

EXHIBIT B

ALVARADO, et al., v. AUSTIN, et al.

Declaration of

Army Chaplain (Captain) Jordan Ballard

IN THE MATTER OF THE VACCINE MANDATE CHALLENGE

DECLARATION OF CH (CPT) JORDAN PETER BALLARD

Pursuant to 28 U.S.C. §1746, I, JORDAN PETER BALLARD declare as follows:

1. My name is JORDAN PETER BALLARD. I am over 18 years of age and have personal knowledge of and am competent to testify on the matters stated herein.
2. I make this declaration in support of my challenge to the Department of Defense and Department of the Army mandates requiring that I be vaccinated against COVID-19. All statements made in this Declaration are true to the best of my own personal knowledge.
3. I currently reside at [REDACTED] Copperas Cove, TX 76522. My home of record and where I am domiciled is [REDACTED] Copperas Cove, TX 76522.
4. I am an active duty chaplain in the United States Army serving at the rank of captain. I am currently assigned to the 4th Battalion, 5th Air Defense Artillery Regiment, Headquarters and Headquarters Battalion, Tedesco Way Building 56060 Fort Hood, TX 76544.
5. I began my military service on September 14, 2021. I was commissioned and entered active duty on September 14, 2021.
6. My promotions were as follows: May 5, 2021: 1st Lieutenant to Captain. I have approximately 1 year of service as of August 9, 2022.
7. During my military career, I have yet to deploy overseas.
8. I have not received any special awards yet in my brief military career.
9. I submitted my Religious Accommodation Request (RAR) (or Religious exemption) at Fort Jackson, SC on October 20, 2021 (Exhibit 1) asking to be excused from the Army's COVID-19 vaccine mandate based on my sincerely held religious beliefs. A summary of those reasons follows:

a) I have sincerely held religious beliefs concerning abortion. COVID-19 vaccine manufacturers developed and/or tested vaccines using cell lines from aborted fetus cells. The same is true of the MMR, Hep A, and Hep B vaccines. I cannot in good conscience receive any vaccine that was produced or tested using cell lines derived from tissue from aborted fetuses since it amounts to licit cooperation with evil. I am willing to take immunizations that were not developed/tested using cell lines from aborted fetus cells. Alternatives exist for some immunizations.

b) I also submitted a request for medical exemption at Fort Jackson, SC on October 5, 2021. In mid-March 2021, I had COVID-19. I had flu-like symptoms and lost my sense of taste and smell. I quarantined for ten days until symptoms were gone. I have a serologic test from September 3, 2021, showing that I have antibodies against the COVID-19 spike protein. My request for medical examination was in accordance with AR 40-562, ¶2-6a.(1)(b): “General examples of medical exemptions include the following... Evidence of immunity based on serologic tests, documented infection, or similar circumstances.” My request was denied on October 19, 2021. I submitted an appeal on October 20, 2021. The appeal was denied on December 1, 2021.

10. My RAR was denied on February 23, 2022, Exhibit 2. I received the denial memo on March 16, 2022. I submitted my RAR appeal, Exhibit 3, on March 23, 2022, which is still pending approval or denial. In my appeal, I included the following responses to the denial memo:

a) The Surgeon General: “Your request for exemption from other enumerated vaccines is overly broad as it relates to vaccines you have already received as well as possible future immunization requirements. If, in the future, your duties and circumstances change and you are required to receive any additional immunizations, you may submit a new

religious accommodation request for adjudication at that time for those particular vaccines.”

My response: The request is *not* overly broad. I have religious objections to all vaccines produced/tested with cell lines derived from tissue cells from aborted fetuses. This includes the MMR, Hep A, Hep B, and COVID-19 vaccines.

b) The Surgeon General: “As a Chaplain you would be in an office environment providing counsel to other Soldiers in close proximity or providing ministry to potentially hundreds of Soldiers. As noted by your chain of command, remaining unvaccinated in such scenarios would place not just yourself at risk, but the health and safety of other Soldiers to whom you are ministering as well.”

