

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NAVY SEAL 1, United States Navy,
NAVY SEAL 2, United States Navy,
SENIOR CHIEF PETTY OFFICER, United
States Navy, CHAPLAIN, United
States Navy, NAVY EOD OFFICER,
United States Navy, COMMANDER
SURFACE WARFARE OFFICER, United
States Navy, NAVY CHIEF WARRANT
OFFICER, United States Navy
Reserve, COLONEL FINANCIAL
MANAGEMENT OFFICER, United States
Marine Corps, LIEUTENANT COLONEL 1,
United States Marine Corps,
LIEUTENANT COLONEL 2, United States
Marine Corps, RESERVE LIEUTENANT
COLONEL, United States Marine
Corps, MAJOR, United States Marine
Corps, CAPTAIN, United States
Marine Corps, CAPTAIN 2, United
States Marine Corps, CAPTAIN 3,
United States Marine Corps, FIRST
LIEUTENANT, United States Marine
Corps, SECOND LIEUTENANT, United
States Marine Corps, CHIEF WARRANT
OFFICER 3, United States Marine
Corps, LANCE CORPORAL 1, United
States Marine Corps, LANCE CORPORAL
2, United States Marine Corps,
MAJOR, United States Air Force,
CHAPLAIN, United States Air Force,
RESERVE LIEUTENANT COLONEL 1,
United States Air Force, RESERVE
LIEUTENANT COLONEL 2, United States
Air Force, MASTER SERGEANT SERE
SPECIALIST, United States Air
Force, TECHNICAL SERGEANT, United
States Air Force, CADET, United
States Air Force Academy, COLONEL,
United States Army, ARMY RANGER,
United States Army, NATIONAL
GUARDSMAN, Virginia Army National
Guard, PILOT, United States Coast

Civil Docket
8:21-cv-02429-SDM-TGW

Guard, LCDR PILOT, United States Coast Guard, LIEUTENANT, United States Coast Guard, MANAGEMENT AND PROGRAM ANALYST, Citizenship and Immigration Services, Department of Homeland Security, STATE DEPARTMENT EMPLOYEE 1, and FEDERAL CIVILIAN CONTRACTOR EMPLOYER, for themselves and all others similarly situated,

Plaintiffs,

vs.

LLOYD AUSTIN, in his official capacity as Secretary of the United States Department of Defense, CHRISTINE WORMUTH, in her official capacity as Secretary of the United States Army, CARLOS DEL TORO, in his official capacity as Secretary of the United States Navy, GEN. DAVID H. BERGER, in his official capacity as Commandant of the United States Marine Corps, FRANK KENDALL, in his official capacity as Secretary of the United States Air Force, ALEJANDRO MAYORKAS, in his official capacity as Secretary of the Department of Homeland Security, ROBIN CARNAHAN, in her official capacity as Administrator of the United States General Services Administration, KIRAN AHUJA, in her official capacity as Director of the United States Office of Personnel Management, LESLEY A. FIELD, in her official capacity as Acting Administrator for Federal Procurement Policy, Office of Management and Budget, and MATHEW C. BLUM, in his official capacity as Chair of the Federal Acquisition Regulatory Council,

Defendants.

Transcript of Preliminary Injunction Hearing

Heard in Courtroom 15A
Sam M. Gibbons United States Courthouse
801 North Florida Avenue
Tampa, Florida 33602
Thursday - March 10, 2022
10:03 a.m. - 6:25 p.m.

BEFORE THE HONORABLE STEVEN D. MERRYDAY

UNITED STATES DISTRICT JUDGE

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Federal Official Court Reporter
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Proceedings recorded by machine shorthand
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I N D E X

<u>WITNESSES CALLED BY THE PLAINTIFF:</u>	<u>PAGE</u>
COMMANDER SURFACE WARFARE OFFICER, UNITED STATES NAVY	
Direct Examination By Mr. Gannam	20
Cross-Examination By Ms. Powell	46
Redirect Examination By Mr. Gannam	63
PETER CONSTANTINE CHAMBERS	
Direct Examination By Mr. Staver	69
Cross-Examination By Ms. Yang	116
Continued Cross-Examination By Ms. Yang	130
Redirect Examination By Mr. Staver	138
THERESA MARIE LONG	
Direct Examination By Mr. Staver	141
Cross-Examination By Ms. Yang	193
Redirect Examination By Mr. Staver	211
STEWART HILL TANKERSLEY	
Direct Examination By Mr. Staver	214
Cross-Examination By Ms. Powell	241
Redirect Examination By Mr. Staver	247
Opening Statements by Ms. Powell	8
Opening Statements by Mr. Staver	16
Closing Arguments by Ms. Powell	248
Closing Arguments by Mr. Gannam	253
Closing Arguments by Mr. Staver	266
Closing Arguments by Ms. Powell	271
Reporter's Certificate	273

EXHIBITS

<u>PLAINTIFFS'</u>	<u>ADMITTED</u>
Exhibit 1	87
Exhibit 2	94
Exhibit 3	97
Exhibit 5	100
Exhibit 6	102
Exhibit 7	103
Exhibit 8	115
Exhibit 9	222
Exhibit 11	189
Exhibit 18	233
Exhibit 19	237
 DEFENDANTS'	
Exhibit 1	<u>135</u>

PROCEEDINGS

1

(Open court.)

10:03:25AM

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10:03:25AM

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THE COURT: Please be seated, one and all.

10:03:28AM

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10:03:37AM

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10:03:42AM

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10:03:45AM

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And the chief judge on Monday dissolved the mask mandate, and it was discretionary in my courtroom anyway. I will say that for the benefit of those who might not have been here before.

10:03:47AM

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10:04:01AM

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We are together this morning once again in case 21-civil-2429, Navy SEAL 1, et al., versus Biden, et al., although I don't think he's any longer a party.

10:04:07AM

11

Who will speak for the plaintiff this morning?

10:04:11AM

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MR. STAVER: I will, Your Honor. Mat Staver and

10:04:15AM

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Roger Gannam.

10:04:16AM

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10:04:19AM

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THE COURT: Good morning, Mr. Staver, and good morning, Mr. Gannam.

10:04:21AM

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MR. GANNAM: Good morning.

10:04:22AM

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THE COURT: And who will speak for the defendants this morning?

10:04:23AM

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MS. POWELL: Amy Powell for DOJ for the defendants.

10:04:24AM

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With me at counsel table also presenting today is Catherine Yang. With me today, not presenting, is Commander Osterhues from the Navy.

10:04:28AM

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THE COURT: Good morning, and welcome.

10:04:38AM

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COMMANDER OSTERHUES: Good morning, sir.

10:04:39AM

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THE COURT: All right. We are here on the -- I think

10:04:44AM 1 Document 118 -- is that right? -- the defendants' emergency
10:04:48AM 2 motion for stay pending appeal, I think the part of it having
10:04:53AM 3 to do with the immediate administrative stay has been resolved,
10:04:56AM 4 but we still have the question of a stay pending appeal.

10:05:00AM 5 So, Ms. Powell, did you want to be heard further on
10:05:05AM 6 the motion?

10:05:08AM 7 MS. POWELL: I'm happy to do that now, Your Honor, or
10:05:12AM 8 hold it until after we've dealt with witnesses. Defer to the
10:05:15AM 9 Court on your preferences.

10:05:16AM 10 THE COURT: Yes. Did you and Mr. Staver talk and
10:05:18AM 11 agree to -- probably not --

10:05:20AM 12 MS. POWELL: No.

10:05:20AM 13 THE COURT: -- agree to some method of presentation?
10:05:24AM 14 Do you have witnesses?

10:05:25AM 15 MS. POWELL: We did not bring witnesses, Your Honor,
10:05:28AM 16 no.

10:05:28AM 17 THE COURT: That's right.

10:05:30AM 18 Well, I will leave that in your discretion. If you
10:05:33AM 19 would like to speak now, you're welcome to do so. If you'd
10:05:36AM 20 like to defer any presentation, given the fact that you're not
10:05:40AM 21 going to offer evidence, you can do that as well.

10:05:43AM 22 MS. POWELL: I'm happy to begin speaking.

10:05:45AM 23 THE COURT: You can do part now and part later, I'm
10:05:47AM 24 not trying to exclude you from doing anything you want to do.

10:05:50AM 25 MS. POWELL: Sure, sure. I'm happy to begin talking

OPENING STATEMENTS BY MS. POWELL

10:05:52AM 1 now. Of course if the Court has particular questions, I'd
10:05:55AM 2 welcome the Court's direction.

10:05:57AM 3 THE COURT: All right. Thank you.

10:05:57AM 4 MS. POWELL: The military defendants here have shown
10:05:59AM 5 at least, we think, a substantial case on the merits. And
10:06:02AM 6 given the traditional deference due to the military in this
10:06:05AM 7 area, we think that the balance of harms tip sharply in the
10:06:09AM 8 military's favor.

10:06:10AM 9 The Court's order against enforcing the vaccine
10:06:13AM 10 mandate and against any adverse action arising out of their
10:06:16AM 11 requests substantially interferes with military judgment as
10:06:19AM 12 laid out in the multiple declarations submitted in this matter
10:06:24AM 13 and has the deleterious affect of sidelining a guided-missile
10:06:27AM 14 destroyer and interfering with the potential deployment of 300
10:06:31AM 15 Marines as well.

10:06:33AM 16 The declarations lay out a number of harms related
10:06:36AM 17 both to the additional risks from COVID as well as to good
10:06:40AM 18 order and discipline. To summarize briefly, realizing this was
10:06:46AM 19 all quite laid out in the briefing and the declarations --

10:06:49AM 20 THE COURT: Yes.

10:06:49AM 21 MS. POWELL: -- with respect to Navy Commander and
10:06:53AM 22 particular vaccination status creates a risk of serious illness
10:06:57AM 23 to him, some additional risks to his crew and effects on the
10:07:00AM 24 operations of the ship, including his inability to enter
10:07:03AM 25 certain ports.

OPENING STATEMENTS BY MS. POWELL

10:07:05AM 1 Similarly, with respect to Lieutenant Colonel 2, many
10:07:11AM 2 of the Navy declarations, like Caudle and Merz and Dwyer, apply
10:07:17AM 3 to her as well, because she is scheduled to be on a deployed
10:07:21AM 4 ship. But the declarations specific to her indicate that she
10:07:24AM 5 as an unvaccinated person has an increased risk of illness or
10:07:28AM 6 serious infection and, thus, is a risk to herself and her crew,
10:07:33AM 7 and it is particularly important that the commanding officer
10:07:35AM 8 not become ill, and that it also limits the utility of her
10:07:41AM 9 battalion because she will not be able to enter certain ports
10:07:44AM 10 or certain countries.

10:07:46AM 11 The good order and discipline harms are similarly
10:07:51AM 12 laid out with respect to both plaintiffs here. The military's
10:07:55AM 13 mission demands a culture of immediate and unquestioned
10:07:58AM 14 compliance with orders. Here, plaintiffs went through the
10:08:01AM 15 exemption process. The original vaccine mandate gave them the
10:08:05AM 16 option of pursuing an exemption process, and they certainly
10:08:08AM 17 were not considered to be out of compliance with order while
10:08:10AM 18 they pursued that process.

10:08:12AM 19 That process is now complete, they were given an
10:08:15AM 20 order and declined to follow it. Under those circumstances,
10:08:18AM 21 even if they had good reason to do so, leaving them in command
10:08:21AM 22 when they cannot -- even if the reasons are strong and powerful
10:08:25AM 23 to them, if they cannot follow lawful orders, it creates a good
10:08:28AM 24 order and discipline problem that reverberates across the
10:08:33AM 25 Department of the Navy.

OPENING STATEMENTS BY MS. POWELL

10:08:33AM 1 With respect to Navy Commander, there are additional
10:08:37AM 2 concerns as well laid out in further detail in the declarations
10:08:42AM 3 that not only has he disobeyed an order he is expected to
10:08:45AM 4 enforce, he has compromised his trustworthiness in other ways.
10:08:51AM 5 His commanding officer believes he was misled about the leave
10:08:54AM 6 request for the last hearing. Commander testified to the
10:08:57AM 7 contrary to be sure that he told his commanding officer he was
10:09:01AM 8 leaving town, but he also testified that he told his executive
10:09:05AM 9 officer he was leaving town, and the executive officer says
10:09:08AM 10 otherwise.

10:09:10AM 11 Recognizing that all that is disputed, there are a
10:09:12AM 12 few things that are not disputed. He did disobey orders
10:09:16AM 13 regarding getting approval for a COVID-19 mitigation plan
10:09:20AM 14 before he was scheduled to go out on leave. He's required to
10:09:24AM 15 do that before requesting leave, much less before he is already
10:09:26AM 16 out on leave, it was after he had already received a letter of
10:09:30AM 17 instruction last fall for exercising poor judgment with regard
10:09:36AM 18 to COVID-19 mitigation measures and potentially exposing his
10:09:40AM 19 crew to COVID.

10:09:41AM 20 Also undisputed is the fact that, whether he agrees
10:09:45AM 21 or not, his commanding officer does not trust him, and his
10:09:50AM 22 subordinate officer contradicted his testimony given in this
10:09:52AM 23 court. Under these circumstances, where he does not trust the
10:09:56AM 24 officers above and below him, and they do not trust him, he
10:09:59AM 25 cannot command a warship.

OPENING STATEMENTS BY MS. POWELL

10:10:01AM 1 The harm to plaintiffs on the other hand is that if
10:10:06AM 2 the injunction is stayed or modified such that they can be
10:10:10AM 3 reassigned, they will be reassigned to non-command roles and be
10:10:14AM 4 processed for potential separation. That separation process is
10:10:17AM 5 not automatic. They have the opportunity to make RFRA
10:10:21AM 6 arguments again to the Board of Inquiry. Both of these
10:10:23AM 7 plaintiffs are entitled to a Board of Inquiry where they can
10:10:28AM 8 make the case that they should not be separated, that they
10:10:30AM 9 still have sufficient value to the Navy, even as unvaccinated
10:10:33AM 10 individuals that they should be retained in service or even
10:10:35AM 11 placed in different positions. If the board disagrees with the
10:10:38AM 12 decision to date, they can be retained in service, and that
10:10:41AM 13 decision is binding on the Secretary. That process is expected
10:10:46AM 14 to take months, possibly a year. It is not in and of itself an
10:10:51AM 15 irreparable harm to the plaintiffs.

10:10:54AM 16 On the merits, bearing in mind that we need only make
10:11:01AM 17 a substantial case on the merits at this stage for the motion
10:11:04AM 18 to stay, we certainly believe that we have made a substantial
10:11:08AM 19 case both with respect to justiciability as well as the
10:11:12AM 20 standards for RFRA, that typically courts should not elect the
10:11:19AM 21 authority to enter injunctions that could intrude on military
10:11:24AM 22 judgments in this area. With respect to compelling interest
10:11:26AM 23 and the availability of less restrictive alternatives, we have
10:11:30AM 24 put in personal declarations from the actual decisionmakers,
10:11:34AM 25 some of the most senior military officers in the country to

OPENING STATEMENTS BY MS. POWELL

10:11:37AM 1 explain that they personally consider each individual exemption
10:11:40AM 2 request and make a decision based on the individualized
10:11:43AM 3 circumstances before them, including the submissions of the
10:11:45AM 4 requester, their service records, the chaplains' interviews and
10:11:50AM 5 the other material that is properly before them.

10:11:52AM 6 Not only are unvaccinated service members at higher
10:11:57AM 7 risk of contracting and spreading COVID-19, the consequences of
10:12:01AM 8 infection in even one infected service member can be severe.
10:12:07AM 9 Several of the declarations make this point, including the Merz
10:12:10AM 10 declaration recently submitted. And there are collateral
10:12:15AM 11 consequences, like the inability to deploy such people to
10:12:19AM 12 certain countries, an ability for them to disembark in certain
10:12:22AM 13 countries, and less restrictive measures cannot solve problems
10:12:28AM 14 like that. Not only is vaccination superior to measures like
10:12:32AM 15 masking or social distancing that might not be available
10:12:36AM 16 onboard ship in any case, it's the only way to ensure that they
10:12:40AM 17 can enter a country with the COVID-19 vaccine requirement.

10:12:44AM 18 The Court previously suggested that they had served
10:12:47AM 19 successfully unvaccinated without unmanageable consequences.
10:12:51AM 20 But there were consequences, there are always consequences, and
10:12:54AM 21 those are laid out in some of the declarations, like Caudle and
10:12:58AM 22 Dwyer. And indeed in their testimony, both plaintiffs
10:13:02AM 23 testified about COVID outbreaks onboard ship or in units that
10:13:07AM 24 they observed which led to quarantine, the unavailability of
10:13:10AM 25 service members, people being transferred off ship, all of

OPENING STATEMENTS BY MS. POWELL

10:13:15AM 1 those things have an impact on the mission of the Navy and the
10:13:18AM 2 Marine Corps.

10:13:18AM 3 Ultimately, the fundamental mission of the military
10:13:23AM 4 is to be ready at any given time to fight and win wars. They
10:13:27AM 5 cannot do that if they are sick. Resources get tied up in
10:13:32AM 6 quarantine, the Navy's loss -- millions of service days have
10:13:39AM 7 been lost to COVID-19. And I think these plaintiffs' own
10:13:42AM 8 testimony at the hearing last time actually tended to confirm
10:13:45AM 9 that, that there are consequences, that resources have to be
10:13:47AM 10 shuffled around when there are outbreaks.

10:13:50AM 11 That doesn't mean that every mission fails, but some
10:13:53AM 12 will, and it is particularly severe of course when that person
10:13:56AM 13 could be the commanding officer in the midst of a mission.
10:13:59AM 14 There is also the problem -- it's laid out in I think the
10:14:05AM 15 Caudle declaration -- that while unvaccinated members were
10:14:08AM 16 onboard ship, they were required to be within 72 hours of
10:14:11AM 17 higher level medical care at any given time, because a ship
10:14:14AM 18 like a destroyer does not have higher level medical care or
10:14:16AM 19 even a physician onboard.

10:14:19AM 20 The Court observed that there's no specific data in
10:14:30AM 21 the record with respect to these individuals' sort of
10:14:35AM 22 particular health conditions, and I think that's true. The
10:14:40AM 23 Rans declaration points out that even young and healthy people
10:14:43AM 24 are at risk of severe COVID and long COVID, that even people
10:14:48AM 25 who have mild cases or even asymptomatic cases sometimes seem

OPENING STATEMENTS BY MS. POWELL

10:14:50AM 1 to have long-term consequences.

10:14:52AM 2 One of the studies she cites in her declaration
10:14:55AM 3 points to a study of -- I forget how many, but more than a
10:15:00AM 4 hundred international athletes who contracted COVID, and
10:15:03AM 5 somewhere over 85 percent of them had significant symptoms
10:15:07AM 6 persisting longer than 28 days, with 14 percent of them I think
10:15:11AM 7 having symptoms persisting even longer than that.

10:15:17AM 8 Now, if these particular plaintiffs had been in poor
10:15:21AM 9 condition, that certainly would have been taken note of in
10:15:25AM 10 considering their request. But them being in good condition is
10:15:29AM 11 expected to be the norm of course across the Navy and the
10:15:32AM 12 Marine Corps. The expectation is that others -- that anyone
10:15:35AM 13 who is on duty in the Navy or Marine Corps is in good physical
10:15:40AM 14 condition. And the Rans declaration, like Young and Lescher
10:15:45AM 15 and others who have proffered declarations in this case take
10:15:48AM 16 that into account when they assess the risk of COVID to the
10:15:52AM 17 force.

10:15:52AM 18 In any case, I guess to sum up, a lack of finding
10:16:02AM 19 about, you know, the commander's body mass index or something
10:16:05AM 20 like that, we don't think undercuts in any way the finding --
10:16:08AM 21 or the military judgment that a vaccine requirement in this
10:16:11AM 22 instance is the best way to protect the force.

10:16:14AM 23 I'm happy to answer any questions the Court has.
10:16:19AM 24 There are -- I'd like at some point to address the Court about
10:16:23AM 25 some of the plaintiffs' proffered witnesses, but -- does the

OPENING STATEMENTS BY MS. POWELL

10:16:26AM 1 Court have further questions right now?

10:16:27AM 2 THE COURT: I would think that you would -- is it
10:16:30AM 3 satisfactory just to do that as they're called in the normal
10:16:34AM 4 order? Did you have some sort of global --

10:16:37AM 5 MS. POWELL: I had a global point --

10:16:39AM 6 THE COURT: Okay.

10:16:40AM 7 MS. POWELL: -- that we would like the Court to
10:16:41AM 8 exclude the testimony of Drs. Long, Chambers, and Tankersley.
10:16:45AM 9 I don't know if all of them are here. But the plaintiffs
10:16:48AM 10 appear to have proffered them according to their opposition as
10:16:52AM 11 potential experts on the safety and efficacy of the vaccine.

10:16:56AM 12 We are here of course on a motion to stay a
10:17:02AM 13 preliminary injunction with respect to these two individuals.
10:17:03AM 14 I don't view the plaintiffs' original motion with respect to
10:17:06AM 15 these two individuals, or anything in the Court's order, or
10:17:08AM 16 anything in our motion to stay as having previously addressed
10:17:13AM 17 this issue at all, and it seems improper to raise it at this
10:17:17AM 18 late stage in opposition to a stay motion. It's certainly
10:17:21AM 19 unhelpful to the Court at this point to proffer this new expert
10:17:24AM 20 testimony from new experts that have not previously been
10:17:27AM 21 involved in this case.

10:17:28AM 22 Second, we think the inclusion or the acceptance of
10:17:32AM 23 their testimony at this point would be -- recognizing that the
10:17:36AM 24 rules of evidence at preliminary proceedings are somewhat
10:17:39AM 25 looser, it would unfair and unreasonable to accept them now on

OPENING STATEMENTS BY MR. STAVER

10:17:43AM 1 two days' notice of new people who have not previously been
10:17:45AM 2 involved in this case.

10:17:46AM 3 We haven't seen a declaration related to this case,
10:17:49AM 4 much less an expert report or expert discovery, nor even a
10:17:52AM 5 summary of what they're going to testify about other than it
10:17:55AM 6 has to do with the safety and efficacy of the vaccines. We
10:17:59AM 7 think it is unlikely, that if we had that opportunity, that
10:18:01AM 8 they could be qualified as experts or that their submission
10:18:05AM 9 would comply with the federal rules or the *Daubert* standards of
10:18:09AM 10 evidence in this area, and they just don't speak to any issues
10:18:13AM 11 that the Court needs to decide today in any case, nor do they
10:18:16AM 12 seem to properly be fact witnesses as far as we're aware as to
10:18:19AM 13 any issue that is before the Court in the motion to stay.

10:18:24AM 14 THE COURT: All right. Thank you, Ms. Powell.

10:18:27AM 15 And I know a couple of times before when you've
10:18:30AM 16 argued, I've promised to let you argue without interrupting,
10:18:34AM 17 and I never did it, but I did this morning.

10:18:38AM 18 All right. Mr. Staver.

10:18:41AM 19 MR. STAVER: Good morning, Your Honor.

10:18:43AM 20 THE COURT: Good morning.

10:18:44AM 21 MR. STAVER: You had -- before we briefly address
10:18:48AM 22 this, and then we're going to actually wait till the end to
10:18:51AM 23 rebut the argument that was just presented by and large after
10:18:55AM 24 we present the witnesses, but you also asked us to address the
10:19:00AM 25 handling of the case --

OPENING STATEMENTS BY MR. STAVER

10:19:01AM 1 THE COURT: Mm-hmm.

10:19:02AM 2 MR. STAVER: -- and there's now three cases: there's
10:19:04AM 3 this case, there are two outstanding motions in this case, the
10:19:08AM 4 motion on preliminary injunction for the rest of the
10:19:11AM 5 plaintiffs, and then the class certification or conditional
10:19:14AM 6 certification.

10:19:15AM 7 THE COURT: And there are other cases in other
10:19:17AM 8 places.

10:19:18AM 9 MR. STAVER: Right, right. And in fact -- so the
10:19:20AM 10 other --

10:19:21AM 11 THE COURT: And more all the time.

10:19:25AM 12 MR. STAVER: There's more all the time. In fact, as
10:19:27AM 13 you know, seven judges have reviewed RFRA, and all of them have
10:19:32AM 14 come to the same conclusion that Your Honor has come to. Three
10:19:34AM 15 on the Fifth Circuit Court of Appeals and four other district
10:19:37AM 16 court decisions, all of which have concluded that the
10:19:40AM 17 Department of Defense and the various military branches are
10:19:43AM 18 blatantly violating the Religious Freedom Restoration Act.

10:19:47AM 19 Clearly, that is a serious issue. If there is a
10:19:51AM 20 violation of an order, it's not a violation from our plaintiffs
10:19:56AM 21 as it relates to "get the shot," it's a preceding violation of
10:20:02AM 22 the federal Religious Freedom Restoration Act and even the
10:20:05AM 23 First Amendment. That's where the violation actually begins,
10:20:08AM 24 and it is rampant, and it is frankly abusive, and it is
10:20:11AM 25 widespread, and we can address that more as we come to the

OPENING STATEMENTS BY MR. STAVER

10:20:15AM 1 conclusion of our hearing today.

10:20:17AM 2 But in looking at the process of the case, those two
10:20:22AM 3 motions are still outstanding as this Court knows. The other
10:20:25AM 4 two cases that were severed, the employer -- the federal
10:20:28AM 5 employer and the federal civil contractors, we propose that
10:20:32AM 6 this Court stay those at this point because there is no
10:20:37AM 7 immediacy for us to proceed on that at this stage and take some
10:20:42AM 8 of the burden away from the Court.

