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President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

Sir, I serve as an Officer in the Arizona Air National Guard. My career in the United States Air Force included service flying F-16s, A-10s, F-117s, and currently piloting the MQ-1 Predator in Overseas Contingency Operations. My education included opportunities earning a Bachelor's degree from the US Air Force Academy and a Masters in Homeland Security from the Naval Postgraduate School. My Masters thesis¹ helped me to formalize well-researched recommendations to your administration and the Department of Homeland Security (DHS) related to continued use of the anthrax vaccine in the Strategic National Stockpile (SNS).

Regardless of whether or not your administration adopts my proposals for the DHS under Homeland Security Presidential Directive (HSPD) authorities, I respectfully recommend decisive action under your authorities as Commander in Chief in the best interest of civilian control of the military, and as a matter of justice. Specifically, the Department of Defense (DoD) anthrax vaccine immunization program (AVIP) was illegal until the Food and Drug Administration (FDA) completed the investigational new drug licensure process on December 19, 2005. As a result, it appears academic that soldiers punished for refusing to comply with the patently illegal mandate prior to December 19, 2005 deserve service records correction.

Background: Supporting the requirement for the correction of records for servicemembers.

(a) LEGISLATIVE INQUIRY. Congressional Hearings resulted in House Report 106-556 in April 2000. The report found the DoD's anthrax vaccine mandate in conflict with FDA regulations. The Congressional Committee declared the immunization "investigational" and the program "experimental" absent a properly approved indication for use against inhaled anthrax. Article III Federal Court findings later corroborated the illegal status of the program.

(b) JUDICIAL INQUIRY. A December 2003 preliminary injunction and an October 2004 permanent injunction by the Federal District Court of Washington DC enjoined mandatory

¹ Naval Postgraduate School Graduation: <https://www.chds.us/?press/release&id=2351>;

Naval Postgraduate School Thesis: <http://handle.dtic.mil/100.2/ADA514307>;

Center for Homeland Defense and Security Interview: <http://www.chds.us/?player&id=2375>;

Silo Thinking Editorial: http://www.chds.us/?spost/spost_displayarticle&articleid=37&offset=&postid=2.

anthrax inoculations. The DC Federal Appellate Court later declined to vacate or overrule those opinions. The courts affirmed the DoD's program as "not substantially justified" given the vaccine licensing was never finalized by the FDA until December 19, 2005. On that date, the FDA published a final order for the vaccine, including approval for use against inhalation anthrax. By August 2007, courts declared servicemembers as the "prevailing party," though the DoD never moved to correct the injustices at the core of this dispute, i.e., punishments.

(c) EXECUTIVE INQUIRY. A preliminary report in August 2008, and a final report in February 2010, by the Department of Justice's Federal Bureau of Investigation (FBI), affirmed that the perpetrator's motive in the fall 2001 anthrax letter attacks was to save the "failing" anthrax vaccine program. The FBI revealed that the anthrax letter attacks by a Defense Department scientist allowed the failing program to be "rejuvenated" ... "within a few months of the anthrax attacks." The FBI disclosed that following the attacks the "FDA fast-tracked the approval process and approved the Anthrax Vaccine ... even though it didn't meet the original potency standards." This occurred at the same time previous administration officials recommended minimizing use of the current anthrax vaccine and development of a new one.

(d) UNITED STATES CODE. According to the above legislative and judicial inquiry, prior to December 19, 2005, the DoD's program violated 10 U.S.C. § 1107 due to the mandate of an investigational vaccine. As a result, prior to 2006, DoD wrongfully punished those soldiers refusing to submit to the mandatory vaccination for essentially upholding their Oath of Office and the Uniform Code of Military Justice requirement to challenge illegal orders. Notably, the inference of legality for military orders does not apply to patently illegal orders. Accordingly, the "undisturbed" findings of the courts deserve consideration when reviewing DoD's past punishments of soldiers.² To date, the DoD not only willfully ignored the law, but also failed to dutifully rescind the erroneous punishments of soldiers in light of the aforementioned facts.

Based on the four compelling arguments above, I appeal to your sense of justice and your authorities as our Commander in Chief. I respectfully request you consider expunging the adverse actions against all soldiers previously sanctioned for refusing to comply with the DoD's illegal anthrax vaccine mandate. Just as the DoD recently presented press releases to all soldiers about Gen John D. Lavelle's posthumous correction of military records from the Vietnam era, I believe your leadership on this matter would reinforce civilian control of the armed forces and the threshold requirement to similarly correct the records for our troops at the bottom of the chain of command. I recommend a Presidential Executive Order or Proclamation to serve as an appropriate, prompt means to accomplish this honorable change.

Sincerely,



LtCol Thomas L. Rempfer

² *Rempfer v. U.S. Dep't of Air Force Board for Correction of Military Records (AFBCMR)*, 538 F. Supp. 2d 200 (D.C. 2008). September 5, 2010, from https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv2350-31.