

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

NAVY SEAL 1, <i>et al.</i> , for themselves)	
and all others similarly situated,)	
)	
Plaintiffs,)	
v.)	No. 8:21-cv-2429-SDM-TGW
)	
JOSEPH R. BIDEN, in his official)	
capacity as President of the United)	
States, <i>et al.</i> ,)	
)	
Defendants.)	

**DECLARATION OF
NAVY COMMANDER SURFACE WARFARE OFFICER**

I, Navy Commander Surface Warfare Officer, do hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this Declaration, and if called upon to testify to them, I would and could do so competently.

2. I am a Commander and a Surface Warfare Officer in the United States Navy. I am the Commanding Officer of a guided missile destroyer.

3. I joined the Navy after completing university in 2004. I pursued a commission because I wanted to serve our country. I took an oath to uphold the constitution. I am proud to defend freedom and our republican form of government.

4. I have now honorably served over 17.5 years in the Navy.

5. Over the course of my service, I have deployed multiple times across the globe in support of our nation’s interests (Western Pacific, Persian Gulf, Red Sea, Mediterranean Sea, Black Sea, Atlantic, Caribbean, Eastern Pacific, etc.).

EXHIBIT A

6. I never thought I would be placed in the position of conflict between my faith and a military order, and have to decide whether to remain true to what God wants me to do, or be kicked out of the service.

7. I love both God and the Navy, and want to be able to remain true to my beliefs, and continue to serve.

8. I submitted my original Religious Accommodation Request (RAR) on 13 September 2021.

9. My request was denied by the Chief of Naval Personnel on 22 October 2021 and presented to me by my direct supervisor on 26 October 2021.

10. I subsequently submitted my appeal on 03 November 2021.

11. When I received an initial denial of my RAR, which I timely appealed, I noted the many inconsistencies and false statements in my commander's non-recommendation of my initial request; as well as those contained in the denial. CNO(N1)'s denial letter of 22 October 2021 and ISIC's disapproval recommendation dated 14 September 2021 failed to consider or acknowledge any viable alternative to achieve the mission and/or accommodate my religious freedoms and practices.

12. From the first confirmed case of COVID-19 virus in the United States on 20 January 2020, to the 11 December 2020 emergency use authorization for a COVID-19 vaccine, I/my command completed the following military operations/requirements:

a. From January 2020 to August 2020, my ship deployed to FIFTH and SIXTH FLEET areas of operation in support of OPERATION SENTINEL.

b. In September 2020, my command conducted a weapons offload at a Naval Weapons Station.

c. From October 2020 to November 2020, my command conducted national tasking for SECOND FLEET in the western Atlantic in support of out of area deployers.

d. From January 2021 to March 2021, my command executed a 60-day surge deployment to FOURTH FLEET in support of counter-illicit trafficking operations. This period is the first where we had positive cases of COVID-19. The first was a member of my command. Prior to leaving Norfolk, everyone took a COVID test. The result came back positive after we departed; however, we were able to isolate the individual and transport him off in Florida with no impact to mission. Additionally, as part of this mission, we took on several detainees that had to be turned over to their parent government. At least one detainee was COVID positive, yet we still provided care as necessary without impacting our mission.

13. From January 2020 to March 2021, my ship was underway for 300+ days over a 15-month time period. Throughout this time, my command successfully executed health protection protocols to limit COVID-19 exposure as follows:

a. Mask wear both on and off the ship.

- b. Sanitization of the ship's spaces, passageways, door handles, etc., three times per day.
- c. Enforced social distancing protocols as best as practicable (minimized gatherings/meetings).
- d. Utilized Restriction of Movement (ROM) protocols for personnel travelling out of area (with travel risk assessments).
- e. Utilized ROM protocols for personnel experiencing COVID-like symptoms, in addition to COVID testing as required per Navy policy.
- f. Conducted a ship-wide ROM with a confirmed negative COVID test prior to surge deployment.
- g. Developed and executed a quarantine/isolation protocol for underway operations.

14. For almost a year, my command continued to execute mission requirements during the height of the COVID-19 pandemic without the benefit of a vaccine. The force health protection protocols we executed have proven successful and are a less restrictive means of furthering the government's compelling interest without infringing upon any service member's religious freedoms.

15. In addition, since the introduction of Emergency Use Authorization COVID-19 vaccines to the U.S. market, 294 Sailors at my command have been vaccinated, leaving about twenty-four (24) Sailors, including myself, unvaccinated. To the extent any COVID-19 vaccine reduces the risk of infection and spread, the fact that 93% of command is vaccinated further reduces the risks of COVID-19 infection and

spread throughout the command, thereby ensuring military readiness and health and safety requirements for units and individuals. The COVID-19 virus currently has a mortality rate of approximately 1.6% in the United States, which predominantly affects individuals age 65 years and older and individuals with comorbidities such as obesity, smoking, heart conditions, diabetes and kidney disease. The majority of my command, to include myself, does not fall within the scope of those individuals most likely to die from COVID-19 which further highlights the low risk to health and safety, non-battle injury, and/or military readiness if one does not receive a COVID-19 vaccine.

