

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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GRAHAM FLETTERICH

34647 Pima Trail
Julian, CA 92036;

Plaintiff,

-against-

HON. LLOYD J. AUSTIN, III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

and

HON. CARLOS DEL TORO
Secretary of the Navy
1000 Navy Pentagon
Washington, DC 20301-1000

Defendants.

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Docket No.: 21-cv-3193

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

1. Plaintiff Graham Fletterich is a Lieutenant Commander (LCDR) in the United States Navy. He brings this action under the Administrative Procedures Act to challenge the Navy's arbitrary, capricious, and unlawful denial of his request for a medical exemption from compulsory COVID-19 vaccination. Notwithstanding clear scientific evidence of immunity – three times greater than that of fully vaccinated people – Navy officials are violating their own regulations to force an unnecessary and potentially dangerous vaccination under threat of termination.

2. LCDR Fletterich recently contracted COVID-19, mere months ago, on August 10, 2021. LCDR Fletterich quarantined as per Navy regulations and protocols, but he recovered sufficiently to return to his military duties in service of his country on August 23.

3. On August 24, the very next day after LCDR Fletterich returned to duty, Secretary of Defense Lloyd Austin mandated vaccination against COVID-19 for all servicemembers, subject to exceptions required by law and according to existing procedures and policies of the DoD and military service branches.

4. On September 14, 2021, with proof of recently acquired natural immunity and on the advice of his personal physician (a civilian doctor), LCDR Fletterich requested consideration of his individual medical circumstances and a temporary medical exemption from the COVID-19 vaccine in accordance with existing and long-standing regulations governing the Navy's vaccine program. In his request for a medical exemption, LCDR Fletterich informed the approving authorities that his primary physician supported his request for a medical exemption from the vaccine mandate and that his primary physician would produce his official opinion in support of the exemption request within ten calendar days.

5. The Senior Medical Officer had a duty to provide customized care and to respond to LCDR Fletterich's specific clinical situation when making individual immunization delivery decisions. Without consulting either LCDR Fletterich or his physician, the Senior Medical Officer denied LCDR Fletterich's medical exemption request sooner than 24 hours from the time it was submitted. The denial decision was a form letter, less than a page long, which addressed none of the concerns, objections, or regulatory support that LCDR Fletterich articulated in his request for a temporary medical exemption.

6. Rather than receive the individualized medical care and individualized consideration of the medical exemption request according to his specific medical circumstances—individualized clinical care and clinical consideration to which he is entitled by right, not privilege—LCDR Fletterich received a summary denial of his exemption without any reasonable consideration, despite being on notice that additional relevant evidence from LCDR Fletterich’s primary physician was forthcoming.

7. Through proof of prior COVID-19 infection in his medical records and from results from an accredited laboratory performing an antibody test authorized by the FDA under an Emergency Use Authorization (EUA), LCDR Fletterich has demonstrable natural immunity to COVID-19. He has followed his service’s procedural requirements to request the appropriate medical exemption on the advice of his medical provider; he has submitted a lawful request for a medical exemption whose denial was unlawful, arbitrary, and capricious; and he has procedurally exhausted the meager administrative avenues available to him in the military to protect his rights and receive a fair review of his request considering his individual and clinical circumstances.

8. No other avenues exist under existing Navy regulations that allow LCDR Fletterich to seek review or otherwise appeal the otherwise unchecked and unfettered decision of this single fellow field-grade officer whose exercise of authority stands to deprive LCDR Fletterich of important procedural and substantive rights.

9. Absent judicial review of one individual medical officer’s unlawful, arbitrary, and capricious decision to deny LCDR Fletterich’s lawful medical exemption request, LCDR Fletterich has no other avenues inside or outside the military to review the decision below and to stop the catastrophic career consequences he now faces.

10. LCDR Fletterich seeks judicial review of the unlawful, arbitrary, and capricious decision to deny his medical exemption. LCDR Fletterich seeks this relief under the Administrative Procedures Act, 5 U.S.C. § 702, *et seq.*, the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651. Plaintiff LCDR Fletterich also seeks temporary and permanent injunctive relief preventing his compelled vaccination attendant to his claims for declaratory judgment.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 because this action arises under the United States Constitution and federal law, specifically the Fifth and Fourteenth Amendments of the United States Constitution, U.S. Const. Amend. V and XIV; the Administrative Procedures Act, 5 U.S.C. §§ 551, *et seq.* and §§ 701 *et seq.*; and DoD and Navy Regulations.

