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## United States Senate

January 25, 2022

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The Honorable Lloyd J. Austin  
Secretary of Defense  
United States Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301

Dear Secretary Austin:

On behalf of all Americans who are bravely serving in our nation's Armed Forces, I demand an explanation for why the Department of Defense has refused to grant nearly all requests for a religious accommodation for the COVID-19 vaccine, despite having received 19,979 exemption requests across all branches.<sup>1</sup>

My office has repeatedly requested updated data on COVID-19 vaccination rates among our service members from each branch for months, despite facing significant delays, inadequate data, and recycled responses. Although some branches have approved medical and administrative accommodation requests, as of early January, zero religious accommodation requests have been granted in all branches – zero, that is, except for two requests reportedly granted by the U.S. Marine Corps out of 3,367 requests, just days after a federal district court ruled in favor of a Marine seeking a religious exemption, calling the Navy's system for processing accommodations "theater" because not a single exemption had been granted in seven years.<sup>2</sup> More specifically from the information we were able to obtain, despite receiving 2,128 religious exemption requests in its active component, the U.S. Army has approved zero requests. Similarly, the U.S. Navy has received 3,791 and the Air Force has received 10,693 total religious exemption requests, but neither service has approved a single one.

Furthermore, in denial letters that have been shared with my office, the Department often uses discriminatory, boilerplate form letters that misapply the law and discredit the sincerity of religious beliefs. For example, a Marine shared his denial of a religious exemption with me in which the Commanding Officer said that requiring the COVID-19 vaccine "does not substantially burden your sincerely held religious belief." It is inappropriate and legally unnecessary for a Commanding Officer with no legal or spiritual training to adjudicate what substantially burdens the service member's sincerely held religious belief.

It is alarming that the Department is so blatantly disregarding the free exercise of religion that is guaranteed to our military service members, both through the First Amendment and through the Religious Freedom Restoration Act (RFRA) (42 U.S.C. Sec 2000bb-1). Congress chose to apply RFRA to the military, and the military remains accountable to Congress for adhering to this law.

As Judge Reed O'Connor stated in his injunction of the mandate for 26 Navy SEALs who have religious objections to the vaccine in *Navy Seal v. Biden*, our nation "asks the men and women in our military to serve, suffer, and sacrifice. But we do not ask them to lay aside their citizenry and give up the very rights they have

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<sup>1</sup> This number was provided by the services as of January 21, 2022. The Army would only provide data for Active Duty, and not for the National Guard and Reserve; therefore, these numbers are not represented in the total.

<sup>2</sup> Philip Athey, "2 Marines Receive Religious Exemption to Covid-19 Vaccine," Marine Corps Times (Marine Corps Times, January 13, 2022), <https://www.marinecorpstimes.com/news/your-marine-corps/2022/01/13/2-marines-receive-religious-exemption-to-covid-19-vaccine/#:~:text=The%20Marine%20Corps%20has%20granted,to%20receive%20by%20Nov.%20228..e>

sworn to protect.”<sup>3</sup> He went on to say that “there is no COVID-19 exception to the First Amendment. There is no military exclusion from our Constitution.”<sup>4</sup> I would ask that you take swift action to ensure religious liberty is protected and upheld at the Department of Defense.

As you will recall, I first wrote to you about this issue on September 20, 2021 – shortly after the vaccine requirement for military service members was implemented and after evidence surfaced that service members were being discouraged from seeking religious accommodations by their superiors. In that letter, I underscored the urgency and importance of the Department respecting the sincerely-held religious beliefs of service members, and that it was paramount that DOD leadership and each branch work to uphold the constitutional rights of our men and women in uniform. I also intentionally emphasized the importance of relying on the RFRA, as well as the policy outlined in DOD Instruction (DODI) 1300.17, *Religious Liberty in the Military Services*, which provides specific guidance to clarify that service members may seek religious accommodations from vaccines should they substantially burden their sincerely-held religious beliefs.

After 37 days, I received a response that explicitly stated that the Department will ensure that “religion-based vaccine exemption requests and appeals are respectfully considered.”

It has been 90 days since that response, yet the U.S. Army, Navy, Air Force, and Space Force, Active, Guard, and Reserve have still not granted a single religious exemption for the COVID-19 vaccine, while the Marine Corps has granted only two accommodations for individuals who were already in the process to retire. Clearly, religion-based vaccine exemption requests and appeals are not being respectfully considered.

Congress recently spoke to this concern directly in the National Defense Authorization Act for Fiscal Year 2022 (P.L. 117-81), which explicitly called for the establishment of “uniform standards under which covered members may be exempted from receiving an otherwise mandated COVID-19 vaccine for administrative, medical, or religious reasons.”

The Department has a constitutional and statutory responsibility to accommodate religious exercise - even exercise it may disagree with or see as negligible. It does not have the legal authority to second-guess the reasonableness of a religious belief or the service member’s assessment of the religious connection between the mandate and his or her underlying belief. Further, the Department is required to evaluate all accommodation requests individually to determine whether or not the vaccine mandate is the least restrictive means of burdening that one individual service member’s religious belief.

There are currently 2.3 million Active Duty, National Guard, and Reserve service members in the US military, from which less than 20,000 accommodation requests have reportedly been submitted. Correctly applying RFRA and DODI 1300.17 would not mandate that all religious accommodation requests are approved. But to grant a mere two accommodations demonstrates at best a lack of preparedness to properly evaluate requests in accordance with current DOD policies and law. At worst, it betrays an intentional hostility toward religious freedom (one of the core Constitutional protections our military actively serves to protect) that results in the violation of the law.

On January 7, 2022, President Biden, the Commander-in-Chief, stated that religious freedom is a universal and inalienable right.” While I appreciate the claim that the Department will respect religious exercise, those words are meaningless if they are not followed by actions. These outcomes demonstrate a remarkable disregard for religious freedom and glaring legal deficiencies with the current review process.

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<sup>3</sup> *Navy Seal v. Biden*, 4:21-cv-01236-O (N.D. Tex. 2022).

<sup>4</sup> *Navy Seal v. Biden*, 4:21-cv-01236-O (N.D. Tex. 2022).

In light of this, please fully respond to the following questions and requests:

1. What actions are you taking to ensure all military leaders charged with evaluating accommodation requests are basing such determinations in accordance with RFRA and DODI 1300.17, rather than whether leaders personally affirm the basis for the request?
2. Please provide an assessment of the Department's compliance with RFRA and DODI 1300.17, including an analysis of the compelling government interest and the least restrictive means for carrying that out in light of the denial of religious accommodation requests to date.
3. Has the Department established "uniform standards under which covered members may be exempted from receiving an otherwise mandated COVID-19 vaccine for administrative, medical, or religious reasons," as required by the FY22 NDAA?

It is imperative that you act to protect the constitutional right of religious freedom for all those serving in the armed services. I, along with the men and women serving our nation, eagerly await your reply by February 1, 2022.

In God We Trust,

A handwritten signature in black ink, appearing to read 'James Lankford', with a large, sweeping flourish extending to the left.

James Lankford  
United States Senator