10:20:44AM 9 THE COURT: Mr. Staver, let me interrupt you just a
10:20:46AM 10 second.

10:20:46AM 11 MR. STAVER: Yes.

10:20:47AM 12 THE COURT: I was going to suggest at the conclusion
10:20:48AM 13 of this hearing that I would meet with counsel and we can
10:20:52AM 14 discuss this maybe in a little bit more relaxed format.

10:20:57AM 15 MR. STAVER: Sure, we can do that.

10:21:00AM 16 THE COURT: And before you went to -- I understand
10:21:03AM 17 you're going to talk to Judge Porcelli today, or whenever, and
10:21:08AM 18 so we could talk about these procedural matters at that point.

10:21:13AM 19 MR. STAVER: Okay.

10:21:13AM 20 THE COURT: I do feel as -- I don't know this,
10:21:16AM 21 because I haven't talked to either of you about it, but I'm
10:21:19AM 22 sure both counsel do as well, we need to -- a decision must be
10:21:25AM 23 made soon as to how to manage these cases.

10:21:28AM 24 MR. STAVER: Yes.

10:21:29AM 25 THE COURT: And I certainly would appreciate any

OPENING STATEMENTS BY MR. STAVER

10:21:31AM 1 assistance that I can get in making that decision. I know
10:21:35AM 2 there are some other factors that bear on both sides'
10:21:38AM 3 objectives that may not be consistent with that, legitimate
10:21:45AM 4 factors that come to bear, but I thought we would talk about
10:21:49AM 5 this --

10:21:49AM 6 MR. STAVER: Very good.

10:21:50AM 7 THE COURT: -- immediately after the hearing,
10:21:52AM 8 depending on when it ends, perhaps after lunch after the
10:21:56AM 9 hearing or something, but depending on how long it goes. But
10:22:00AM 10 we'll get to that, and then we can see where that leads us.

10:22:06AM 11 MR. STAVER: Okay. Very good.

10:22:07AM 12 With that in mind, we would like to just proceed with
10:22:12AM 13 the first witness --

10:22:12AM 14 THE COURT: You may.

10:22:14AM 15 MR. STAVER: -- which would be the Commander.

10:22:15AM 16 THE COURT: You may.

10:22:29AM 17 Good morning, sir. Let me ask you to pause and raise
10:22:29AM 18 your right hand.

10:22:29AM 19 COMMANDER SURFACE WARFARE OFFICER, UNITED STATES NAVY,
10:22:29AM 20 having been sworn or affirmed under oath, was examined and
10:22:36AM 21 testified as follows:

10:22:36AM 22 THE COURT: State your name, please.

10:22:38AM 23 Are you the Lieutenant Commander who is referred to
10:22:42AM 24 in the complaint in this action?

10:22:45AM 25 THE WITNESS: Yes, sir.

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:22:45AM 1 THE COURT: Please have a seat in the witness stand,
10:22:48AM 2 make yourself comfortable. We need to attach that microphone
10:22:55AM 3 with which I think you're familiar.

10:23:01AM 4 And I'll recognize Mr. Gannam for his direct
10:23:06AM 5 examination.

10:23:07AM 6 MR. GANNAM: Thank you, Your Honor.

10:23:11AM 7 May it please the Court.

10:23:11AM 8 DIRECT EXAMINATION

10:23:11AM 9 BY MR. GANNAM:

10:23:16AM 10 Q. Commander, will you please just state again for the record
10:23:21AM 11 that you are in fact the Navy Commander Surface Warfare Officer
10:23:27AM 12 proceeding under pseudonym in this case?

10:23:30AM 13 A. I am the Navy Commander.

10:23:34AM 14 Q. And, Commander, are you aware of a preliminary injunction
10:23:37AM 15 order that was entered by this Court on February 18 essentially
10:23:42AM 16 prohibiting the Navy from taking any adverse action against you
10:23:45AM 17 as a result of your unvaccinated status?

10:23:48AM 18 A. Yes, sir.

10:23:49AM 19 Q. And are you aware that also on February 28th the
10:23:53AM 20 defendants filed an emergency motion in this court to stay that
10:23:58AM 21 preliminary injunction order?

10:23:59AM 22 A. Yes, I am.

10:24:00AM 23 Q. Have you read that motion to stay?

10:24:02AM 24 A. I have.

10:24:04AM 25 Q. I'm going to refer to a few portions of it.

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

- 10:24:08AM 1 On page 1, and this is, for the record, Document 118,
- 10:24:13AM 2 page 1, about three-quarters of the way down, it reads, "The
- 10:24:18AM 3 Order is an extraordinary intrusion upon the inner workings of
- 10:24:22AM 4 the military that presents a direct and imminent threat to
- 10:24:25AM 5 national security during a global military crisis, and it
- 10:24:29AM 6 indefinitely sidelines a Navy warship."
- 10:24:31AM 7 Had you read that statement in the motion?
- 10:24:34AM 8 A. Yes, sir, I did.
- 10:24:35AM 9 Q. And did you understand that warship to be referring to the
- 10:24:38AM 10 destroyer that you command?
- 10:24:40AM 11 A. Yes, sir.
- 10:24:42AM 12 Q. I also want to refer to page 16 of the same document,
- 10:24:46AM 13 Document 118, about halfway down it reads, "By forcing the Navy
- 10:24:50AM 14 to keep in place a commander of a destroyer who has lost the
- 10:24:55AM 15 trust of his superior officers and the Navy at large, this
- 10:24:58AM 16 Order effectively places a multi-billion dollar guided missile
- 10:25:02AM 17 destroyer out of commission."
- 10:25:03AM 18 Do you remember reading that statement in the motion?
- 10:25:06AM 19 A. Yes, sir, I do.
- 10:25:08AM 20 Q. On February 28th, when the defendants filed this motion
- 10:25:12AM 21 stating that your destroyer was indefinitely sidelined and
- 10:25:16AM 22 effectively out of commission, where were you?
- 10:25:19AM 23 A. I was out at sea.
- 10:25:22AM 24 Q. How were you out at sea, Commander?
- 10:25:24AM 25 A. I was commanding my warship on a two-week underway period

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:25:28AM 1 conducting training exercises.

10:25:31AM 2 Q. And can you explain what kind of training exercises you
10:25:35AM 3 were performing?

10:25:36AM 4 A. Yes, sir. Specifically my ship is in our training cycle,
10:25:43AM 5 and we have basic mission areas that we need to conduct
10:25:47AM 6 training, assessments, and certifications on to get us ready.

10:25:53AM 7 Most recently, my ship came out of a maintenance
10:25:56AM 8 availability last year, we came out of a shipyard. When you
10:25:58AM 9 come out of a shipyard, you also have to do some engineering
10:26:01AM 10 light-off assessments, dock trials, crew certification. We
10:26:05AM 11 fast cruise to make sure the ship is qualified, watch bills,
10:26:08AM 12 and ready to conduct sea trials, which was generally the first
10:26:12AM 13 underway period that the ship has since preceding the shipyard
10:26:16AM 14 availability window. We conducted that in December.

10:26:19AM 15 We closed out our maintenance phase window in that time
10:26:23AM 16 frame and started our basic phase training cycle; it's
10:26:27AM 17 generally about six months. We started that in January and it
10:26:30AM 18 will go into July.

10:26:32AM 19 Once our ship finishes that basic phase training cycle, we
10:26:36AM 20 start moving into integrative and advanced phases where we
10:26:41AM 21 integrate with other assets, working with, you know, a strike
10:26:43AM 22 group so we can, you know, certify to go on deployment.

10:26:47AM 23 My ship right now is in that basic window where we're
10:26:52AM 24 working on our basic certifications. Basic certifications are
10:26:55AM 25 not warfare specific. They include basic things that a warship

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:26:59AM 1 needs to do, like seamanship, navigation, damage control,
10:27:02AM 2 engineering, aviation, and communications. This past two-week
10:27:08AM 3 underway, we were specifically doing engineering training and
10:27:11AM 4 certifications to make sure we knew how to do engineering
10:27:15AM 5 evolutions, drills, and combat main space fire.

10:27:20AM 6 We did that all successfully. We finished that actually a
10:27:24AM 7 day early over that two-week period, and we were moving very
10:27:28AM 8 well in accordance of the assessment team that was onboard to
10:27:31AM 9 evaluate us. Most ships, and this is from the assessor's point
10:27:35AM 10 of view that I got, don't always finish that on time. They
10:27:37AM 11 have to, you know, continue, you know, doing these evolutions
10:27:42AM 12 and drills, you know, later underways which kind of prolong
10:27:45AM 13 their training time.

10:27:46AM 14 My ship was able to do that a day early. I try to move
10:27:50AM 15 forward and ask for to finish our certification altogether, we
10:27:54AM 16 didn't get approval to do that due to the inspection team's
10:27:57AM 17 shore leadership management, but that's okay. My ship
10:28:01AM 18 celebrated that victory for getting through our engineering
10:28:03AM 19 drills and certifications that we were required to complete in
10:28:04AM 20 that window.

10:28:06AM 21 Q. And were you in command of the ship throughout this
10:28:09AM 22 training exercise?

10:28:10AM 23 A. Yes, sir, I was.

10:28:11AM 24 Q. And were you in command of the ship -- or strike that.

10:28:14AM 25 The completion of the training exercise successfully was

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:28:21AM 1 all under your command, correct?

10:28:23AM 2 A. That is correct.

10:28:25AM 3 Q. Has the training schedule of your ship continued on the

10:28:32AM 4 same schedule as was in place prior to this Court entering its

10:28:36AM 5 preliminary injunction?

10:28:38AM 6 A. Yes, sir, for the most part. You know, if things do

10:28:42AM 7 change by, you know, training teams or schedule changes or

10:28:45AM 8 whatnot, you know, as long as we do it within our windows, we

10:28:47AM 9 are fine. And I say that under the auspices of, you know, last

10:28:51AM 10 time I testified in our January underway, our schedule was

10:28:55AM 11 impacted slightly by the weather and so we had to pull into

10:28:59AM 12 port and adjust our schedule for what training and

10:29:01AM 13 certifications we did, but we still completed them within our

10:29:05AM 14 allotted time.

10:29:06AM 15 Q. Has any aspect of your ship's training qualifications

10:29:09AM 16 schedule been impacted by your vaccine status?

10:29:12AM 17 A. No, sir, it has not.

10:29:15AM 18 Q. So is the work that you're doing for these training

10:29:19AM 19 qualifications, is it different from if your -- for example,

10:29:23AM 20 your ship was tasked with a combat mission?

10:29:27AM 21 A. Yes. So while we're in the basic phase training cycle,

10:29:32AM 22 it's kind of divided in half. You have Tier 1 certifications,

10:29:35AM 23 which are the non-warfare specific ones as previously

10:29:39AM 24 mentioned, and you have Tier 2 certifications, which go into

10:29:42AM 25 warfare specific areas, things like air warfare, surface

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:29:49AM 1 warfare, anti-submarine warfare, electronic warfare, so on and
10:29:51AM 2 so forth.

10:29:53AM 3 As a result of the USS Fitzgerald and John S. McCain
10:29:56AM 4 collisions back in 2017, the surface fleet and/or the Navy
10:30:00AM 5 adjusted the training cycle to make sure that, hey, we will not
10:30:04AM 6 task ships with missions unless they have met their basic
10:30:09AM 7 program certifications, and those are those Tier 1
10:30:12AM 8 certifications that I mentioned earlier, the seamanship,
10:30:14AM 9 navigation, damage control, engineering, aviation, and
10:30:17AM 10 communications.

10:30:18AM 11 My ship is still moving through those between now and the
10:30:21AM 12 end of April, so I would not be tasked to do any missions until
10:30:25AM 13 after we have met those minimum training requirements to
10:30:28AM 14 proceed forward. We have to get through our training
10:30:31AM 15 certifications right now to be able to do that. We don't take
10:30:34AM 16 ships that are, you know, in a shipyard or don't have the
10:30:38AM 17 proficiency or haven't been trained right to go out and do
10:30:41AM 18 missions that they're not properly certified to do. And my
10:30:43AM 19 ship is in that window right now while we're doing those things
10:30:47AM 20 as we speak.

10:30:47AM 21 Q. And is your ship on schedule to complete its necessary
10:30:51AM 22 training qualifications, that is, the schedule established by
10:30:55AM 23 the Navy prior to the Court entering its preliminary
10:30:58AM 24 injunction?

10:30:58AM 25 A. Yes, sir, we are.

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:31:00AM 1 Q. Now, when you go underway, or go out to sea on your ship,
10:31:05AM 2 do you -- are there certain COVID protocols that impact, you
10:31:09AM 3 know, what you have to do, for example, before you leave for a
10:31:12AM 4 trip?

10:31:16AM 5 A. Not necessarily before I leave anymore. And the COVID
10:31:19AM 6 policy seems to be changing, you know, every month in terms of
10:31:23AM 7 how we adapt and overcome.

10:31:25AM 8 I will tell you, you know, last -- or excuse me, in
10:31:28AM 9 January, the standard operational guidance for COVID policy was
10:31:33AM 10 released by the Navy, and it established conditions, for
10:31:37AM 11 example, for mask wear underway, in which, for the first ten
10:31:41AM 12 days underway, everyone has to wear masks in the conduct of our
10:31:45AM 13 duties as long as it doesn't impact the operations, and there
10:31:48AM 14 are some exceptions out there that I can make for, you know,
10:31:50AM 15 during flight operations, for example. They make exceptions
10:31:54AM 16 that, you know, if 75 percent of the eligible population that
10:32:02AM 17 has been boosted, has their booster shot, then the crew can
10:32:05AM 18 relax mask and you won't have to wear your mask underway.

10:32:09AM 19 That is an example of, you know, COVID protocols that we
10:32:12AM 20 still have in place. And most recently, last week, I think,
10:32:18AM 21 the indoor mask policy changed based on community level of
10:32:21AM 22 transmission.

10:32:23AM 23 THE COURT: I'm sorry. It changed based on?

10:32:25AM 24 THE WITNESS: (No oral response.)

10:32:26AM 25 THE COURT: I didn't hear what you said --

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:32:27AM 1 THE WITNESS: Yes, sir.

10:32:28AM 2 THE COURT: -- because your voice was a little soft.

10:32:30AM 3 Based on what?

10:32:32AM 4 THE WITNESS: Community level of transmission.

10:32:35AM 5 THE COURT: Got it. Thank you.

10:32:37AM 6 THE WITNESS: So there's a website on the CDC that

10:32:40AM 7 lists certain areas by county and gives their level of

10:32:44AM 8 transmission, low, medium, or high.

10:32:46AM 9 THE COURT: Yes.

10:32:48AM 10 THE WITNESS: And the DoD policy is for -- if you're

10:32:51AM 11 in areas of a low or medium level of transmission, indoor masks

10:32:55AM 12 are not required at indoor facilities. If it is high, then you

10:32:59AM 13 are required to wear that indoors. So right now, certainly in

10:33:01AM 14 Norfolk, indoor mask policy for my ship is relaxed because

10:33:06AM 15 Norfolk's level of transmission is low.

10:33:09AM 16 Q. (By Mr. Gannam) Have any COVID-related policies specific

10:33:15AM 17 to you because of your vaccination status impacted the ability

10:33:19AM 18 of your ship to complete its training qualifications or any

10:33:23AM 19 other tasks assigned to it?

10:33:25AM 20 A. No, sir.

10:33:26AM 21 Q. I'm going to refer again to the motion filed by the

10:33:31AM 22 defendants, specifically the attached declarations. So at

10:33:38AM 23 Document 118-4, which is the Admiral Gilday declaration. On

10:33:45AM 24 page 5, at the bottom, in paragraph 8, it reads, "The

10:33:50AM 25 effectiveness of mitigation measures is extremely limited on

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:33:54AM 1 ships where Sailors must live, work, eat, and sleep in close
10:33:58AM 2 proximity to other Sailors."

10:34:01AM 3 Had you seen that statement?

10:34:02AM 4 A. Yes, sir.

10:34:02AM 5 Q. Do you agree that's generally true?

10:34:04AM 6 A. Yes, sir.

10:34:05AM 7 Q. When you are underway for a training qualification
10:34:10AM 8 mission, do sailors have to live, work, eat, and sleep in close
10:34:14AM 9 proximity to other sailors?

10:34:16AM 10 A. Yes, they do.

10:34:16AM 11 Q. Is that close proximity any different when you're doing a
10:34:20AM 12 training qualification as opposed to when you're underway for a
10:34:23AM 13 combat mission?

10:34:24AM 14 A. No, sir, it does not.

10:34:25AM 15 Q. The second sentence of that paragraph reads, "Ships
10:34:27AM 16 typically have limited space to quarantine Sailors from the
10:34:31AM 17 rest of the crew, if such facilities exist at all."

10:34:35AM 18 You already testified that you have a specific berthing
10:34:38AM 19 area that you've established for quarantining anyone who tests
10:34:42AM 20 positive, correct?

10:34:42AM 21 A. That is correct. So all ships are supposed to have what's
10:34:45AM 22 called a quarantine or isolation instruction. And this
10:34:49AM 23 actually predated COVID, but it's obviously adapted for COVID,
10:34:54AM 24 such that if we do have somebody who develops symptoms underway
10:34:57AM 25 and gets tested and it comes up positive that we would put them

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:35:01AM 1 in isolation. The SOG 5.0, the standard operating guidance for
10:35:08AM 2 COVID that was released in January, even allows ships to
10:35:11AM 3 execute that ROM isolation period afloat, which is good, it
10:35:15AM 4 makes us more adaptable. We're moving with the policy, and we
10:35:19AM 5 can do that, we can execute that with our isolation protocols
10:35:22AM 6 that we have onboard our Navy vessels.

10:35:25AM 7 Q. And is there any -- is the limited space available to
10:35:30AM 8 quarantine sailors on your ship any more limited when you are
10:35:34AM 9 doing a training qualification exercise as opposed to being on
10:35:39AM 10 a combat mission?

10:35:40AM 11 A. The ability to isolate people I don't think is more
10:35:43AM 12 limited due to training. We are able to execute that now, we
10:35:50AM 13 did execute it last month when I had a three-week scheduled
10:35:54AM 14 underway period, had to pull in for the weather and then get
10:35:58AM 15 back underway again. I had folks that did test positive during
10:36:03AM 16 that period coming back from the holidays, you know, that were
10:36:04AM 17 delayed. We were able to ROM COVID-positive cases onboard the
10:36:07AM 18 ship with permission of my commodore, with the permission that
10:36:10AM 19 is laid out in that SOG guidance. We had about eight males and
10:36:14AM 20 two females in those isolation areas and were able to execute
10:36:18AM 21 this under Navy guidance effectively.

10:36:21AM 22 So to answer your question, does it, you know, change
10:36:23AM 23 right now? No, we're still able to execute that even while
10:36:26AM 24 we're doing our training missions.

10:36:27AM 25 Q. I'm going to refer now to Document 118-6, which is Admiral

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:36:34AM 1 Dwyer's declaration attached to the stay motion. On page 3 of
10:36:37AM 2 that document, in paragraph 6, it reads, "The environment in
10:36:41AM 3 which the Navy -- in which Navy personnel operate at sea - in
10:36:45AM 4 close quarters for extended periods of time in spaces without
10:36:48AM 5 the availability of exterior ventilation (for example, inside
10:36:52AM 6 surface ships, submarines and aircraft) - renders our Sailors
10:36:57AM 7 susceptible to contagious respiratory diseases such as
10:37:02AM 8 COVID-19."

10:37:02AM 9 Have you seen that statement before?

10:37:04AM 10 A. I believe I did read that.

10:37:05AM 11 Q. And do you generally agree with that statement?

10:37:11AM 12 A. Yes. I mean, I think on a warship, yes, we are confined
10:37:14AM 13 with all those limitations. I would say that also it doesn't
10:37:17AM 14 matter whether we're doing a training certification or, you
10:37:20AM 15 know, underway deployment either.

10:37:23AM 16 Q. So are the quarters any closer on an underway deployment
10:37:28AM 17 as compared to doing training qualifications?

10:37:31AM 18 A. No, sir. It's the same.

10:37:33AM 19 Q. When the government said on February 28th that your
10:37:39AM 20 destroyer was indefinitely sidelined, do you believe that's an
10:37:43AM 21 accurate statement?

10:37:44AM 22 A. No, sir, I do not.

10:37:45AM 23 Q. And when the government said on February 28th that your
10:37:48AM 24 destroyer was effectively out of commission, do you believe
10:37:52AM 25 that's an accurate statement?

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:37:54AM 1 A. No, sir, I do not.

10:38:03AM 2 Q. Several -- there have been several allusions in the
10:38:08AM 3 various declarations and the motion to the concept of good
10:38:09AM 4 order and discipline. Can you sort of explain for the Court
10:38:13AM 5 what is good order and discipline and why is that important in
10:38:16AM 6 the Navy?

10:38:16AM 7 A. So good order and discipline is, you know, our requirement
10:38:20AM 8 under Navy regulations that, you know, I am to maintain both as
10:38:23AM 9 a commanding officer and as a service to ensure the proper
10:38:27AM 10 operations for what we do. It does talk about, you know,
10:38:31AM 11 following orders and the importance of that. It also talks
10:38:34AM 12 about the moral integrity that we're supposed to establish in
10:38:38AM 13 the profession of arms.

10:38:39AM 14 It is a good thing to have good order and discipline, and
10:38:42AM 15 I agree with that. The problem that I have with, you know,
10:38:46AM 16 throwing out good order and discipline, even in this case, is
10:38:49AM 17 it becomes a catchall for anything where -- goes against, you
10:38:54AM 18 know, an established or initial policy.

10:38:58AM 19 We are historically repeating bad patterns in our history
10:39:03AM 20 for discriminatory acts. For example, if you go back into
10:39:07AM 21 history and look at the integration of people of color into the
10:39:10AM 22 military service, and whether they were segregated or
10:39:13AM 23 integrated, the push of not doing that was because it was
10:39:16AM 24 contrary to good order and discipline.

10:39:19AM 25 It's the same thing that was repeated when, you know,

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:39:22AM 1 gender was an issue and trying to integrate women with men in
10:39:26AM 2 military service, whether your troops are on the ground or on
10:39:29AM 3 the ship or submarine or whatever the case may be, you don't
10:39:32AM 4 want to do this because it's contrary to good order and
10:39:34AM 5 discipline.

10:39:35AM 6 The same thing was repeated again in like the '80s and
10:39:39AM 7 '90s when sexual orientation of the people in the military
10:39:43AM 8 became an issue and they the established policies like "don't
10:39:45AM 9 ask, don't tell." If you do, your sexual orientation now is
10:39:50AM 10 going to be contrary to good order and discipline because we
10:39:52AM 11 can't have folks serving together with contrary points of view
10:39:56AM 12 on that. Even most recently, today, in the past five years,
10:40:00AM 13 the topic of, you know, transgender or your gender identity is
10:40:04AM 14 a topic of, you know, hey, how are we going to implement this
10:40:07AM 15 or execute this to not affect good order and discipline?

10:40:11AM 16 The Navy has undergone, and I assume the military at
10:40:17AM 17 large, this, you know, idea of, how do we get better at
10:40:20AM 18 diversity and inclusion, and we do training on, like, things
10:40:23AM 19 that you're not supposed to discriminate against. You're not
10:40:26AM 20 supposed to discriminate against race, ethnicity, gender,
10:40:30AM 21 sexual orientation, so on and so forth, but one of those is
10:40:33AM 22 also religion. It's founded in our Constitution.

10:40:37AM 23 I'm here today because the military is not executing this
10:40:44AM 24 policy while respecting the constitutional freedoms laid out in
10:40:49AM 25 the First Amendment or RFRA. I should not be the one standing

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:40:54AM 1 here to say that today; generals and admirals, the executives
10:40:59AM 2 in our service, should be here to say that to the politics, to
10:41:03AM 3 the bureaucracy, to their decision-making. It should also not
10:41:06AM 4 be my junior sailors or the hundreds of thousands of military
10:41:10AM 5 servicemen out there to say, "Hey, I have a religious objection
10:41:14AM 6 to this. Why is no one not speaking out that we can do this
10:41:17AM 7 and still do the job, the mission?" That's for me to do when
10:41:22AM 8 my superiors will not.

10:41:24AM 9 I understand that I took an oath to the Constitution, that
10:41:28AM 10 is what my oath is, and it's different than the enlisted oath,
10:41:31AM 11 which is to follow orders. Every general on flag takes the
10:41:35AM 12 same oath as me, to uphold the Constitution, to bear true faith
10:41:39AM 13 and allegiance to the Constitution and the country whose course
10:41:40AM 14 it directs. That requires that I know the Constitution.

10:41:44AM 15 Our religious freedoms are being attacked. And when I
10:41:47AM 16 read the declaration that talks about, you know, there are no
10:41:51AM 17 less restrictive means other than vaccination, and they use
10:41:55AM 18 examples in there such as, you know, the port entry
10:41:59AM 19 requirements such as the pre-ROM deployment sequester. Those
10:42:04AM 20 are less restrictive means in and of themselves.

