

6 September 2021

MEMORANDUM XXXXXXXXXXXX

FROM: XXXXXXXXXXXXXXXX

Subject: **Informal Complaint** under Article 138, Uniform Code of Military Justice (AFI 51-505, Chpt. 3)

1. I, XXXXXXXXXXXX, am currently assigned as a XXXXXX at the (base and unit). On XX Month 2021, while assigned to the (Unit), you committed the following wrong(s) against me:

a. The alleged wrongs include an unlawful verbal order for mandatory vaccination, and here are the details: On 31 August 2021, I contacted my AOC (xxxxx) via Microsoft Teams while I was in quarantine in Challenger Hall. I had heard a rumor from other Cadet Candidates that the Covid 19 vaccine would be required. xxxxxx confirmed that all unvaccinated Cadet Candidates were required to get their first shot, no later than Wednesday 1 Sep. 2021. Since I was in quarantine at that time, I would need to get the shot as soon as possible after being released from quarantine. Failure to comply would result in disciplinary or administrative action.

b. This order is legally distinguishable from the order of SECDEF Austin dated 24 August 2021, and is unlawful for the following reasons:

(1) In the Memo, para. 2, it states, "Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA)."

(2) Currently the only COVID-19 vaccine that has been approved is Pfizer Comirnaty vaccine, which as the CDC says, is "legally distinguishable" from the Pfizer BioNTech vaccine. It is unclear as to whether Comirnaty is available in the U.S.

(3) The Experimental Use Authority (EUA) (10 U.S.C. § 1107) law specifically states that if an approved vaccine is available, then those under the EUA are not lawful to administer.

(4) Therefore, any vaccine other than the Pfizer Comirnaty may not lawfully be utilized or ordered to be utilized.

(5) This unlawful order is followed by a threat of disciplinary or administrative action and says nothing about the lawful exemptions available, such as religious, medical, and natural immunity per AR 40-562, (“Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases,”) which remain in effect and may not be summarily dismissed. Due process under the law was not given.

c. Additionally, myself and others were treated as if we were being punished for not having been vaccinated:

(1) While others and I were in quarantine, we were isolated for six plus days merely for having been near someone who tested positive for COVID. I was tested but never provided the results.

(2) None of us were allowed to go into each other’s rooms or have any human interaction. We were all told we could only go outside for 30 minutes at a time if we were contact traced. If we had a positive test we were to contact permanent party to anytime we needed to leave the building and get some air. It is my understanding that someone received one or more Letters of Reprimand for being outside and going into another’s room.

(3) I was not checked on at all throughout the six plus days. I was given food by someone dropping it off.

d. I feel these actions were tantamount to punishment for not having been vaccinated. We were never provided any instruction or guidance in writing. I was not provided any appeal or other due process, and never told whether I tested positive or negative.

2. I request the following relief under Article 138, Uniform Code of Military Justice:

a. That the current order be rescinded and clarified to include that vaccination at this time is voluntary.

b. That the EUA strictly requires “informed consent,” that all Cadet Candidates be informed of the ingredients in all vaccines, be informed of all potential side effects, reactions to include death, and how many negative reactions and deaths have currently occurred. (Per 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III), “Federal Food, Drug, and Cosmetic Act.”)

c. That all Cadet Candidates be made aware of their right to refuse any experimental vaccine, unless the President signs an Executive Order outlining the need for emergency vaccination.

d. That all Cadet Candidates be made aware of their right to seek religious, medical, and natural immunity exemptions (AR 40-562, para. 2-6(b)), from the vaccine.

e. A memorandum be provided justifying the actions of isolation and what appeared to be punishment, and that I be provided my options for redress.

Signature Block