16. Seventeen (17) Sailors in my command submitted religious accommodation requests, including myself. Sixteen (16) have been disapproved; of those, six (6) have decided to submit appeals to the Chief of Naval Operations (CNO) for final adjudication.

17. The denial of religious accommodation letter I received is identical to the denial letters received by all sixteen Sailors in my command that submitted similar requests.

18. Each of us submitted distinct, personal accounts of our religious practices and the method by which receipt of the COVID-19 vaccine would violate those tenets. The form-like denial letter by the Chief of Naval Personnel demonstrates a blanket denial of religious accommodations regardless of factors articulated in our initial requests. Blanket denial of religious accommodations violates military service member

religious liberties and the right to case-by-case consideration and review as specified in DOD Instruction 1300.17.

19. Additionally, not all of the information considered on an individual's religious accommodation adjudication has been included when returned to the command. Each of the disapprovals has contained a reference to a letter from BUMED on each individual whose case was considered. This information should be provided and returned with the disapproval as part of the Privacy Act, so the member can use it as part of the basis for appeal should he or she choose to do so.

20. Unit cohesion and good order and discipline are not affected by one's vaccination status at my command. The medical status of individuals is a private matter that is not disclosed to the command at large. All military members may wear a mask for personal protection even if fully vaccinated in light of personal health protection.

21. It is well-established that even individuals who have been fully vaccinated against COVID-19 may still contract and spread the virus. Individuals who chose to receive a COVID-19 vaccination did so to protect themselves and have put their confidence in the efficacy and effectiveness of the vaccine to protect them from contracting the virus or reducing the effects of the virus if contracted. The vaccination status of co-workers is not an issue within our command.

22. Despite the fact that I (as the Commanding Officer of my unit) positively endorsed 16 of the 17 religious accommodation requests at my command, **all** were disapproved by Navy. Even though I specifically stated that I could accommodate the

requests of these sixteen (16) Sailors, my endorsement was deemed insufficient by the Navy in its rejections.

23. The Navy denied my appeal from the original denial of my religious accommodation on 28 January 2022, and ordered me to begin a vaccination series within five (5) calendar days (by 2 February 2022), or else report to a Navy immunization clinic for vaccination on 3 February 2022. A true and correct copy of the final denial and order are attached hereto as Exhibit A-1.

24. If I do not present for vaccination on 3 February 2022, I will be in violation of the order, because my faith prohibits me from getting the COVID-19 shot.

25. I have been ordered to meet with my Squadron commander the evening of 3 February 2022, and fully expect to be relieved as commander of my ship, due to a “loss of confidence” in my ability to lead, simply because I have remained true to my faith.

I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Executed this February 1, 2022.

/s/ Navy Commander Surface Warfare Officer
Navy Commander Surface Warfare Officer
(Original Signature retained by Counsel)

"Commander Surface Warfare Officer, United States Navy"



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

1730
N00
23 Jan 22

From: Chief of Naval Operations
To: CDR [REDACTED]
Via: Commander, Destroyer Squadron [REDACTED]

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION REQUIREMENT

Ref: (a) DCNO (N1) ltr 1730 Ser N1/114357 of 22 Oct 21
(b) DoD Instruction 1300.17 of 1 Sep 2020
(c) SECNAVINST 1730.8B
(d) ASN (M&RA) memo of 6 Jun 13
(e) BUPERSINST 1730.11A
(f) CHBUMED 6320 Ser M44/21UM40540 of 13 Oct 21
(g) NAVADMIN 190/21

1. Your appeal of reference (a) is disapproved. I am disapproving your appeal due to the Navy's compelling governmental interest in preventing spread of diseases to support mission accomplishment, including military readiness, unit cohesion, good order and discipline, and health and safety, at the individual, unit, and organizational levels. A waiver of immunizations would have a predictable and detrimental effect on the readiness of you and the Sailors who serve alongside you. Granting your request will have a direct and foreseeable negative impact on the compelling governmental interest in military readiness and health of the force. I further find that there are no less restrictive means to achieve the Navy's compelling governmental interest.

2. References (b) through (c) designate me as the final appeal authority for requests for religious accommodation.

3. I considered your original request, your appeal, and the endorsements on your correspondence. In reviewing your appeal, I evaluated the request under the assumption that your religious beliefs are sincere and would be substantially burdened. Your status as a Surface Warfare Officer commanding an operational warship was taken into account in making my determination. As explained in reference (f), while no vaccine is 100 percent effective, vaccines with lower effectiveness still reduce disease incidence in the population, reduce an individual's risk of contracting the disease, and generally reduce the severity of disease for those who do contract the illness. In addition, the current coronavirus disease 2019 (COVID-19) pandemic further highlights the importance of vaccination in both individual and unit force health protection.

