

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL #1, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 8:21-cv-02429
	)	
JOSEPH R. BIDEN, JR., in his official	)	
capacity as President of the United States,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF MAJOR GENERAL SHARON R. BANNISTER**

I, Sharon R. Bannister, hereby state and declare as follows:

1. I am a Major General in the United States Air Force currently assigned as the Director of Medical Operations at the Department of the Air Force Office of the Surgeon General. I have been in this position since 10 June 2021. As a part of my duties, I am responsible for ensuring a medically ready force which includes oversight of the Headquarters-level Religious Resolution Team for the Department of the Air Force (HAF/RRT).
2. I am generally aware of the allegations set forth in the pleadings filed in this matter. I make this declaration in my official capacity as the Director overseeing the HAF/RRT and based upon my personal knowledge and information that has been provided to me in the course of my official duties.
3. Religious accommodation requests for exemption from an immunization requirement are reviewed and resolved in accordance with Department of the Air Force Instruction (DAFI) 52-201, *Religious Freedom in the Department of the Air Force*, dated 23 June 2021, and Air Force

Instruction (AFI) 48-110\_IP, *Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases*, dated 7 October 2013 (certified current 16 February 2018). Religious Resolution Teams (RRT) aid and advise the initial approval level decision authority. The initial approval authority is the member's Major Command (MAJCOM), Field Command (FIELDCOM), Direct Reporting Unit (DRU), or Field Operating Agency (FOA) commander.<sup>1</sup> The appeal authority is the Air Force Surgeon General.<sup>2</sup> If an appeal is made from the initial decision, a separate RRT assists and advises the appellate authority. At the initial level (installation level), the RRT will be comprised of, at a minimum: the commander (or designee), Senior Installation Chaplain (or equivalent), Public Affairs Officer, Judge Advocate, and medical provider.<sup>3</sup> At the appeal level, the RRT comprises, at a minimum: a Chaplain, Judge Advocate, medical provider, member from Public Affairs, and member from the office of the Deputy Chief of Staff for Manpower, Personnel, and Services.<sup>4</sup> The Air Force Surgeon General, as the appeal authority, provides an individualized review of each request and is not required to rely on the determinations made by the approval authority. Additionally, the appeal authority is not limited to the documentation submitted by the approval authority. If necessary, the appeal authority can and will request additional information from the approval authority in order to make an informed decision. The Surgeon General may deny the religious accommodation request or overrule the initial disapproval and grant the religious accommodation request in full or in part. I am familiar with the religious accommodation process for exemption from an immunization requirement and the RRT as it falls within the scope of my official duties.

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<sup>1</sup> DAFI 52-201, paragraph 6.6.1.

<sup>2</sup> DAFI 52-201, Table 6.1.

<sup>3</sup> DAFI 52-201, paragraph 3.8.1.1.

<sup>4</sup> DAFI 52-201, paragraph 3.8.1.2.

4. There is no blanket policy or practice of approving or disapproving all religious accommodation requests. Not all religious accommodation requests are the same. Each request is reviewed individually—by both the initial approval level decision authority and the appellate authority, if applicable—to determine (1) if there is a sincerely held religious belief, (2) if the vaccination requirement substantially burdens that sincerely held religious belief, and if so, (3) whether there is a compelling government interest in requiring that specific requestor to be vaccinated, and (4) whether there are less restrictive means in furthering that compelling government interest.<sup>5</sup>

5. Several members of the Air Force have not limited their request to the new COVID-19 vaccine, but request exemption from multiple (or all) DoD vaccination requirements. Each aspect of the requested exemption must be considered separately since the compelling government interest and possible less restrictive means may differ for each vaccine.

6. This is a fact- and labor-intensive analysis that is particular to the circumstances of the requestor. To aid in this endeavor, a religious accommodation package includes a written request from the service member,<sup>6</sup> a memorandum from a chaplain who interviewed the member, counseling memoranda from both a medical provider and the member's commander, a recommendation from the RRT, and then recommendations from every commander in the service member's chain of command. The recommendations from the chain of command discuss whether there is a compelling government interest in vaccinating that member, the impact on mission accomplishment if the member is not vaccinated, and whether there are less restrictive means. Other pertinent information for resolving the request may also be included.

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<sup>5</sup> DAFI 52-201, paragraphs 2.2 – 2.10.

<sup>6</sup> The request may also include letters from ecclesiastical leaders or others in support of the sincerely held religious belief.

### **Sincerely Held Religious Beliefs**

7. As noted above, religious accommodation requests are not all the same. One request is not representative of another. As an initial matter, requests must be reviewed to determine if the beliefs are sincerely held and if they are religious in nature. If the immunization requirement does not substantially burden a member's exercise of religion, the request may still be approved, but it is reviewed under a different standard.<sup>7</sup> Requests may call into question the religious nature of the belief. Some members have also asserted non-religious reasons, such as medical concerns, within their religious exemption requests. For example, some question the safety of the vaccine or the speed with which it was approved by the Food and Drug Administration (FDA). Others have expressed a concern that the vaccine will be used to implant a surveillance chip. These non-religious bases may be the only justification given or may be intermixed with beliefs of a more religious nature.

