September 2023.

a. Service Members who are separating or retiring due to High Year Tenure (HYT) may apply for a waiver of their current HYT gate. HYT waivers will be considered for up to an additional 12 months for enlisted Sailors filling critical operational billets both at sea and shore. Requests will be approved on a case-by-case basis. Sailors will submit a command endorsed form 1306/7 Enlisted Personnel Action Request (ePAR) to My Navy Career Center (MNCC) via MyNavy Portal or by emailing the ePAR request directly to askmncc(at)navy.mil.

b. Service Members with an approved separation or retirement date that are in a sea duty billet, will remain on sea duty if their request for voluntary extension is approved.

(1) Sailors with an approved separation or retirement date who are in billets that are eligible for Sea Duty Incentive Pay (SDIP) and who are approved for a voluntary extension as described above will receive SDIP for those extensions.

(2) Exceptions to the timeline to request SDIP and to the length of extension for SDIP have been approved to accommodate these requests. The latest SDIP eligibility chart can be found at https://www.mnp.navy.mil/group/pay-and-benefits. This chart is updated periodically so check for recent additions. For Sailors who are in an SDIP eligible billet, a Form 1306/7 ePAR should be submitted to MNCC at askmncc(at)navy.mil and your detailer.

d. While all Service Members are encouraged to apply, the following will not be approved:

(1) Service Members who have executed any portion of their v separation or retirement orders (e.g., terminal leave, household goods shipment)

(2) Service Members pending mandatory separation or retirement for age.

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 312 of 325 PAGEID #: 4977

(3) Service Members approved for disability separation or / retirement. (4) Service Members being separated for misconduct. (5) Service Members who are COVID-19 vaccination refusers. If you have any questions regarding delaying a Service Members 4. Not in class separation or retirement date contact the appropriate detailer, enlisted community manager, or the MNCC at: askmncc(at)navy.mil or phone: 1-833-330-MNCC MNCC. Questions regarding SDIP should be directed to, Mr. Keith Tucker, PERS-40DD, 1-901-874-3545 or Keith.Tucker(at)Navy.mil.// 5. Released by Vice Admiral Richard J. Cheeseman, Jr., N1.// BT #0001 NNNN

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Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 313 of 325 PAGEID #: 4978 6/30/22, 5:41 AM FISCAL YEAR 2022 ACTIVE COMPONENT ENLISTED FORCE MANAGEMENT ACTIONS (CORRECTED COPY)

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# FISCAL YEAR 2022 ACTIVE COMPONENT ENLISTED FORCE MANAGEMENT ACTIONS (CORRECTED COPY):

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NARR/REF A IS NAVADMIN 307/20, MODIFICATION TO EARLY SEPARATION POLICY NAVADMIN CANCELLATIONS.

REF B IS NAVADMIN 288/17, EARLY SEPÁRATION POLICY NAVADMIN CANCELLATIONS. REF C IS NAVADMIN 084/22, TRANSITION OF ENLISTED SERVICE MEMBERS FROM ACTIVE COMPONENT TO RESERVE COMPONENT.

REF D IS MILPERSMAN 1910-108, SEPARATION BY REASON OF CONVENIENCE OF THE CONVENIENT EAST TO FILETURE FOLICATION https://navadmin-viewer.fly.dev/NAVADMIN/142/22 Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 314 of 325 PAGEID #: 4979 6/30/22.5:41 AM FISCAL YEAR 2022 ACTIVE COMPONENT ENLISTED FORCE MANAGEMENT ACTIONS (CORRECTED COPY) GOVERNMENT - DARKIT REDEADE TO FORTHER EDUCATION. REF E IS MILPERSMAN 1910-102, SEPARATION BY REASON OF CHANGES IN SERVICE OBLIGATION (ACTIVE DUTY AND INACTIVE NAVY RESERVISTS). REF F IS MILPERSMAN 1160-120, HIGH YEAR TENURE. REF G IS BUPERSINST 1430.16G CH-1, ADVANCEMENT MANUAL FOR ENLISTED PERSONNEL OF THE U.S. NAVY AND U.S. NAVY RESERVE.

