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(Original Signature of Member)

118TH CONGRESS

1st SESSION

H. R. ____

To require the Department of Defense to correct the records of servicemembers previously punished for refusing to submit to the illegal anthrax vaccine program prior to the immunization mandate's court-directed final order publication in the Federal Register on December 19, 2005.

And,

To require the Department of Defense to correct the records of servicemembers previously punished for refusing to submit to COVID-19 vaccine prior to the immunization mandate's congressionally ordered repeal in accordance with the 2023 NDAA.

IN THE HOUSE OF REPRESENTATIVES

Representative _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To unilaterally and proactively correct the service records of the United States Department of Defense personnel previously punished or discharged for refusing to submit to Anthrax Vaccine or COVID-19 Vaccine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled

SECTION 1. SHORT TITLE.

This Act shall be cited as “Lieutenant Colonel Russell E. Dingle[i] Memorial Anthrax and COVID Vaccine Justice Act of 2023.”

SECTION. 2. BASIS FOR CORRECTION OF RECORDS OF SERVICEMEMBERS PREVIOUSLY PUNISHED FOR REFUSAL TO SUBMIT TO ANTHRAX VACCINE.

(a) LEGISLATIVE INQUIRY.— Multiple Congressional Hearings resulted in House Report 106-556 in April 2000.[ii] That report found the Department of Defense Anthrax Vaccine Immunization Program (AVIP) was conducted in conflict with Food and Drug Administration (FDA) regulations, and declared the anthrax vaccine was an investigational drug absent a properly approved indication for use against inhaled anthrax. The illegal status of the AVIP was later corroborated in Article III Federal Court findings.

(b) JUDICIAL INQUIRY.— Following a December 2003 preliminary injunction, and an October 2004 permanent injunction by the Federal District Court of Washington DC that prohibited further mandatory anthrax inoculations, and later declinations to vacate or overrule those opinions by the DC Federal Appellate Court, the mandatory nature of the AVIP was affirmed as “not substantially justified” given the vaccine licensing was never finalized by the FDA until plaintiffs compelled them to do so on December 19, 2005. On that date, the FDA published a final order for the vaccine. Because of the previously non-finalized licensure, the mandatory AVIP was affirmed as illegal and by August 2007 the servicemembers suing the Defense Department were declared the “prevailing party.”[iii]

(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.[iv] The FBI revealed that the anthrax letter attacks by a Defense Department scientist caused the 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 Adsorbed ... even though it didn’t meet the original potency standards.”

(d) UNITED STATES CODE.— According to the above finalized legislative, judicial, and executive branch inquiries, the Defense Department’s AVIP violated 10 U.S.C. §1107 due to the mandate of a vaccine that was investigational and unlicensed. In effect, the Defense Department wrongfully punished personnel for refusing to submit to the mandatory vaccination, who by doing so upheld their Oaths of Office and the Uniform Code of Military Justice requirements to challenge illegal orders. It remains uncontested that the “inference of lawfulness”[v] for military orders does not apply to “patently illegal orders.” The AVIP was patently illegal because the Defense Department initiated a vaccine investigational new drug licensure process yet did not procure from the FDA a finalized license. As a direct result, statutory requirements remained unmet until December 19, 2005. It remains academic that any personnel punished for refusing to comply with the unlawful order, prior to December 19, 2005, warrant record corrections.

SECTION. 3. BASIS FOR CORRECTION OF RECORDS OF SERVICEMEMBERS PREVIOUSLY PUNISHED FOR REFUSAL TO SUBMIT TO COVID-19 VACCINE.

(a) LEGISLATIVE INQUIRY.— Congressional intervention resulted in the 2023 NDAA rescission of the Department of Defense COVID-19 Vaccine mandate. Explanatory language in the NDAA expressed “support” for “efforts by the Secretary to ensure that the military departments have a consistent process in place to consider such requests for correction of military records and reinstatement.”^[vi] This legislation takes the additional logical step to require such corrections unilaterally and proactively as opposed to requiring requests by individual servicemembers.