8. The majority of requests we have reviewed as part of the RRT for the appeal authority have stated a Christian basis for their request. There are requests related to various Christian denominations (e.g., Catholic, Protestant, etc.) as well as non-denominational Christian faiths. In addition, as we receive more appeals, we anticipate more requests based on other religious beliefs. For example, I am aware of at least one request derived from the member's Hebrew Israelite belief system and another from an avowed atheist who is nevertheless making a religious accommodation request.

9. Even within the Christian-based requests we have, reviewed, requestors have presented a wide range of religious beliefs. Some have stated a religious-based opposition to abortion and the use of aborted fetal stem cells in the development and testing of vaccines. Others have

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<sup>7</sup> Such a request would be approved unless the needs of mission accomplishment outweigh the needs of the requestor.

asserted a religious-based opposition to putting contaminants into their body. Some have asserted God made their bodies perfectly and using an mRNA-vaccine alters what the DNA does, thus violating God's plan. Still others have stated the vaccine is the "mark of the beast" and would defile them.

10. The approval and appeal authority may still consider whether the belief is sincerely held. This analysis involves looking at, among other things, how the individual demonstrates adherence to that belief. For example, an individual who requests a religious accommodation based on opposition to contaminants may raise questions as to how their belief system defines a contaminant and how they have adhered to that system in the past and present.

#### **Substantial Burden**

11. Identifying the sincerely held religious belief is necessary for determining whether there is a substantial burden on that belief. For instance, if a service member requesting an exemption from COVID-19 vaccinations that used aborted fetal cells in the development of the vaccine would not be substantially burdened if offered a vaccine that did not utilize aborted fetal cells. Similarly, a member requesting exemption from mRNA vaccines may not be substantially burdened if offered another type of vaccine, such as the Janssen (Johnson & Johnson) vaccine.

12. In addition, requests for religious accommodation may not present a substantial burden due to timing. Immunization requirements may only be due at certain times or under certain conditions. For example, the Tetanus-diphtheria (Td) booster is only required every 10 years.<sup>8</sup> A request to be exempt from these types of vaccines requires an analysis to determine whether there is a substantial burden at this time for that member. A substantial burden may not exist for

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<sup>8</sup> AFI 48-110\_IP, paragraph 4-16(c).

a member requesting exemption from Td if that member is not due to receive the booster for an extended period.

13. Similarly, certain vaccines are only required if a particular assignment or duty would expose the member to the risk, such as a deployment or relocation to certain geographic locations. For example, a member is required to vaccinate against smallpox only if warranted based on duties (e.g., medical teams at hospitals/clinics), geographical locations that pose a higher risk, or in occupational designated occupational roles.<sup>9</sup> Accordingly, a member requesting exemption from smallpox may not be substantially burdened if the vaccine is not required based on that member's circumstances.

14. In both types of scenarios—the vaccine is not required for an extended period of time or not yet required based on the member's individual circumstances—there is no substantial burden and it is difficult if not impossible for the government and the Department of the Air Force to properly review the compelling government interest and less restrictive means until closer in time to when the vaccine is actually required.

### **Compelling Government Interest**

15. The Department of the Air Force has a compelling government interest in mission accomplishment, which means the Air Force has a compelling interest in preventing and minimizing the impact of infectious disease that affects “military readiness, unit cohesion, good order and discipline, and health and safety for both the member and the unit.”<sup>10</sup> As such, the Department of the Air Force, along with the rest of the Department of Defense, maintains robust vaccination requirements for its members including both routine vaccinations and risk-based or occupation-related vaccinations. In the event of a request for exemption from a particular

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<sup>9</sup> AFI 48-110\_IP, paragraph 4-15(g).

<sup>10</sup> DAFI 52-201, paragraph 2.1.

vaccination, the compelling government interest in vaccinating a particular member for mission accomplishment is fact dependent. As previously noted, commanders within a member's chain of command provide recommendations and inputs on the compelling government interest in vaccinating the requestor, including the impact approving the accommodation would have on mission accomplishment.

16. Some considerations for a religious accommodation request are unique to the military and the Department of the Air Force itself. This is due to the unique role and mission for military members in National Defense. Even within the Department of the Air Force, the roles and responsibilities of individual Airmen and Guardians may differ vastly. To illustrate this difference, we can look at the wide differences of missions of the Air Force's approximate 3,300 squadrons. Squadrons come in sizes ranging from seven personnel to over 600 personnel and may have a specialized tactical or functional mission. The traditional squadrons include fighter squadrons, bomber squadrons, mobility squadrons, tanker squadrons, missile squadrons, intelligence squadrons, surveillance reconnaissance squadrons, command and control squadrons, and training squadrons. These specialized squadrons, along with an operational support squadron, usually make up the operational group on any specific base. Other squadrons include medical squadrons, aircraft maintenance squadrons, civil engineering squadrons, mission support squadrons, and security forces squadrons.

17. There are nine MAJCOMs, three FIELDCOMs, and approximately 20 DRUs and FOAs in the Department of the Air Force. Each has their own unique mission and requirements, which support the overall mission of the Department of the Air Force in defending national security. The vast majority of commanders (i.e., approval authorities) for the MAJCOMs and FIELDCOMs are three- and four-star General Officers.