RMKS/1. The purpose of this NAVADMIN is to implement key force management personnel policy actions in the enlisted active component to ensure the Navy remains fully manned and operationally ready. References (a) and (b) are hereby updated for enlisted personnel. For those who have decided to separate, please review reference (c) for additional career progression opportunities in the Navys Selected Reserves. Navy encourages all qualified Sailors to stay Navy. See your career counselor for more information. While we strive to retain all qualified Sailors, commanding officers should continue to exercise their obligation to document performance and adjust their recommendation for retention, accordingly.

2. Sailors are encouraged to look for selective reenlistment bonus (SRB) updates frequently to take advantage of the opportunities published on the Navy's SRB website at: https://www.mynavyhr.navy.mil/References/Pay-Benefits/N130D/. Please keep in mind SRB levels may be adjusted up or down depending on rating health.

3. Early Separation Cancellation. Effective immediately, all enlisted early out programs and new time in grade requirement waivers are hereby cancelled. Service commitments such as enlistment contracts, service obligations for accepting permanent change of station orders, advancements, bonuses, training, etc., will be fulfilled. Service members experiencing difficulty in fulfilling obligated service requirements are encouraged to work with their chain of command and respective detailers to examine available alternatives to complete their obligation.

a. Commanding officers still retain the 90-day early out authority for policy outlined in references (d) and (e).

b. Service members previously granted approval will not be affected by this policy change.

c. Service members interested in pursuing commissions in the Navy are still encouraged to submit requests. As always, these requests will be considered on a case by case basis.

d. United States Space Force applicants are not affected by this policy change.

4. Delaying separation or retirement. The Navy is accepting applications from enlisted personnel who desire to delay their

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 315 of 325 PAGEID #: 4980 6/30/22: 5:41 AM FISCAL YEAR 2022 ACTIVE COMPONENT ENLISTED FORCE MANAGEMENT ACTIONS (CORRECTED COPY) separation or retirement. The deadline for application submission is 31 August 2022.

a. Service members with an approved separation or retirement date on or before 31 March 2023 are eligible to submit a request to their detailer to have their separation or retirement date delayed and projected rotation date (PRD) extended, up to 30 September 2023, if the billet they are in upon submission of the request will be gapped upon their departure. Requests to extend beyond 30 September 2023 will be considered on a case by case basis for expected gaps in operational billets.

b. All Service members interested in extending retirements are invited to apply to their PERS-40 detailer to have their PRD extended no later than 90 days prior to the start of their previously requested terminal leave date or retirement date, (whichever comes first), via their chain of command utilizing their previously submitted Navy Standard Integrated Personnel System (NSIPS) voluntary retirement request. For example, if the Service members terminal leave date starts on 8 May 2023, then the request will have to be submitted on or before 7 February 2023 into NSIPS. NOTE: A form 1306/7 Electronic Personnel Action request (ePAR) is not required for previously submitted or approved retirements.
Priority for approval will be given to those Service members filling sea duty and critical billets that would otherwise be gapped.

c. In line with reference (f), Service members who are separating or retiring due to high year tenure (HYT) may apply for a HYT waiver of their current HYT gate. HYT waivers will be considered for up to an additional 12 months for enlisted Sailors filling critical operational billets both at sea and shore that would otherwise be gapped, while maintaining the service members eligibility for advancement. Those service members will submit a command-endorsed ePAR to MyNavy Career Center (MNCC) via MyNavy Portal or by emailing the ePAR request directly to askmncc@navy.mil. Requests will be approved on a case by case basis.

d. Service members with an approved separation or retirement date that are in a sea duty billet, will remain on sea duty if their request for voluntary extension is approved.

