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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To correct the records of the United States Department of Defense servicemembers previously punished for refusing to take Anthrax Vaccine Adsorbed prior to December 19, 2005.

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 may be cited as "Lt Col Russ Dingle¹ Memorial Anthrax Vaccine Justice Act of 2019".

¹ 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.

SEC. 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. That report found the Department of Defense Anthrax Vaccine Immunization Program (AVIP) to have been conducted in conflict with Food and Drug Administration (FDA) regulations, and declared the anthrax vaccine to have been investigational and experimental 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 prohibiting 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, including approval for use against inhalation anthrax. Because of this 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.”

(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 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 and judicial inquiries the Defense Department's AVIP violated 10 U.S.C. §1107 due to the mandate of a vaccine that was investigational because until December 19, 2005 the anthrax vaccine was never properly licensed by the FDA. In effect, the Defense Department wrongfully punished those servicemen and women 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. Indeed, it remains uncontested that the inference of legality for military orders does not apply to patently illegal orders. The AVIP was patently illegal because the Defense Department initiated the vaccine's 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 servicemember punished for refusing to comply with the unlawful order prior to December 19, 2005 must have their service records corrected.

**SEC. 3. CORRECTION OF RECORDS OF SERVICEMEMBERS
PREVIOUSLY PUNISHED FOR REFUSAL TO ANTHRAX VACCINE.**

(a) CORRECTION.—In the case of a member or former member of the Armed Forces whomsoever before the December 19, 2005 publication of the final order for anthrax vaccine was subject to any form of adverse personnel action as a result of the refusal to take a vaccine covered by section 2, 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 unilaterally take such proactive actions as may be necessary to correct the military records of all members or former members so as to obviate all adverse consequences of the member or former member's refusal to take anthrax vaccine. Refusal to take Anthrax vaccine shall not be considered an offense under any article of the UCMJ nor punishable by any administrative means and any such offenses, guilty pleas, findings, sentences or punishments (judicial and non-judicial) levied shall be voided retroactively. For purposes of this act, voluntary separations while under duress of such orders shall also be

considered an adverse action meriting relief. In cases where the member or former member has made an 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.

Due to the manner in which circumstances were not well understood by commanders, the Government of the United States shall henceforth indemnify members of the chain of command at its own expense for any claims by subordinate members who received punishment.

(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.—(1) 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) 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.