12. This Court also has jurisdiction under 28 U.S.C. § 1361, which confers original jurisdiction on any United States District Court to compel an officer or employee of any United States agency to perform a duty owed to the plaintiff.

13. This Court has authority to review Defendants' unlawful actions and inactions and enter appropriate relief under the Administrative Procedures Act, 5 U.S.C. §§ 702-706 and pursuant to 28 U.S.C. §§ 2201-02, which provides authority to any United States District Court to provide a remedy in a case involving a controversy with a federal agency in which an appropriate pleading seeks declaratory judgment.

14. This Court has authority to award attorneys' fees under 5 U.S.C. § 504 and under 28 U.S.C. § 2412.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1402 and 28 U.S.C. § 1391(e) because Defendants are officers of an agency of the United States acting in their official capacities,

this is the judicial district in which a defendant resides, and a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

16. Plaintiff LCDR Fletterich is an active-duty Officer in the United States Navy, assigned to the USS ABRAHAM LINCOLN (CVN 72). LCDR Fletterich is subject to mandatory vaccination.

17. Defendant Lloyd J. Austin, III, is the United States Secretary of Defense. Secretary Austin issued a memorandum on August 24, 2021, requiring the United States Armed Forces to vaccinate all service members, including Plaintiff LCDR Fletterich. Secretary Austin is sued in his official capacity.

18. Defendant Carlos Del Toro is the United States Secretary of the Navy. Secretary Del Toro issued a directive on August 30, 2021, which required the United States Navy to vaccinate all U.S. Navy service members, including Plaintiff LCDR Fletterich. Secretary Del Toro is sued in his official capacity.

FACTUAL BACKGROUND

The DoD vaccine mandate is ordered and implemented along a parallel timeline with LCDR Fletterich's infection and recovery from COVID-19.

19. On Monday, August 9, 2021, Secretary of Defense Lloyd Austin issued a Message to the Force Memorandum encouraging vaccination for all Armed Forces servicemembers and expressed his intent to make vaccinations mandatory across the Department of Defense (DoD). A true and correct copy of this memorandum is attached as exhibit 2.

20. The next day, Tuesday, August 10, 2021, while aboard the USS Abraham Lincoln, Plaintiff LCDR Fletterich tested positive for COVID-19.

21. Plaintiff LCDR Fletterich was flown off the ship on Thursday, August 12, to start a 14-day Restriction of Movement. He returned to work fully recovered on August 23.

22. Secretary Austin issued a memo the next day, August 24, that directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who were not fully vaccinated against COVID-19 (hereinafter, the “DoD Mandate”). A true and correct copy of the DoD Mandate is attached as Exhibit 3.

23. Secretary Austin’s DoD Mandate stated, “Those with previous COVID-19 infection are not considered fully vaccinated.” Ex. 3.

24. Secretary Austin’s DoD Mandate ordered all Military Departments to use *existing policies and procedures* to manage the mandatory vaccines and clarified that, “Mandatory vaccination of Service members will be subject to any identified contraindications *and any other administrative or other exemptions established in Military Department policy.*” Ex. 3 (emphasis added).

25. Secretary Austin’s DoD Mandate ordered that, “Mandatory vaccination requirements will be implemented consistent with DoD Instruction 6205.02, “DoD Immunization Program,” July 23, 2019. Ex. 2. A true and correct copy of DoDI 6205.02 is attached as Exhibit 4.

26. On August 30, 2021, Secretary of the Navy Del Toro issued ALNAV 062/21 to implement the Secretary Austin’s DoD Mandate and to order that all servicemembers within the Department of the Navy who are not already vaccinated, exempted, or currently seeking an exemption to be fully vaccinated within 90 days. A true and correct copy of ALNAV 062/21 is attached as Exhibit 5.

27. The next day, the Chief of Naval Operations issued NAVADMIN 190/21, 2021-2022 Navy Mandatory COVID-19 Vaccination and Reporting Policy, August 31, 2021. A true and correct copy of NAVADMIN 190/21 is attached as Exhibit 6.

28. NAVADMIN 190/21 made clear, “The process for obtaining exemptions for mandatory vaccinations is provided in reference (c) [BUMEDINST 6230.15B, dated October 7, 2013].” Ex. 6, ¶ 3.d.

29. BUMEDINST 6230.15B, “Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases,” dated October 7, 2013, is a joint-service military regulation governing the military medical services administration of vaccines. A true and correct copy of BUMEDINST 6230.15B is attached as Exhibit 7.