My response: I spent three months at Fort Jackson completing my Chaplain Basic Officer Leader Course (Sept 14–Dec 16, 2021) but did not contract COVID-19 or give anyone else COVID-19. I attended indoor meetings, had one-on-one interactions in small spaces, conducted group exercises, carpooled, and did many other activities that would have caused COVID-19 to spread. Yet, it did not. I did not get COVID-19 at CHBOLC because I already had COVID-19 in March 2021. My serologic test shows as much. Additionally, I have *already* been operating as a Chaplain for months at my battalion. I do chaplain circulation, attend staff meetings, perform exercises with small groups, conduct indoor trainings, ride in vehicles, and counsel Soldiers in my office. I have not gotten COVID-19 or spread it to anyone else. I have natural immunity to COVID-19 that supersedes the artificial immunity created by the COVID-19 vaccine. Studies support the conclusion that natural immunity derived from prior COVID-19 infection confers longer lasting and stronger protection against infection, symptomatic disease, and hospitalization compared to the Pfizer two-dose vaccine-induced immunity. Unit cohesion, good order,

and discipline are unaffected by my vaccination status. I am no more a threat to military readiness than any other Soldier. My natural immunity makes me more of an asset than a liability.

c) The Surgeon General: “COVID-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army’s compelling governmental interests, which also includes protecting your health, the health of the force, and ensuring mission accomplishment.”

My response: Stating that COVID-19 is a grave risk to the readiness of the force is an overstatement. The COVID-19 virus predominantly affects individual’s age 65 years and older and individuals with comorbidities such as obesity, smoking, heart conditions, diabetes and kidney disease. The majority of my battalion, to include myself, does not fall within the scope of those individuals most likely to succumb to COVID-19, which further highlights the low risk to health, safety, and military readiness if I do not receive a COVID-19 vaccine. There is a 99.98% survival rate, without even considering striations for age, comorbidities, or treatments received. In addition, the mask mandate has been lifted federally and here at Fort Hood. COVID-19 is not an imminent threat. Otherwise, we would still be masking, social distancing, and assigning quarantine to those with flu-like symptoms.

d) Proof of serological immunity is a traditionally-accepted contraindication for and administrative exemption to many infectious diseases and is recognized in Army regulations as well. Proof of recovery from a prior COVID-19 infection is a less restrictive means of furtherance of a compelling government interest and should be accepted in my case so that I do not have to surrender my sincerely-held religious beliefs to serve God and country. Under the required legal analysis, the government must show it

cannot accommodate the religious adherent while achieving its interest through a viable alternative. The Surgeon General's denial letter of failed to consider any viable alternative to achieve the mission and/or accommodate my religious freedoms and practices.

e) Many service members with other vaccine waivers (i.e. influenza) are still permitted to remain in military service and maintain worldwide deploy-ability. If the Army chooses to deem me non-deployable and separate me from military service, such a decision would be inconsistent with other vaccine waiver cases.

f) Separating me from Army service would negatively impact military readiness and would result in the loss of the Army's investment in my training and the expertise I possess. My separation would result in a great loss to my command's readiness as well. There is not a week that goes by that I do not counsel Soldiers who are battling anxiety, depression, and/or suicidal ideations. As a Chaplain, I am able to counsel them, console them, and lead them down a path that avoid self-destructive behaviors and a toxic work environment. The command team relies heavily upon my support to the high-risk Soldiers in our battalion especially.

g) There is a larger problem with the vaccine mandate: it cannot be fulfilled as written since the FDA-approved vaccine COMIRNATY is not available. On October 12, 2021, I received a counseling that required me to "become fully vaccinated with a COVID-19 vaccine that has received full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance NLT 31 October 2021, subject to the availability of vaccines." The order goes on to state, "Voluntary immunization with a COVID-19 vaccine under FDA Emergency Use Authorization or World Health Organization Emergency Use Listing in accordance with applicable dose requirements

prior to, or after receiving this order, constitutes compliance with this order.” This language is consistent with the Secretary of Defense’s guidance issued August 24, 2021: “Mandatory vaccination against COVID-19 will only use vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance.” The next sentence of counseling states, “This is a lawful order.”

