

Congress of the United States
Washington, DC 20515

September 19, 2022

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon Washington, D.C. 20301-1000

Secretary Austin:

We are seeking information related to a partially leaked June 2, 2022, memo from the Department of Defense Inspector General (DoD IG) regarding the Department of Defense's (DoD's) treatment of religious accommodation requests for exemptions to the military's COVID-19 vaccine mandate.

Past public reporting indicates that the DoD has rejected the overwhelming majority of the 24,000 servicemembers who applied for religious exemptions to the COVID-19 vaccine mandate. As of February 2022, the Department of the Navy had granted only a single, partial exemption to its COVID-19 vaccine mandate on religious grounds, and as of July 2022 the Department of the U.S. Army had approved just 20 of over 8,000 requests, the Department of the Air Force had approved less than 130 of over 9,000 requests, and the U.S. Marines had only approved 7 of over 3,700 requests. At least 75,000 troops face discharge because of the DoD's vaccine mandate.

It is especially concerning that the majority of approved religious accommodation requests were given to retiring servicemembers and that all branches have approved non-religious vaccine exemption requests at a far higher rate than religious exemptions. This suggests the DoD is applying different policies towards servicemembers' applications based on their religious beliefs and expected employment status.

According to the DoD IG's memo, the religious vaccine exemption "denial memorandums we reviewed generally did not reflect an individualized analysis." Instead, "We found a trend of generalized assessments rather than the individualized assessment that is required by Federal law and DoD and Military Service policies." For example, "Assuming a 10-hour workday with no breaks or attention to other matters, the average review period was about 12 minutes," for religious accommodation applications.

As the memo explains, the described blanket denial of religious accommodation violates DoD Instruction 1300.17, which directs officials to "review each [religious accommodation] request individually, considering the full range of facts and circumstances relevant to the specific request," and the Supreme Court's ruling in *Burwell v. Hobby Lobby*, which found that the

Religious Freedom Restoration Act of 1993 (RFRA) requires government officials to demonstrate they have not burdened “the particular claimant[‘s]” ability to exercise their religion. U.S. District Judge Steven Douglas Merryday cited the DoD’s unlawful RFRA violations in his August 4, 2022, preliminary injunction prohibiting the DoD from enforcing its vaccine mandate or retaliating against unvaccinated servicemembers.

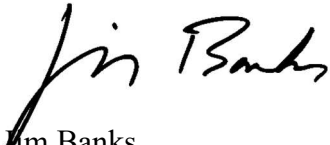
In summary, according to the DoD IG’s memo, the Department has engaged in unlawful religious discrimination. As members of Congress, we would like to request that the Department provide us with the following information no later than September 30th, 2022:

- A complete copy of the Department of Defense Inspector General’s June 2, 2022, memo.
- All records of religious accommodation requests regarding COVID-19 vaccinations submitted to the Departments of the Navy, Air Force and Army.
- All religious accommodation requests approved by the Departments of the Navy, Air Force and Army.
- Any DoD internal policy directives related to the review process for religious accommodation requests regarding COVID-19 vaccinations.

In addition, it is imperative that you remind all employees and officials within the Department of their legal responsibility to take appropriate measures to collect, retain, and preserve all documents, communications, and other records in accordance with federal law, including the Federal Records Act and related regulations. This includes electronic messages involving official business that are sent using both official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software. Specifically, this preservation request should be construed as an instruction to preserve all documents, communications, and other information, including electronic information and metadata, that is or may be potentially responsive to a future congressional inquiry, request, investigation, or subpoena. For purposes of this request, “preserve” means securing and maintaining the integrity of all relevant documents, communications, and other information, including electronic information and metadata, by taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, mutation, or negligent or reckless handling that could render the information incomplete or inaccessible. This includes preserving all compilations of documents that have already been gathered in response to requests, even if copies of individual documents may still exist elsewhere in the agency.

Cc: Sean W O’Donnell, Acting Inspector General of the Department of Defense

Sincerely,



Jim Banks
Member of Congress



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