30. This document specifically outlines that one example of a proper medical exemption is “[e]vidence of immunity based on serologic tests, documented infection, or similar circumstances.” Ex. 7, § 2-6.a.(1).

LCDR Fletterich makes good-faith efforts to maintain his medical readiness status and protect himself from catastrophic adverse health consequences only to meet the unyielding wall of the DoD Mandate’s party line.

31. On information and belief, faced with an unfathomable amount of available information demonstrating great medical uncertainty and rapidly developing scientific knowledge about COVID-19, its various vaccines, and the unstudied long-term medical effects of the vaccines, LCDR Fletterich made efforts to get answers and trusted advice from his military medical providers.

32. Despite his repeated attempts, LCDR Fletterich repeatedly hit the stone wall of an unyielding company line in which military medical providers either refused or were simply unable to directly answer his legitimate questions and concerns related to the mandatory vaccines.

33. Despite his good-faith efforts, LCDR Fletterich could not obtain answers regarding the medical effects of such vaccines relative to his own individualized medical circumstances and the correct Navy procedures in place to obtain those answers and address his concerns.

LCDR Fletterich is forced to seek treatment and answers from civilian doctors after Navy medical providers ignore his legitimate medical concerns.

34. As a result of his inability to get anything but a party line coercing vaccination for all military members from his military medical providers, LCDR Fletterich sought treatment and advice from his primary physician, Dr. David Bortz, MD, FACP.

35. On information and belief, LCDR Fletterich's primary physician advised him not to get vaccinated against COVID-19 because vaccination was currently unnecessary and provided no additional benefits to his health or the public due to his very recent infection with COVID-19 and the natural immunity it provided.

36. On information and belief, LCDR Fletterich's primary physician advised him not to get vaccinated against COVID-19 because of the recency of his COVID-19 infection.

37. On information and belief, LCDR Fletterich's primary physician advised him against getting vaccinated against COVID-19 because vaccination so soon after a COVID-19 infection still faced great medical uncertainty and had been insufficiently studied.

LCDR Fletterich obtains accredited laboratory results to prove he possesses a significant amount of COVID-19 antibodies.

38. Faced with advice from his primary physician and guided by the plain language of existing DoD Navy policies and procedures governing the Navy's vaccination policy, LCDR Fletterich obtained testing from an accredited laboratory using a test authorized by the FDA under an Emergency Authorization Use (EAU) to test and identify individuals with antibodies to SARS-CoV-2 (COVID-19). A true and correct copy of the results of that test, redacted to conceal personally identifiable information, is attached as Exhibit 8.

39. Dated September 11, 2021, the results of his laboratory testing showed that LCDR Fletterich had greater than three times the number of antibodies required to identify individuals who had contracted COVID-19. Ex. 8.

With individualized medical advice from his doctor, laboratory results proving natural immunity, and the plain language of existing Navy regulations and policies to guide him, LCDR Fletterich submits a medical exemption request according to DoD and Navy regulations.

40. On September 14, 2021, LCDR Fletterich submitted a vaccine medical exemption request to all approving authorities via his Senior Medical Officer (SMO), CDR Joseph Monlux, according to Navy policies and regulations. A true and correct copy of that request for a medical exemption is attached as Exhibit 9.

41. In his request for a medical exemption, LCDR Fletterich informed CDR Monlux and all approving authorities that LCDR Fletterich's primary care physician, Dr. David Bortz, did not support LCDR Fletterich getting a COVID-19 vaccine. Ex. 9, ¶ 17.

42. In his request, LCDR Fletterich provided CDR Monlux and all approving authorities with contact information for his primary care physician, Dr. David Bortz. Ex. 9, ¶ 17.

43. In his request, LCDR Fletterich informed CDR Monlux and all approving authorities that Dr. David Bortz would provide his official written opinion in support of the request no later than September 24, ten calendar days from the date LCDR Fletterich submitted his request for a medical exemption. Ex. 9, ¶ 17.

44. On information and belief, Dr. Bortz provides highly personalized healthcare with an emphasis on health maintenance and prevention of disease. He is licensed to practice medicine by the State of California, is board-certified by the American Board of Internal Medicine as an internist, and serves as an associate professor of medicine at the University of California, San Diego (UCSD). *See* Exhibit 10, profile of MDVIP-affiliated physician David L. Bortz, located at

https://www.mdvip.com/doctors/davidbortzmd?utm_campaign=listing&st-t=rep_&utm_source=bing&utm_medium=organic, last visited November 14, 2021.

Navy medical providers ignore the advice of LCDR Fletterich's primary physician, ignore his clinical circumstances, ignore regulations, and deny his exemption request on a half-page form letter in under 24 hours.