10:42:08AM 21 Your Honor, I did that last year when we did a deployment.
10:42:11AM 22 My ship, regardless of vaccination status, is that was a
10:42:14AM 23 policy, and we did a pre-deployment ROM. We all, the day after
10:42:18AM 24 Christmas, had to report to a hotel and test in prior to going
10:42:23AM 25 there. And when we tested out, we were allowed to go back in a

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:42:27AM 1 bubble transport back to the ship deemed clean. And that
10:42:31AM 2 policy has shifted obviously over the past year and a half, and
10:42:35AM 3 it's, you know, somewhere in the degree of vaccinated personnel
10:42:37AM 4 do not have to execute that ROM sequester. At one period of
10:42:41AM 5 time unvaccinated did. If the ability for me to go on
10:42:46AM 6 deployment is dependent upon whether or not I have to do a
10:42:48AM 7 pre-deployment ROM sequester that is a less restrictive means
10:42:52AM 8 than me getting a vaccine that I have a religious objection to,
10:42:57AM 9 then I would execute that.

10:42:58AM 10 The port of entry requirements, it's also laid out there,
10:43:01AM 11 that says my vaccination is going to affect that is confusing
10:43:04AM 12 to me, and I don't understand how they're saying that. Other
10:43:08AM 13 nations cannot tell our ship what to do as a sovereign-immune
10:43:14AM 14 vessel in terms of the interworkings of our ship. They can't
10:43:17AM 15 tell what our sailors can do onboard the ship or what we have
10:43:19AM 16 to do. They don't review or medical records; we don't give
10:43:22AM 17 that stuff up.

10:43:24AM 18 They can put restrictions on if people go out in town on
10:43:28AM 19 liberty or official business, that is true. But if I'm an
10:43:32AM 20 unvaccinated sailor and the choice is, hey, when you pull into
10:43:34AM 21 a port, if you're unvaccinated, you can't go out in town
10:43:39AM 22 because that's what the host country requirements are, right
10:43:41AM 23 when I step off that vessel, okay, I can stay on the ship.
10:43:44AM 24 That is my home, that's where I live, that is a less
10:43:47AM 25 restrictive means, and I would do that. We have done that over

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:43:50AM 1 the past two years.

10:43:52AM 2 I did a seven-month deployment in 2020 during the COVID
10:43:56AM 3 pandemic, we were not allowed to pull in anywhere. I did
10:43:59AM 4 another deployment in 2021 for 60 days, we pulled in seven
10:44:02AM 5 places -- around seven places in the Caribbean and we were not
10:44:06AM 6 allowed to leave the pier, and this was regardless of
10:44:09AM 7 vaccination status. The one time we were able to go on the
10:44:12AM 8 pier was in Guantanamo, and that's a U.S. base so we could do
10:44:16AM 9 that. The point is that is a less restrictive means to taking
10:44:20AM 10 the vaccine if you have a religious objection to it. We have
10:44:24AM 11 demonstrated resiliency and adaptability during the COVID
10:44:25AM 12 pandemic to execute our mission, and we can do that.

10:44:29AM 13 The Navy has policies right now in place where we set
10:44:32AM 14 accommodations in place just by policy. The standard operating
10:44:37AM 15 guidance that was just released in January did that when it
10:44:40AM 16 talked about the mask wear guidance underway. So if 25 percent
10:44:48AM 17 of the eligible population is not boosted, 75 percent are, like
10:44:53AM 18 that's an accommodation. The whole ship can now relax mask if
10:44:57AM 19 75 percent of the boosted population has met that requirement,
10:44:59AM 20 and it's not based on your medical or religious exemptions for
10:45:03AM 21 that other 25 percent, that's an accommodation.

10:45:07AM 22 The recent indoor mask guidance, that's an accommodation.
10:45:11AM 23 The fact that I can isolate people who are COVID-positive
10:45:17AM 24 regardless of their vaccination status underway and still
10:45:21AM 25 execute my mission is an accommodation. It isn't based on

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:45:25AM 1 religious objection, it's based on the fact that you are
10:45:29AM 2 COVID-positive. And for me to be able to execute my mission,
10:45:31AM 3 if you are only isolated for five days and I'm out at sea for
10:45:34AM 4 longer than that, I can still do that with minimum impact.
10:45:38AM 5 That's a good thing. But I accommodated vaccinated sailors in
10:45:44AM 6 that process as well, and I did. Every person that I ROM'd on
10:45:49AM 7 onboard my ship underway in January, it was about ten sailors,
10:45:50AM 8 they were all vaccinated sailors that were COVID-positive.
10:45:54AM 9 That's okay.

10:45:55AM 10 There are other examples out there where we make
10:45:58AM 11 accommodations. I mean the flu shot, I think I testified last
10:46:01AM 12 month, is another example of that. The flu shot policy that we
10:46:05AM 13 release every October-November time frame says, hey, everyone
10:46:08AM 14 is supposed to go do that, get evaluated by your medical
10:46:10AM 15 provider. The minimum requirement is 90 percent. What is that
10:46:15AM 16 10 percent Delta based off of? I don't know that it's based
10:46:18AM 17 off of religion or anything else, it's by policy.

10:46:21AM 18 So if I have people that don't get the flu shot but the
10:46:24AM 19 rest of my ship is 90 percent or higher, we move forward. We
10:46:28AM 20 don't go after to separate them, we don't kick them off the
10:46:31AM 21 ship. Whether the people come and go or my flu shot inventory
10:46:37AM 22 expires and I have people that come and go, as long as I'm
10:46:41AM 23 above 90 percent, there is no question. That's okay.

10:46:43AM 24 The same should be true with the COVID policy. And we are
10:46:49AM 25 going out after people and separating people and removing them

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:46:52AM 1 from their job and making blanket policy statements to say they
10:46:55AM 2 can't execute their mission without respect to their religious
10:46:59AM 3 objections, which is required by law and enshrined in our
10:47:02AM 4 Constitution, and that is wrong.

10:47:05AM 5 Q. Let me ask you this, Commander. Has your vaccination
10:47:09AM 6 status in any way undermined the good order and discipline on
10:47:12AM 7 your destroyer?

10:47:13AM 8 A. I do not think so. I would say no.

10:47:17AM 9 Q. And how do you know?

10:47:19AM 10 A. My ship is performing everything that they need to do.
10:47:22AM 11 They are doing extremely well. As we go through our basic
10:47:27AM 12 phase training cycle, in terms of meeting our mission
10:47:30AM 13 objectives, we are doing that.

10:47:32AM 14 Just this week, I talked about engineering when we were
10:47:35AM 15 underway, we're finishing out our damage control
10:47:37AM 16 certifications. I was there for the first two days, we were --
10:47:40AM 17 it's a five-day event, we were on track to finish it on
10:47:43AM 18 Wednesday. My ship didn't need me there on Wednesday to
10:47:46AM 19 execute that, and they did, and they completed it, so now we
10:47:49AM 20 are damage control certified as we move out of the basic phase,
10:47:52AM 21 and that's a good thing.

10:47:53AM 22 The things that my ship are supposed to be doing, they are
10:47:56AM 23 doing well. I'm not saying we're perfect, because there are
10:47:59AM 24 obviously personnel, equipment issues, maintenance issues, and
10:48:01AM 25 training things that every ship does differently, but in terms

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:48:05AM 1 of meeting our mission objectives, we are doing well.

10:48:09AM 2 Q. And in your last training exercise that you just returned
10:48:13AM 3 from, were there any superior officers along the way with you
10:48:17AM 4 who gave you feedback about that particular mission?

10:48:19AM 5 A. Yes, there was.

10:48:21AM 6 Q. And who was that?

10:48:23AM 7 A. So my deputy commodore was sent to observe our two-week
10:48:28AM 8 underway period. He and another member of his staff, who is an
10:48:32AM 9 engineering readiness assessor, which is the purpose of our
10:48:36AM 10 underway, was there, and the deputy commodore was there,
10:48:41AM 11 purportedly, to observe me and make sure that the ship was
10:48:42AM 12 doing all right.

10:48:45AM 13 A welcoming to the crew, he observed our training, he
10:48:47AM 14 observed our evolutions, talked to me, gave me daily updates,
10:48:52AM 15 provided recommendations on how we can do better, which I
10:48:56AM 16 welcome. I always want to know how we can be better. And as a
10:49:00AM 17 post commanding guy, he has a good perspective how we can do
10:49:04AM 18 that. That's a part of his job.

10:49:04AM 19 So after the end of those two weeks, he sat down with me
10:49:07AM 20 and my executive officer the night before we pulled in and gave
10:49:11AM 21 us the download for his observations, and he did say we had a
10:49:15AM 22 very successful underway. He was very pleased that the ship
10:49:17AM 23 did more than just the engineering assessments that we were
10:49:20AM 24 required to do. We obviously did other things along the way;
10:49:24AM 25 we did electronic warfare training, combat systems training.

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:49:27AM 1 We had a very successful refueling at sea, which is a high risk
10:49:31AM 2 evolution. It was our second one of the year.

10:49:35AM 3 And so the focus of, hey, you're not solely focused on
10:49:38AM 4 engineering, but the rest of the ship is still doing stuff in
10:49:41AM 5 operations, which you need to do to train to go into battle
10:49:45AM 6 and/or deploy, the ship was doing that and he was pleased with
10:49:47AM 7 that.

10:49:48AM 8 So in addition to some other recommendations for
10:49:50AM 9 improvement, at the end of that brief, to me and XO, he said,
10:49:54AM 10 "I am going to go back and report that your ship is safe and
10:49:56AM 11 ready to execute the basic phase. There was nothing that
10:50:00AM 12 happened where I needed to intervene or had concerns on your
10:50:04AM 13 ability to command."

10:50:09AM 14 Q. Let me ask you about your appearance here today. How did
10:50:15AM 15 you obtain permission this time to come down and testify?

10:50:21AM 16 A. Yes, sir. So I got back from our underway period on late
10:50:27AM 17 Friday afternoon, didn't get home until Friday night, was
10:50:31AM 18 informed by the legal team that -- of the subpoena desiring my
10:50:35AM 19 presence here.

10:50:37AM 20 I -- first thing Monday morning coming into work, I let my
10:50:41AM 21 chain of command know, "Hey, these are my intentions." Based
10:50:44AM 22 on the discussions with my JAG or whatnot, he said, "Hey,
10:50:47AM 23 because you have a subpoena, this might be permissive TAD." I
10:50:47AM 24 let my supervisor know that I intend to do permissive TAD.

10:50:55AM 25 Q. What is permissive TAD? What does that mean?

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:50:57AM 1 A. So instead of taking leave where I use my entitled leave
10:51:02AM 2 days, it would be, you know, effectively like a no-cost orders
10:51:05AM 3 to come down and execute this legal matter.

10:51:09AM 4 I provided a travel risk assessment and a recommended ROM
10:51:14AM 5 for my return. I let my supervisor know, based on all the
10:51:18AM 6 change in guidance, this COVID risk assessment or travel risk
10:51:23AM 7 assessment is not a requirement, it is discretionary at the
10:51:28AM 8 commander. I presume, obviously, from last month, that he
10:51:31AM 9 wanted to see that, so I gave it. I recommended a three-day
10:51:34AM 10 ROM on my return based on the conditions, and then sent that
10:51:40AM 11 off.

10:51:40AM 12 Over the course of those two days, I got a lot of
10:51:45AM 13 questions or pushback on, you know, why permissive leave? Is
10:51:49AM 14 this required to be funded? Why are you taking leave? Your
10:51:54AM 15 leave is starting -- or your absence from the ship is starting
10:51:58AM 16 to impact readiness. Why are you subpoenaed? When I sent the
10:52:03AM 17 subpoena, it was, your lawyer sent the subpoena, not the judge.
10:52:06AM 18 I don't know if there's a difference to that, I don't know why.
10:52:09AM 19 There was a lot of push back and forth to be able to do that.

10:52:13AM 20 The frustrating part is, you know, after sending all that
10:52:16AM 21 stuff off, to include my, you know, leave chit request, which
10:52:21AM 22 is abnormal, all of our COs only email him, but he wanted to
10:52:25AM 23 see that, what exact location I was staying, the exact fly
10:52:30AM 24 times. So probably, like, after 15 emails of doing all this
10:52:35AM 25 stuff, he finally said, "Leave is approved."

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:52:37AM 1 However, I'm still here today and I don't know what my ROM
10:52:40AM 2 requirements will be upon my return. I will assume, in
10:52:43AM 3 discussion with him, that if he hasn't decided that I will do
10:52:46AM 4 the five-day ROM. By Navy policy, five days is only required
10:52:51AM 5 if you test positive for COVID. I tested prior to executing my
10:52:55AM 6 travel and it was negative, and I will test when I get back as
10:52:59AM 7 well.

10:52:59AM 8 Q. So your commander has not yet given you an answer on what
10:53:04AM 9 your ROM requirement will be when you return from this trip?

10:53:09AM 10 A. Correct. There is no final answer. He said it will be
10:53:12AM 11 five days unless I -- after reviewing my recommendation, which
10:53:15AM 12 he wants to pass along with the medical community to make sure
10:53:19AM 13 it's in line, to go earlier, but he has not deemed the official
10:53:23AM 14 five, three, or zero for ROM days.

10:53:26AM 15 Q. And is it also true, then, that you are unable to tell
10:53:29AM 16 your XO, for example, or other department heads when you'll be
10:53:33AM 17 back because you're waiting on this decision from your
10:53:35AM 18 commander?

10:53:36AM 19 A. That's correct.

10:53:40AM 20 Q. Argument was made a few minutes ago about what happened on
10:53:43AM 21 your last trip, this dispute over when you let your XO know
10:53:49AM 22 that you were traveling out of area. Do you recall that
10:53:52AM 23 argument earlier today?

10:53:54AM 24 A. Yes, sir, I do.

10:53:54AM 25 Q. And you recall discussing that at the last hearing on this

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:53:57AM 1 matter?

10:53:57AM 2 A. I do.

10:53:59AM 3 Q. Let me ask you to just remind the Court, when did you

10:54:03AM 4 first communicate that you were traveling out of area, or

10:54:08AM 5 taking leave out of area, to your crew?

10:54:12AM 6 A. To my crew or to my XO?

10:54:15AM 7 Q. To your crew.

10:54:16AM 8 A. Okay.

10:54:16AM 9 Q. Well, to your XO, if there's a difference.

10:54:19AM 10 A. Okay. So some of that confusion comes into play based on

10:54:23AM 11 the preceding Thursday, where I had to report in to my

10:54:26AM 12 supervisor because I did not get the vaccine when I went to

10:54:32AM 13 Navy Medical Center Portsmouth, and I reported back to my

10:54:36AM 14 commodore. It was also around the time that the injunction was

10:54:36AM 15 placed.

10:54:38AM 16 I asked then that, you know, "Hey, it's been a very

10:54:41AM 17 emotional, stressful time, I do need to take leave the

10:54:43AM 18 following week. I would like, you know, a day or two to spend

10:54:45AM 19 time with the family." He said, "Of course. You know, policy,

10:54:50AM 20 send me an email, we'll work on it from there." And at that

10:54:52AM 21 time I was going to take local leave the following week to

10:54:56AM 22 spend time with my family. There's -- that was conveyed.

10:54:59AM 23 Over the weekend is when I, you know, had the

10:55:02AM 24 correspondence with the legal team that said, "Hey, there's a

10:55:05AM 25 hearing. Are you in port, and are you available to come?" I

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:55:09AM 1 said, "I am in port, I could conceivably come. I need to
10:55:13AM 2 figure this out with my family," which my wife was supportive
10:55:16AM 3 of, and so we decided that, hey, let's do this.

10:55:19AM 4 So that Monday morning I made the preparations to, you
10:55:25AM 5 know, come down here for that hearing, submitted my request in
10:55:30AM 6 NSIPS. At the department head meeting that I had that
10:55:32AM 7 afternoon, which is -- we normally do on Monday afternoon, we
10:55:36AM 8 generally have an hour, hour and a half department head
10:55:39AM 9 meeting. I had six department heads, and my executive officer
10:55:42AM 10 and command master chief usually attend those. We talk about
10:55:46AM 11 various things, each department provides updates, talk about
10:55:49AM 12 the ship, what's coming up next, taskers that need to go out or
10:55:53AM 13 whatnot.

10:55:56AM 14 So over that hour-, hour-and-a-half-long meeting, I did
10:55:56AM 15 mention that, "Hey, for my leave this week, I will be out of
10:55:59AM 16 area, I will not be available, get the CO leave message ready,"
10:56:03AM 17 and then I continued on with, you know, multiple other things.
10:56:05AM 18 I cannot attest, because I did not specifically look at my
10:56:08AM 19 executive officer or specifically tasked him, I just said it
10:56:12AM 20 openly, passing in the group in that hour-and-a-half-long
10:56:13AM 21 conversation.

10:56:13AM 22 It is true that I did not make it a point to talk about
10:56:17AM 23 Tampa or the legal case. I did not want to, and frankly I
10:56:21AM 24 think that's, you know, contrary to good order and discipline,
10:56:24AM 25 because I don't want my subordinates to be privy to the

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:56:27AM 1 personal legal cases I'm involved that would also detract from
10:56:31AM 2 their mission, or what's my boss involved in, what's going to
10:56:34AM 3 happen to him. So I did feel that was necessary to protect
10:56:37AM 4 them from that, that does not mean that I didn't say I was
10:56:41AM 5 going out of the area.

10:56:42AM 6 The next morning -- or the next day, you know, at some
10:56:46AM 7 point the XO came in when we were having updates, and I pulled
10:56:50AM 8 him in and shut the door and I told my XO, "Hey, when you go in
10:56:55AM 9 and look at my leave chit, you're going to see that it's in
10:56:58AM 10 Tampa, Florida. I am going to go handle legal matters. I
10:57:02AM 11 don't want to share this with the rest of the crew, I don't
10:57:04AM 12 want that to be a distraction, but you need to know that." He
10:57:07AM 13 acknowledged. His declaration does say that he didn't know
10:57:12AM 14 about out of area going to Tampa for the purpose of that case;
10:57:12AM 15 that is true for Tuesday. Whether or not he heard me say out
10:57:14AM 16 of area or not on Monday, I don't know the relevance of that.
10:57:17AM 17 It's not misleading in my opinion.

10:57:20AM 18 But the point that I would make also to the Court and
10:57:22AM 19 others is there is no negative feeling that I have towards my
10:57:27AM 20 XO. I do not have a loss of trust with my XO. He's a very
10:57:31AM 21 good naval officer and he should be the one to relieve me next
10:57:35AM 22 when it comes time. We have a fleet-up policy where the XO
10:57:35AM 23 relieves the CO when their time comes.

10:57:40AM 24 If you were to bring him in or make a declaration and/or
10:57:43AM 25 make a statement to the Court, he would attest to the integrity

NAVY COMMANDER - DIRECT EXAM BY MR. GANNAM

10:57:46AM 1 or the character or the success of our ship, I have no doubt
10:57:50AM 2 about that. I do think it was some undue influence on him or
10:57:53AM 3 partial information given to him to make that declaration that
10:57:57AM 4 doesn't have the full scope of the details, and I don't fault
10:58:01AM 5 him for that. He is a good officer.

10:58:04AM 6 Q. You mentioned a CO's leave message. Can you explain what
10:58:09AM 7 that is?

10:58:11AM 8 A. A CO's leave message is generally something that you send
10:58:16AM 9 out the day before a CO goes on leave, it generally lets the
10:58:20AM 10 chain of command and the other commands out there know that the
10:58:24AM 11 CO is not going to be available generally due to, you know,
10:58:29AM 12 being on leave out of area. If I were to go on leave and be
10:58:33AM 13 local, I wouldn't need to send that message, because if
10:58:36AM 14 something came up and I needed to cancel my leave, I would just
10:58:39AM 15 drive into the ship. Obviously I can't do that when I am out
10:58:43AM 16 of the area.

10:58:45AM 17 Q. So would there be any reason to issue a CO's leave message
10:58:48AM 18 if you were to be in the area and available?

10:58:51AM 19 A. No, sir, there's no requirement to do that.

10:58:54AM 20 Q. And you testified a moment ago that you directed that a
10:58:58AM 21 CO's leave message be prepared at the Monday briefing with your
10:59:03AM 22 department heads, correct?

10:59:03AM 23 A. I did.

10:59:04AM 24 Q. Was a CO's leave message prepared?

10:59:08AM 25 A. There was. It was routed to me the next morning, maybe

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

10:59:12AM 1 around lunchtime or so, I initialed it and it went out sometime
10:59:15AM 2 after lunch that day.

10:59:16AM 3 Q. And can you think of any reason why a CO's leave message
10:59:20AM 4 would have been issued if you hadn't asked for one to be issued
10:59:24AM 5 in that briefing?

10:59:29AM 6 A. I think generally me or the XO would have that done. So
10:59:32AM 7 if it had not already been done, when I talked to my XO the
10:59:35AM 8 next morning, he would have made sure, "Hey, are we tracking
10:59:39AM 9 this message? It needs to go out today," so he's my back-up as
10:59:40AM 10 the second in command. But, no, otherwise for them to be able
10:59:44AM 11 to release that, they would have to know that I'm going out of
10:59:47AM 12 area.

10:59:51AM 13 MR. GANNAM: No further questions, Your Honor.

10:59:53AM 14 THE COURT: All right. Thank you, sir.

10:59:54AM 15 Ms. Powell, have you cross-examination for this
10:59:58AM 16 witness?

10:59:58AM 17 MS. POWELL: I do.

11:00:00AM 18 THE COURT: You're recognized for that purpose.

11:00:10AM 19 CROSS-EXAMINATION

11:00:10AM 20 BY MS. POWELL:

11:01:11AM 21 Q. Commander, you testified the ship was underway in just the
11:01:14AM 22 past few weeks, correct?

11:01:16AM 23 A. Yes.

11:01:17AM 24 Q. And when was that approximately? Do you recall the dates?

11:01:22AM 25 A. I think it was the 22nd of February, and we returned this

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:01:25AM 1 past Friday on the 4th of March. I believe those are the
11:01:30AM 2 dates. Roughly about 11 or 12 days.

11:01:33AM 3 Q. So that was the first underway period since the issuance
11:01:36AM 4 of the injunction in this case?

11:01:42AM 5 A. Yes, I think so.

11:01:45AM 6 Q. Sorry, I didn't mean to make that complicated. I think
11:01:48AM 7 that's adequate in the record.

11:01:49AM 8 And the purpose of the underway was to complete the
11:01:51AM 9 certification, correct?

11:01:53AM 10 A. Not complete the certification, but there are
11:01:55AM 11 certifications we get before the entire certification. So next
11:01:59AM 12 week we'll actually close out our last portion of the
11:02:02AM 13 engineering certifications. But we are doing a training in
11:02:05AM 14 certification of Events 3 and 4, which have certain milestones,
11:02:08AM 15 in those were certifications for evolutions -- engineering
11:02:12AM 16 evolutions, certification for engineering drills, and
11:02:15AM 17 certification for fighting and main space fire drill for the
11:02:19AM 18 ship.

11:02:20AM 19 Q. You have read two -- or have you read the two previous
11:02:26AM 20 declarations that Captain Brandon submitted in this matter?

11:02:31AM 21 A. The last time I read any of the declarations provided by
11:02:33AM 22 him, I think was the court hearing last time. I vaguely
11:02:37AM 23 remember the first one, I do not remember the second one.

11:02:40AM 24 Q. Okay. Do you recall him discussing a loss of trust and
11:02:43AM 25 confidence in you?

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

- 11:02:46AM 1 A. If that was in the declaration, then yes.
- 11:02:50AM 2 Q. Do you recall him stating that he was already mitigating
- 11:02:54AM 3 the risk of having you in command of the ship at sea?
- 11:02:58AM 4 A. I'd have to read that again.
- 11:02:59AM 5 Q. By placing extra supervision onboard?
- 11:03:03AM 6 A. Okay.
- 11:03:05AM 7 Q. Normally the Navy can trust commanders to command their
- 11:03:08AM 8 open ships, right? They're expected to operate with a certain
- 11:03:11AM 9 amount of independence?
- 11:03:13AM 10 A. Should, yes.
- 11:03:15AM 11 Q. But on your recent underway, Captain Aldridge was onboard,
- 11:03:19AM 12 correct?
- 11:03:19AM 13 A. That is correct. He was the deputy commodore that I was
- 11:03:22AM 14 referring to earlier that did come underway with us, yes.
- 11:03:24AM 15 Q. He is senior in rank to you?
- 11:03:26AM 16 A. Yes, ma'am.
- 11:03:27AM 17 Q. And senior in position as well?
- 11:03:29AM 18 A. Yes, ma'am.
- 11:03:31AM 19 Q. And he was on the ship for the entire underway period?
- 11:03:34AM 20 A. That is correct.
- 11:03:37AM 21 Q. You previously mentioned that -- or I'm sorry. You as the
- 11:03:42AM 22 commanding officer need to stay current on Navy policy and
- 11:03:46AM 23 regulations in general, correct?
- 11:03:50AM 24 A. To stay current on policy? I mean, yes, every time a
- 11:03:54AM 25 policy comes out, you know, we're supposed to read it and make

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:03:57AM 1 sure we understand it, yes.

11:03:58AM 2 Q. Sure.

11:04:00AM 3 So you know what the Navy regulations are?

11:04:04AM 4 A. As a general statement, yes.

11:04:08AM 5 Q. Are you familiar with the concept of a senior officer

11:04:15AM 6 present? Is that a phrase you have heard before?

11:04:17AM 7 A. Senior officer present? I think so. Like SOPA, Senior

11:04:22AM 8 Officer Present Afloat.

11:04:22AM 9 Q. Yes.