I agree that the order is lawful in that the military does have the authority to mandate FDA-approved vaccines for military personnel, and the order mandates me to get the FDA-approved version of the vaccine. However, the FDA-approved vaccine is not available. The CDC website admits this: “COMIRNATY products are not orderable at this time.” COMIRNATY is distinguished on this website as an FDA-approved vaccine in contrast to the list of Emergency Use Authorization (EUA) vaccines, which include the Pfizer-BioNTech, Moderna, and Janssen vaccines. In short, the FDA-approved COMIRNATY is not available. The physician assistant in our battalion checked at the clinic administering vaccines here at Fort Hood, and they only have the EUA vaccines. The Secretary of Defense’s order is lawful but cannot be physically executed. Under current marketing of COVID-19 vaccines, I only have access to Pfizer-BioNTech, Moderna, or Jansen (Johnson & Johnson) COVID-19 vaccines. These are all currently under EUA. At this time, I do not elect to receive an EUA vaccine on a volunteer basis.

BioNTech Manufacturing GmbH (in partnership with Pfizer, Inc.) received FDA licensure/ approval on August 23, 2021. Pfizer, Inc. received EUA for its vaccine, Pfizer-BioNTech COVID-19 Vaccine, on December 11, 2020, and it remains under EUA to date. There are multiple legally-binding FDA and Pfizer documents associated with these two products, and the language in these documents consistently confirms that

COMIRNATY is the only FDA-approved vaccine; Pfizer-BioNTech is still administered under an EUA and is *not* an FDA-approved vaccine. This language is legally unambiguous in nature and verifies that the vaccine is not FDA-approved. In addition, the FDA letter to Pfizer, Inc. contains several dozen references to the words “authorized,” “EUA,” or “emergency use,” all of which refer to authorization and administration under an EUA when referring to the Pfizer-BioNTech COVID-19 vaccine. There is not one reference to the word “approved,” “licensed” or “FDA-approval” when referring to the Pfizer-BioNTech COVID-19 Vaccine. Those references are only found when directly referring to COMIRNATY for ages 16 and over.

The letter requires certain items to be briefed to recipients of the Pfizer-BioNTech COVID-19 vaccine, specifically “As the vaccination provider, you must communicate to the recipient or their caregiver, information consistent with the ‘Vaccine Information Fact Sheet for Recipients and Caregivers’ (and provide a copy or direct the individual to the website www.cvdvaccine.com to obtain the Vaccine Information Fact Sheet) prior to the individual receiving each dose of the Pfizer-BioNTech COVID-19 Vaccine, including: 1) FDA has authorized the emergency use of the Pfizer-BioNTech COVID-19 Vaccine, which is not an FDA-approved vaccine. 2) The recipient or their caregiver has the option to accept or refuse Pfizer-BioNTech COVID-19 Vaccine.” This clearly verifies that the Pfizer-BioNTech vaccine is *not* FDA approved and that recipients have the right to refuse Pfizer-BioNTech.

This document further verifies that Pfizer-BioNTech COVID-19 Vaccine is *not* FDA-approved and verifies that it is “legally distinct with certain differences” in comparison to the BioNTech Manufacturing GmbH vaccine COMIRNATY. The Summary Basis for Regulatory Action dated, November 8, 2021, clearly states, “In the

U.S., there are no licensed vaccines or anti-viral drugs for the prevention of COVID-19.” The National Institute of Health (NIH) Daily Med website (dailymed.nlm.nih.gov) lists the Marketing Start *and* End Date for COMIRNATY as August 23, 2021, implying the vaccine was only available on the date of licensure by the FDA. My personal attempts to secure the COMIRNATY vaccine at my local Military Treatment Facility have been unsuccessful, confirming its unavailability.