(1) Sailors with an approved separation or retirement date who are in billets that are eligible for Sea Duty Incentive Pay (SDIP), and who are approved for a voluntary extension that exceeds their prescribed sea tour by at least 12 months, will receive SDIP.

(2) Exceptions to the timeline to request SDIP and to the length of extension for SDIP will be granted by Enlisted Distribution Division (PERS-40) to accommodate these requests. The latest SDIP eligibility chart can be found at

https://www.mynavyhr.navy.mil/References/Pay-Benefits/SDIP/.

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 316 of 325 PAGEID #: 4981 6/30/22, 5:41 AM FISCAL YEAR 2022 ACTIVE COMPONENT ENLISTED FORCE MANAGEMENT ACTIONS (CORRECTED COPY) This chart is updated periodically so check for recent additions. For Service members who are in a SDIP eligible billet, an ePAR should be

submitted to MNCC at askmncc@navy.mil and their detailer.

(3) Service members approved for extension under this policy remain eligible to participate in the Navy wide advancement exam, or may be considered for advancement determination by a selection board if eligible, as long as they meet terminal eligibility date requirements set forth in reference (g).

c. While all service members are encouraged to apply, the following will not be considered:

 Service members who have executed any portion of their separation or retirement orders (e.g., household goods shipment).

(2) Service members pending mandatory separation or  ${\cal V}$  retirement for age.

(3) Service members approved for disability separation or retirement.

(4) Service members being separated for misconduct.

5. If you have any questions regarding delaying a Service members separation or retirement date contact the appropriate detailer, their Enlisted Community Manager, or the MNCC at: askmncc@navy.mil or phone: 1-833-330-MNCC(6622). Questions regarding SDIP should be directed to, PERS-40DD, 1-901-874-3545 or mill\_sdip@navy.mil//

6. Released by Vice Admiral Richard J. Cheeseman, Jr.//

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## **EXHIBIT C: ERRATA SHEET**

Page 221 1 Andrew E. Carmichael, Esquire 2 andrew.e.carmichael@usdoj.gov 3 4 RE: U.S. Navy Seals 1-3 Et Al v. Austin, Lloyd J. III Et Al 6/30/2022, William K. Lescher (#5289637) 5 6 The above-referenced transcript is available for review. 7 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. The witness should sign the Acknowledgment of 12 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 cs-midatlantic@veritext.com 16 Return completed errata within 30 days from 17 18 receipt of testimony. If the witness fails to do so within the time 19 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25

> Veritext Legal Solutions 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

Case: 1:22-cv-00084-MWM Doc #: 85-1 Filed: 08/18/22 Page: 319 of 325 PAGEID #: 4984

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Page 223 1 U.S. Navy Seals 1-3 Et Al v. Austin, Lloyd J. III Et Al William K. Lescher (#5289637) 2 3 ACKNOWLEDGEMENT OF DEPONENT I, William K. Lescher, do hereby declare that I 4 have read the foregoing transcript, I have made any 5 6 corrections, additions, or changes I deemed necessary as 7 noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony 8 9 given by me. 10 11 12 William K. Lescher Date \*If notary is required 13 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS 1S AUGUST 15 DAY OF 2022 16 17 18 19 NOTARY PUBLIC LOR WILL BURROUCHS, JAGL, USNO 20 21 22 23 24 25

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PAGE: NA LINE: NA CHANGE "vice chief" to "Vice Chief" (throughout)

**REASON** Proper title/noun

PAGE: NA LINE: NA CHANGE "joint staff surgeon" to "Joint Staff Surgeon" (throughout)

REASON Proper title/noun

PAGE: NA LINE: NA CHANGE "striker" to "Strike Group" (throughout)

REASON Proper title/noun correct term

PAGE: NA LINE: NA CHANGE "examplar" to "example" (throughout)

**REASON** spelling

PAGE\_18\_ LINE\_15\_\_ CHANGE "of the O6 level" to "at the O6 level"