11:04:23AM 10 A. Is that what you're referring to?

11:04:25AM 11 Q. Yes.

11:04:26AM 12 A. Okay.

11:04:27AM 13 Q. And what does that mean in your words?

11:04:30AM 14 A. So, for example, my commodore is the commander of our

11:04:37AM 15 destroyer squadron, and we have four ships out of Norfolk based

11:04:42AM 16 in that squadron, two other ships in Florida that are under his

11:04:45AM 17 operational control, if not administrative.

11:04:47AM 18 So if he, for example, were to embark on our ship, we

11:04:52AM 19 would have a pennant for him as a Senior Officer Present Afloat

11:04:56AM 20 when we're pulled into port on the pier. Right? The senior,

11:04:59AM 21 you know, ship on that pier would deem the pier

11:05:02AM 22 responsibilities, watch-standing requirements, et cetera. And

11:05:05AM 23 if you're underway and embarked with other ships, the

11:05:08AM 24 commanding control would generally go with the senior officer

11:05:12AM 25 present.

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:05:12AM 1 Q. Okay. So they have responsibilities as senior officer
11:05:17AM 2 present?

11:05:17AM 3 A. So if -- I don't want to misconstrue that. If they are in
11:05:23AM 4 command, yes.

11:05:24AM 5 Q. And if they're not in command?

11:05:26AM 6 A. So you can have riders that are on your ship that are
11:05:29AM 7 senior officers to you but they're not in command.

11:05:32AM 8 Q. Understood.

11:05:32AM 9 In that situation, are you aware that the senior officer
11:05:35AM 10 is required to assume command if in his or her judgment the
11:05:41AM 11 exercise of authority is otherwise necessary?

11:05:47AM 12 A. I think so.

11:05:47AM 13 Q. Okay.

11:05:48AM 14 A. So I will tell you, when I was told that the deputy was
11:05:51AM 15 coming to get underway, it was not disclosed to me the
11:05:54AM 16 purposes. In fact, I just got an email that said, "Please
11:05:57AM 17 confirm that you know that the deputy commodore and my
11:05:59AM 18 engineering senior chief petty officer are getting underway
11:06:04AM 19 next week."

11:06:04AM 20 "Roger, sir. I understand they're coming to get underway
11:06:06AM 21 with us."

11:06:07AM 22 I have no problem with people coming to get underway. I
11:06:08AM 23 did ask the deputy, when he came aboard my ship that day, "Hey,
11:06:11AM 24 is your purpose here to relieve me?" and he said, "No."

11:06:13AM 25 "What is your purpose here?" and he did say that he was

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:06:16AM 1 here to observe me and make sure the ship was safe for
11:06:19AM 2 operations. I understand that my commodore wants to have that
11:06:22AM 3 backup.

11:06:24AM 4 Q. Understood.

11:06:24AM 5 A. Yes.

11:06:24AM 6 Q. So you would agree with the statement that in that
11:06:26AM 7 position he could intervene if there was reason to do so in his
11:06:29AM 8 judgment and it was necessary?

11:06:31AM 9 A. Sure.

11:06:32AM 10 Q. And you understood that was why he was there?

11:06:35AM 11 A. Yes.

11:06:46AM 12 Q. At your last hearing, you testified that you informed your
11:06:50AM 13 XO and department heads at a meeting on Monday the 9th that you
11:06:54AM 14 were leaving the area. And that is your testimony again today?

11:06:59AM 15 A. In that meeting, that hour and a half meeting that we had,
11:07:03AM 16 I did make that as a passing statement, that for my leave I'll
11:07:06AM 17 be out of area and unavailable, get the CO leave message ready.
11:07:12AM 18 I did not look at my XO and specifically task him. I did not
11:07:15AM 19 have an individual conversation with my XO. It was general
11:07:17AM 20 words I put out to him.

11:07:19AM 21 Q. Well, is it -- well, I don't want you to speculate.
11:07:21AM 22 You have read the declaration that your XO signed as well,
11:07:25AM 23 correct?

11:07:25AM 24 A. Yes. I remember reading it the day of that it was brought
11:07:29AM 25 in.

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:07:30AM 1 Q. Right. And he says he was not told you were leaving the
11:07:33AM 2 area at that meeting?

11:07:35AM 3 A. If you could bring the declaration, I would rather read it
11:07:37AM 4 with you so I make sure that I don't misunderstand.

11:07:41AM 5 Q. Sure.

11:07:41AM 6 MS. POWELL: I think I've got the redacted version
11:07:44AM 7 with me. Is that okay?

11:07:46AM 8 MR. STAVER: Sure.

11:08:18AM 9 MS. POWELL: May I approach?

11:08:19AM 10 THE COURT: You may.

11:08:23AM 11 MS. POWELL: Would you like a copy?

11:08:27AM 12 THE COURT: No, that's fine.

11:08:38AM 13 Q. (By Ms. Powell) Paragraph 3, the third sentence.

11:08:49AM 14 A. "Monday" -- do you want me to read that?

11:08:51AM 15 Q. Sure.

11:08:51AM 16 A. "Monday, February 7th, 2022, Plaintiff Navy Commander did
11:08:55AM 17 not tell me he was going -- leaving the local area on leave."

11:09:01AM 18 Q. So at the very least, your XO does not recall the
11:09:03AM 19 statement that you made at that meeting?

11:09:05AM 20 A. I don't know if he means that I did not look at him one on
11:09:09AM 21 one and have a conversation, "Hey, XO, I'm going out of area on
11:09:12AM 22 leave." As I previously stated, I said it in the meeting in
11:09:15AM 23 the group. I don't know, if you were to ask him, "Hey, what
11:09:18AM 24 else did your commanding officer say at that meeting?" if he
11:09:21AM 25 would also be able to attest to all of those things. I don't

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:09:25AM 1 know. But whether or not he heard specifically that I was
11:09:28AM 2 going out of area on leave or not, I do not fault him for
11:09:31AM 3 remembering everything, nor am I going to, you know, say that,
11:09:35AM 4 you know, he is out of line. I said it to a group. This reads
11:09:39AM 5 as if I had a conversation with him, and I did not have a
11:09:44AM 6 conversation specifically with him. I said it to a group.
11:09:48AM 7 Q. Well, it doesn't say a conversation specifically with him.
11:09:50AM 8 It says he did not tell me he was leaving the local area on
11:09:54AM 9 leave in a group or otherwise, correct?
11:09:56AM 10 A. I agree that he did not tell me he was leaving the local
11:09:59AM 11 area to be there.
11:10:02AM 12 Q. Okay. And yet paragraph 4 goes on to say that he spoke
11:10:04AM 13 with the other department heads about that meeting as well,
11:10:06AM 14 correct?
11:10:08AM 15 A. Paragraph 4. Okay. Are you asking me to read that,
11:10:16AM 16 ma'am?
11:10:17AM 17 Q. I'll read it. The second sentence begins -- well, no,
11:10:20AM 18 I'll read all of it; how's that.
11:10:22AM 19 "I asked today" -- so the day this was signed. "I asked
11:10:26AM 20 all the department heads who are other officers supervising
11:10:31AM 21 personnel responsible for different functions on the ship when
11:10:33AM 22 they became aware that Plaintiff Navy Commander was leaving the
11:10:37AM 23 local area on leave. The combat systems officer became aware
11:10:40AM 24 that Plaintiff was leaving the local area on midday Tuesday,
11:10:43AM 25 February 8th, 2022, when Plaintiff Navy Commander asked him for

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:10:47AM 1 a COVID mitigation worksheet. No other department heads were
11:10:50AM 2 aware that Plaintiff was leaving the local area before midday
11:10:53AM 3 on Tuesday."

11:10:57AM 4 Now, is that -- that suggests that he believes that none
11:11:04AM 5 of the other department heads remembered this conversation you
11:11:07AM 6 supposedly had with them.

11:11:09AM 7 MR. GANNAM: Your Honor, I object to the requirement
11:11:11AM 8 for speculation. On its face, there's no possible way that the
11:11:16AM 9 commander could know what happened in this conversation that
11:11:20AM 10 apparently occurred the day that he was testifying. We further
11:11:23AM 11 object to the admissibility of anything in paragraph 4 as
11:11:29AM 12 hearsay or on top of hearsay.

11:11:32AM 13 We have no objection to the government asking the
11:11:33AM 14 commander questions about this or if he agrees to any of these
11:11:37AM 15 statements or knows about them, but we object to the
11:11:39AM 16 admissibility as the truth of anything in paragraph 4.

11:11:43AM 17 MS. POWELL: Rules of evidence are somewhat relaxed
11:11:45AM 18 at these preliminary proceedings. I certainly acknowledge this
11:11:48AM 19 is hearsay, Your Honor, and I'm interested in what the
11:11:51AM 20 commander's explanation is at this point.

11:11:53AM 21 THE COURT: Overruled. Go ahead, Ms. Powell.

11:11:56AM 22 Q. (By Ms. Powell) Does it change your testimony that
11:12:06AM 23 apparently the other department heads also don't remember that
11:12:08AM 24 conversation the way you do?

11:12:10AM 25 A. No, it doesn't.

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:12:10AM 1 Q. Do you think they're mistaken as well?

11:12:13AM 2 A. I don't know.

11:12:14AM 3 Q. Do you think your XO is lying about the conversation he

11:12:18AM 4 had?

11:12:18AM 5 A. I do not think my XO is a liar. I do not know if he heard

11:12:22AM 6 it when I said it on Monday. The point of me talking to him

11:12:25AM 7 about Tampa is correct; it did not occur until Tuesday. I did

11:12:31AM 8 not tell any of my department heads where I was going or what I

11:12:35AM 9 was doing. It is my job to protect them from that and

11:12:39AM 10 establish good order and discipline on my ship. I do not think

11:12:42AM 11 it a good practice to share my personal legal matters to my

11:12:45AM 12 ship that impact my ability to carry on my service or conduct

11:12:50AM 13 my ability to command. That, in and of itself, is contrary to

11:12:54AM 14 good order and discipline and it would be a distraction. All

11:12:57AM 15 they needed to know was that I was going out of area.

11:12:58AM 16 The tasker to get a CO leave message did come out of that

11:13:02AM 17 conversation. Whether or not they remember this or the other

11:13:05AM 18 things that I said that day over the context or the course of

11:13:09AM 19 all the meetings and stuff that we have, I don't know. You

11:13:11AM 20 would have to call each one of them up here and state that. If

11:13:14AM 21 there's a question as to my integrity, you would have to call

11:13:17AM 22 them up here and say that, and I have no problem with that.

11:13:22AM 23 Q. Commander, you previously expressed a concern that the

11:13:22AM 24 declaration might have been the result of undue influence. Do

11:13:25AM 25 you have any specific reason to believe that there was undue

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

- 11:13:29AM 1 influence on your executive officer?
- 11:13:33AM 2 A. I don't think it is appropriate for my case here to speak
- 11:13:37AM 3 on the religious freedoms as associated with this case and the
- 11:13:42AM 4 vaccine mandate, is appropriate to go under me to my
- 11:13:47AM 5 subordinates and speak to my integrity or, you know, misleading
- 11:13:50AM 6 of information, as it's saying here, specifically as in terms
- 11:13:53AM 7 to when I was going out of leave and what they know or didn't
- 11:13:57AM 8 know.
- 11:13:57AM 9 Q. Do you have any reason to think that someone asked him to
- 11:13:59AM 10 lie or mislead?
- 11:14:02AM 11 A. I don't think my XO is lying.
- 11:14:06AM 12 Q. Or you speculated that there might have been undue
- 11:14:09AM 13 influence. I'm just asking whether you have any -- anyone told
- 11:14:11AM 14 you that was the case or if you have other specific evidence of
- 11:14:15AM 15 it.
- 11:14:15AM 16 A. I think the act of going to my XO to provide a declaration
- 11:14:20AM 17 on one particular subject matter that is in question and
- 11:14:24AM 18 doesn't provide a recourse for what else you knew or the full
- 11:14:28AM 19 context of that is -- in my opinion, that is undue command
- 11:14:32AM 20 influence. If you wanted him to provide a full statement on
- 11:14:35AM 21 everything that he knew, or my integrity, or character, or the
- 11:14:37AM 22 good order and discipline on my ship, that's not provided here.
- 11:14:41AM 23 It's one specific question that they went after.
- 11:14:44AM 24 Q. Correct.
- 11:14:45AM 25 A. I don't think he had the full context of this either.

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

- 11:14:50AM 1 Q. Okay.
- 11:14:50AM 2 A. Does that answer your question, ma'am?
- 11:14:52AM 3 Q. Yes, I think it does.
- 11:14:53AM 4 Prior to the last hearing, you did -- you testified that
- 11:15:04AM 5 you did eventually submit the travel risk assessment that's
- 11:15:08AM 6 required, correct?
- 11:15:09AM 7 A. Ma'am, are you referring to this week or the last one?
- 11:15:12AM 8 Q. The last one.
- 11:15:12AM 9 A. The last one, yes. The commodore had called me, because
- 11:15:16AM 10 he saw the leave message. I can't remember if it was late on
- 11:15:21AM 11 the ship and I was still there, you know, working through
- 11:15:23AM 12 things, somewhere around 5 or 6 o'clock, he called and had that
- 11:15:27AM 13 conversation, yes, ma'am.
- 11:15:28AM 14 Q. So it was submitted after he confronted you about it?
- 11:15:30AM 15 A. I submitted it after having the conversation, walking
- 11:15:33AM 16 through the worksheet with him on it, yes.
- 11:15:36AM 17 Q. This particular county you were traveling to was
- 11:15:40AM 18 considered a high risk COVID area at the time, correct?
- 11:15:43AM 19 A. I believe so, but I don't know --
- 11:15:44AM 20 Q. It is currently, correct?
- 11:15:46AM 21 A. Yes. Yes, ma'am.
- 11:15:48AM 22 Q. And I think at the last hearing, and please correct me if
- 11:15:52AM 23 I'm wrong, I think you conceded that you probably should have
- 11:15:54AM 24 done the risk mitigation plan sooner?
- 11:15:57AM 25 A. Yes, I conceded that I probably should have said to him on

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:16:01AM 1 Monday --

11:16:01AM 2 Q. Because it needed his approval?

11:16:06AM 3 A. Yes. The COVID travel risk assessment in and of itself is

11:16:10AM 4 not directive. It's not required by Navy policy, it's at

11:16:14AM 5 commander's discretion. My point in speaking to the commodore,

11:16:18AM 6 is like, "Yes, sir, I realize me being unvaccinated and high

11:16:21AM 7 risk, I should have provided to you more time to make that

11:16:24AM 8 determination." To say that I didn't meet a requirement, I

11:16:27AM 9 don't know if I agree with that or where that's written that

11:16:30AM 10 that is required, unless my commodore said, "I want to see that

11:16:36AM 11 so I can make a determination for your ROM." Yes.

11:16:38AM 12 Q. The policy applicable to sailors aboard your ship requires

11:16:41AM 13 it to be done prior to requesting leave, correct?

11:16:44AM 14 A. If they are going out-of-area leave, yes, ma'am.

11:17:00AM 15 Q. For this hearing, you submitted your leave request and

11:17:03AM 16 travel mitigation plan ahead of time, correct, before taking

11:17:07AM 17 leave?

11:17:07AM 18 A. Yes, ma'am.

11:17:08AM 19 Q. And in that you proposed a three-day restriction of

11:17:12AM 20 movement?

11:17:13AM 21 A. I did.

11:17:13AM 22 Q. Despite the fact this county is a high risk area and

11:17:17AM 23 you're attending indoor gatherings?

11:17:19AM 24 A. I did. In consult with my IDC, my independent duty

11:17:23AM 25 corpsman, and the Navy policy for executing a ROM is not

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:17:29AM 1 specific to the community level of transmission. It actually
11:17:32AM 2 says the ROM is required if you are COVID-positive. One, I am
11:17:36AM 3 not COVID-positive and I tested negative, and, two, the ROM is
11:17:40AM 4 at the discretion of the commander based on all the facts. You
11:17:44AM 5 can implement mitigations and not do a ROM, such as no ROM is
11:17:48AM 6 required after the return of your travel, wear an N95 mask. If
11:17:52AM 7 you develop symptoms, get a test, et cetera. We decided three
11:17:56AM 8 days --

11:17:56AM 9 Q. So --

11:17:56AM 10 A. -- because -- if I can continue. My IDC, based on the CDC
11:18:02AM 11 guidance that, you know, symptoms -- if you were to be exposed,
11:18:05AM 12 symptoms generally develop within 48 to 72 hours following
11:18:08AM 13 that. So if I did this travel, based on the interactions that
11:18:12AM 14 I had with people, and I returned to Norfolk, after 48 to
11:18:16AM 15 72 hours, if you don't have any symptoms, that would be a
11:18:19AM 16 sufficient ROM and you could come back and we could do the test
11:18:22AM 17 and clear.

11:18:23AM 18 Q. But the CDC guidance applicable to unvaccinated travelers
11:18:26AM 19 specifically recommends a five-day quarantine, correct?

11:18:31AM 20 A. I don't know if that's what the CDC says. I know what the
11:18:34AM 21 CDC puts out before the Navy can execute, and the Navy has to
11:18:38AM 22 evaluate that and apply it to the Navy based on, you know,
11:18:41AM 23 operational guidance, ships, buildings, et cetera.

11:18:43AM 24 Q. The guidance you provided to your own sailors provides for
11:18:46AM 25 a five-day quarantine, does it not?

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

- 11:18:49AM 1 A. That guidance was written in May of 2021, and the policy
- 11:18:54AM 2 for COVID and the CDC has changed multiple times over since
- 11:18:58AM 3 May of 2021. It was actually signed by my predecessor. I
- 11:19:02AM 4 would say that it's somewhat out-of-date. But, yes, we did
- 11:19:05AM 5 that five a-day ROM also based on medical guidelines then, and
- 11:19:10AM 6 I can't remember what the five days was for, but that --
- 11:19:14AM 7 Q. But it still does apply to the sailors under your command?
- 11:19:17AM 8 A. It does.
- 11:19:17AM 9 Q. And it is consistent with the current CDC guidance for
- 11:19:19AM 10 travel of unvaccinated persons, correct?
- 11:19:21AM 11 A. I can't attest to that. I'd have to read what the CDC
- 11:19:25AM 12 says for travel of unvaccinated sailors.
- 11:19:28AM 13 Q. But in any event, you thought you were entitled to special
- 11:19:29AM 14 treatment that your crew was not?
- 11:19:33AM 15 A. No. Why is it special treatment?
- 11:19:35AM 16 Q. Because your crew would be required to undergo a five-day
- 11:19:40AM 17 quarantine?
- 11:19:40AM 18 A. No. I can change and establish that based on the travel
- 11:19:42AM 19 risk assessments that I got. Most of my crew doesn't get a ROM
- 11:19:44AM 20 at all because most of the crew is vaccinated.
- 11:19:47AM 21 Q. Correct.
- 11:19:48AM 22 But if they were not, the current policy would provide for
- 11:19:51AM 23 a five-day quarantine, would it not?
- 11:19:53AM 24 A. It's at my discretion for their ROM.
- 11:19:58AM 25 Q. Okay.

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:19:59AM 1 A. For my crew. The whole travel risk assessment is based on
11:20:04AM 2 commander's evaluation whether the travel is at risk or not.
11:20:09AM 3 The only requirement is if I had someone who tested positive
11:20:13AM 4 for COVID, they would be mandated a five-day ROM. I think the
11:20:17AM 5 Navy policy also says that for foreign travel, so if somebody
11:20:20AM 6 traveled overseas, whether it's for vacation or to go see
11:20:23AM 7 family living somewhere, they would also be mandated a five-day
11:20:26AM 8 ROM.

11:20:26AM 9 Q. You testified briefly, and I'm honestly not entirely sure
11:20:31AM 10 I understand the ins and outs here, that you had requested for
11:20:35AM 11 temporary duty status for this hearing.

11:20:38AM 12 A. Mm-hmm.

11:20:39AM 13 Q. If that were the case, you would not be taking leave,
11:20:43AM 14 right? If that would were the case, you would be getting paid
11:20:46AM 15 by the Navy to pursue your private lawsuit against the Navy?

11:20:49AM 16 A. That's a negative. No, ma'am.

11:20:52AM 17 Q. Why?

11:20:52AM 18 A. Because the joint travel regulations do allow permissive
11:20:57AM 19 TAD. There are provisions for funded government travel and
11:21:01AM 20 there are provisions that say that this is not government
11:21:03AM 21 funded travel. At no point -- and the commodore asked me that
11:21:07AM 22 multiple times if I was asking for funded travel. I very
11:21:10AM 23 clearly said, at least three times, I am not asking for funded
11:21:13AM 24 travel.

11:21:13AM 25 Q. You are asking to not to take leave.

NAVY COMMANDER - CROSS-EXAM BY MS. POWELL

11:21:15AM 1 A. Yes. Because there are provisions that allow you to do
11:21:19AM 2 something under the obligation of duties that are allowed by
11:21:22AM 3 Navy policy or DoD policy that you don't have to take leave
11:21:26AM 4 for.

11:21:26AM 5 Q. And if you were not taking leave, you'd be receiving your
11:21:29AM 6 regular salary for pursuing your private lawsuit against the
11:21:32AM 7 Navy.

11:21:32AM 8 A. Yes. And in conversation with my JAG, you can do
11:21:35AM 9 permissive TAD when you are a witness -- when you are
11:21:39AM 10 subpoenaed to witness in court. We have permissive travel all
11:21:42AM 11 the time for, you know, local TAD stuff, for example, for
11:21:45AM 12 schools. You have permissive TAD -- and I'm speaking no-cost
11:21:49AM 13 options here -- for house hunting, for example. Somebody has
11:21:54AM 14 orders to go somewhere else, they can take no-cost orders to go
11:21:57AM 15 out and, you know, pursue a future home, where they're going to
11:22:01AM 16 live if they are moving out of the area. And I did not request
11:22:05AM 17 funded travel. I said my intentions are to do permissive TAD
11:22:09AM 18 because I thought there was that provision for me.

11:22:11AM 19 Q. And typically when your TAD -- is that what you called
11:22:14AM 20 that?

11:22:15AM 21 A. Temporary assigned duty --

11:22:15AM 22 Q. Okay.

11:22:16AM 23 A. -- or temporary duty, TAD, TDY.

11:22:19AM 24 Q. You're in some sort of official status when you're on
11:22:21AM 25 that, correct? Sort of acting in an official capacity?

NAVY COMMANDER - REDIRECT EXAM BY MR. GANNAM

- 11:22:26AM 1 A. I guess you can say that.
- 11:22:28AM 2 Q. And this is a personal legal matter; no?
- 11:22:30AM 3 A. So when you do house hunting, you are not acting in an
- 11:22:34AM 4 official capacity, you are executing duties that the Navy or
- 11:22:37AM 5 government allows you to do for that purpose.
- 11:22:39AM 6 Q. Right. But if you're searching for a house in a new
- 11:22:42AM 7 location, it's typically one that the Navy has ordered you to
- 11:22:45AM 8 go to.
- 11:22:45AM 9 A. For house hunting leave, yes. You have to have orders
- 11:22:49AM 10 outside of the area to be able to travel there and execute
- 11:22:51AM 11 that.
- 11:22:52AM 12 Q. Got it.
- 11:23:00AM 13 MS. POWELL: Can I have just a moment?
- 11:23:02AM 14 THE COURT: You may.
- 11:23:13AM 15 (Off-the-record discussion between Ms. Powell and
- 11:23:16AM 16 Commander Osterhues.)
- 11:23:19AM 17 MS. POWELL: That's all I have, Your Honor.
- 11:23:20AM 18 THE COURT: All right. Thank you, Ms. Powell.
- 11:23:23AM 19 Mr. Gannam, if you have redirect for this witness,
- 11:23:27AM 20 you are recognized for that purpose.
- 11:23:30AM 21 MR. GANNAM: Thank you, Your Honor.
- 11:23:32AM 22 May it please the Court.
- 11:23:33AM 23 **REDIRECT EXAMINATION**
- 11:23:33AM 24 **BY MR. GANNAM:**
- 11:23:34AM 25 Q. Did you or the government file the motion that led to the

NAVY COMMANDER - REDIRECT EXAM BY MR. GANNAM

11:23:38AM 1 hearing here today?

11:23:40AM 2 A. I'm sorry, can you say that again?

11:23:41AM 3 Q. Did you file the motion seeking the stay of the Court's

11:23:45AM 4 order that led to the hearing today?

11:23:47AM 5 A. No, sir.

11:23:47AM 6 Q. Is it your understanding that the defendants, the U.S.

11:23:50AM 7 government, filed that motion?

11:23:53AM 8 A. I'm not -- can you say that again?

11:23:55AM 9 Q. Is it your understanding that the defendants in this

11:23:58AM 10 case --

11:23:58AM 11 THE COURT: I think we can take notice of who filed

11:24:00AM 12 the motion, Mr. Gannam.

11:24:04AM 13 Q. (By Mr. Gannam) At least you didn't ask for the motion to

11:24:07AM 14 be filed that led to you being here?

11:24:09AM 15 A. No, sir, I did not.

11:24:10AM 16 Q. When you submitted your request for TAD, did you disclose

11:24:15AM 17 to your commander the reason why you wanted to take that TAD?

11:24:19AM 18 A. I did.

11:24:19AM 19 Q. And was it approved?