18. There are multiple factors to consider in determining whether there is a compelling government interest in requiring a vaccination for a particular service member, including the member's career field, the proximity and amount of time they must work with other individuals, the likelihood of the member being deployed or otherwise required to travel with little or no notice, and the impact to the mission if that member contracted a disease, such as COVID-19, or infected another member with the disease. These factors are considered in connection with requests for religious exemption from the COVID-19 vaccine requirement.<sup>11</sup>

19. The primary mission of the U.S. Air Force is "Fly, fight, and win – airpower anytime, anywhere."<sup>12</sup> Thus, Airmen and Guardians are expected to maintain a high state of readiness – physical, mental, and occupational – to perform both the duties they typically train for in their respective career fields and as augmentees in other military duties such as disaster and relief operations or physical security for Air Bases or Garrisons. Some requestors' primary duties in the Department of the Air Force involve flight or space operations. Other requestors fulfill the Air Force's mission through intelligence operations, logistics support, aircraft maintenance, finance, and medical support, to name a few. Depending on the specialty, service members requesting an exemption may fly in a single-occupancy aircraft or fly in close proximity with multiple service members in a crew-type aircraft. The impact to mission accomplishment if a member in a single occupancy aircraft contracted COVID-19 may be different than the impact if a member of an aircrew contracted COVID-19 and the entire crew was exposed. The approval or appeal authority may find there is a compelling government interest in both scenarios, or it might find otherwise, but the discrete facts are relevant and reviewed separately.

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<sup>11</sup> While addressing COVID-19 in the example, the same analysis may apply for other vaccines from which a particular member may request exemption.

<sup>12</sup> U.S. Air Force Mission, <https://www.airforce.com/mission>, last visited November 19, 2021.

20. Likewise, some requestors are medical providers, working with service members and their dependent family members. Accordingly, they may come in close proximity with individuals who are immuno-compromised or who have otherwise been unable to obtain public health vaccinations. Other service members may work more in an office setting or outdoors with less proximate physical contact to others. The member's installation may have sufficient backup if the member falls ill or may be critically manned. While the vast majority of the force is deployable and expected to be ready to deploy on short notice, some career fields, such as Tactical Air Control Party Specialists (TAC-Ps) or Pararescue Specialists (known as PJs), are more likely to deploy with little notice to austere locations. With over 10,000 religious accommodation requests pending in the Department of the Air Force (including routing for initial approval authority action or routing for appeal authority action), the types of situations that may be presented are as diverse as the career fields and assignments the Department of the Air Force has to offer. Our approval or appeal authorities review each fact scenario on an individualized case by case basis in determining whether there is a compelling government interest.

#### **Less Restrictive Means**

21. Whether there are less restrictive means available that are as effective as vaccination in furthering the compelling government interest is fact-dependent as well. For one, a potentially less restrictive means available for one service member may not be reasonable for another service member in a different career field, at a different geographic location, or in different work circumstances that would compel the service member's physical presence. Pilots and other aircrew, for example, cannot telework. Other positions may be able to telework, but only in a degraded capacity and may still be at risk themselves due to exposure in the local community or

through family and friends. The Air Force has a deadline for all personnel to be vaccinated for COVID-19 because approving an accommodation conditioned on future vaccination may not be feasible to address mission needs. For example, even if a deployable service member could sometimes telework without degrading the mission at their primary duty location (i.e., home station), that member may still need to be fully vaccinated because the nature of his or her career field, as well as military necessity, can make the need to deploy or otherwise travel unpredictable. When the Air Force needs its forces to travel immediately to meet an evolving threat, there is not enough time to wait for the member to reach a fully vaccinated status in two, three, or four weeks. An Approval or Appeal Authority often has to weigh multiple factors like these to determine whether or not the facts warrant an accommodation.

22. The availability of a less restrictive means may also depend on the sincerely held religious belief. A less restrictive means for a member who requested an exemption based on how the vaccine was developed may involve permitting them to take a vaccine that was not developed the same way. A service member with limited time remaining in service may be able to be accommodated differently than a member who has a four to six year service commitment.

23. The Air Force does not apply a “blanket” rule that no less restrictive means of protecting the force exists other than a vaccination. The Approval and Appeal Authority must look at numerous factors that vary by individual. The Department of the Air Force strives to make sure full and appropriate consideration is given to each request. Where an accommodation can be granted without adversely impacting the compelling government interest in mission accomplishment, it will be.

24. COVID-19 is no exception, but presents some unique challenges. The spread of the disease has been difficult to control and the disease has already demonstratively adversely

impacted mission accomplishment and military effectiveness. There has been a surge of accommodation requests to be exempt from the vaccine that is unprecedented. Identifying the situation where less restrictive alternatives to the vaccine would not adversely impact mission accomplishment requires an individualized analysis.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of December 2021.

**BANNISTER.S** Digitally signed by  
**HARON.RUSCH** BANNISTER.SHARON.  
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SHARON R. BANNISTER, Maj Gen, USAF  
Director of Medical Operations