**REASON** Correct preposition

PAGE\_22\_ LINE\_19\_ CHANGE "force of employment" to "force employment"

**REASON** Mistranscription

PAGE\_33\_ LINE\_8-11\_\_ CHANGE after "I personally do not" add period. Start new sentence with "I have

**REASON** Mistranscription

PAGE\_37\_ LINE\_13\_ CHANGE "unware" to "unaware

**REASON** Incorrect phrase

PAGE\_39\_ LINE 14-15\_CHANGE "excellent intel" to "exfil capability"

**REASON** Mistranscription

PAGE\_44\_ LINE 15\_CHANGE Insert comma (,) between "been" and "because

**REASON Punctuation** 

PAGE\_44\_LINE\_16\_CHANGE\_period (.) to comma (,) and make the "I" "It's" lower case to create one sentence

**REASON** Punctuation

PAGE\_45\_LINE\_4\_CHANGE\_Add "the" after "So"

**REASON Punctuation** 

PAGE\_45\_LINE\_21\_CHANGE\_Remove "that"

**REASON** Mistranscription

PAGE\_54\_ERSE\_9\_CHANGE "the shore" to "ashore"

**REASON Incorrect Term** 

PAGE\_55\_LINE\_1 CHANGE "on" to "in"

**REASON Incorrect Term** 

PAGE\_55\_LINE\_2\_CHANGE "in" to "and"

**REASON** Incorrect Term

PAGE\_58\_LINE 2 CHANGE add commas (,) on either side of the term "the commander"

**REASON** Punctuation

PAGE\_59\_LINE 2 CHANGE "the" to "their"

REASON Incorrect Term

PAGE\_66\_LINE\_6 CHANGE Comma (,) after accommodation

**REASON** Punctuation

PAGE\_71\_LINE 6 and 18 CHANGE "depo" to depot"

**REASON** Incorrect Term

PAGE\_78\_LINE 8 CHANGE add comma (,) after adversary

**REASON** Punctuation

PAGE\_82\_LINE\_14\_CHANGE add I before "iterated"

**REASON** Mistranscription

PAGE\_83\_LINE\_3\_CHANGE remove "it"

**REASON** Mistranscription

PAGE\_92\_LINE\_2\_CHANGE "of NAV" to "OPNAV"

**REASON** Incorrect Term

PAGE\_93\_LINE\_1\_CHANGE "shop" to "shot"

**REASON** Incorrect Term

PAGE\_93\_LINE\_12\_CHANGE "residence" to "resident"

**REASON** Incorrect Term

PAGE\_95\_LINE\_12\_CHANGE Comma (,) after "rep"

**REASON** Punctuation

PAGE\_95\_LINE 15 CHANGE Add "it' before appears

Lescher

**REASON** Mistranscription

PAGE\_97\_LINE 2-3 CHANGE replace "entered" with "nature of"

**REASON** Mistranscription

PAGE\_116\_LINE\_21\_CHANGE "some" to "same"

**REASON** Mistranscription

PAGE\_122\_LINE\_2\_CHANGE Remove "it led

**REASON** Mistranscription

PAGE\_130\_LINE 8 CHANGE "at the RDC" to "FFRDC"

**REASON** Mistranscription

PAGE\_130\_LINE 12 CHANGE remove "the"

**REASON** Mistranscription

PAGE\_131\_LINE\_11\_CHANGE add "an" before "incremental"

**REASON** Missing term

PAGE\_132\_LINE\_4\_CHANGE \_"Although" to "All of"

**REASON** Incorrect term

PAGE\_146\_LINE 13 CHANGE "expeditiously" to "expeditionary"

**REASON** Mistranscription

PAGE 155 LINE 12 CHANGE "shop" to "shot"

**REASON** Incorrect Term

PAGE\_157\_LINE\_12\_CHANGE replace "inconsistent" with "consistent"