(b) JUDICIAL INQUIRY.— Unlike the anthrax vaccine mandate’s federal court rulings that found that mandate illegal, COVID-19 mandate litigation is ongoing. Whereas the anthrax vaccine mandate violated 10 U.S.C. §1107, the COVID-19 vaccine challenged the congressionally mandated provisions of 10 U.S.C. §1107a, pertaining to Emergency Use Authorized unapproved medical products. Anthrax vaccine EUA precedent, as the first-ever EUA authorized, should have directly applied to COVID-19 vaccination, and therefore the same “no penalty” provisions, memorialized in the Federal Register,^[vii] are retroactively enforced through this legislation.

(c) EXECUTIVE INQUIRY.— The Department of Defense, under the Executive Branch, promulgated specific rules by which the mandatory COVID-19 mandate would be implemented. If followed, the mandate would have been in compliance with 10 U.S.C. §1107a, pertaining to Emergency Use Authorized unapproved medical products. The Secretary of Defense implementation memo for the mandate specifically stated, “Mandatory vaccination...will only use COVID-19 vaccines that receive full licensure,” and that were “FDA-approved.” This requirement never occurred throughout the mandated deadlines. Alternatively, the Secretary of Defense informed the armed forces that the DoD would “seek the President's approval” in the event that approved vaccine was not available. Ultimately, only EUA investigational unapproved medical products were utilized throughout the mandate deadlines.^[viii] The Executive Branch implementation of the mandate therefore conflicted with 10 U.S.C. §1107a, the 2005 EUA precedent, and most importantly the DoD’s own memos and rules for executing the mandatory program.

SEC. 4. CORRECTION OF RECORDS OF SERVICEMEMBERS PREVIOUSLY PUNISHED OR DISCHARGED FOR REFUSAL TO ANTHRAX VACCINE OR COVID-19 VACCINE.

(1)(a) CORRECTION.—In the case of a member or former member of the Armed Forces whomsoever for anthrax vaccine or COVID-19 vaccine was subject to any form of adverse personnel action as a result of the refusal to take a vaccine covered by section 2 and 3, the Secretary concerned, acting through the appropriate military board for the correction of military records under title 10 and 32 of the United States Code shall, not needing application from the member, shall unilaterally take such proactive actions as may be necessary to correct the military records of all members or former members so as to obviate any and all adverse consequences or withheld favorable personnel actions for any member or former member’s refusal to submit to the vaccines. For purposes of this act, with respect to COVID-19 vaccine, voluntary or involuntary separations while under duress of such orders shall also be considered an adverse action meriting relief in the form of being made whole through offers of reinstatement and retroactive entitlements. In cases where the member or former member has made a previous application for correction and not received full restoration these rules shall also apply equally and retroactively. In all scenarios the intent is to make corrections in the manner most favorable to the member.

(b) SECRETARY CONCERNED.—In this section, the term “Secretary concerned” has the meaning given that term in section 101 of title 10, United States Code.

(c) ANNUAL REPORT.— The Secretary of Defense shall submit to the congressional committees listed in paragraph 2 an annual report on activities under this section. Each such report shall identify the number of military records corrected by the respective service correction board.

(2) The congressional committees referred to in paragraph (1)(c) are the following:

(a) The Committee on Government Reform, the Committee on Armed Services, and the Committee on Veterans' Affairs of the House of Representatives.

(b) The Committee on Governmental Affairs, the Committee on Armed Services, and the Committee on Veterans' Affairs of the Senate.