11:24:21AM 20 A. It was approved Tuesday evening, yes, sir. After multiple

11:24:28AM 21 RFIs, which is request for information, of the type of travel

11:24:32AM 22 and the type of leave, what am I doing on leave, where am I

11:24:36AM 23 staying, my travel risk, whether it's going to be funded or

11:24:40AM 24 not, there are multiple RFIs after requesting that, yes, sir.

11:24:44AM 25 Q. When you submitted your recommendation for the ROM

11:24:48AM 1 requirement when you returned from this hearing, did you demand
11:24:54AM 2 that it only be three days, or merely recommend that?

11:24:59AM 3 A. It was a recommendation, sir.

11:25:01AM 4 Q. And will you comply with whatever ROM requirement is
11:25:04AM 5 imposed by your commander whenever that's done?

11:25:06AM 6 A. Yes, sir, I will.

11:25:07AM 7 Q. And is that any different from how a sailor under your
11:25:11AM 8 command would be treated when submitting a recommended ROM
11:25:15AM 9 requirement for travelling out of area?

11:25:17AM 10 A. No, it is not.

11:25:20AM 11 Q. When the deputy commodore came on board your ship to
11:25:25AM 12 travel with you on your last exercise, at any point did he
11:25:30AM 13 assume command of your ship?

11:25:31AM 14 A. No, sir, he did not.

11:25:37AM 15 MR. GANNAM: I've no further questions, Your Honor.

11:25:38AM 16 THE COURT: All right. Thank you very much. In that
11:25:40AM 17 case, Navy Commander, if you'll remember to let us detach that
11:25:43AM 18 microphone, you may step down, and you're excused with our
11:25:47AM 19 thanks.

11:25:48AM 20 THE WITNESS: Thank you.

11:25:58AM 21 THE COURT: It is just at 11:30. Would this be a
11:26:01AM 22 good time to take a brief recess?

11:26:03AM 23 MR. STAVER: That's fine.

11:26:05AM 24 THE COURT: You're about to call a witness. Do you
11:26:07AM 25 have an idea what the duration of that witness might be on

11:26:10AM 1 direct?

11:26:10AM 2 MR. STAVER: I would say 45 minutes to an hour.

11:26:13AM 3 THE COURT: All right. Well, why don't we take a
11:26:15AM 4 brief recess, then we'll come back here, hear that witness and
11:26:19AM 5 any cross-examination, and then we'll break for lunch.

11:26:21AM 6 MR. STAVER: Thank you.

11:26:22AM 7 THE COURT: Does that sound all right, Ms. Powell?

11:26:24AM 8 MS. POWELL: I'm sorry, I missed what you said.

11:26:29AM 9 THE COURT: I asked Mr. Staver -- I said we've been
11:26:32AM 10 in session about an hour and a half, and it's also 30 minutes
11:26:40AM 11 before noon. So I said, "Well, are you going to call a
11:26:44AM 12 witness? How long will the witness be on direct?" and I think
11:26:47AM 13 he said 45 minutes. I said, "Okay. Well, let's take a break,"
11:26:51AM 14 just the morning recess, in other words, "and come back in 15
11:26:54AM 15 or 20 minutes, maybe at a quarter to 12, we'll hear that
11:26:58AM 16 witness and any cross-examination, and then break for the lunch
11:27:01AM 17 hour." Is that all right?

11:27:02AM 18 MS. POWELL: Yes.

11:27:03AM 19 THE COURT: Does that sound good?

11:27:04AM 20 MR. STAVER: Thank you.

11:27:05AM 21 THE COURT: Then we are in recess for about 15 or
11:27:11AM 22 20 minutes. We'll say 20. All right. Thank you.

11:27:15AM 23 (Proceedings in recess from 11:27 a.m. until 11:50 a.m.)

11:50:34AM 24 THE COURT: All right. Please be seated.

11:50:39AM 25 Mr. Staver, you're recognized to call your next

11:50:54AM 1 witness.

11:50:54AM 2 MR. STAVER: Yes, Your Honor.

11:50:55AM 3 I call Lieutenant Colonel Peter Chambers --

11:50:58AM 4 Dr. Chambers to the stand.

11:50:59AM 5 MS. POWELL: Your Honor, this is one of the witnesses

11:51:09AM 6 I previously objected to. I don't know how you'd like to

11:51:12AM 7 handle that.

11:51:12AM 8 THE COURT: Well, here's what I'm going to do. This

11:51:21AM 9 is -- there's no jury in this circumstance, so the witness is

11:51:25AM 10 here for the purpose of testifying, and, like everyone else,

11:51:30AM 11 has, I'm sure, traveled here. I cannot determine at this

11:51:35AM 12 moment anything about qualifications or -- I don't know his

11:51:39AM 13 opinions or the like.

11:51:43AM 14 But the way I normally handle this for experts when

11:51:48AM 15 their credentials are not stipulated as qualifying the witness

11:51:59AM 16 to testify in the form of an opinion on some stated topic, I

11:52:06AM 17 allow the proffering party to state the -- through question and

11:52:15AM 18 answer, to develop their credentials and state the subject

11:52:19AM 19 matter on which the party tenders the witness to the Court as

11:52:22AM 20 an expert, and then would recognize you to voir dire that

11:52:26AM 21 witness for that purpose, and then assuming that the witness

11:52:34AM 22 qualifies, allow the testimony to proceed. At your option, you

11:52:40AM 23 could let the testimony go forward and voir dire the witness on

11:52:43AM 24 cross-examination, either way. For the purposes of this

11:52:51AM 25 hearing, initially, I will permit the witness to testify over

11:52:55AM 1 the objection. And obviously the plaintiffs would be entitled
11:53:01AM 2 to proffer the testimony in any event.

11:53:05AM 3 MS. POWELL: Okay.

11:53:05AM 4 THE COURT: So it's not a material difference one way
11:53:08AM 5 or the other. So that's how I sort of intended to handle that,
11:53:14AM 6 which I think is about the most expeditious way to do it.

11:53:18AM 7 Yes, sir. If you'll step forward. Let me ask you to
11:53:22AM 8 raise your right hand.

11:53:23AM 9 PETER CONSTANTINE CHAMBERS,
11:53:23AM 10 having been sworn or affirmed under oath, was examined and
11:53:31AM 11 testified as follows:

11:53:31AM 12 THE COURT: State your name, please.

11:53:32AM 13 THE WITNESS: Peter Constantine Chambers.

11:53:35AM 14 THE COURT: Peter Constantine Chambers.

11:53:39AM 15 THE WITNESS: Yes, sir.

11:53:40AM 16 THE COURT: Sir, if you will have a seat in the
11:53:44AM 17 witness stand. We'll need to attach the microphone to
11:53:47AM 18 something, lapel, the tie, or something of the like.

11:54:10AM 19 MR. STAVER: May we approach the witness with the
11:54:12AM 20 exhibits, and we'll distribute those so we can address those as
11:54:15AM 21 we proceed?

11:54:16AM 22 THE COURT: You may do so freely as long as you don't
11:54:21AM 23 camp out.

11:54:21AM 24 MR. STAVER: Certainly. We're just going to present
11:54:24AM 25 one notebook and leave it there for the different ones.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

11:54:25AM 1 THE COURT: Great. Thank you.

11:54:26AM 2 MR. STAVER: And this is not -- we're not introducing
11:54:28AM 3 all of this, but will pare it down to streamline our hearing
11:54:33AM 4 today.

11:54:40AM 5 DIRECT EXAMINATION

11:54:40AM 6 BY MR. STAVER:

11:54:43AM 7 Q. Can you state your name again for the record.

11:54:45AM 8 A. Peter Constantine Chambers.

11:54:47AM 9 Q. Can you tell the Court the background about your education
11:54:51AM 10 and training particularly in the medical field and in the
11:54:54AM 11 military?

11:54:56AM 12 A. Yes, sir. I came into the Army in 1983 as an enlisted
11:55:00AM 13 man, infantryman. Did my time, got an honorable discharge.

11:55:05AM 14 Upon completion of that, I attended College of Medical School,
11:55:08AM 15 University of New England. College of Osteopathic Medicine is
11:55:11AM 16 where I graduated from in 1995. At that time, I went to the
11:55:15AM 17 Reserves in order to do my residency program, the Inactive
11:55:20AM 18 Ready Reserves. I did a primary care residency with the
11:55:23AM 19 intention of being an operational position in the Army's
11:55:26AM 20 Special Forces, of which I did.

11:55:27AM 21 I went back in after 9/11 and I attended the Special
11:55:31AM 22 Forces Q Course, became qualified as a Green Beret and also as
11:55:36AM 23 a battalion surgeon for a particular unit at Fort Bragg.

11:55:40AM 24 That would bring me up to 2015, when I left that position
11:55:45AM 25 and then I went to the Texas National Guard --

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

11:55:47AM 1 THE COURT: Mr. Chambers.

11:55:48AM 2 THE WITNESS: Yes, sir.

11:55:48AM 3 THE COURT: Could I ask you to speak just a step or
11:55:50AM 4 two more slowly.

11:55:51AM 5 THE WITNESS: Yes.

11:55:52AM 6 THE COURT: I'm trying to follow you --

11:55:52AM 7 THE WITNESS: Okay.

11:55:53AM 8 THE COURT: -- and take a few notes here as I go.

11:55:53AM 9 THE WITNESS: Okay. Absolutely.

11:55:56AM 10 THE COURT: -- and it'll ease the pressure on the
11:55:59AM 11 court reporter as well.

11:55:59AM 12 THE WITNESS: So after 2015, I came off active duty
11:56:02AM 13 from Fort Bragg and went to the Texas National Guard. At that
11:56:06AM 14 time, I took a position as a surgeon -- physician and surgeon
11:56:11AM 15 with the task force also in the Texas Guard that is a Special
11:56:18AM 16 Operations Tac Unit.

11:56:19AM 17 After that, we get to last year of 2020, I was the
11:56:27AM 18 governor's task force liaison, so the Governor Abbott, for the
11:56:32AM 19 COVID response, and I did that for eight months during the
11:56:35AM 20 COVID response, from March -- for eight months on.

11:56:39AM 21 The border mission then came on, it was Operation
11:56:44AM 22 Lone Star, and it -- let's see, February -- February of 2021.
11:56:49AM 23 I went on to that mission as a task force surgeon under a
11:56:55AM 24 502(f) type orders. And a 502(f) is for COVID response, it's
11:57:00AM 25 Title 10. And I was taken off those orders in November of 2021

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

11:57:06AM 1 at which time -- unfortunately I have to get out for a medical
11:57:11AM 2 discharge, sir -- Your Honor.

11:57:15AM 3 Q. (By Mr. Staver) We'll talk about that in a few moments.

11:57:17AM 4 So do have -- in addition to your medical training, do you
11:57:20AM 5 have individual training in COVID response with regards to the
11:57:23AM 6 governor's task force of Texas?

11:57:28AM 7 A. Well, that's more of an on-the-job type training. I
11:57:30AM 8 wasn't trained specifically in epidemiology or virology. I'm a
11:57:34AM 9 primary care doctor. But I was able to help advise on
11:57:39AM 10 procurement of PPE, testing and tracing for the state of Texas,
11:57:45AM 11 to include the northern half of the state of Texas. Put me on
11:57:48AM 12 the road a lot, sir. So there's no real particular training
11:57:52AM 13 other than on-the-job, like I said, observation and beliefs.

11:57:57AM 14 Q. Can I assume that you were selected for that position
11:58:00AM 15 because of your abilities to address COVID response?

11:58:04AM 16 A. Okay. Yes, sir. I believe that the selection for that
11:58:09AM 17 was because of my training as a Special Forces position, where
11:58:13AM 18 we do training for weapons of mass destruction and bio-warfare,
11:58:17AM 19 yes, sir.

11:58:17AM 20 Q. And you mentioned that you're also a Green Beret and that
11:58:21AM 21 you're a medical doctor. Are there very many other people like
11:58:24AM 22 you that are medical doctors within the Green Beret?

11:58:27AM 23 A. There are five in the inventory, sir, in the Department of
11:58:30AM 24 Defense.

11:58:30AM 25 Q. Are you saying that there's five medical doctors that are

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

11:58:34AM 1 in the Green Beret in the entire Department of Defense or in
11:58:38AM 2 the U.S. Army?

11:58:39AM 3 A. To my last knowledge, sir, there are five.

11:58:42AM 4 Q. In the entire Department of Defense?

11:58:44AM 5 A. 18 series/61 November, there are five, sir.

11:58:48AM 6 Q. Okay. And you're one of those five?

11:58:50AM 7 A. Yes, sir.

11:58:52AM 8 Q. You also were apparently tasked for the COVID response
11:58:55AM 9 with regards to your military.

11:58:57AM 10 A. I believe so, sir.

11:59:00AM 11 Q. Prior to talking about what you're seeing on the border,
11:59:04AM 12 and we'll talk more about that, and your COVID response, you
11:59:08AM 13 also have received a number of honors and medals, including a
11:59:13AM 14 Purple Heart?

11:59:14AM 15 A. Yes, sir. I didn't move out of the way fast enough.

11:59:17AM 16 Q. Can you explain that?

11:59:18AM 17 A. Yes, sir. At 12 May, 2004, my vehicle was struck by an
11:59:22AM 18 IED. There was a one-five-five howitzer shell buried in the
11:59:26AM 19 road in Iraq. Other gentlemen in the vehicle lost their lives;
11:59:32AM 20 I was able to get out of it.

11:59:33AM 21 Q. And you were injured?

11:59:35AM 22 A. Yes, sir.

11:59:36AM 23 Q. How were you injured?

11:59:37AM 24 A. I was injured by initial blast overpressure injury and a
11:59:42AM 25 high velocity round that went through my left arm and ended up

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 11:59:47AM 1 Lodged into the left side of my chest.
- 11:59:49AM 2 Q. Did the other individuals in the vehicle survive?
- 11:59:52AM 3 A. One did, and he passed away en route back to the States,
- 11:59:55AM 4 yes, sir.
- 11:59:55AM 5 Q. And did you assist him?
- 11:59:57AM 6 A. Yes, sir.
- 11:59:59AM 7 Q. So in your work with regards to the military, you also
- 12:00:04PM 8 were assigned a bomb-sniffing dog; is that correct?
- 12:00:10PM 9 A. Yes, sir. The dog was -- because we lost the handler, we
- 12:00:14PM 10 have a military working dog, he's airborne qualified, he goes
- 12:00:18PM 11 on missions with us. It's not typically the job of the
- 12:00:20PM 12 surgeon, but as a Green Beret, I'm generally closer to the tip
- 12:00:25PM 13 of the spear, and so we have these working dogs that go with us
- 12:00:28PM 14 down range. The handler was killed, I got a hold of him, I had
- 12:00:31PM 15 him for six months, he retired, and then I ended up adopting
- 12:00:35PM 16 him, yes, sir.
- 12:00:35PM 17 Q. Now, I understand this dog has taken 41 jumps. Are most
- 12:00:39PM 18 of them or many of them with you?
- 12:00:40PM 19 A. Just one with me, sir.
- 12:00:41PM 20 Q. One with you, but 41 total?
- 12:00:43PM 21 A. Yes.
- 12:00:43PM 22 Q. And you have your dog here, not in the courtroom but in
- 12:00:46PM 23 the hotel room?
- 12:00:47PM 24 A. Next door.
- 12:00:48PM 25 Q. Are you with him 24/7?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:00:50PM 1 A. Yes, sir.
- 12:00:51PM 2 Q. And you still use that dog?
- 12:00:52PM 3 A. Yes, sir.
- 12:00:52PM 4 Q. Can you tell us --
- 12:00:53PM 5 A. He's now a service dog for me.
- 12:00:55PM 6 Q. Can you tell us what you're doing in Texas? What is your
- 12:00:59PM 7 duty with the military?
- 12:01:00PM 8 A. My duty with the military is I'm a Special Operations
- 12:01:03PM 9 Detachment-Alpha, that's for Africa, that's our area of
- 12:01:06PM 10 operations, I am the surgeon for that. I also serve as a dual
- 12:01:09PM 11 capacity as an 18 Alpha, which is a commander for Special
- 12:01:14PM 12 Forces, however my primary position is as a flight surgeon, 61
- 12:01:19PM 13 November.
- 12:01:20PM 14 Q. And your dog is with you on the border?
- 12:01:23PM 15 A. He was with me for the past several months, since March,
- 12:01:26PM 16 and I came off in November this last year.
- 12:01:28PM 17 Q. What do you do on the border?
- 12:01:30PM 18 A. So my job on the border is -- primarily because I'm under
- 12:01:32PM 19 502(f) orders, that is Title 10, even though to stay active
- 12:01:38PM 20 duty mission, my primary focus was to mitigate COVID as we
- 12:01:42PM 21 operated in an austere environment on the border, where 10,000
- 12:01:46PM 22 to 20,000 people a week that are unvaccinated walk across that
- 12:01:50PM 23 border, and it is our soldiers who have to meet them, and
- 12:01:53PM 24 apprehend many times, and my dog and I have done that as well
- 12:01:56PM 25 because I spent every third night on the border.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:01:57PM 1 Q. Is this potentially life-and-death-threatening situations
12:02:01PM 2 for you and your team?

12:02:02PM 3 A. Absolutely, sir.

12:02:03PM 4 Q. Why is that?

12:02:05PM 5 A. Well, on occasion we get indirect fire, sometimes we get
12:02:08PM 6 direct fire, not indirect in the form of mortars, but they --
12:02:09PM 7 plunging fire, so sometimes you can take a 50-caliber, which is
12:02:12PM 8 a large round, it's happened. We've had people not in my unit
12:02:15PM 9 hit, but civilians in town that's probably not talked about in
12:02:19PM 10 the news, and it comes across from what we call the Mike side,
12:02:23PM 11 or the Mexican side. Cartels are always having exchanges of
12:02:29PM 12 gunfire. There are exchanges of gunfire that take place
12:02:33PM 13 between factions down there, particularly in the Roma region,
12:02:36PM 14 that is one of our hottest areas. We will have 900 migrants
12:02:41PM 15 walk across that point every night who are unvaccinated and who
12:02:47PM 16 are sick, and it has been my job to keep our soldiers safe, and
12:02:52PM 17 I did a good job of it, sir.

12:02:54PM 18 Q. Before we get to that, I want to ask, you are nearly 40
12:02:58PM 19 years in the military, correct?

12:03:00PM 20 A. My career spans 38 years; came in in 1983, sir. I had a
12:03:04PM 21 break in service. So on my leave-and-earning statement, it
12:03:08PM 22 says 38 years. I'm over 20 years and have a letter that I can
12:03:11PM 23 retire.

12:03:12PM 24 Q. Was it your goal to reach 40 years cumulatively?

12:03:15PM 25 A. I wanted to reach 40 years, yes, sir.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:03:17PM 1 Q. And why are you not going -- let me back up.
- 12:03:19PM 2 Are you planning to retire prior to 40 years cumulative,
- 12:03:23PM 3 sir?
- 12:03:23PM 4 A. Yes, sir. My plan was to retire at 40 years and hopefully
- 12:03:28PM 5 make the next rank so it would be a better retirement.
- 12:03:31PM 6 Q. And that would be 2023 sometime?
- 12:03:34PM 7 A. Yes, sir.
- 12:03:34PM 8 Q. But are you retiring in 2022?
- 12:03:37PM 9 A. Yes, sir. I'll be retiring probably in 60 days.
- 12:03:41PM 10 Q. Why are you retiring?
- 12:03:44PM 11 A. I had an adverse reaction to a Moderna shot.
- 12:03:48PM 12 Q. What kind of adverse reaction?
- 12:03:50PM 13 A. It was a neurologic deficit.
- 12:03:51PM 14 Q. Can you explain what that is?
- 12:03:53PM 15 A. Yes, sir. What my MRI shows is demyelination. And I've
- 12:03:59PM 16 had several soldiers on the border have the same type situation
- 12:04:02PM 17 all within the same time frame as myself. This is what brought
- 12:04:06PM 18 me to meet with my colleague -- can I say her name?
- 12:04:09PM 19 Q. You can.
- 12:04:10PM 20 A. Lieutenant Colonel Theresa Long. She's sitting in this
- 12:04:14PM 21 courtroom right now. I met her over the phone. She's a master
- 12:04:18PM 22 of public health and she's also an epidemiology trained
- 12:04:23PM 23 physician. I work, like I said, sir, at the tip of the spear.
- 12:04:26PM 24 I don't have access to those things typically; she pointed me
- 12:04:29PM 25 in the right direction. I called her and asked her, "How do I

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:04:32PM 1 find out how many soldiers in general?" She said, "The DMED
- 12:04:37PM 2 system," defense medical epidemiologic database.
- 12:04:40PM 3 Q. Is that abbreviation D-M-E-D?
- 12:04:42PM 4 A. Delta, Echo -- Well, D-M-E-D.
- 12:04:45PM 5 Q. And what is the DMED?
- 12:04:47PM 6 A. It's a database -- and she can explain it more eloquently
- 12:04:52PM 7 than I -- that is created to be a sentinel watch for physicians
- 12:04:58PM 8 to know when there's a pandemic, an epidemic, or too many of
- 12:05:03PM 9 one type of disease process that would typically break the
- 12:05:09PM 10 normal patterns, and it lets us know every year based upon ICD
- 12:05:13PM 11 Ten Codes, so this is a very objective database.
- 12:05:16PM 12 This is not like the VAERS system that we've been hearing
- 12:05:19PM 13 about, where in the VAERS system it can be somewhat subjective.
- 12:05:23PM 14 This one is objective; it is by each individual visit.
- 12:05:27PM 15 So perhaps if a soldier comes in and says, "I have chest
- 12:05:31PM 16 pain, shortness of breath," and they're diagnosed with
- 12:05:34PM 17 pericarditis, you would then have three ICD Ten Codes that
- 12:05:38PM 18 would be brought up for that. Then we look at that and see
- 12:05:41PM 19 what are the norms, what are the changes, and whether the Delta
- 12:05:44PM 20 would cause the changes.
- 12:05:46PM 21 Q. And when you say VAERS, that's capital VAERS?
- 12:05:48PM 22 A. VAERS. That's the civilian side.
- 12:05:51PM 23 Q. Right.
- 12:05:52PM 24 And so the DMED is the military side?
- 12:05:53PM 25 A. It's DoD.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:05:55PM 1 Q. Okay.

12:05:56PM 2 A. Covers, I believe -- and this is my belief -- 1.4 million

12:06:01PM 3 active duty, and then I believe it takes over to 2.4 total with

12:06:05PM 4 Reserves and National Guard.

12:06:08PM 5 Q. So you're retiring one year shy of 40 cumulative years

12:06:12PM 6 because you have a medical condition?

12:06:15PM 7 A. Yes, sir. It makes it difficult for me to jump out of a

12:06:18PM 8 plane, which is one the tasks that's required for me to do

12:06:21PM 9 that. I get vertigo occasionally and sometimes some brain fog,

12:06:25PM 10 which is more of just a vision thing. I just kind of -- you

12:06:29PM 11 know, foggy. It's changed vision, and it's secondary to what's

12:06:33PM 12 called demyelination, which is evident on my MRI.

12:06:38PM 13 Q. What is demyelination as far as you know?

12:06:39PM 14 A. Demyelination is -- there's a myelin sheath that covers

12:06:42PM 15 much like a wire, it's rubber on the outside. The myelin is

12:06:46PM 16 what protects the neurons, the nerves, from crisscrossing or

12:06:52PM 17 being damaged, inflammatory responses, et cetera.

12:06:55PM 18 When you have demyelination, it is concomitant with

12:07:00PM 19 typically multiple sclerosis is the concern. I didn't expect

12:07:05PM 20 to see anything on my MRI; I did. I went through a military

12:07:09PM 21 physician, he diagnosed it, and then -- now I'm going with

12:07:13PM 22 neurology specialty care to continue it, because it's something

12:07:17PM 23 I want to get rid of if I can.

12:07:18PM 24 Q. Prior to taking Moderna vaccine, did you have any of these

12:07:18PM 25 conditions?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:07:18PM 1 A. Negative, sir. I've taken every vaccine the Army has
12:07:24PM 2 given me since 1983 on and never had a problem.

12:07:26PM 3 Q. Why did you take the Moderna vaccine?
12:07:28PM 4 A. Because I trusted my government.

12:07:29PM 5 Q. What did they tell you?
12:07:31PM 6 A. It was safe and effective. There was no informed consent,
12:07:35PM 7 but it was safe and effective.

12:07:37PM 8 Q. And you relied upon that?
12:07:39PM 9 A. Yes, sir.

12:07:39PM 10 Q. And do you believe -- or do your physicians believe that
12:07:41PM 11 this is related to your Moderna shot?
12:07:46PM 12 A. It would be hard for me to speculate. I know that my
12:07:48PM 13 personal -- other physicians, I can't say, but for mine he does
12:07:51PM 14 believe that after going through what's called a differential
12:07:54PM 15 diagnosis of ruling out other things.

