



Attorney 'Thrilled' After Federal Judge Blocks COVID Vaccine Mandate for Air Force, Air National Guard

Description

USA: A federal judge in Ohio on Wednesday blocked the military's COVID-19 vaccine mandate nationwide for Air Force, Space Force and Air National Guard service members who requested religious exemptions.

In his [4-page ruling](#), U.S. District Judge Matthew McFarland said the government failed to "raise any persuasive arguments for why the Court should not extend the Preliminary Injunction issued on March 31, 2022, to cover the Class Members."

Wednesday's ruling replaces McFarland's [14-day temporary restraining order](#), issued July 14. The temporary order was issued to allow the military time to make its case for why the preliminary injunction shouldn't last longer and be expanded to apply to 10,000 or more service members seeking an exemption.

Earlier this month, government lawyers argued that preventing the military from punishing unvaccinated members "would interfere with ongoing legal proceedings and would otherwise be improper, particularly in light of significant new developments."

Defendants pointed to the recent Emergency Use Authorization of Novavax — which is not yet fully licensed — and claimed unlike the other three shots available in the U.S., Novavax does not use fetal cells in its development, manufacturing or production.

"Those class members whose religious objections were based on mRNA technology or the use of fetal-derived cell lines are no longer substantially burdened by the [COVID-19](#) vaccine requirement because this option is now available," lawyers said.

"Moreover, religious beliefs of service members who object to vaccination based on mRNA technology are not substantially burdened by Novavax or the Johnson & Johnson vaccines, which do not use mRNA technology."

Included in the government's filing as an exhibit was a declaration from Lt. Gen. Kevin Schneider,

director of staff for the Air Force headquarters.

Schneider claimed unvaccinated members “are at a higher risk of contracting COVID-19 and substantially more likely to develop severe symptoms resulting in hospitalization or death” and that exempting a large number of airmen “would pose a significant and unprecedented risk to military readiness and our ability to defend the nation.”

“As of March 14, 2022, a total of 91,984 Department of the Air Force Service members had contracted COVID-19 during the pandemic, resulting in 229 hospitalizations, of which 14 died,” Schneider said. “Of those who died, 12 (86%) were completely unvaccinated.”

Schneider did not provide the number of servicemen injured or hospitalized as a result of having to receive a COVID-19 vaccine under the military’s vaccine mandate.

McFarland wasn’t convinced. He instead [modified the class](#) to include all active-duty, active reserve, reserve, national guard, inductees and appointees of the U.S. Air Force and Space Force, including but not limited to Air Force Academy Cadets, Air Force Reserve Officer Training Corps Cadets, members of the Air Force Reserve Command and any airman who has sworn or affirmed the U.S. Uniformed Services Oath of Office or Enlistment and is currently under command and could be deployed.

Under the new order, the Air Force can’t take disciplinary action against, or attempt to kick out members who requested a religious exemption on or after Sept. 1, 2021, those confirmed as having a sincerely held religious belief by chaplains and those who either had their request denied or whose request has not yet been acted on.

“Obviously, we are thrilled for our clients who we were facing career-ending consequences for the exercise of their sincerely held beliefs,” Chris Wiest, an attorney for plaintiffs, said Wednesday.

“This case will now proceed into the discovery phase in which we look forward to placing government decision-makers under oath and questioning them about their discriminatory decision-making.”

Of the Air Force’s 497,000 members, 97% have received a primary COVID-19 vaccination series.

Of the 1,400 [exemptions granted](#), only 104 are religious exemptions — and those were granted only to service members at the end of their term of service.

Currently, 2,847 requests are pending and 6,803 were rejected.

The small number of religious accommodations granted is “farcical,” McFarland said earlier this year. The Air Force “‘has effectively stacked the deck’ against service members seeking religious exemptions.”