It is true that Pfizer-BioNTech and COMIRNATY are “interchangeable,” and healthcare providers should “use the doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.” However, while they claim the vaccines have the same formulation and can be used interchangeably to vaccinate against COVID-19 (similar to how other EUA authorized vaccines can also be used to vaccinate against COVID-19), the legal fact remains Pfizer-BioNTech is still *not* FDA-approved, nor is it *legally* interchangeable with COMIRNATY. Per 10 U.S.C. §1107, individuals must be informed of an option to accept or refuse administration of emergency use products. This requirement may only be waived by the President of the United States, and “The President may grant such a waiver only if the President determines, in writing, that obtaining consent is not in the interests of national security.” To date, the President has not issued such a written waiver. 10 U.S. Code 1107a is also consistent with the original order I am accused of disobeying, which verifies that any use of EUA-authorized vaccine options to fulfil the intent of the order must be voluntary. Per 10 U.S. Code 1107a, the original directive from SECDEF and the counseling statement with the order to me to get the vaccine, and per the FDA Fact Sheet, I decline to voluntarily subject myself to any of the current EUA COVID-19 vaccines, including the Pfizer-BioNTech COVID-19 Vaccine.

11. As an unvaccinated soldier awaiting approval of my RAR, I have been subject to discriminatory treatment. At Fort Jackson, I had to quarantine for seven days at the beginning of my officer course and for another seven days after I traveled home for Thanksgiving. I had no COVID-19 symptoms, nor was there any effort to test for COVID-19. I presented my request for religious accommodation on September 14, 2021, to our small group leader and cadre member, but my request for religious accommodation was not finally processed until mid-October. Due process was not observed. I was restricted to the use of only one gymnasium on post—the old, worn down one. I had to wear a mask when vaccinated soldiers did not have to, even though the scientific data for cloth-mask effectiveness is lacking. I was told that I could not travel home for Thanksgiving with my family, though the commandant of the chaplain school rescinded that order when I threatened to file an Equal Opportunity complaint against him for religious discrimination. I was also told the day before graduation (December 15, 2021) that I would not be allowed to go to my duty station at Fort Hood and that I would be stuck at Fort Jackson. I had to present my own case based on the course manager’s misunderstanding. Unvaccinated soldiers are not allowed to PCS (permanent change of station), but I was at Fort Jackson on PTDY (permissive temporary duty) and thus could continue on to Fort Hood, which was to be my duty station. Vaccinated soldiers were also shamed by the Chief of Chaplains when he visited one of our trainings in October 2021, and told those of us who were unvaccinated that we needed to “do the right thing”—meaning, get vaccinated. There was no consideration that getting vaccinated would violate our sincerely-held religious beliefs. In addition, our small group of unvaccinated soldiers was removed from class one day and informed that we could not travel home for Thanksgiving, and when we walked back into the classroom, it felt like we had a scarlet letter as our classmates gazed on us as “bad soldiers.” Finally, I cannot deploy with my battalion, and I

cannot travel (TDY– temporary duty) for my endorser-required annual training in October 2022 since I am not vaccinated. I have been treated like a second-class citizen because of my religious beliefs.

12. The following retaliatory, career damaging, negative, punitive or administrative actions have been taken against me for refusing the alleged COVID vaccine and requesting a religious accommodation request:

- a) I cannot deploy, which will undoubtedly affect my OER (Officer Evaluation Report) and will minimize my chances of achieving a top-block, which is required for promotion and for continual service in the Army.
- b) I cannot go to my annual endorser training in Virginia in October 2022, which could threaten my good standing with my endorser and therefore jeopardize my position as an Army chaplain.
- c) If my RAR appeal is denied, then I will be liable to receive a GOMAR (General Officer Memorandum of Reprimand), and will be separated from the Army with the potential loss of benefits if I do not receive an honorable discharge.