[i] Lieutenant Colonel Russell E. Dingle served as an A-10 Pilot and Commander with the Connecticut Air National Guard. He led a command-directed research team in 1997 that identified the now affirmed illegalities associated with the anthrax vaccine immunization program. He testified on the findings to Congress in 1998. His research was cited by the federal court for the Doe v. Rumsfeld case related to FDA Citizen Petition Docket # 01P-0471. LtCol Dingle passed away in 2005, leaving two daughters and a widow who would be honored to have their father and husband's seminal work on behalf of U.S. troops honored by the Congress. See Lt Col Dingle bio at: <https://hoping4justice.org/about>

[ii] HR 106-556, Unproven Force Protection, Apr. 3, 2000. <https://www.congress.gov/106/crpt/hrpt556/CRPT-106hrpt556.pdf>

[iii] Federal Register, 70 Fed. Reg. 5452, 5455, Feb. 2, 2005, and Doe v. Rumsfeld fee ruling, Aug. 21, 2007. <https://nebula.wsimg.com/d0bceb467740286f7e5c351272205611?AccessKeyId=0BA19F97E21CB8613CD7&disposition=0&alloworigin=1>

[iv] FBI and DoJ Amerithrax report, Feb. 19, 2010. <https://www.justice.gov/archive/amerithrax/docs/amx-investigative-summary.pdf> and <https://nebula.wsimg.com/a4354f1d322bb11f199c56b3d0d17c4b?AccessKeyId=0BA19F97E21CB8613CD7&disposition=0&alloworigin=1>

[v] Manual for Courts-Martial (MCM), United States (2019 Edition). [https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20\(Final\)%20\(20190108\).pdf?ver=2019-01-11-115724-610](https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20(Final)%20(20190108).pdf?ver=2019-01-11-115724-610)

[vi] Joint explanatory material accompanying the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. Sec. 525 includes "Rescission of COVID-19 vaccination mandate." Excerpt: "The agreement includes a provision that would require the Secretary of Defense to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19. We believe in the importance of the Secretary following public health guidance in order to protect the health and welfare of servicemembers and their families, to include mandating vaccines based on readiness requirements. We note that the Department of Defense has mechanisms to correct a servicemember's military record for discharge due to failure to receive the COVID-19 vaccine. In addition, the military departments have the ability to consider applications for reinstatement of servicemembers who were previously separated for refusing the vaccine. We would support efforts by the Secretary to ensure that the military departments have a consistent process in place to consider such requests for correction of military records and reinstatement as long as all other eligibility requirements are met for service." <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR7776EAS-RCP117-70-JES.pdf>

[vii] Federal Register, Authorization of Emergency Use of Anthrax Vaccine Adsorbed for Prevention of Inhalation Anthrax by Individuals at Heightened Risk of Exposure Due to Attack With Anthrax; Excerpt: "relating to the option

to accept or refuse administration of AVA, the AVIP will be revised to give personnel the option to refuse vaccination. Individuals who refuse anthrax vaccination will not be punished. Refusal may not be grounds for any disciplinary action under the Uniform Code of Military Justice. Refusal may not be grounds for any adverse personnel action. Nor would either military or civilian personnel be considered non-deployable or processed for separation based on refusal of anthrax vaccination. There may be no penalty or loss of entitlement for refusing anthrax vaccination. This information shall read in the trifold brochure provided to potential vaccine recipients as follows: You may refuse anthrax vaccination under the EUA, and you will not be punished. No disciplinary action or adverse personnel action will be taken. You will not be processed for separation, and you will still be deployable. There will be no penalty or loss of entitlement for refusing anthrax vaccination.” Notice by the Food and Drug Administration on 02/02/2005. <https://www.federalregister.gov/documents/2005/02/02/05-2028/authorization-of-emergency-use-of-anthrax-vaccine-adsorbed-for-prevention-of-inhalation-anthrax-by>

[viii] Secretary of Defense COVID-19 vaccine mandate implementation memo, Aug. 27, 2021. <https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICE-MEMBERS.PDF> and Aug. 9, 2021. <https://www.usafa.edu/app/uploads/MESSAGE-TO-THE-FORCE-MEMO-VACCINE.pdf>