The U.S. Secretary of Defense on Aug. 24, 2021, directed military branch secretaries to immediately begin full vaccination of all members of the armed forces, service members on active duty and those in the reserves, and National Guard, unless exempted.

The Secretary of Defense [claimed](#) that “to defend the nation, we need a healthy and ready force” and “after careful consultation with medical experts and military leadership, and with the support of the

President ... vaccination against the coronavirus disease 2019 (COVID-19) is necessary to protect the Force and defend the American people.”

Military’s recruiting crisis deepens under vaccine mandate

Lawmakers from both sides of the aisle are putting pressure on the Pentagon to fix the military’s recruitment crisis in what has been deemed the worst recruiting environment since the end of the Vietnam War, Politico reported this week.

Recent briefing slides obtained by Politico show senior Pentagon leaders are alarmed by poor enlistment numbers and the military “currently faces the most challenging recruiting market since the advent of the All-Volunteer Force, with multiple Services and Components at risk for missing mission in FY 2022.”

“Arduous market conditions are expected to persist into the future as the market is not likely to self-correct,” according to the slides.

While the military said it acknowledges the problem, the desire of young Americans to join the military has “fallen off the statistical cliff,” according to Politico.

The Army only reached 66% of its goal for the fiscal year ending in September, while the Navy is at 89%, according to data compiled from October 2021 to May 2022.

Although the rates for the Marine Corps, Air Force and Space Force are at 100%, that leaves the U.S. Department of Defense (DOD) with a total rate of just 85%.

Rep. Jackie Speier (D-Calif.), who chairs the Military Personnel Subcommittee, wants to hold a joint hearing with her panel and the Readiness Subcommittee on recruiting issues.

“I would say we have to do a deep dive into why the numbers are shrinking,” Speier told Politico. “I think we have to have a hearing to kind of explore that.”

The DOD says the drop in entry-level troops can be traced to concerns about the physical and psychological risks of service and other career interests, the possibility of interference with a college education, dislike of the military lifestyle and the military’s high standard for recruits.

The Army last week announced it is launching multiple initiatives to address the problem including providing \$35,000 bonuses for new recruits ready to ship out to basic training within 45 days and lowering the service’s physical and academic standards.

Some DOD officials and experts blame COVID-19 vaccine mandate

Former and current DOD officials and experts criticized the Pentagon’s COVID-19 vaccine mandate as a contributing factor — and claimed the “department leadership knows it.”

According to [Military News](#), the Army recently cut more than 60,000 National Guard and Reserve soldiers who [refused to be vaccinated](#) from military pay and benefits and is preventing them from participating in military duties.

Mackenzie Eaglen, an expert with the conservative American Enterprise Institute, argued the military's vaccine mandate has "indisputably negative" impacts on recruiting.

"The math and logic simply doesn't add up to let troops go involuntarily over the vaccine while announcing at the same time historically high bonuses for new recruits (which the U.S. Army did this winter)," Eaglen said.

"It is far more time-consuming and expensive to fire those with experience versus bringing in new, untrained personnel."

"If you are sitting in the state of Georgia or Texas and you see they are putting 40,000 members out, you are going to scratch your head a bit and say, 'why would I join up?'" a former senior DOD official told Politico. "And if you don't want to get vaccinated, you are certainly not going to join."

Rep. Mike Waltz (R-Fla.), the top Republican on the House Armed Services' Readiness Subcommittee, former Green Beret and current member of the National Guard, [joined with 49 other](#) republican lawmakers on Tuesday to send a letter to Defense Secretary Lloyd Austin requesting the Pentagon reconsider its COVID-19 vaccine mandate in response to the recruiting crisis.

"At a time when the department is struggling to recruit qualified young men and women fit for duty to fill the ranks, and while China is embarking on a massive military buildup which threatens American interests around the world, we should not be hindering our own readiness and capabilities by punishing and forcing out experienced and dedicated Guardsmen and Reservists," the [letter stated](#).

By Megan Redshaw

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