12:07:56PM 16 Q. And was this in close proximity to your Moderna
12:08:00PM 17 vaccination?
12:08:01PM 18 A. It was approximately two to three weeks afterwards I
12:08:07PM 19 noticed the vertigo starting, and then the headaches was the
12:08:12PM 20 next thing. And this is not just me, numerous soldiers on the
12:08:16PM 21 border received this. As we grew from a certain size, and
12:08:19PM 22 that's an operational security I can't give out the numbers on
12:08:22PM 23 the border, but I can say in the thousands now. But we started
12:08:24PM 24 with a lot less, and as we progressed in the -- I'll explain it
12:08:32PM 25 real quickly.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:08:37PM 1 So 28 percent of the people, when I got on the border, of
12:08:39PM 2 soldiers, 28 percent, were vaccinated. As more and more came
12:08:45PM 3 on, it was my job to do informed consent, and I did. When I
12:08:48PM 4 did informed consents, I was told by the command not to do
12:08:51PM 5 informed consents. I have a letter that I provided from our
12:08:56PM 6 state surgeon that said do not. Either wise, if you cannot
12:08:59PM 7 convince soldiers to take it, you must recuse yourself. I'm
12:09:03PM 8 paraphrasing. The letter is available. It's a direct email
12:09:07PM 9 from state surgeon -- from surgeon -- command surgeon -- sorry,
12:09:10PM 10 task force surgeon.

12:09:11PM 11 THE COURT: Of the state of Texas.

12:09:13PM 12 THE WITNESS: Of the state of Texas, yes, sir.

12:09:15PM 13 So we did the informed consents and we did them
12:09:21PM 14 efficiently. We gave fair data, this is the way we do it as
12:09:24PM 15 physicians; we say the positives, we say the negatives. It's
12:09:27PM 16 harder for me, as I'm going along, knowing what I could
12:09:29PM 17 possibly have, corroborating with the VAERS data and seeing
12:09:35PM 18 that our DMED data is virtually the same. And I know that, you
12:09:39PM 19 know, you'll probably have questions about that, but...

12:09:41PM 20 Q. (By Mr. Staver) We'll talk about that in a few moments.

12:09:43PM 21 A. Yes, sir.

12:09:44PM 22 Q. The letter that you're referring to, is that -- I want to
12:09:46PM 23 point you to tab 1.

12:09:49PM 24 A. Yes, sir.

12:09:50PM 25 MR. STAVER: Your Honor, as far as -- I'd like to --

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:09:54PM 1 we weren't planning -- because of the military regulations,
12:10:00PM 2 Dr. Chambers is not testifying as a spokesperson for the
12:10:03PM 3 military as an individual.

12:10:05PM 4 THE WITNESS: Yes.

12:10:06PM 5 MR. STAVER: And there are certain military
12:10:08PM 6 regulations as to whether they can testify based upon
12:10:11PM 7 reasonable medical certainty and represent the military. We're
12:10:15PM 8 presenting him primarily in his expertise as a witness of what
12:10:19PM 9 he knows, and we're not going to get into necessarily causal
12:10:24PM 10 relationship with regards to this, but he will present facts or
12:10:29PM 11 fact witness information.

12:10:33PM 12 THE COURT: All right. Go ahead.

12:10:34PM 13 Q. (By Mr. Staver) All right. I turn your attention to tab
12:10:38PM 14 1. Can you identify what is listed as tab 1 in the notebook
12:10:42PM 15 that you have before you?

12:10:43PM 16 A. Yes, sir, I have it before me.

12:10:45PM 17 Q. What is this?

12:10:47PM 18 A. This is a copy of the email that all providers in the
12:10:51PM 19 state of Texas got as a mass email. The only thing missing
12:10:55PM 20 from it is the email addresses.

12:10:55PM 21 Q. Now, this is from Jeffrey Powell, lieutenant colonel,
12:11:00PM 22 deputy joint surgeon?

12:11:02PM 23 A. Yes, sir, it is.

12:11:03PM 24 Q. So when you said it's from Texas, it's not from the state
12:11:06PM 25 of Texas, it's from the Texas Military Department, or the

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:11:10PM 1 Office of the Joint Surgeon, correct?
- 12:11:12PM 2 A. Yes, correct.
- 12:11:13PM 3 Q. So that's the military branch?
- 12:11:14PM 4 A. Yes, sir.
- 12:11:16PM 5 Q. So what did this letter address to you? What did it say?
- 12:11:20PM 6 I want to point your attention to paragraph 4, in following up,
- 12:11:27PM 7 that you said that you were not supposed to give informed
- 12:11:29PM 8 consent.
- 12:11:30PM 9 A. Would you like me to read it, sir?
- 12:11:31PM 10 Q. Yes, sir.
- 12:11:32PM 11 A. It kind of bothers me every time I do, but I'll read it,
- 12:11:32PM 12 sir.
- 12:11:34PM 13 "As a reminder, it is our job to convince Soldiers to
- 12:11:38PM 14 receive the vaccine. If you, personally are not able to
- 12:11:41PM 15 fulfill this role, please, privately message the State Surgeon,
- 12:11:47PM 16 Colonel Peter Coldwell at..." his email address. "Do not reply
- 12:11:50PM 17 all," with five stars at the end of it.
- 12:11:53PM 18 Q. Is Colonel Peter Coldwell you?
- 12:11:57PM 19 A. Negative.
- 12:11:58PM 20 Q. That's a different person --
- 12:11:58PM 21 A. The command surgeon --
- 12:12:00PM 22 Q. That's a different person that you would also give your
- 12:12:03PM 23 email to, correct?
- 12:12:05PM 24 A. Yes, sir.
- 12:12:07PM 25 Q. Now, I want you to go down to the medical exemptions

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:12:13PM 1 sections, and it's actually highlighted.

12:12:16PM 2 A. Mm-hmm.

12:12:17PM 3 Q. Can you read the section that is the first highlight under

12:12:19PM 4 "Medical Exemptions"?

12:12:21PM 5 A. The 2-6 Alpha? Is that what you're talking about, sir?

12:12:21PM 6 Q. Yes.

12:12:26PM 7 A. "Temporary medical exemptions are outlined in the

12:12:29PM 8 regulation (As we do annually with the flu vaccine) those who

12:12:34PM 9 are pregnant or breastfeeding, undergoing chemotherapy --"

12:12:38PM 10 Q. Just read the yellow highlight --

12:12:38PM 11 A. Oh, yellow --

12:12:40PM 12 Q. -- instead of the whole thing.

12:12:42PM 13 A. "Don't apply science to the regulation. It will hurt your

12:12:46PM 14 head."

12:12:46PM 15 Q. As a physician, how do you address that?

12:12:53PM 16 A. As a physician, I did address it, sir. I wrote a letter

12:12:57PM 17 back explaining that we do kind of operate in the realm of

12:13:01PM 18 science and that this was inappropriate.

12:13:04PM 19 Q. On the next page, page 2, can you read the section called

12:13:08PM 20 "Religious Exemptions"?

12:13:14PM 21 A. "Religion Exemptions. Read the regulation." This is him

12:13:17PM 22 speaking to all of us providers. See AR 600-20. And he's

12:13:22PM 23 quoting here, tongue-in-cheek. "Ever seen a religious

12:13:27PM 24 exemption for vaccines? No," exclamation point. You haven't.

12:13:30PM 25 That kid was administratively separated during IET. Soldiers

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:13:33PM 1 will try. Soldiers will fail."

12:13:37PM 2 Q. How do you interpret that?

12:13:40PM 3 A. Well, that's exactly what prompted me, sir, to respond

12:13:44PM 4 back to an email directly back, and then I was told just to

12:13:48PM 5 find somebody else to do the informed consents. But I also

12:13:52PM 6 conferred with other physicians throughout the force, to

12:13:54PM 7 include the Marine Corps, to include the Navy, which Navy docs

12:13:58PM 8 cover Marine Corps, but Air Force that were working with us in

12:14:02PM 9 the state as well, active duty and with Guards, and they all

12:14:06PM 10 felt that there was the same shadow regulation that takes

12:14:08PM 11 place. And this is my belief, this is what I'm hearing.

12:14:12PM 12 Q. When you say "shadow regulation," what do you mean?

12:14:15PM 13 A. It's not to go exactly by the regs, but if I go by Army

12:14:19PM 14 regulation 40-562, Chapter 8, which covers vaccines, there are

12:14:26PM 15 certain pieces in there that are being used, but not the whole

12:14:30PM 16 regulation, and I can't -- I haven't done that in my many years

12:14:33PM 17 as an officer or enlisted, only picked and choosed a

12:14:38PM 18 regulation. Maybe been out of grooming regulation with a

12:14:41PM 19 mustache in the past, but that's about it.

12:14:43PM 20 Q. So according to this directive that you got, you were, as

12:14:47PM 21 your duty, to convince soldiers to get the vaccine, not to give

12:14:52PM 22 them informed consent?

12:14:53PM 23 A. Based upon this directive, yes, sir.

12:14:55PM 24 Q. You were also told that there are no religious exemptions?

12:15:01PM 25 A. I was told, based on this -- but then I did get in their

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:15:07PM 1 chili a little bit and went up and talked to them face to face,
12:15:10PM 2 and verbally, he said, "Well, we're going to look at them, but,
12:15:14PM 3 you know, between you and I, this isn't going to go anywhere."

12:15:17PM 4 Yes, sir, that was a conversation.

12:15:18PM 5 MR. STAVER: I'd like to introduce what is tab 1 as
12:15:23PM 6 Plaintiffs' Exhibit 1.

12:15:30PM 7 MS. YANG: We would object, Your Honor. The document
12:15:31PM 8 has no relevance to the issues in this case and in particular
12:15:34PM 9 to this motion that's before the Court. On its face, it is
12:15:37PM 10 issued by the Texas Military Department. The forces that are
12:15:43PM 11 at issue today are the U.S. Navy, the U.S. Marine Corps. This
12:15:47PM 12 simply has no bearing on the issues.

12:15:51PM 13 MR. STAVER: Your Honor, in their motion, they put
12:15:54PM 14 back into issue compelling interest, safety, efficacy, they did
12:16:00PM 15 that on page 5 of the motion and is why we're here. They cite
12:16:04PM 16 to the declarants that they have put in their side of medical
12:16:13PM 17 information generally for all of the different branches,
12:16:16PM 18 including the Navy and the Marines.

12:16:18PM 19 This Court stated specifically in its order last
12:16:22PM 20 Wednesday that some of that data may need to be subject to
12:16:27PM 21 cross-examination. It's outdated, or could be outdated. We
12:16:32PM 22 asked them to bring those individuals, because we assumed that
12:16:35PM 23 they were going to comply and have an evidentiary hearing; they
12:16:39PM 24 refused to do so. We asked if they were going to bring
12:16:43PM 25 Commodore Brandon; they refused to do so. When we asked

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:16:46PM 1 whether they would accept a subpoena; they refused to accept a
12:16:50PM 2 subpoena. So they are here without any live testimony. You
12:16:53PM 3 invited them to be here to present live testimony and subject
12:16:57PM 4 that to cross-examination, which they're not wanting to do.

12:17:01PM 5 In fact, today they have said again they have a
12:17:05PM 6 compelling interest, everybody needs to be vaxxed because of
12:17:10PM 7 safety and efficacy, otherwise you'll have a deterioration of
12:17:15PM 8 military readiness, so they put it in again today. They also
12:17:18PM 9 have said that the rules of evidence are relaxed, twice, and we
12:17:21PM 10 agree with them. And so based upon all of those reasons, we
12:17:24PM 11 believe that this information is relevant, and we will continue
12:17:27PM 12 to build through this to show its continued connection to this
12:17:30PM 13 case.

12:17:31PM 14 MS. YANG: Your Honor, if I may, very quickly.
12:17:33PM 15 Nothing that my colleague has just said rebuts the lack of
12:17:38PM 16 relevance of this document. Yes, the rules of evidence may be
12:17:41PM 17 relaxed for purposes of this preliminary hearing, but that
12:17:42PM 18 doesn't mean that they go out the window completely. Relevance
12:17:45PM 19 is still very much at issue for this Court as well as the
12:17:49PM 20 Court's time.

12:17:50PM 21 THE COURT: All right. Thank you.

12:17:55PM 22 I cannot determine at this moment that the testimony
12:18:00PM 23 is without probative value. Immaterial for the moment.
12:18:11PM 24 Without determining that, I'll receive the proffered document
12:18:18PM 25 into evidence.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:18:21PM 1 MR. STAVER: Thank you, Your Honor.

12:18:22PM 2 THE COURT: That implies no weighing of the matter,

12:18:26PM 3 so overruled.

11:04:37AM 4 (Plaintiffs' Exhibit 1 admitted.)

12:18:30PM 5 Q. (By Mr. Staver) I'd like to point you to what is tab

12:18:34PM 6 No. 2 in the notebook.

12:18:38PM 7 A. Yes, sir, I'm there.

12:18:39PM 8 Q. Can you identify that document?

12:18:42PM 9 A. Yes, sir. This is updated masking guidance from the

12:18:46PM 10 SPACECOM, General Jim Dickinson.

12:18:50PM 11 Q. Does paragraph 2 say, "With the high levels of population

12:18:55PM 12 immunity in both vaccinations and infections, the risk of

12:18:57PM 13 medically significant disease, hospitalization, and death from

12:19:01PM 14 COVID-19 has been greatly reduced," therefore they're changing

12:19:05PM 15 the masking and testing requirement?

12:19:08PM 16 A. Yes, sir, I recognize that, and I tend to agree that it is

12:19:12PM 17 greatly reduced.

12:19:14PM 18 Q. And that came to you?

12:19:16PM 19 A. Say again, sir. I'm sorry, I missed that.

12:19:19PM 20 Q. This is the general of the United States Navy -- or Army?

12:19:25PM 21 A. It didn't come to me, but, yeah, I recognize that.

12:19:28PM 22 Q. Yeah. Okay.

12:19:28PM 23 And you're aware of it?

12:19:30PM 24 A. Yes, sir.

12:19:30PM 25 Q. And has the masking been changed this week?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:19:34PM 1 A. On the active duty side?

12:19:36PM 2 Q. Yes.

12:19:36PM 3 A. Yes, it has.

12:19:37PM 4 Q. And it has been relaxed?

12:19:39PM 5 A. It has been relaxed. But, sir, if I might add, on the
12:19:42PM 6 border of Texas, because I understand that there is some
12:19:46PM 7 concern that the Texas Military Department is not a part of the
12:19:51PM 8 Department of Defense. But when somebody is on 502(f) orders,
12:19:53PM 9 I am under Title 10, and that is Department of Defense. And
12:19:57PM 10 those are straight up Department of Defense atmospherics that
12:20:03PM 11 I'm receiving when I get a letter like this. I just wanted to
12:20:05PM 12 clear that up.

12:20:06PM 13 But regarding masking, it was released earlier -- on the
12:20:09PM 14 border earlier for us, because the EXORD that the -- summer of
12:20:14PM 15 last year, the governor of Texas lifted that earlier than the
12:20:20PM 16 active duty side.

12:20:21PM 17 Q. Now, in January of vice admiral of the Navy has indicated
12:20:26PM 18 that -- it was quoted in the *Navy Times* that Omicron has not
12:20:30PM 19 interfered with the Navy operations. Are you familiar with
12:20:33PM 20 that article?

12:20:34PM 21 MS. YANG: Objection, Your Honor.

12:20:39PM 22 THE COURT: I don't think there's a predicate for
12:20:41PM 23 that, Mr. Staver.

12:20:42PM 24 Q. (By Mr. Staver) Are you --

12:20:44PM 25 THE COURT: Sustained.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:20:45PM 1 Q. (By Mr. Staver) Are you familiar with an article that
- 12:20:48PM 2 quotes the vice admiral of the Navy with regards to Omicron and
- 12:20:53PM 3 the Navy particularly?
- 12:20:54PM 4 A. Yes, I'm aware of that. I just read it two days ago.
- 12:20:58PM 5 Q. And what is your understanding that the vice admiral
- 12:21:01PM 6 indicated in his quotation in January of 2022?
- 12:21:05PM 7 A. Much like this previous one, the space command, that
- 12:21:08PM 8 Omicron was less virulent, or that -- and I'm -- I know I'm
- 12:21:11PM 9 generalizing, but it's my belief that it's also indicating
- 12:21:14PM 10 that same --
- 12:21:17PM 11 Q. So is it consistent in terms of this with the Army, that
- 12:21:21PM 12 there's a downgrading of the risk or the restrictions such as
- 12:21:28PM 13 masking?
- 12:21:29PM 14 A. Yes. And it has been, in my opinion -- or my belief,
- 12:21:34PM 15 based upon observation on the border, that the mortality -- the
- 12:21:40PM 16 morbidity is much decreased, so much so that it really don't
- 12:21:46PM 17 put anybody in the hospital in uniform, and we've been in the
- 12:21:50PM 18 worst of it, the thick of it regarding migrants coming in that
- 12:21:52PM 19 do not have any vaccination status who come in sick.
- 12:21:56PM 20 Q. With regards to those that do have vaccination status and
- 12:21:59PM 21 they have whatever vaccination levels that each one of these
- 12:22:02PM 22 vaccines require, is that preventing the transmission of COVID
- 12:22:08PM 23 in your unit?
- 12:22:11PM 24 A. With the soldiers that are vaccinated?
- 12:22:13PM 25 Q. Correct.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:22:14PM 1 A. Okay. As of this Omicron variant and time frame, I'm
12:22:19PM 2 going to say late summer going into fall, the vaccinated,
12:22:23PM 3 especially double vaccinated, sat at 71 to 78 upwards -- up
12:22:29PM 4 some weeks, 82 percent of the positive cases; whereas, my
12:22:35PM 5 unvaccinated personnel remained steady state, almost a flat
12:22:40PM 6 curve, they were still in the mix, but typically around
12:22:43PM 7 15 percent. Those are unvaccinated. That's just the numbers.

12:22:47PM 8 Q. Unvaccinated were getting Omicron or some version about
12:22:52PM 9 15 percent?

12:22:52PM 10 A. 15 to 16 percent typically, but that wave -- that never
12:22:57PM 11 really had any increase in the Delta. It was pretty much
12:23:01PM 12 consistent across the board.

12:23:03PM 13 Q. And those that had the double vaccine, at least two
12:23:07PM 14 doses --

12:23:07PM 15 A. That shot up -- as soon as we got -- incrementally, with
12:23:11PM 16 the amount of soldiers that showed up on the borders, we went
12:23:14PM 17 from 28 percent unvaxxed when we began. Then more soldiers
12:23:19PM 18 came on, and as they came on, they were going through the
12:23:22PM 19 in-processing stations, they were giving them vaxxes there. I
12:23:24PM 20 couldn't -- I didn't have any control over their informed
12:23:27PM 21 consents.

12:23:28PM 22 As we went to 48 percent of the soldiers on the border
12:23:31PM 23 vaxxed, that's when that number went to 86 percent of the
12:23:36PM 24 double vaxxed, or vaccinated positive rate on, we can say,
12:23:41PM 25 Omicron, but it was just during that time frame.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:23:43PM 1 Q. Now, are you saying the more people that got vaccinated,
12:23:46PM 2 the higher percentage of those that got COVID?
12:23:49PM 3 A. Without a shadow of a doubt, yes, sir.
12:23:54PM 4 Q. Were you finding, then, that the vaccination was not
12:23:57PM 5 effective with regards to preventing infection in transmission?
12:24:02PM 6 A. Well, sir, I got the vaccine, and two months later,
12:24:06PM 7 roughly during the Delta variant timeframe, I got extremely
12:24:10PM 8 sick.
12:24:10PM 9 Q. I want to ask you about your vaccination. You said that
12:24:12PM 10 you got the vaccination because you trusted that it was safe
12:24:15PM 11 and effective. Were you aware of any aborted fetal cell, were
12:24:20PM 12 you aware of any other issues or safety or efficacy?
12:24:24PM 13 A. No, sir.
12:24:24PM 14 Q. And have you learned about them now?
12:24:25PM 15 A. Yes, sir.
12:24:25PM 16 Q. Would you do it again? With the knowledge that you have,
12:24:28PM 17 what would your decision be?
12:24:31PM 18 A. My decision would be based upon my faith, which I would
12:24:34PM 19 not be taking an aborted fetal cell, that's for sure. Yes,
12:24:42PM 20 sir.
12:24:42PM 21 Q. All right. I want to point you to what is at tab 3. Do
12:24:54PM 22 you recognize that document -- that page?
12:24:58PM 23 A. I absolutely do. This is the FDA document that was -- I
12:25:01PM 24 think it was in response to a court order to release the
12:25:07PM 25 adverse reactions or --

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:25:08PM 1 Q. No. I think that you may be -- let me back up. This
- 12:25:13PM 2 is -- just take a look at what the document is --
- 12:25:13PM 3 A. Okay.
- 12:25:15PM 4 Q. -- without any court-order issues.
- 12:25:17PM 5 A. Okay. No. This is -- this is -- oh, this is just the FDA
- 12:25:20PM 6 surveillance COVID-19 vaccines.
- 12:25:23PM 7 Q. What date is it?
- 12:25:23PM 8 A. The side effects and disease process, or possible --
- 12:25:26PM 9 Q. At the bottom of the first page, what is the date?
- 12:25:29PM 10 A. Bottom of the first page, looks like -- I don't have a
- 12:25:35PM 11 date on this -- oh, first page here. Roger. 22 October, 2020.
- 12:25:39PM 12 Q. And the second page is a slide from that presentation?
- 12:25:42PM 13 A. Yes, sir.
- 12:25:43PM 14 Q. And that was during the clinical trials before the first
- 12:25:46PM 15 emergency use authorization was granted in December 2020?
- 12:25:51PM 16 A. Yes, sir.
- 12:25:51PM 17 Q. Nearly two months before?
- 12:25:53PM 18 A. Yes, sir.
- 12:25:53PM 19 Q. What does that -- how did you and why did you come across
- 12:25:56PM 20 this document?
- 12:25:58PM 21 A. Well, this document -- I didn't see it in this particular
- 12:26:01PM 22 way, but these data is what we saw coming out in the VAERS,
- 12:26:06PM 23 which made us go back and look, because we tried to marry these
- 12:26:10PM 24 up with the side effects that we were seeing. That's how I ran
- 12:26:16PM 25 across it.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:26:17PM 1 Q. And was this relevant to your research with regards to --
12:26:21PM 2 or in your investigation regarding your own injury and the
12:26:28PM 3 DMED?

12:26:29PM 4 A. The DMED data cleared it up for me, sir, and not just for
12:26:32PM 5 me. I really was looking to be -- we had a rash of various
12:26:36PM 6 different entities, even -- you know, diagnoses that we see
12:26:40PM 7 here: convulsions, seizures, transverse myelitis.

12:26:46PM 8 Questionable whether we had encephalomyelitis. We had people
12:26:51PM 9 that passed out and they called them strokes. But when they
12:26:54PM 10 went to emergency room, it came off my purview so I didn't have
12:26:57PM 11 the follow-up ability. Because they didn't go to a military
12:27:00PM 12 treatment facility, they went to a civilian, so I can't tell
12:27:03PM 13 you specifically.

12:27:05PM 14 Q. So some of the medical conditions that are listed on that
12:27:09PM 15 second page there, is that where you were seeing within your
12:27:12PM 16 soldiers and --

12:27:15PM 17 A. Yes, sir. Seeing within my soldiers, but also in
12:27:17PM 18 discussion with other physicians, with Dr. Long once again.
12:27:20PM 19 She had a much more complete list that she had seen in --
12:27:24PM 20 compared to this, because she sees a lot more patients in the
12:27:28PM 21 clinical setting. So, yes, we do -- but we had those
12:27:32PM 22 discussions.

12:27:34PM 23 Q. One of those conditions is myocarditis. Do you see that?

12:27:38PM 24 A. Yes, sir.

12:27:41PM 25 MR. STAVER: I'd like to introduce that as

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:27:45PM 1 Plaintiffs' No. 2.

12:27:46PM 2 THE COURT: All right. Plaintiffs' 2 is received.

11:04:37AM 3 (Plaintiffs' Exhibit 2 admitted.)

12:27:50PM 4 Q. (By Mr. Staver) And then the one right after that is an

12:27:54PM 5 article from the Journal of American Medical Association. Are

12:27:58PM 6 you familiar with that article?

12:28:00PM 7 A. I am familiar with this in reviewing before this case, but

12:28:03PM 8 I had not seen it in the past. I've heard of it from other

12:28:08PM 9 colleagues.

12:28:09PM 10 Q. That article addresses -- that's an article by military

12:28:14PM 11 doctors regarding military personnel, correct?

12:28:16PM 12 A. Yes, sir. I read it.

12:28:18PM 13 Q. What does it conclude?

12:28:20PM 14 A. That myocarditis occurs in previously healthy military

12:28:26PM 15 patients, is increased post-COVID-19 vaccine. We've seen this,

12:28:35PM 16 it sort of -- within the past -- let me be straight up, within

12:28:37PM 17 the past three days, and people are texting me from the border,

12:28:42PM 18 I've had four chest pains in 28- to 40-year-olds. This morning

12:28:48PM 19 I got texted again, and one of my friends -- I take care of

12:28:53PM 20 these soldiers, you become friends with them -- he had a

12:28:58PM 21 myocardial infarction at 30 -- thirty-something years old.

12:29:03PM 22 This is way more common. I've never seen anything like this

12:29:06PM 23 since 2003 as a physician.

12:29:09PM 24 Q. What was happening in 2003?