4. Vaccination of Navy personnel can impact both individual and unit mission accomplishment. It reduces the risk to the individual for disease-related performance impairment, and it reduces the risk to the unit for disease outbreaks of contagious diseases such as COVID-19. While non-

**Final Denial of Religious Accommodation Request
"Commander Surface Warfare Officer, United States Navy"**

Subj: APPEAL OF RELIGIOUS ACCOMMODATION FOR IMMUNIZATION
REQUIREMENT

pharmacologic measures such as personal hygiene, mask wearing, and social distancing can also reduce the risk of disease outbreaks, they too are not 100 percent effective and must be implemented in conjunction with immunization to reduce the risk of mission failure. As explained in reference (f), these measures are not as effective as vaccination in maintaining military readiness and the health of the force.

5. You must now become fully vaccinated against COVID-19 in accordance with reference (g). You are free to choose which authorized COVID-19 vaccine to take, but you must receive a vaccine within five calendar days upon receipt of this letter. If you choose a COVID-19 vaccine that requires two doses, you must complete the series as prescribed.

6. The Navy welcomes people of all faiths and no faith to join our ranks in patriotic service. Our greater mission sometimes requires reasonable restrictions. You have my sincere best wishes for your continued success in your Navy career.


M. M. GILDAY

Copy to:
ASN (M&RA)
OPNAV (N131)
BUMED

**Final Denial of Religious Accommodation Request
"Commander Surface Warfare Officer, United States Navy"**

ADMINISTRATIVE REMARKS
 NAVPERS 1070/613 (REV. 08-2012) PREVIOUS EDITIONS ARE OBSOLETE SUPPORTING DIRECTIVE MILPERSMAN 1070-320

SHIP OR STATION:

[REDACTED]

SUBJECT: USFFC COVID-19 Vaccine Lawful General Order	<input type="checkbox"/> PERMANENT <input checked="" type="checkbox"/> TEMPORARY
	AUTHORITY (IF PERMANENT):

- On 24 August 2021, the Secretary of Defense directed that all members of the U.S. Armed Forces under DoD authority be vaccinated against COVID-19. ALNAV 062/21 and NAVADMIN 190/21 implemented SECDEF's mandate for the Department of the Navy (DON) and the Navy, respectively, and directed that active duty Navy service members become fully vaccinated by 28 November 2021. Navy service members are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose COVID-19 vaccine.
- In addition to the order to achieve full vaccination against COVID-19 by 28 November 2021, Commander, U.S. Fleet Forces Command (USFFC) issued a lawful general order that all unvaccinated personnel assigned to USFFC and subordinate commands complete their initial vaccine dose by 30 September 2021, absent an approved or pending administrative or medical exemption.
- At the time of its implementation, you were outside the scope of USFFC lawful general order and were required to obtain the COVID-19 vaccination by the dates prescribed above because you submitted a Religious Accommodation (RA) Request and a subsequent appeal to the denial of your RA request. You are now in receipt of the Chief of Naval Operations' denial of your RA appeal. You do not have any additional right of appeal for a RA exempting you from requirement to receive the COVID-19 vaccine.
- Within five (5) calendar days, you are hereby directed to commence COVID-19 vaccination series in accordance with NAVADMIN 190/21 and the USFFC order. *ALL INFO FROM MY ORIGINAL REQUEST WAS NOT PROVIDED WHEN I SUBMITTED MY APPEAL. IT WAS PROVIDED 24 JAN 22. I INTEND TO SUBMIT THAT REQUEST.*
- Failure to take the directed corrective action will constitute a further failure to obey a lawful order and is punishable under the Uniform Code of Military Justice and/or may result in administrative action.
- If you have not started a COVID-19 vaccination series prior to 3 February 2022, your appointed place of duty at 1000 on 3 February 2022 will be the Naval Medical Center Portsmouth Immunizations clinic.
- Upon completion of your appointment, report to the Destroyer Squadron TWO SIX office in LF-18 on Naval Station Norfolk with your COVID-19 Vaccination Record Card.
- You must initial the following, as applicable.
 - I acknowledge the above counseling/warning and understand its contents.
 - I acknowledge that I may submit a statement in response to this counseling/warning (initial one below).
 - I intend to submit a statement (to be submitted separately and not on this issuance)
 - I do not intend to submit a statement.

[REDACTED]
 Member's Signature/Date
[Signature] 28 JAN 2022

[Signature] 28 JAN 22
 Superior Officer's Signature/Date

ENTERED AND VERIFIED IN ELECTRONIC SERVICE RECORD:			
VERIFYING OFFICIAL RANK OR GRADE/TITLE:	DATE:	SIGNATURE OF VERIFYING OFFICIAL:	
NAME (LAST, FIRST, MIDDLE):	SOCIAL SECURITY NUMBER:	BRANCH AND CLASS:	
[REDACTED]	N/A	USN	

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