**REASON** Mistranscription

PAGE 158 LINE 16 CHANGE "it" to "it's"

**REASON** Incorrect Term

PAGE\_168\_LINE 18 CHANGE delete "It's central, yeah" with "conceptually"

**REASON** Mistranscription

PAGE\_174\_LINE\_14\_CHANGE replace "trans medical readiness" with "transmissibility [sic]" (sounds likes "transmittinglyness")

**REASON** Mistranscription

PAGE, 180 /LINE 16 CHANGE "bases" to "basis"

William X. Lesche

**REASON** Mistranscription

PAGE\_184\_LINE 7 CHANGE add "that" before "these"

**REASON** Missing Term

PAGE\_184\_LINE 16 CHANGE add "of" before "specific conditions"

**REASON** Missing Term

PAGE\_185\_ LINE 16 CHANGE "so" to "is"

**REASON** Missing Term

PAGE\_187\_ LINE 5 CHANGE "higher tenure" to "high year tenure"

**REASON** Mistranscription

PAGE\_187\_LINE 7 CHANGE "opening to aperture" to "opening the aperture"

**REASON** Incorrect Term

PAGE\_187\_LINE9\_CHANGE "are" to "or"

**REASON** Incorrect Term

PAGE\_188\_LINE 13 CHANGE add comma (,) after "sustaining"

**REASON** Punctuation

PAGE\_194\_LINE 20\_CHANGE "based" to "base"

**REASON** Incorrect Term

PAGE 198 LINE 9 CHANGE "Yard" to "Air"

**REASON** Incorrect Term

PAGE\_198\_LINE 13 CHANGE add "was" after "and"

REASON Missing Term

PAGE\_198\_LINE\_18\_CHANGE "squad" to "squadron"

**REASON** Incorrect Term

PAGE\_199\_LINE 1\_CHANGE remove "a" before command

**REASON** Incorrect Term

PAGE\_200\_ LINE 2-3\_CHANGE remove "4" replace with "forward" and remove "-" between "5-1" and "5-9" to read "51" and "59"

**REASON** Mistranscription

PAGE 200 MINE 6-7 CHANGE replace "with - employes" with "which employs"

William K. Lescher

REASON Incorrect phrase

PAGE\_202\_LINE 9-10 CHANGE change "within side" to "with inside"

**REASON** Mistranscription

PAGE\_205\_ LINE 1-2 CHANGE "Navy component commanders and the combatant commanders" to "Navy Component Commanders and the Combatant Commanders"

**REASON** Proper noun/mistranscription

PAGE\_209\_ LINE 9 CHANGE Add "the" before "measures"

**REASON** Missing Term

PAGE\_209\_ LINE 14 CHANGE "so to" to "then to"

**REASON** Incorrect Term

PAGE\_215\_ LINE 2 CHANGE "talking" to "talked"

**REASON** Mistranscription

PAGE\_215\_LINE 8\_CHANGE add "the" after "standard"

**REASON** Missing Term

PAGE\_216\_ LINE 7 CHANGE add "the" after "meet"

**REASON** Missing Term

PAGE\_218\_ LINE 4 CHANGE add "about the" after "today"

**REASON** Missing Term

PAGE\_218\_ LINE 4 CHANGE "are" to "is"

**REASON** Incorrect Term

PAGE\_218\_ LINE 12-14 CHANGE add "this" after doing

**REASON** Mistranscription

## 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	:		

#### 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 Class Counsel in this matter.
- 2. Attached hereto is a true and accurate copy of an email I sent to Government Counsel,

with a proposed agreed order on August 18, 2022.

3. They did not respond, and thus did not agree.

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 August 18, 2022.