12:29:10PM 25 A. Well, that's when I came on to actually getting deployed.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:29:13PM 1 Q. I see.
- 12:29:14PM 2 So in your history as a medical doctor in the military,
- 12:29:18PM 3 you've never seen any kind of spiking like this of these
- 12:29:21PM 4 adverse events?
- 12:29:22PM 5 A. Not events like this, no, sir.
- 12:29:24PM 6 Q. In otherwise healthy young men and woman?
- 12:29:28PM 7 A. Absolutely. In my whole time of deployment down range, if
- 12:29:32PM 8 we look at the border mission as a deployment -- it's a CONUS
- 12:29:36PM 9 deployment, but it is a deployment -- to have that many
- 12:29:40PM 10 hospitalized in the ICU, it's -- if I did that down range, I
- 12:29:46PM 11 would say, "Okay. We're doing something wrong in Afghanistan."
- 12:29:49PM 12 I had one myocardial infarction with a 48-year-old first
- 12:29:54PM 13 sergeant down range, one, on a deployment that I can recall,
- 12:29:57PM 14 that I took care of firsthand, one in all of my deployments,
- 12:30:01PM 15 and I've got a few, sir -- Your Honor, and so now you can't say
- 12:30:06PM 16 that this is normal. This is not normal.
- 12:30:09PM 17 Q. And are you hearing the same thing from other doctors
- 12:30:12PM 18 outside of your unit that is very similar to this?
- 12:30:15PM 19 MS. YANG: Objection, Your Honor. That's hearsay.
- 12:30:19PM 20 MR. STAVER: Your Honor --
- 12:30:19PM 21 THE COURT: Excuse me.
- 12:30:21PM 22 MR. STAVER: I'm sorry.
- 12:30:22PM 23 THE COURT: Overruled.
- 12:30:35PM 24 Q. (By Mr. Staver) You can answer the question. Are you
- 12:30:37PM 25 hearing similar reports?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:30:39PM 1 THE COURT: The answer is -- "Are you hearing this?"
12:30:42PM 2 which is, respectfully, you either are or you aren't?

12:30:47PM 3 THE WITNESS: I am, yes, sir.

12:30:48PM 4 Q. (By Mr. Staver) Does it confirm what you are seeing
12:30:51PM 5 yourself with your own soldiers?

12:30:54PM 6 A. Sir, it's difficult to get other doctors that have been --
12:31:03PM 7 not coerced. I don't know. Their commands have been -- will
12:31:05PM 8 not let us talk sometimes. In that particular email that
12:31:08PM 9 we have --

12:31:08PM 10 THE COURT: The question here -- and I don't want you
12:31:10PM 11 to stray too far from it, was --

12:31:12PM 12 THE WITNESS: Yes, sir.

12:31:13PM 13 THE COURT: -- I believe whether -- without going
12:31:18PM 14 into what the doctors might have said, were their observations
12:31:26PM 15 to you consistent with your own observations?

12:31:28PM 16 THE WITNESS: Yes, sir.

12:31:28PM 17 THE COURT: Is that a fair rendering of your
12:31:29PM 18 question?

12:31:29PM 19 MR. STAVER: Yes, that's correct.

12:31:31PM 20 THE WITNESS: Yes, sir. Absolutely consistent.

12:31:34PM 21 MR. STAVER: I'd like to introduce that as
12:31:36PM 22 Plaintiffs' next exhibit, that'd be what's under tab 3, which
12:31:40PM 23 is the Journal of American Medical Association Cardiology
12:31:45PM 24 report -- or study.

12:31:46PM 25 THE COURT: All right. Plaintiffs' 3 is received.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

11:04:37AM 1 (Plaintiffs' Exhibit 3 admitted.)

12:31:49PM 2 Q. (By Mr. Staver) I'd like to direct your attention --

12:31:54PM 3 THE COURT: I think that, fairly construed, the

12:31:57PM 4 defendants have a standing objection to this material, and my

12:32:02PM 5 ruling as to each one of them incorporates my ruling as to the

12:32:05PM 6 first one.

12:32:05PM 7 MS. YANG: Thank you, Your Honor.

12:32:07PM 8 MR. STAVER: Thank you, Your Honor.

12:32:08PM 9 Q. (By Mr. Staver) I'd like to point your attention to what

12:32:11PM 10 is tab 5 in that notebook before you. Do you recognize that

12:32:20PM 11 document?

12:32:21PM 12 A. I originally heard of this actually in a news source, but,

12:32:25PM 13 yes, I do recognize the document as what -- the first time I

12:32:30PM 14 had seen it was the other day, yes, sir. Two days ago.

12:32:32PM 15 Q. And that document --

12:32:33PM 16 THE COURT: I'm sorry, I could not understand you.

12:32:35PM 17 THE WITNESS: Yes, sir. I do recognize the document.

12:32:37PM 18 I had said I originally had seen it on the news. It had come

12:32:40PM 19 out on the news. FDA was required to release --

12:32:44PM 20 THE COURT: All right. Understood.

12:32:45PM 21 All right. Mr. Staver.

12:32:46PM 22 Q. (By Mr. Staver) And have you reviewed the document?

12:32:47PM 23 A. I have reviewed this document.

12:32:49PM 24 Q. The document is entitled Cumulative Analysis of

12:32:52PM 25 Post-Authorization Adverse Event Reports of PF-07302048 --

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:32:59PM 1 A. Mm-hmm.

12:33:02PM 2 Q. -- (BNT162B2) Received through 28 February, 2021. And it

12:33:11PM 3 is from Pfizer?

12:33:12PM 4 A. Yes, sir.

12:33:14PM 5 Q. To the FDA?

12:33:16PM 6 A. I believe that this was court-ordered --

12:33:19PM 7 THE COURT: The question is, did Mr. Staver properly

12:33:25PM 8 identify the document?

12:33:26PM 9 THE WITNESS: Yes, sir.

12:33:27PM 10 THE COURT: Mr. Staver?

12:33:27PM 11 MR. STAVER: Yes.

12:33:28PM 12 THE WITNESS: He did properly identify it.

12:33:29PM 13 Q. (By Mr. Staver) And this document was released by a court

12:33:33PM 14 order last March 1, just last week?

12:33:36PM 15 A. Yes, sir.

12:33:37PM 16 Q. And you've reviewed it since it has been released by a

12:33:41PM 17 FOIA request?

12:33:42PM 18 A. Yes, sir, I have.

12:33:43PM 19 Q. Is it your understanding that this document is in the

12:33:45PM 20 FDA's possession as it relates to Pfizer reporting adverse

12:33:49PM 21 events?

12:33:51PM 22 A. That is my understanding.

12:33:58PM 23 Q. I want you to go to the appendix, which is on -- it's at

12:34:04PM 24 the end of page 29.

12:34:08PM 25 A. Yes, sir. I am at page 29.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:34:10PM 1 Q. What does that appendix do? What is it for?
- 12:34:14PM 2 A. It's a cumulative listing of adverse reactions based upon
12:34:21PM 3 their data that they obtained prior to releasing this.
- 12:34:25PM 4 Q. Without going through and counting every one --
- 12:34:30PM 5 A. I do know how many are there, sir.
- 12:34:33PM 6 Q. How many?
- 12:34:33PM 7 A. 1291.
- 12:34:36PM 8 Q. 1291 adverse events.
- 12:34:37PM 9 Is your adverse reaction listed as one of those events?
- 12:34:41PM 10 A. Yes, sir, it is.
- 12:34:42PM 11 Q. Where is it?
- 12:34:44PM 12 A. Page 32, it is there, demyelination.
- 12:34:50PM 13 Q. It'll be page 3 of the appendix.
- 12:34:53PM 14 A. Page -- oh, okay. Yes, page 3 of the appendix, page 32.
- 12:34:57PM 15 Q. So all of these adverse events are listed by alphabetical
12:35:01PM 16 order, and yours is just below the -- halfway down the section
12:35:06PM 17 of that page, demyelination?
- 12:35:08PM 18 A. That is what I'm diagnosed with right now, sir.
- 12:35:13PM 19 Q. And you didn't know that was a possible adverse event
12:35:16PM 20 before you took that shot, did you?
- 12:35:18PM 21 A. No.
- 12:35:19PM 22 Q. But Pfizer presented that information to the FDA as one of
12:35:21PM 23 the adverse reactions?
- 12:35:24PM 24 A. Right. Now, as of March 1st, yes.
- 12:35:28PM 25 MR. STAVER: I'd like to introduce that as the next

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:35:31PM 1 exhibit to plaintiffs.

12:35:32PM 2 THE COURT: I believe that's 5. Is that right?

12:35:33PM 3 MR. STAVER: I believe so.

12:35:34PM 4 THE COURT: All right. Plaintiffs' 5 is received.

11:04:37AM 5 (Plaintiffs' Exhibit 5 admitted.)

12:35:37PM 6 Q. (By Mr. Staver) I'd like to take you to what is labeled

12:35:40PM 7 tab 6 in the notebook.

12:35:45PM 8 A. Yes, sir.

12:35:46PM 9 Q. What is that document?

12:35:49PM 10 A. This reflects what appears to me to the web page at the

12:35:55PM 11 VAERS website, which was -- we call it the "dashboard" in our

12:36:00PM 12 vernacular.

12:36:02PM 13 Q. Mm-hmm.

12:36:04PM 14 And that lists adverse events of the three COVID shots,

12:36:11PM 15 Moderna, Pfizer, and Johnson & Johnson, or Janssen?

12:36:15PM 16 A. Yes, sir.

12:36:15PM 17 Q. Okay. And does it -- in terms of identifying the document

12:36:20PM 18 up through February 25, it has 1,151,448 reports of adverse

12:36:29PM 19 events.

12:36:29PM 20 A. As of this date, yes, sir.

12:36:30PM 21 Q. Some of those adverse events are listed and separated and

12:36:34PM 22 segregated below, including myocarditis, pericarditis at

12:36:40PM 23 35,303. Do you see that?

12:36:40PM 24 A. (No oral response.)

12:36:44PM 25 Q. In the second page.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:36:45PM 1 A. There we are. Yes, sir, I see it.
- 12:36:48PM 2 Q. Thrombocytopenia, or low platelet?
- 12:36:53PM 3 A. 5,812.
- 12:36:54PM 4 Q. Do you -- can you explain what that is?
- 12:36:56PM 5 A. So the platelets are required for us to coagulate properly
- 12:37:02PM 6 your blood product. And if you don't have enough platelets, or
- 12:37:08PM 7 low platelets, thrombocytes at the platelet cell, it can lead
- 12:37:13PM 8 to bleeding in the brain, or in anyplace, really, but -- if it
- 12:37:13PM 9 gets low enough.
- 12:37:21PM 10 Q. And then it also says 45,615 permanent disabilities.
- 12:37:27PM 11 A. Yes, sir.
- 12:37:27PM 12 Q. Do you see that?
- 12:37:28PM 13 A. I see that.
- 12:37:29PM 14 Q. Go to the third page, if you will, and the first chart.
- 12:37:36PM 15 A. Yes, sir.
- 12:37:37PM 16 Q. What does that first chart, as a physician or someone who
- 12:37:41PM 17 is treating or working with people with COVID response -- what
- 12:37:44PM 18 does it tell you about with regards to the COVID vaccines
- 12:37:50PM 19 themselves?
- 12:37:51PM 20 A. So this would be on the X axis, you're looking at time and
- 12:37:58PM 21 you're looking at -- that most recently corresponds with the
- 12:38:04PM 22 administration of the vaccines that the report of deaths have
- 12:38:08PM 23 increased exponentially.
- 12:38:11PM 24 Q. So if you begin in June of 1990 when the CDC VAERS
- 12:38:18PM 25 database was instituted, and you take that all the way up to

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:38:22PM 1 the EUA approval, December of 2020, and particularly 2021,
12:38:28PM 2 before that spike, that other line that is fairly stable, is
12:38:33PM 3 that the cumulative of all vaccines combined?
12:38:39PM 4 A. That's cumulative of all vaccines combined.
12:38:42PM 5 Q. So in other words, from June of 1990 until these vaccines
12:38:45PM 6 were released on the public in the United States, particularly,
12:38:49PM 7 we're talking about, there was a cumulative number of all
12:38:54PM 8 vaccines from every kind of vaccine that was listed there, and
12:38:58PM 9 it was fairly stable in terms of its adverse reactions.
12:39:01PM 10 A. Yes, sir.
12:39:02PM 11 Q. And then what happened when the COVID vaccines were
12:39:05PM 12 release.
12:39:06PM 13 A. Well, if you refer to it right there, you see that in 2020
12:39:11PM 14 and into 2021, it peaked out at exactly 2020-2021 mark.
12:39:22PM 15 Q. Coinciding with the release of COVID vaccines?
12:39:28PM 16 A. Yes, sir.
12:39:28PM 17 MR. STAVER: I'd like to introduce that.
12:39:30PM 18 THE COURT: Plaintiffs' 6 is received.
11:04:37AM 19 (Plaintiffs' Exhibit 6 admitted.)
12:39:35PM 20 Q. (By Mr. Staver) I would like to take you to tab 7 in your
12:39:38PM 21 notebook.
12:39:39PM 22 A. Yes, sir.
12:39:39PM 23 Q. Can you identify that?
12:39:43PM 24 A. This is defense medical epidemiology database. This is
12:39:48PM 25 the surveillance data that we spoke of before of onset.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:39:54PM 1 Q. So if I understand you correctly, you have the CDC VAERS
- 12:39:58PM 2 site, which is data we just looked at, correct?
- 12:39:58PM 3 A. Yes, sir.
- 12:40:02PM 4 Q. That's the civilian side?
- 12:40:03PM 5 A. Mm-hmm.
- 12:40:04PM 6 Q. Is that right?
- 12:40:04PM 7 A. Yes, that's -- it also has -- it can -- when you enter
- 12:40:08PM 8 into a VAERS patient, I've done it before for the ones I've
- 12:40:12PM 9 had, you can -- there'll be a military way to pull up those as
- 12:40:18PM 10 well, and Dr. Long can speak to this.
- 12:40:21PM 11 Q. And the next tab, the 7, the DMED, that's the DoD version
- 12:40:26PM 12 or -- so to speak, regarding military personnel specifically,
- 12:40:31PM 13 correct?
- 12:40:31PM 14 A. Correct. That is our own DoD internal.
- 12:40:37PM 15 MR. STAVER: I would like to introduce that as the
- 12:40:39PM 16 next exhibit, Your Honor.
- 12:40:41PM 17 THE COURT: Plaintiffs' 7 is received, again, subject
- 12:40:43PM 18 to the continuing objection and the ruling earlier.
- 11:04:37AM 19 (Plaintiffs' Exhibit 7 admitted.)
- 12:40:47PM 20 Q. (By Mr. Staver) Have you, as a physician who has seen an
- 12:40:52PM 21 adverse event, attempted to enter that data into VAERS?
- 12:40:57PM 22 A. I have entered data into VAERS during the border mission
- 12:41:03PM 23 post-COVID-19 vaccines, yes, I have.
- 12:41:07PM 24 Q. How easy or difficult is that process?
- 12:41:08PM 25 A. It took me, on average, an hour and a half to enter the

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:41:11PM 1 data.

12:41:13PM 2 Q. Are you aware that there's a Harvard study that says the
12:41:16PM 3 data entered into VAERS historically is less than one percent
12:41:20PM 4 of actual?

12:41:21PM 5 A. Yes, sir, I'm aware of that information.

12:41:23PM 6 Q. As someone who has attempted to enter into VAERS, do you
12:41:27PM 7 understand that it's very difficult to enter data into VAERS?

12:41:31PM 8 A. There is a learning curve involved, so, yes, it is very
12:41:34PM 9 difficult.

12:41:34PM 10 Q. So when you took about two hours to enter your first one,
12:41:39PM 11 what was happening when you attempted to populate VAERS with
12:41:41PM 12 your information regarding someone who had an adverse event?

12:41:44PM 13 A. It kept popping off the system. It's not very intuitive,
12:41:51PM 14 it's not something I use typically, but I felt the need to
12:41:54PM 15 catalogue these as these patients were increasing pretty
12:41:59PM 16 regularly.

12:42:00PM 17 Q. Okay. I want to take you to what is considered tab 8, and
12:42:05PM 18 I want to pass that chart that's there --

12:42:10PM 19 A. Sure.

12:42:11PM 20 Q. -- and go to the two letters from United States Senator
12:42:18PM 21 Ron Johnson, February 1, February 17. It'll be at the end of
12:42:27PM 22 that chart.

12:42:27PM 23 A. There it is. I have it.

12:42:29PM 24 THE COURT: And it's where again, Mr. Staver?

12:42:31PM 25 MR. STAVER: It is at the end, Your Honor, of that

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:42:33PM 1 tab 8.

12:42:34PM 2 THE COURT: At the end of tab 8?

12:42:37PM 3 MR. STAVER: Yes, sir.

12:42:38PM 4 THE COURT: Thank you. I've got it.

12:42:39PM 5 MR. STAVER: And it starts with a February 1 letter

12:42:41PM 6 from the senator.

12:42:42PM 7 THE COURT: I see it.

12:42:43PM 8 MR. STAVER: All right.

12:42:44PM 9 Q. (By Mr. Staver) Do you recognize that letter and also the

12:42:47PM 10 February 17 letter, 2022, which is right behind it?

12:42:52PM 11 A. I do recognize both letters, yes, sir.

12:42:54PM 12 Q. Do you recognize Senator Ron Johnson?

12:42:57PM 13 A. Yes, sir, I recognize the signature.

12:43:01PM 14 Q. In paragraph one he says that an attorney is representing

12:43:06PM 15 three Department of Defense whistleblowers. Do you see that in

12:43:09PM 16 the middle of that paragraph on the February 1 letter?

12:43:12PM 17 A. Yes, sir, I do.

12:43:13PM 18 Q. Do you see in the beginning of the second paragraph, he

12:43:17PM 19 refers to data from the Defense Medical Epidemiology Database,

12:43:22PM 20 DMED.

12:43:25PM 21 A. Yes, sir, I see that part.

12:43:26PM 22 Q. Is that what we were just talking about in terms of the

12:43:29PM 23 military version of the VAERS?

12:43:30PM 24 A. Yes, sir.

12:43:33PM 25 Q. Now, he also lists some summary of what was presented

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:43:39PM 1 before him in a hearing or a roundtable on January 24, 2022.

12:43:45PM 2 Do you see that summary that begins on the first page and goes

12:43:48PM 3 over to the second page?

12:43:50PM 4 A. Yes, sir.

12:43:50PM 5 Q. Can you read the summary?

12:43:51PM 6 A. Yes, sir. It begins with hypertension, 2,181 percent

12:43:56PM 7 increase. Diseases of the nervous system --

12:43:58PM 8 Q. Let me back up. Let me back up.

12:44:01PM 9 A. Okay.

12:44:03PM 10 Q. The information that is -- that you're going to read is

12:44:07PM 11 regarding the military, particularly all branches of the

12:44:10PM 12 military; is that right?

12:44:12PM 13 A. DoD-wide, sir.

12:44:14PM 14 Q. And is that information, according to the letter,

12:44:18PM 15 beginning in 2021 as compared to the previous five years of

12:44:24PM 16 data?

12:44:25PM 17 A. Yes, sir. I'll explain that from my standpoint, and then

12:44:31PM 18 Dr. Long will be able to explain the details of how she came on

12:44:35PM 19 to it, and then brought some of it -- as we got the information

12:44:37PM 20 from her, how we found this -- how she found this.

12:44:45PM 21 2016 through 2020, it's the ICD Ten Code that's being

12:44:51PM 22 looked at. This is the current system. Prior to that, it was

12:44:55PM 23 the ICD Nine. So she went back to those 2016 when we

12:45:00PM 24 originally discussed this. And once I got a chance to get on

12:45:04PM 25 the system with some other colleagues of mine on the Texas

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:45:08PM 1 side, I was able to concur. What we found was -- and I'm going
12:45:13PM 2 to use neurologic, because it's the one I'm most aware of right
12:45:17PM 3 now having, through myself and taking care of soldiers with it,
12:45:20PM 4 neurologics in 2016 were roughly around 70- to 80,000, I
12:45:25PM 5 believe closer to 80,000. 2017, '18, '19, and '20, roughly
12:45:31PM 6 about the same. And then it went up to 800,000 -- over 836,000
12:45:38PM 7 interactions -- or ICD 10 diagnoses that were entered into the
12:45:43PM 8 system. That's over a thousand -- well, it is exactly a
12:45:47PM 9 1,048 percent increase.

12:45:49PM 10 Q. Is that what the letter is referring to in that second
12:45:52PM 11 paragraph, that neurological issues increased ten times, from a
12:45:56PM 12 five-year average of 82,000 to 863,000 in 2021?

12:46:02PM 13 A. Yes, sir.

12:46:03PM 14 Q. And that's just for service members?

12:46:06PM 15 A. Yes.

12:46:07PM 16 Q. Not the general public?

12:46:09PM 17 A. Yes, sir.

12:46:10PM 18 Q. So with regards to that, can you read into the record the
12:46:17PM 19 percentages that compare 2021 to the previous five years of
12:46:22PM 20 several different listings?

12:46:24PM 21 A. Okay. We'll start with the hypertension, again, 2,181
12:46:29PM 22 percent increase. Diseases of the nervous system, 1,048
12:46:33PM 23 percent increase. Malignant neoplasms of the esophagus,
12:46:38PM 24 894 percent increase. Multiple sclerosis, 680 percent
12:46:44PM 25 increase. Neoplasms of digestive organs, 624 percent increase.

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:46:50PM 1 Guillain-Barré, 551 increase. Breast cancers, 487 percent
12:46:50PM 2 increase. Demyelinating diseases, 487 percent increase.
12:46:57PM 3 Neoplasms or cancers of the thyroid and other endocrine glands,
12:47:04PM 4 474 percent increase. Female infertility, 472 percent
12:47:09PM 5 increase. Pulmonary embolisms, that's a clot in the lung,
12:47:12PM 6 468 percent increase. Migraines, 452 percent increase.
12:47:17PM 7 Ovarian dysfunction, 437 percent increase. Testicular cancer,
12:47:23PM 8 369 percent increase. And tachycardia -- final one -- 302
12:47:27PM 9 percent increase.

12:47:29PM 10 Q. And that's military-wide, that's just not for your unit,
12:47:32PM 11 and it's not for just the United States Army.

12:47:35PM 12 A. Military-wide. That's the DoD.

12:47:37PM 13 Q. The next paragraph -- actually, the second paragraph
12:47:44PM 14 there, your name is mentioned. It says -- do you see that? --
12:47:48PM 15 "At the roundtable, Renz" -- the attorney -- do you see that?

12:47:51PM 16 A. Yes, sir.

12:47:51PM 17 Q. -- "revealed the names of the brave whistleblowers who
12:47:56PM 18 uncovered this information to DMED: Drs. Samuel Sigoloff,
12:48:00PM 19 Peter Chambers, and Theresa Long."

12:48:02PM 20 Is the Peter Chambers referring in that letter to you?

12:48:05PM 21 A. Yes, sir.

12:48:05PM 22 Q. You're referred to as a whistleblower by this letter?

12:48:10PM 23 A. Yes, sir.

12:48:10PM 24 Q. And also Theresa Long is referred to as a whistleblower in
12:48:14PM 25 this letter?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:48:15PM 1 A. Yes, sir.
- 12:48:19PM 2 Q. Is it your understanding that whistleblowers have certain
- 12:48:22PM 3 protection --
- 12:48:23PM 4 A. Yes, sir.
- 12:48:24PM 5 Q. -- from retaliation?
- 12:48:26PM 6 A. Based upon the letter that's produced from the senator,
- 12:48:29PM 7 yes, sir, I believe that, and regulations.
- 12:48:30PM 8 Q. Have you personally witness attempted retaliation or
- 12:48:34PM 9 attempt to influence a witness's testimony --
- 12:48:34PM 10 A. Yes, sir --
- 12:48:36PM 11 Q. -- in this hearing today?
- 12:48:37PM 12 A. I did last night, sir.
- 12:48:38PM 13 Q. Of who?
- 12:48:39PM 14 A. Theresa Long.
- 12:48:41PM 15 Q. We'll talk about that a little bit later.
- 12:48:45PM 16 The February 17 letter, that's a letter, again, to
- 12:48:49PM 17 Secretary of Defense Lloyd Austin, asking him to again produce
- 12:48:54PM 18 documents that he still has not produced to Senator Ron
- 12:48:59PM 19 Johnson; is that correct?
- 12:48:59PM 20 A. Yes, sir.
- 12:48:59PM 21 Can I add something to that?
- 12:49:02PM 22 Q. Sure.
- 12:49:02PM 23 A. The only response that I believe I saw was on PolitiFacts
- 12:49:09PM 24 when it was released within the Pentagon --
- 12:49:15PM 25 THE COURT: This seems to me not responsive to a

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:49:15PM 1 question.

12:49:18PM 2 THE WITNESS: Okay.

12:49:19PM 3 THE COURT: Mr. Staver.

12:49:19PM 4 MR. STAVER: All right.

12:49:21PM 5 Q. (By Mr. Staver) The other letter that's there is the

12:49:24PM 6 February 17 letter also to Secretary of Defense Lloyd Austin --

12:49:28PM 7 A. Yes, sir.

12:49:28PM 8 Q. -- asking him to again produce documents that have

12:49:31PM 9 previously not been produced; is that correct?

12:49:33PM 10 A. Yes, sir.

12:49:37PM 11 Q. Okay. So you were present last night, is that correct,

12:49:41PM 12 when Lieutenant Colonel Dr. Theresa Long received a -- pressure

12:49:51PM 13 to not do testimony today?

12:49:55PM 14 A. Yes, sir, I was there. And we had spoke about it between

12:49:58PM 15 she and I confidentially, but I was aware that she was

12:50:03PM 16 receiving pressure from her command as to her testifying under

12:50:10PM 17 her subpoena.

12:50:11PM 18 Q. I only have a few more questions for you. Just a moment.

12:50:20PM 19 Now, the defendants have indicated that universal

12:50:30PM 20 vaccination is necessary for military readiness. You're aware

12:50:34PM 21 of that?