45. On information and belief, neither CDR Monlux nor any other approval authority contacted LCDR Fletterich or Dr. Bortz for further consultation, information, or clarification about the specific clinical circumstances underlying LCDR Fletterich's request for a medical exemption from compulsory COVID-19 vaccination against the medical advice of his physician, Dr. Bortz.

46. On September 15, 2021, the day after LCDR Fletterich submitted his exemption request, CDR Monlux, denied LCDR Fletterich's exemption request. A true and correct copy of that exemption request denial memorandum is attached as Exhibit 11.

47. CDR Monlux denied LCDR Fletterich's request for a medical exemption in a summary form letter that quoted Secretary of Defense Austin's DoD Mandate (Ex. 2), Secretary of the Navy Del Toro's administrative message of August 30, 2021 (Ex. 4), and the Chief of Naval Operations administrative message of August 31, 2021 (Ex. 5) to reiterate a point that LCDR Fletterich acknowledged in his initial medical exemption request: specifically, a history of COVID-19 infection does not automatically exempt a Navy service-member from mandatory COVID-19 vaccination. Ex. 11.

48. Though CDR Monlux quoted the DoD Mandate and two of the Navy's administrative messages regarding implementation of the mandate, CDR Monlux quoted no law or existing Navy policies or regulations to justify the denial of LCDR Fletterich's medical exemption request. Ex. 11.

49. LCDR Fletterich's Navy medical providers had a duty to ensure LCDR Fletterich was "evaluated for preexisting immunity, screened for administrative and medical exemptions, and/or evaluated for the need for medical exemptions to immunizations." Ex. 7. § 1-4(c)(4).

50. CDR Monlux disregarded LCDR Fletterich's preexisting immunity.

51. On information and belief, CDR Monlux failed to screen for any other administrative or medical exemptions.

52. On information and belief, CDR Monlux failed to evaluate LCDR Fletterich for the need for a medical exemption.

53. CDR Monlux referenced no medical reasons or individualized clinical circumstances to justify his summary denial of LCDR Fletterich's medical exemption request. Ex. 11.

LCDR Fletterich has no other administrative or procedural options to obtain a fair review of his medical exemption request, leaving a lawsuit as the only way to have his primary physician's advice considered in contemplation of an irrevocable medical procedure.

54. After CDR Monlux denied LCDR Fletterich's medical exemption request, LCDR Fletterich attempted in good faith to determine the correct process for seeking review of that denial to appeal it. Ex. 12, ¶ 4. A true and correct copy of LCDR Fletterich's temporary administrative exemption request is attached as Exhibit 12.

55. Since the cursory denial of his medical exemption request, LCDR Fletterich has been attempting in good faith to learn any other administrative options that remain available to him to protect his health, as it is Navy policy that each member of the Navy is responsible for ensuring their own medical readiness. Ex. 12, ¶ 4.

56. LCDR Fletterich has sought answers from Navy medical personnel, from Navy JAG personnel, and from his own chain of command regarding remaining avenues available to

him to gain fair review of his medical exemption request and the subsequent denial of that request. Ex. 12, ¶ 4.

57. Navy medical providers have discretion in deciding whether to grant a temporary medical exemption, recommend a permanent medical exemption, or disapprove a medical exemption request. Ex. 7, § 2-6; Ex. 13.

58. According to Navy policy as detailed in BUMEDNOTE 6300, Navy medical providers, and here the Senior Medical Officer, are both the initial and final disapproval authority for a medical exemption request. A true and correct copy of BUMEDNOTE 6300 is attached as Exhibit 13.

59. The Navy has no policy or procedure in place to appeal a medical officer's denial of a medical exemption request, even when as here, that decision is contrary to existing law, policy, and regulation and is otherwise unlawful, arbitrary, capricious, and an abuse of discretion.

60. LCDR Fletterich's inability to gain fair review of his request for a medical exemption based on his trusted primary physician's advice, and the Navy's failure of process have forced LCDR Fletterich to retain undersign counsel to file this civil action to seek judicial review of the decision below. Ex. 12, ¶ 4.

The Navy now seeks to remove LCDR Fletterich from the service without allowing him due process of law.

61. On November 13, 2021, LCDR Fletterich submitted to his commanding officer and to all approving authorities a request for a temporary administrative exemption from receiving the COVID-19 vaccine. Ex. 12.