13. The Army has made it clear that resisting the vaccine comes with the high price. I stand to lose my job and my livelihood, which jeopardizes my ability to provide food, clothing, and shelter for my wife and five children. My family is enrolled the Exceptional Family Member Program (EFMP). This is for families with special-needs children. Our 5-year-old son has autism and is approved for 40 hours of intensive ABA therapy every week. This is currently covered by the Army's Tricare insurance and would cost my family tens of thousands of dollars if my RAR appeal is denied and I have to separate from the Army. If our son does not have this service, then he has major regressions in his behaviors, communication deficits, executive function skills, and social deficits. This hardship on my family is something we have accepted, but facing separation

because of my sincerely-held religious beliefs would impose a major strain financial and emotional strain on our family.

I also stand to face a general discharge, which is a punitive discharge because it is associated with people with discipline problems. This will follow me all of my life. It demeans and mischaracterizes my service and denies VA benefits. However, given the choice of taking the COVID-19 vaccine, which violates my conscience and my sincerely-held religious beliefs for the reasons enumerated above, or facing separation from the Army, I must hold to my convictions and my integrity as a Christian and as a chaplain. This would be a great loss to the Army, in my view. Every week I counsel with soldiers who are struggling with depression, anxiety, suicidal ideations, marriage problems, and other life challenges. As the chaplain, I am able to help the soldiers carry on with the help of God rather than surrender their positions, their marriages, their mental and physical wellbeing, or their lives.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

August 9, 2022

/s/ 
JORDAN PETER BALLRD



**DEPARTMENT OF THE ARMY
OFFICE OF THE SURGEON GENERAL
7700 ARLINGTON BOULEVARD
FALLS CHURCH, VA 22042-5140**

DASG-ZA

23 FEB 2022

MEMORANDUM THRU Commanding General, United States Army Training Center and Fort Jackson, Fort Jackson, South Carolina 29207

FOR Chaplain (CH) (First Lieutenant) Jordan Ballard, Headquarters and Headquarters Company, U.S. Army Chaplain Center and School, Fort Jackson, SC 29207

SUBJECT: Denial of Request for Religious Accommodation

1. I reviewed your religious accommodation request for an immunization exemption from the COVID-19 vaccine mandate and other various vaccines listed in your request.

a. Your request for exemption from the Army's COVID-19 vaccine mandate is denied.

b. Your request for exemption from other enumerated vaccines is overly broad as it relates to vaccines you have already received as well as possible future immunization requirements. If, in the future, your duties and circumstances change and you are required to receive any additional immunizations, you may submit a new religious accommodation request for adjudication at that time for those particular vaccines.

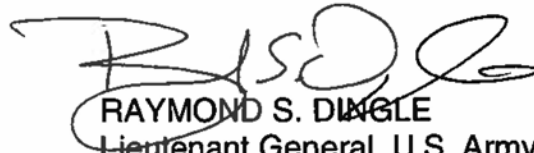
2. I considered your request, based on your Baptist faith, and reviewed your specific case. This included an examination of your chain of command recommendations, your unit chaplain findings of a sincere religious belief, and your current military duties as a 56A, Chaplain, and recent graduate of the Chaplains Officer Basic Officer Leadership Course 21-003. As a Chaplain you would be in an office environment providing counsel to other Soldiers in close proximity or providing ministry to potentially hundreds of Soldiers. As noted by your chain of command, remaining unvaccinated in such scenarios would place not just yourself at risk, but the health and safety of other Soldiers to whom you are ministering as well.

3. COVID-19 is a grave risk to the readiness of the force, and in your case, I find that vaccination is the least restrictive means to further the Department of the Army's compelling government interests, which also includes protecting your health, the health of the force, and ensuring mission accomplishment.

DASG-ZA

SUBJECT: Denial of Request for Religious Accommodation

4. You may appeal this decision through your chain of command to the Assistant Secretary of the Army for Manpower & Reserve Affairs. If you chose to do so, you have seven calendar days from notification of my decision to submit any matters.

A handwritten signature in black ink, appearing to read 'RSD', is written over the printed name 'RAYMOND S. DINGLE'.

RAYMOND S. DINGLE
Lieutenant General, U.S. Army
The Surgeon General and
Commanding General, USAMEDCOM