Christopher Wiest

#### Case: 1:22-cv-00084-MWM Doc #: 85-2 Filed: 08/18/22 Page: 2 of 5 PAGEID #: 4992

#### chris@cwiestlaw.com

From:	chris@cwiestlaw.com
Sent:	Wednesday, August 17, 2022 2:18 PM
То:	'Snyder, Cassandra M (CIV)'; 'Yang, Catherine M (CIV)'; 'Avallone, Zachary A. (CIV)'; 'Carmichael, Andrew E. (CIV)'
Cc:	'Wendy Cox'; 'Aaron Siri'; 'Elizabeth Brehm'; 'Tom B. Bruns'
Subject:	Doster v. Kendall, Agreed Order
Attachments:	AgreedOrderClass-8-17-22.docx

Counsel:

We have read your most recent filing. We were surprised to see some of the contents and claims being made about the order, because we believe that the order is clear and unambiguous.

We are not interested in any "gotchas," and to that end, we are sending over a proposed agreed to, which should satisfy a majority of the issues you recently raised. We are sure that both Judge McFarland and the Sixth Circuit, would appreciate narrowing the issues to those that actually involve material differences between the parties.

Please see the attached order. We are, obviously, willing to agree to it.

Because you have asked Judge McFarland for action on your motion by 8/19, we intend to submit this clarifying motion (for your client's benefit) to the Court, in a short response we intend to file tomorrow, if this does not meet your agreement.

Sincerely,

Christopher Wiest Chris Wiest, Attorney at Law, PLLC 25 Town Center Blvd, Ste. 104 Crestview Hills, KY 41017 513-257-1895 (v)

## 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	:		

#### AGREED ORDER BETWEEN THE PARTIES CLARIFYING THE SCOPE OF THE PRELIMINARY INJUNCTION

The parties, through Counsel, in order to resolve certain issues that have arisen between them concerning the scope of the preliminary injunction entered on July 27, 2022 [Doc. 77], hereby agree to the following agreed order. Nothing in this agreed order waives any party's appellate arguments. The parties therefore agree, as a matter of clarification:

That the injunction, in paragraph 2, is confined to the class definition, in paragraph 1, of Doc. 77. The injunction, by its terms, only applies to members of the class, and thus only applies to "[a]ll active-duty, active reserve, reserve, national guard, inductees, and appointees of the United States Air Force and Space Force, including but not limited to Air Force Academy Cadets, Air Force Reserve Officer Training Corps (AFROTC) Cadets, Members of the Air Force Reserve Command, and any Airman who has sworn or affirmed the United States Uniformed Services Oath of Office or Enlistment and is currently under command and could be deployed," with all of the past tense language in that definition meaning that those individuals had met that definition, as of the date of the class modification, July 27, 2022 [Doc. 77], who: "(i) submitted a religious accommodation request to the Air Force from the Air

Force's COVID-19 vaccination requirement, where the request was submitted or was pending, from September 1, 2021 to the present" (i.e. July 27, 2022, the date of the order); "(ii) were confirmed as having had a sincerely held religious belief substantially burdened by the Air Force's COVID-19 vaccination requirement by or through Air Force Chaplains; and (iii) either had their requested accommodation denied or have not had action on that request." Those requirements, also with language in the past tense, indicates that the requirements had to have been met by the date of the modified class order (i.e. July 27, 2022), for someone to be a member of the class and for the injunction to provide relief to them.

- Further, the injunction, which provided "Defendants shall not refuse to accept for commissioning or enlistment any inductee or appointee due to their refusal to get vaccinated for COVID-19 due to their sincerely held religious beliefs. Further, Members who submitted requests for religious accommodation may cancel or amend previous voluntary retirement or separation requests or request to transfer to the Air Force Reserve," is confined to people who met the class definition as of July 27, 2022.
- 3. Finally, insofar as the restrictions on National Guard are concerned, the application of the injunction is limited to the enforcement of the Secretary of the Air Force's vaccine mandate, for those meeting the class definition, and would not apply to any vaccine requirement that was separately imposed by any Governor, State Adjutant General, state legislature, or separate state authority.