62. According to the Chief of Naval Operations administrative message in NAVADMIN 225/21, a Navy service member becomes subject to discipline, criminal charges, and adverse administrative action once the member meets the definition of one who is refusing the

vaccine, but no earlier than when the member meets that definition. Ex. 13, ¶ 4.b. A true and correct copy of NAVADMIN 225/21 is attached as Exhibit 14.

63. A Navy service member refusing the vaccine is one who has received a lawful order to receive a COVID-19 vaccination, is not or will not be fully vaccinated by the deadline, and does not have a pending or approved exemption request under existing Navy regulations. Ex. 14, ¶ 3.c.

64. Having no desire to violate lawful orders and regulations, LCDR Fletterich submitted his temporary administrative exemption request before November 14, 2021, which is the latest date on which he could receive an authorized vaccine to be considered fully vaccinated by the Secretary of the Navy's deadline of November 28, 2021. Ex. 12, ¶ 6; ex. 14, ¶ 4.

65. With submission of his temporary administrative exemption request submitted on November 13, 2021, LCDR Fletterich sought to avoid unnecessary litigation in which he would be forced to move for a preliminary injunction or temporary restraining order as the deadline for the Navy's implementation of the DoD Mandate quickly approaches, litigation that avoidably consumes the resources of the individual plaintiff, Government agency defendants, and the judiciary. Ex. 12, ¶ 5-8; Ex. 4, DoDI 6205.02.

66. LCDR Fletterich's pending request sought a temporary administrative exemption and deferral code entry in his medical readiness reporting record based on administrative reasons and exemptions already established in Military Department policy, including "operational unavailability" and "other legal action pending." Ex. 12, ¶ 5-8; Ex. 4, DoDI 6205.02.

67. The Navy initiated adverse administrative action against LCDR Fletterich in a negative Fitness Report & Counseling Record (FITREP), dated November 15, 2021, in which LCDR Fletterich's commanding officer recommended not promoting LCDR Fletterich (despite his otherwise excellent marks and pending promotion) and recommended not retaining LCDR

Fletterich for further service in the Navy. A true and correct copy of the adverse FITREP is attached as Exhibit 15.

68. The same day, November 15, 2021, LCDR Fletterich's commanding officer denied his request for a temporary administrative exemption in a two-sentence letter that provided no reasons or rationale for the denial. A true and correct copy of the denial letter is attached as Exhibit 16.

69. In his temporary administrative exemption request letter LCDR Fletterich explained his intent to appeal and requested identification of the proper procedures to administratively appeal the request if it were denied. Ex. 12, ¶ 9. In the summary denial he received two days later, LCDR Fletterich's commanding officer stated she was the final approving authority for administrative exemption requests, writing that "forwarding of your request is neither required nor appropriate." Ex. 16.

70. November 15, 2021, is also the day that the Navy released its latest policy instruction via NAVADMIN 256/21, "CCDA Guidance to Commanders." NAVADMIN 256/21 reiterates that it is Navy policy to process for separation all Navy service members who refuse the vaccine. It states, "Navy service members who refuse the COVID-19 vaccine after expiration of the specified time to commence vaccination, [sic] *will* be processed for separation..." (emphasis added). A true and correct copy of NAVADMIN 256/21 is attached as Exhibit 17.

71. NAVADMIN 256/21 removed eligibility for unvaccinated members to attend the DoD SkillBridge program. Ex. 17. SkillBridge program is a DoD-provided training program to assist members in obtaining valuable civilian work experience through training, apprenticeships, or internships during the last six months of a member's service to assist them in their transition into the civilian world.

72. NAVADMIN 256/21 also revoked eligibility for tuition assistance for unvaccinated Sailors. Ex. 17.

73. NAVADMIN 256/21 also revoked eligibility for the Navy's Credentialing Opportunities Online program for unvaccinated members, further impeding members' ability to transition into the civilian world after the Navy indiscriminately forces them from its ranks. Ex. 17.

74. NAVADMIN 256/21 also ordered that all unvaccinated members are ineligible for promotion. Ex. 17.

75. LCDR Fletterich had previously been selected for promotion to the rank of Commander, which was to take effect on December 1, 2021. On November 18, 2021, the Commander of Navy Personnel Command sent LCDR Fletterich a memo informing him that he would no longer be promoted to Commander on December 1, 2021, as projected. A true and correct copy of that memorandum is attached as Exhibit 18.

FIRST CAUSE OF ACTION

Violation of Plaintiff's rights under the Administrative Procedure Act: Agency action without observance of procedure required by law (5 U.S.C. §§ 701-706)

76. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs of this complaint.

77. Defendants are officers and heads of agencies under the APA, 5 U.S.C. § 551(1), the DoD and Navy vaccine mandates are each rules under the APA, 5 U.S.C. § 551(4), and Defendants' actions complained of herein are "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court," 5 U.S.C. § 704.

78. CDR Monlux's decision to deny LCDR Fletterich's medical exemption request marks the consummation of the agencies' decision-making processes with respect to the Department of the Navy's denial of LCDR Fletterich's medical exemption request. 5 U.S.C. § 704.

79. The DoD vaccine mandate as applied to Plaintiff LCDR Fletterich and the denial of LCDR Fletterich's lawful request for a medical exemption from compulsory vaccination are final agency actions for which there is no other adequate remedy in a court. 5 U.S.C. § 704.

80. "Under the APA, the district court acts as an appellate court and reviews the matter as a question of law." *Schwalier v. Panetta*, 839 F. Supp. 2d 75, 81 (D.D.C. 2012).

81. The APA prohibits agency actions that are "not in accordance with law." 5 U.S.C. § 706(2)(A).

82. CDR Monlux summarily denied Plaintiff LCDR Fletterich's medical exemption request without observance of procedure required by law as outlined in DoD and Navy regulations and procedures to which CDR Monlux is subject. 5 U.S.C. § 706(2)(D).

83. DoDI 6205.02, DoD Immunization Program, is the DoD-level policy and regulation that provides instructions on immunization implementation programs to all military agencies subordinate to the DoD. It states, "Individual immunization delivery decisions will be based on nationally recognized standards of U.S. medical care or clinical practice guidelines to *customize care* or respond to *specific clinical situations for each individual*." Ex. 4, DoDI 6205.02, § 3, ¶ 3.1. (Emphasis added).

84. Existing Navy policies and procedures require active-duty Navy personnel to submit their medical exemption requests to Navy health care providers, as defined in BUMEDINST 6230.15B. Ex. 7.

85. BUMEDINST 6230.15B provides that “General examples of medical exemptions include...[e]vidence of immunity based on serologic tests, documented infection, or similar circumstances.” Ex. 7, § 2-6.a.(1).

86. BUMEDINST 6230.15B provides that “General examples of medical exemptions include” cases in which, “An individual’s clinical case is not readily definable.” Ex. 7, § 2-6.a.(1).

87. For medical exemption request where an individual’s clinical case is not readily definable, BUMEDINST 6230.15B requires Navy medical providers to “consult appropriate medical specialists, including specialists in immunization health care.” Ex. 7, § 2-6.a.(1).

88. BUMEDINST 6230.15B orders Navy health care providers to determine medical exemptions to vaccines “based on the health of the vaccine candidate and nature of the immunization under consideration.” Ex. 7, § 2-6.

89. CDR Monlux had a clear and indisputable duty to provide customized and individual care to Plaintiff LCDR Fletterich that responded to LCDR Fletterich’s specific clinical situation, which he failed to provide. Ex. 4, DoDI 6205.02, § 3, ¶ 3.1.

90. In the decision at issue in this case, CDR Monlux was derelict in his duty as a medical provider to customize care and consider LCDR Fletterich’s specific clinical and medical situation.

91. Because CDR Monlux failed to respond to LCDR Fletterich’s specific clinical situation in evaluating his request for a medical exemption from the COVID-19 vaccination as required, Plaintiff LCDR Fletterich has no other adequate remedy available to receive the individualized medical care and consideration to which he is entitled.

92. Defendants’ denial of LCDR Fletterich’s medical exemption requests cites administrative messaging and guidance subordinate to DoD and Navy regulations to justify the

denial in contradiction to those existing policies and regulations without articulating a rational reason for doing so.

SECOND CAUSE OF ACTION

Violation of Plaintiff's rights under the Administrative Procedure Act: Agency action that is contrary to a Constitutional right (5 U.S.C. §§ 701-706)

93. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs of this complaint.

94. Defendants are heads of agencies under the APA, 5 U.S.C. §§ 551(1) and 701(b)(1), the DoD and Navy vaccine mandates are each rules under the APA, 5 U.S.C. § 551(4), and Defendants' actions complained of herein are "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court," 5 U.S.C. § 704.

95. CDR Monlux's decision to deny LCDR Fletterich's medical exemption request marks the consummation of the agencies' decision-making processes with respect to the Department of the Navy's denial of LCDR Fletterich's medical exemption request. 5 U.S.C. § 704.

96. "Under the APA, the district court acts as an appellate court and reviews the matter as a question of law." *Schwalier v. Panetta*, 839 F. Supp. 2d 75, 81 (D.D.C. 2012).