2

Case: 1:22-cv-00084-MWM Doc #: 85-2 Filed: 08/18/22 Page: 5 of 5 PAGEID #: 4995

IT IS SO ORDERED:

Have Seen and Agree

Zach Avallone, Counsel for Defendants

Christopher Wiest, Counsel for the Class/Plaintiffs

## 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	:	

#### **DECLARATION OF PATRICK POTTINGER**

Pursuant to 28 U.S.C. §1746, the undersigned, Patrick Pottinger, 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:

- My name is Major Patrick Pottinger, and I am a class representative in *Doster v. Kendall.* I am currently assigned to Randolph Air Force Base as an instructor pilot. In my current position, I am responsible for training Air Force fighter pilots in the Introduction to Fighter Fundamentals. This is an intense eight-week course that introduces Air Force pilots to tactical aviation. Classes start approximately every 3 weeks, and at any given time we have between 40-60 future fighter pilots training in our unit.
- On March 28, 2022, I was removed from flying status due to my unvaccinated status. My request for religious accommodation had already been disapproved and my removal from flying status was used to coerce me into taking the COVID-19 vaccination against my religious beliefs.

1

- After the initial preliminary injunction granted by Judge McFarland on March 31, 2022, my commander informed me that I would not be restored to flight status or operations at that time.
- 4. On April 22, 2022, my immediate commander informed me that he was restoring me to flying status administratively, but would continue to ground me from flying due to his "personal concerns" about me (all dealing with my refusal to vaccinate). While grounded I was directed by my commander to do meaningful work in support of the flying operation, and I was upgraded to an Operations Supervisor (Ops Sup).
- 5. For the next 13 weeks, I worked as the Ops Sup, where I was responsible for the execution of the daily flying schedule. In this role I was the primary liaison between squadron operations and aircraft maintenance during flying execution. I was also responsible for managing pilots' risk and had the final say as to whether they were cleared to fly. I made these decisions based on my own assessments of the readiness of the pilots and aircrew, the central Texas weather, the status of Randolph AFB, near airfield statuses, and my own prior experience as a 12+ year USAF veteran pilot. At the end of each shift, I was required to debrief the next Ops Sup as well as squadron leadership about pilots or aircraft involved in an unusual situation, in-flight emergencies, weather diverts, etc. I was not allowed to fly the airplanes myself, but I was allowed to send USAF Pilots, aircrew, and student Fighter Pilots out the door to fly after making assessments (in close proximity to them) about their own safety and readiness.

- On June 8, 2022, I was returned to flying status and flew my first flight after being grounded for 13 weeks. I was informed that this was, in no small part, because of the pilot shortage.
- 7. I am generally aware that there is a significant pilot shortage Air Force wide, just as I am aware that the Air Force has failed to meet its accession (officer and enlisted) needs.<sup>1</sup>
- 8. Any delay in training these students will have a significant impact in further expanding that shortage as it takes approximately 2 years to train a fighter pilot, and that is just as a wingman. To build a combat ready 4-ship flight lead, who is ready to employ the standard fighting unit (a 4-ship) alongside multiple USAF Assets, it is closer to 5 years. I learned this as an F-22 Fighter Weapons Officer and while serving during 3 operational tours on Active Duty.
- 9. Suffice to say, pilots are not fungible, and thus the loss of pilots who are unvaccinated are not replaced with personnel who are. The pipeline for other career fields that are short (and there are many of them) are in the same predicament.

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 August 18, 2022.

k Pottinger

<sup>&</sup>lt;sup>1</sup> <u>https://www.nbcnews.com/news/military/every-branch-us-military-struggling-meet-2022-</u> recruiting-goals-officia-rcna35078 (last visited 8/18/2022).

https://www.airforcetimes.com/news/your-air-force/2022/01/21/air-forces-enlisted-recruitment-pipeline-is-drying-up-general-warns/ (last visited 8/18/2022).