97. The APA prohibits agency action that is contrary to a Constitutional right. 5 U.S.C. § 706(2)(B).

98. Defendants' decisions to subject LCDR Fletterich to compulsory vaccination against the advice of his primary physician and without an adequate process for review of medical decisions violates due process and his fundamental right to bodily integrity.

99. CDR Monlux's summary denial of Plaintiff LCDR Fletterich's medical exemption request and the Navy's imminent enforcement action against Plaintiff LCDR Fletterich for violations of the Uniform Code of Military Justice for disobeying a purportedly lawful order

violates LCDR Fletterich's constitutional rights to due process, equal protection, and bodily integrity and autonomy. 5 U.S.C. § 706(2)(B).

THIRD CAUSE OF ACTION

Violation of Plaintiff's rights under the Administrative Procedure Act: Agency action that is arbitrary, capricious, or an abuse of discretion (5 U.S.C. §§ 701-706)

100. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs of this complaint.

101. Defendants are officers and heads of agencies under the APA, 5 U.S.C. § 551(1), the DoD and Navy vaccine mandates are each rules under the APA, 5 U.S.C. § 551(4), and Defendants' actions complained of herein are "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court," 5 U.S.C. § 704.

102. CDR Monlux's decision to deny LCDR Fletterich's medical exemption request marks the consummation of the agencies' decision-making processes with respect to the Department of the Navy's denial of LCDR Fletterich's medical exemption request. 5 U.S.C. § 704.

103. "Under the APA, the district court acts as an appellate court and reviews the matter as a question of law." *Schwalier v. Panetta*, 839 F. Supp. 2d 75, 81 (D.D.C. 2012).

104. The APA prohibits agency action that is arbitrary, capricious, or an abuse of discretion. 5 U.S.C. § 706(2)(A).

105. CDR Monlux's denial of Plaintiff LCDR Fletterich's medical exemption request was arbitrary, capricious, an abuse of discretion, and not in accordance with the law. 5 U.S.C. § 706(2)(A).

106. CDR Monlux's denial memorandum referenced no specific facts, no individual patient medical history, and no clinical considerations customized to LCDR Fletterich to justify the denial of the medical exemption request. Ex. 11.

107. An agency decision is arbitrary and capricious where it fails to base its decision on a consideration of the relevant factors. *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 378 (1989).

108. CDR Monlux failed to consider factors relevant to LCDR Fletterich's individual request for a medical exemption.

109. "At a minimum, the agency must have considered relevant data and articulated an explanation establishing a 'rational connection between the facts found and the choice made.'" *Schwalier v. Panetta*, 839 F. Supp. 2d 75, 81 (D.D.C. 2012) (quoting *Bowen v. Am. Hosp. Ass'n*, 476 U.S. 610, 626 (1986)).

110. A decision is arbitrary and capricious if the agency doesn't adequately explain its result. *Pub. Citizen, Inc. v. Fed. Aviation Admin.*, 988 F.2d 186, 197 (D.C. Cir. 1993).

111. CDR Monlux's cursory denial merely recited incomplete excerpts from vaccine mandate implementation orders, but CDR Monlux failed to make even the most minimal effort to rationally connect those quoted fragments to the underlying reasons for both the DoD vaccine mandate and the exemption request under consideration.

112. A decision is arbitrary and capricious where it is inconsistent with its own precedent. *Singleton v. Babbitt*, 588 F.3d 1078 (D.C. Cir. 2009). To depart from an earlier regulatory approach, an agency must provide a reasoned basis for its departure if it is to meet the arbitrary and capricious standard. *FORMULA v. Heckler*, 779 F.2d 743 (D.C. Cir. 1985).

113. A patient's medical treatment cannot be governed by a one-size-fits-all party-line formula based on generally applicable principles, especially where an exception to the generally applicable rules is the very issue under consideration. CDR Monlux's decision to deny LCDR Fletterich's medical exemption request was arbitrary and capricious because it failed to consider

circumstances that “warrant different treatment for different parties.” *Petroleum Commc’ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994).

114. LCDR Fletterich has a clear regulatory, statutory, and constitutional right to individualized medical care customized to his own specific clinical situation, which he was denied.

FOURTH CAUSE OF ACTION

Violation of Plaintiff’s rights under the Administrative Procedure Act: Agency action that is arbitrary, capricious, or an abuse of discretion (5 U.S.C. §§ 701-706)

115. Plaintiff repeats and re-alleges each of the allegations contained in the foregoing paragraphs of this complaint.

116. Defendants are officers and heads of agencies under the APA, 5 U.S.C. § 551(1), the DoD and Navy vaccine mandates are each rules under the APA, 5 U.S.C. § 551(4), and Defendants’ actions complained of herein are “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court,” 5 U.S.C. § 704.

117. The decision to deny LCDR Fletterich’s temporary administrative exemption request marks the consummation of the agencies’ decision-making processes with respect to the Department of the Navy’s denial of LCDR Fletterich’s temporary administrative exemption request. 5 U.S.C. § 704.

118. “Under the APA, the district court acts as an appellate court and reviews the matter as a question of law.” *Schwalier v. Panetta*, 839 F. Supp. 2d 75, 81 (D.D.C. 2012).

119. The APA prohibits agency action that is arbitrary, capricious, or an abuse of discretion. 5 U.S.C. § 706(2)(A).

120. The denial of Plaintiff LCDR Fletterich’s temporary administrative exemption request was arbitrary, capricious, an abuse of discretion, not in accordance with the law, and not in accordance with the Navy’s own procedures. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- 1) Find and declare that Defendants' actions in denying Plaintiff's medical exemption request violated the Administrative Procedures Act because the denial was issued without observance of procedure required by law.
- 2) Find and declare that Defendants' actions in denying Plaintiff's medical exemption request violated the Administrative Procedures Act because it is action contrary to a Constitutional right.
- 3) Find and declare that Defendants' actions in denying Plaintiff's medical exemption request violated the Administrative Procedures Act because the denial was arbitrary, capricious, or an abuse of discretion.
- 4) Find and declare that the Plaintiff's filing of this claim under the APA constitutes a lawful appeal of the denial of his medical exemption request and temporary administrative exemption request during which time he does not legally meet the Navy's regulatory definition of a vaccine refuser.
- 5) Enter an order declaring unlawful and setting aside the Defendants' vaccination policy and exemption request decisions as applied to Plaintiff.
- 6) Enter an order declaring unlawful and setting aside the adverse disciplinary action already taken against Plaintiff LCDR Fletterich.
- 7) Find and declare that Plaintiff LCDR Fletterich is entitled to individual assessment to determine his eligibility for a medical exemption from vaccination, and enter an order compelling Defendants to provide such an assessment;
- 8) Enjoin the DoD and Department of the Navy from vaccinating Plaintiff LCDR Fletterich until this action has completed and Defendants have conducted a legally

compliant individual assessment to determine Plaintiff LCDR Fletterich's eligibility for a medical exemption.

9) Enjoin the DoD an Department of the Navy from taking any adverse administrative or disciplinary action against Plaintiff LCDR Fletterich on the basis of his unvaccinated status until this action has completed, until Defendants have conducted a legally compliant individual assessment to determine Plaintiff LCDR Fletterich's eligibility for a medical exemption, and until Plaintiff LCDR Fletterich has exhausted his administrative and judicial avenues to appeal that decision if his request is denied.

10) Award Plaintiff's reasonable attorneys' fees, costs, and other costs and disbursements in this action under 5 U.S.C. § 504 and 28 U.S.C. § 2412;

11) Award all other relief to which Plaintiff may be entitled.

Plaintiff seeks this relief pursuant to the Administrative Procedures Act, 5 U.S.C. §§ 702 and 705; the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; and the All Writs Act, 28 U.S.C. § 1651.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues that are so triable.

Dated: December 6, 2021

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X
GRAHAM FLETTERICH

34647 Pima Trail
Julian, CA 92036;

Docket No.: 21-cv-_____

Plaintiff,

-against-

HON. LLOYD J. AUSTIN, III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

and

HON. CARLOS DEL TORO
Secretary of the Navy
1000 Navy Pentagon
Washington, DC 20301-1000

Defendants.
-----X

PLAINTIFF'S VERIFICATION OF COMPLAINT

I, Graham Fletterich, declare as follows:

1. I am the named plaintiff in the above captioned case and a citizen of the United States of America. I am an adult, over eighteen (18) years of age, of sound mind, capable of making this statement, and I am personally acquainted with the facts stated. I declare that the information herein is true, correct, and complete.

2. I have reviewed the contents of the Complaint. I have knowledge of the matters contained in the Complaint. I verify that the statements contained in the Complaint are true to the

best of my knowledge, except as to matters alleged on information and belief, and as to those matters, I believe them to be true.

3. I, Graham Fletterich, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Graham Fletterich

Executed on: 06 DEC 21