12:50:35PM 22 A. Yes, sir.

12:50:36PM 23 Q. They've indicated they have a compelling interest to

12:50:39PM 24 vaccinate every service member otherwise military readiness

12:50:44PM 25 would be undermined. You're aware of that?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

- 12:50:46PM 1 A. Yes, sir.
- 12:50:46PM 2 Q. Are you aware that they've also said there's no other
- 12:50:49PM 3 lesser restrictive means than to discharge an unvaccinated
- 12:50:56PM 4 religious-based individual. You're aware of that?
- 12:51:02PM 5 A. I'm aware of that.
- 12:51:05PM 6 Q. In your experience, based upon not only your research
- 12:51:09PM 7 military-wide throughout the DoD with the DMED, but also
- 12:51:15PM 8 beginning from the very first FDA document pre-EUA, and the
- 12:51:22PM 9 material that was released last week, is this -- are these
- 12:51:30PM 10 vaccines safe for the men and women of the military?
- 12:51:33PM 11 A. These are not safe for the men and women of the military,
- 12:51:37PM 12 not based on this data that we received or the soldiers that
- 12:51:40PM 13 I've seen in the hospital. Not at all, sir.
- 12:51:42PM 14 Q. Because the mantra has been they're always safe and
- 12:51:45PM 15 effective, and that's still the case, isn't -- that's what
- 12:51:47PM 16 you're hearing?
- 12:51:49PM 17 A. Still hearing. They're still doing informed consents to
- 12:51:51PM 18 the soldiers on the border when I left, and the new surgeon
- 12:51:54PM 19 that took over is telling them they are safe and effective.
- 12:51:58PM 20 Q. And they're still telling them that their job is to get
- 12:52:01PM 21 every soldier vaccinated?
- 12:52:04PM 22 A. Yes, sir.
- 12:52:06PM 23 Q. So your personal experience and observation and research
- 12:52:10PM 24 do not support the fact that they have argued that these are
- 12:52:14PM 25 safe?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:52:16PM 1 A. No, sir. There's alternate methods that we can use that
12:52:19PM 2 are a lot simpler and a lot more effective, because I was able
12:52:22PM 3 to do that. I was able to prove it by the fact that with less
12:52:25PM 4 people vaccinated, we stayed in the field longer. As soon as
12:52:28PM 5 the vaccinated increased, we were putting more people on
12:52:32PM 6 quarters for ten days.

12:52:34PM 7 Q. In terms of the safety, you've addressed that, but what
12:52:38PM 8 about effectiveness? You've already --

12:52:40PM 9 A. Effectiveness? As far as the vaccine, sir?

12:52:44PM 10 Q. Correct.

12:52:44PM 11 Are they effective in preventing transmission,
12:52:48PM 12 particularly Omicron, or any other --

12:52:49PM 13 A. There are research controlled trials that are out that
12:52:52PM 14 show that these shots don't last as long as they -- as natural
12:52:56PM 15 immunity does, by far outweighs -- natural immunity outweighs
12:53:02PM 16 the shots. Sometimes -- it depends, really, on the individual,
12:53:03PM 17 but we've seen it where, two, three months, and then -- well,
12:53:06PM 18 now we're having to go to boosters, when a typical vaccine -- I
12:53:11PM 19 haven't seen that in the military --

12:53:13PM 20 Q. And you yourself were vaccinated and got COVID after --

12:53:16PM 21 THE COURT: Mr. Staver, I lost the last part of what
12:53:18PM 22 you were about to say. You were finishing a sentence?

12:53:21PM 23 THE WITNESS: Right, sir.

12:53:22PM 24 It's just -- I have not seen any of the vaccines I've
12:53:26PM 25 taken in the military where I had to take -- we have a series

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:53:27PM 1 that we have to take --

12:53:28PM 2 THE COURT: Yes, I understand.

12:53:30PM 3 THE WITNESS: -- but not a booster so frequently that
12:53:34PM 4 it's -- because it's waxed and waned so early.

12:53:38PM 5 THE COURT: I see. All right.

12:53:38PM 6 Mr. Staver.

12:53:39PM 7 THE WITNESS: Yes, sir.

12:53:39PM 8 Q. (By Mr. Staver) So in your experience, it's neither safe
12:53:42PM 9 for everyone or effective for everyone?

12:53:44PM 10 A. Correct. In my experience.

12:53:46PM 11 Q. Are there other lesser restrictive ways, based upon your
12:53:51PM 12 discussion with your soldiers and your operations and other
12:53:56PM 13 physicians, that the military could achieve its interest of
12:54:01PM 14 keeping a healthy military-ready force besides universal
12:54:08PM 15 vaccination?

12:54:08PM 16 A. Yes, there are other ways. And my situation would be
12:54:11PM 17 different than different theaters and different -- operating a
12:54:17PM 18 ship, for example. But, yes, sir, there's many ways to do
12:54:20PM 19 that.

12:54:20PM 20 Q. What are some of the other ways that you have implemented
12:54:23PM 21 with regards to preventing people from getting COVID, your
12:54:27PM 22 soldiers in particular?

12:54:28PM 23 A. Okay. So an example on the border would be when soldiers
12:54:32PM 24 are in tight quarters, they live in basically FEMA trailers,
12:54:35PM 25 and there's -- there could be up to 15 in a small trailer

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:54:39PM 1 packed in like sardines. And so when they're in close
12:54:43PM 2 proximity, we tend to worry about those things when we have a
12:54:48PM 3 pandemic going on.

12:54:49PM 4 And so what we did was, based upon a study that I had seen
12:54:51PM 5 in April of -- I don't know if you want me to go into the
12:54:54PM 6 study, but basically says if you do nasal lavage with Betadine
12:54:59PM 7 and some salt solution -- that's how simple it is -- and -- or
12:55:03PM 8 you can using baking soda, as long as you did that every day
12:55:07PM 9 between the troops, and you -- the troops -- there was one
12:55:09PM 10 positive case in that group -- you don't have to do it every
12:55:15PM 11 day just because you're standing on the border, but in that
12:55:16PM 12 group, that we decreased it, and according to the studies,
12:55:20PM 13 between 70-, I've seen, -3 and 96 percent decrease within
12:55:25PM 14 hours, the amount that can be potentially growing a culture in
12:55:32PM 15 their nose. So that's what we did. We used that technique
12:55:36PM 16 pretty regularly. It's in our medic packs.

12:55:37PM 17 If a SEAL is down range, a SEAL has that, if they're
12:55:40PM 18 worried about that versus bullets, then they can take Betadine
12:55:45PM 19 and make their own solution and do a nasal lavage. We're doing
12:55:50PM 20 it to our guys when they're exposed on the border.

12:55:51PM 21 Q. So that close proximity would be similar to what you heard
12:55:53PM 22 the testimony regarding close proximity on the ship?

12:55:57PM 23 A. Yes, sir, that would then parlay over.

12:55:59PM 24 Q. In addition to those kinds of preventative measures, did
12:56:02PM 25 you also use other medications besides the COVID injections?

PETER CHAMBERS - DIRECT EXAM BY MR. STAVER

12:56:07PM 1 A. This is where -- where -- better situations for us as
12:56:10PM 2 physicians is that on a state active duty order for the
12:56:13PM 3 soldiers that were on state active duty orders, because I was
12:56:16PM 4 there -- as a Title 10, I could not physically write them a
12:56:20PM 5 prescription, and I did not. But they could go to a local
12:56:24PM 6 economy, see a doctor, and they prescribed ivermectin, or they
12:56:27PM 7 were prescribed whatever, Budesonide if they had a breathing
12:56:31PM 8 problem. Yes, that is available. It was to us.

12:56:36PM 9 MR. STAVER: And, Your Honor, I wanted to move those
12:56:38PM 10 two letters from Senator Ron Johnson as well as the next
12:56:42PM 11 plaintiffs' exhibit.

12:56:44PM 12 THE COURT: So that would be 9 and -- that would be
12:56:50PM 13 Plaintiffs' 9.

12:56:51PM 14 MR. STAVER: That would be 9 cumulatively, yeah.
12:56:53PM 15 Yeah, you can put them together.

12:56:53PM 16 THE COURT: I mean, 8. That would be Exhibit 8.

12:56:57PM 17 MR. STAVER: 8, yes.

12:56:58PM 18 THE COURT: Exhibit 8 is received, again, subject to
12:57:01PM 19 the prevailing understanding.

12:57:04PM 20 (Whereupon, Plaintiffs' Exhibit 8 was admitted.)

12:57:04PM 21 Q. (By Mr. Staver) Do you have any other things that you
12:57:08PM 22 want to share with the Court that would be relevant for this
12:57:10PM 23 hearing?

12:57:11PM 24 THE COURT: Now, there's a question that calls for a
12:57:13PM 25 narrative, but I'll let it go.

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

12:57:17PM 1 MR. STAVER: That's a dangerous question too.

12:57:21PM 2 Q. (By Mr. Staver) You don't have to if you don't want to.

12:57:23PM 3 A. No, I don't.

12:57:24PM 4 MR. STAVER: I don't have any other questions.

12:57:25PM 5 THE COURT: Thank you, Mr. Staver.

12:57:26PM 6 Ms. Yang, I'll leave it to your option to take the

12:57:30PM 7 lunch hour now, or cross-examine and then take the lunch hour.

12:57:34PM 8 MS. YANG: I think I can be relatively quick. About

12:57:38PM 9 15 minutes, if that's okay.

12:57:39PM 10 THE COURT: You're recognized for your

12:57:41PM 11 cross-examination.

12:57:42PM 12 CROSS-EXAMINATION

12:57:42PM 13 BY MS. YANG:

12:57:54PM 14 Q. Good morning, sir -- I guess good afternoon at this point.

12:57:59PM 15 A. Yes.

12:58:00PM 16 Q. Doctor, you haven't actually offered any kind of expert

12:58:03PM 17 report in this case; is that correct?

12:58:06PM 18 A. I've offered based upon belief and observation.

12:58:09PM 19 Q. Right. Just to be clear, I'm asking for a written -- you

12:58:12PM 20 haven't prepared anything written for this case, correct?

12:58:15PM 21 A. Not for this case.

12:58:15PM 22 Q. Okay.

12:58:16PM 23 A. I have for other cases.

12:58:17PM 24 Q. You haven't submitted a declaration in this case?

12:58:20PM 25 A. I have not for this case.

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

- 12:58:21PM 1 Q. All right. And your testimony today is the first time
12:58:24PM 2 that we're hearing from you; is that correct?
- 12:58:26PM 3 A. Yes, it is.
- 12:58:28PM 4 Q. Have you ever treated Plaintiff Navy Commander?
- 12:58:33PM 5 A. No, I have not.
- 12:58:34PM 6 Q. The man -- the individual who testified earlier --
- 12:58:37PM 7 A. I can't understand.
- 12:58:39PM 8 Q. The individual who testified earlier today --
- 12:58:39PM 9 A. Mm-hmm.
- 12:58:41PM 10 Q. -- have you ever treated him medically?
- 12:58:42PM 11 A. No, I have not.
- 12:58:44PM 12 Q. Have you ever treated, medically, Lieutenant Colonel 2,
12:58:48PM 13 who is the other plaintiff in this case?
- 12:58:49PM 14 A. No, I have not.
- 12:58:51PM 15 Q. They're in a different service, correct?
- 12:58:53PM 16 A. Correct.
- 12:58:54PM 17 Q. In a different location from you?
- 12:58:55PM 18 A. Affirmative.
- 12:58:57PM 19 Q. Several times today, I think I counted about five times,
12:59:01PM 20 that you referenced a Lieutenant Colonel Long; is that correct?
- 12:59:05PM 21 A. Correct.
- 12:59:05PM 22 Q. And I believe you referred to, you know, what she was
12:59:08PM 23 expected to testify about, something to that effect. Do you
12:59:12PM 24 generally remember that?
- 12:59:12PM 25 A. I do remember, yes.

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

12:59:14PM 1 Q. Are you offering any testimony today that's different from
12:59:18PM 2 Lieutenant Colonel Long's?

12:59:20PM 3 A. Yes. I mean, we have different expertise.

12:59:23PM 4 Q. Okay. And are you offering any testimony today that's in
12:59:27PM 5 addition to what Lieutenant Colonel Long is expected to testify
12:59:31PM 6 about?

12:59:34PM 7 A. I don't really know what you're getting at.

12:59:35PM 8 MR. STAVER: Your Honor, I don't know how he would
12:59:36PM 9 know what Lieutenant Colonel Long is planning to testify about.

12:59:39PM 10 MS. YANG: During the direct examination, the witness
12:59:43PM 11 specifically referred to what he expected Lieutenant Colonel
12:59:45PM 12 Long would testify to.

12:59:47PM 13 THE COURT: I must admit -- your question is what?

12:59:51PM 14 MS. YANG: Whether the doctor's testimony today is
12:59:54PM 15 any different from or in addition to the expected testimony of
12:59:57PM 16 Lieutenant Colonel Long whose testimony --

12:59:59PM 17 THE COURT: I think the question fairly construed, to
01:00:02PM 18 the best of your knowledge, as you sit there, is her testimony
01:00:05PM 19 different from or in addition to your own testimony?

01:00:09PM 20 THE WITNESS: I didn't review all her testimony, so I
01:00:11PM 21 don't know what else she has to offer. I know her expertise
01:00:14PM 22 level is much more -- at a different point specifically to the
01:00:20PM 23 DMED data, yes, sir, her expertise. Yes, sir. So I did not --
01:00:23PM 24 I was not able to complete that.

01:00:25PM 25 THE COURT: Did I do your question justice?

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

01:00:28PM 1 MS. YANG: You did. Thank you, Your Honor.

01:00:29PM 2 THE COURT: All right.

01:00:30PM 3 Q. (By Ms. Yang) Doctor, you agreed, I believe, in the

01:00:33PM 4 direct examination that you have not been trained specifically

01:00:36PM 5 in epidemiology or virology; is that correct?

01:00:40PM 6 A. Trained to the level of a typical DO or MD, I am.

01:00:44PM 7 Q. You have not received specialized training, however, in

01:00:47PM 8 epidemiology or --

01:00:48PM 9 A. No --

01:00:48PM 10 Q. -- virology?

01:00:49PM 11 A. -- I'm not an epidemiologist.

01:00:49PM 12 Q. Right.

01:00:49PM 13 You don't have a board certification --

01:00:52PM 14 A. I'm a --

01:00:52PM 15 THE COURT: Just one at a time, please. Q and

01:00:55PM 16 then A.

01:00:56PM 17 Q. (By Ms. Yang) So that's a "no," you do not have special

01:00:58PM 18 expertise in epidemiology or virology?

01:01:02PM 19 A. I have more than all the nonphysicians in this room, yes,

01:01:06PM 20 but I do not have a degree in -- a Ph.D. in epidemiology, nor

01:01:13PM 21 am I an epidemiologist.

01:01:13PM 22 Q. Nor are you board-certified in that specialty?

01:01:16PM 23 A. Negative.

01:01:17PM 24 Q. And the same goes for immunology?

01:01:20PM 25 A. That's a subject matter, it's not -- there's no board

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

- 01:01:24PM 1 certification in that.
- 01:01:24PM 2 Q. Okay. Have you received specialized medical training
- 01:01:24PM 3 in --
- 01:01:28PM 4 A. Yes, I did --
- 01:01:28PM 5 Q. -- immunology?
- 01:01:28PM 6 A. -- in medical school.
- 01:01:30PM 7 Q. And have you received specialized training in vaccine
- 01:01:32PM 8 efficacy?
- 01:01:33PM 9 A. We did in medical school, yes.
- 01:01:35PM 10 Q. And have you received specialized training in genetics?
- 01:01:40PM 11 A. It was covered in medical school.
- 01:01:41PM 12 Q. Okay. Nothing beyond the basic courses in medical school,
- 01:01:44PM 13 however?
- 01:01:45PM 14 A. Negative.
- 01:01:46PM 15 Q. Earlier you testified that you were offering some of your
- 01:01:51PM 16 opinions based on your observations, correct?
- 01:01:54PM 17 A. Yes, ma'am.
- 01:01:55PM 18 Q. Are you claiming some kind of expertise in making
- 01:01:58PM 19 observations?
- 01:02:00PM 20 A. I'm claiming, fact witness, that I observed operations on
- 01:02:06PM 21 the border that are of a medical nature.
- 01:02:08PM 22 Q. So you're presenting those opinions as what you observed
- 01:02:10PM 23 with your eyes as opposed to drawing any medical or expert
- 01:02:14PM 24 conclusions from them?
- 01:02:15PM 25 A. I try not to draw conclusions; it's not what I'm here for.

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

01:02:19PM 1 I'm here to be an expert witness -- not an expert witness, a
01:02:23PM 2 fact witness.

01:02:27PM 3 Q. Earlier you testified that you've been involved in the
01:02:31PM 4 COVID response for Governor Abbott, correct, for Texas?

01:02:37PM 5 A. I was a liaison to his task force.

01:02:39PM 6 Q. And you haven't been charged with COVID response for the
01:02:42PM 7 U.S. Army, correct?

01:02:45PM 8 A. Under Title 10, 502 Foxtrot orders, that's exactly what I
01:02:52PM 9 did. That's -- that is the -- those are federal orders,
01:02:55PM 10 Title 10.

01:02:56PM 11 Q. Your testimony is that you have been charged on behalf of
01:02:59PM 12 the entire U.S. Army to coordinate COVID response?

01:03:03PM 13 A. Those orders are Title 10. However you interpret that,
01:03:07PM 14 ma'am, that's exactly what they are. It's not for the entire
01:03:10PM 15 United States Army, those are Title 10 orders.

01:03:10PM 16 Q. Okay. And similarly --

01:03:15PM 17 A. I did not state active duty orders, which would be
01:03:15PM 18 specifically the Guard.

01:03:17PM 19 Q. And similarly you have not been tasked with the COVID
01:03:22PM 20 response for any other branch of the U.S. military, correct?

01:03:27PM 21 A. No, that's wrong. We have a multi -- it's a task force,
01:03:31PM 22 so it's the Air Force, and the Army Title 10 active duty people
01:03:36PM 23 on the borders, as well as the Guard. It's a combination.
01:03:40PM 24 It's a task force, a joint task force, a JTF, so, yes.

01:03:46PM 25 Q. But that's a limited Title 10, in your words, not for --

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

01:03:50PM 1 not on behalf of the entire U.S. Army, the U.S. Navy, the
01:03:55PM 2 U.S. Marine Corps, correct?

01:03:56PM 3 A. Correct, not for the entire.

01:04:00PM 4 Q. I gather, generally, that you've opined that the COVID
01:04:05PM 5 vaccine is unsafe and ineffective, you know, to paraphrase. Is
01:04:10PM 6 it fair to say that you disagree with the CDC's conclusions
01:04:14PM 7 about the safety and efficacy of the COVID vaccines?

01:04:19PM 8 A. Do I disagree with those?

01:04:21PM 9 Q. Yes.

01:04:22PM 10 A. I would say that I would have to disagree --

01:04:24PM 11 Q. Okay.

01:04:26PM 12 A. -- because of what I'm seeing, yes, ma'am.

01:04:28PM 13 Q. Similarly, would you say that you are disagreeing with the
01:04:30PM 14 FDA's determinations about the safety and efficacy of the COVID
01:04:35PM 15 vaccines?

01:04:36PM 16 A. Well, I really don't want to get argumentative at all, but
01:04:40PM 17 they just released something on the 1st of March that admits to
01:04:43PM 18 adverse reactions. That was released -- the FDA had Pfizer
01:04:48PM 19 release that. I don't understand how that's not clear.

01:04:51PM 20 Q. Okay. In your experience, does the fact of some adverse
01:04:57PM 21 events following the vaccine, let's just the flu vaccine, mean
01:05:02PM 22 that that vaccine is therefore unsafe and ineffective?

01:05:07PM 23 A. It means that that vaccine is very unsafe and effective
01:05:09PM 24 for that particular person who could have that immunoglobulin E
01:05:13PM 25 response, which is anaphylaxis is what she's referring to. So

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

01:05:16PM 1 for that particular case, yes, that would be very dangerous for
01:05:18PM 2 that person.

01:05:19PM 3 Q. And generally speaking, the answer, however, would be
01:05:22PM 4 "no"?

01:05:23PM 5 A. Correct. No, not regarding anaphylaxis or -- no, it would
01:05:28PM 6 not.

01:05:29PM 7 Q. Have you reviewed all of the declarations of the military
01:05:31PM 8 doctors in this case?

01:05:35PM 9 A. I've reviewed Dr. Long's. I have not reviewed the other
01:05:40PM 10 physicians.

01:05:42PM 11 Q. Okay. Were you aware that the government has submitted
01:05:44PM 12 multiple declarations from various military doctors?

01:05:47PM 13 A. Yes.

01:05:48PM 14 Q. Did you review any of those?

01:05:51PM 15 A. I went over them. I had a lot of things to review, so I
01:05:54PM 16 categorized based upon my priorities. So I just glanced
01:05:59PM 17 through them, yes.

01:05:59PM 18 Q. Do you specifically remember which ones you reviewed?

01:06:02PM 19 A. Is it epidemiologic -- would it -- Dr. Van -- is there a
01:06:11PM 20 Vans. Rans. Rans. Dr. Rans.

01:06:14PM 21 Q. Any others, or is that the only one you can recall?

01:06:16PM 22 A. That's the only one I really looked at.

01:06:18PM 23 Q. All right. Could you turn, please, to that binder that
01:06:23PM 24 you have in front of you to tab 1.

01:06:26PM 25 A. Mm-hmm.

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

- 01:06:29PM 1 Q. And this communication which you described earlier --
- 01:06:32PM 2 A. Mm-hmm.
- 01:06:33PM 3 Q. -- is issued by the State of Texas Military Department,
- 01:06:37PM 4 correct?
- 01:06:37PM 5 A. Yes, it is. Yes, ma'am.
- 01:06:39PM 6 Q. Not the U.S. Navy?
- 01:06:42PM 7 A. No.
- 01:06:43PM 8 Q. Not the U.S. Marine Corps?
- 01:06:46PM 9 A. Not the U.S. Marine Corps, no.
- 01:06:49PM 10 Q. Could you turn to the same tab in that binder?
- 01:06:53PM 11 A. Mm-hmm.
- 01:06:53PM 12 Q. This is the October 2020 PowerPoint by the FDA, so that's
- 01:06:57PM 13 about a year and a half ago. Are you aware that the FDA and
- 01:07:03PM 14 CDC have continued to update the data that they are receiving
- 01:07:08PM 15 about adverse health events since then?
- 01:07:11PM 16 A. We do. We do get updates. Yes, ma'am, I'm aware.
- 01:07:17PM 17 Q. On this second page of tab 3, there's a list of adverse
- 01:07:25PM 18 event outcomes. You see that?
- 01:07:28PM 19 A. Yes, ma'am.
- 01:07:29PM 20 Q. Do you have any specialized medical training in any of
- 01:07:32PM 21 these areas beyond what you received in basic course work --
- 01:07:38PM 22 A. I'll say empirically, 90 percent of these.
- 01:07:41PM 23 Q. Okay. Which ones specifically have you received
- 01:07:44PM 24 specialized medical training for?
- 01:07:48PM 25 A. Encephalomyelitis, transverse myelitis, convulsions and

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

- 01:07:53PM 1 seizures, stroke, anaphylaxis, acute myocardial infarction,
01:07:58PM 2 myocarditis, deaths -- I think all physicians receive training
01:08:03PM 3 for that -- and pronouncement. Pregnancy and birth.
01:08:07PM 4 Demyelinating diseases, as far as the primary care initial
01:08:13PM 5 visits, yes. Non-anaphylactic allergic reactions,
01:08:18PM 6 thrombocytopenia. I worked in the emergency room for 20 years.
01:08:23PM 7 Arthritis, arthralgias, yes. Kawasaki's, no. Multisystem
01:08:28PM 8 Inflammatory Syndromes in kids, yes. I would be the gatekeeper
01:08:32PM 9 on that one. Vaccine enhanced disease. I've just got a lot of
01:08:38PM 10 experience with that.
- 01:08:38PM 11 Q. All right. You mentioned myocarditis a few times.
01:08:45PM 12 Myocarditis is a condition of the heart, correct?
- 01:08:51PM 13 A. Yes, ma'am.
- 01:08:52PM 14 Q. And the area of medicine that specializes in that, is it
01:08:55PM 15 fair to say is cardiovascular medicine?
- 01:08:58PM 16 A. Negative. It's a cardiologist.
- 01:08:58PM 17 Q. Cardiologist. Okay. Excuse me.
01:09:01PM 18 Are you board-certified in cardiology?
- 01:09:03PM 19 A. No, I'm not.
- 01:09:04PM 20 Q. Do you have any specialized training in cardiology?
- 01:09:06PM 21 A. Yes, I do. I have 20 years of emergency room experience
01:09:10PM 22 taking care of myocardial infarctions. That's more than
01:09:13PM 23 training; that's on the job.
- 01:09:14PM 24 Q. Have you yourself performed any studies into myocarditis?
- 01:09:18PM 25 A. No. I've just most recently taken care of six soldiers on

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

- 01:09:23PM 1 the border with it.
- 01:09:24PM 2 Q. Okay. But separate from that direct patient care, have
- 01:09:28PM 3 you conducted any studies?
- 01:09:30PM 4 A. Studies, no, no, I have not. Not studies.
- 01:09:32PM 5 Q. And those six cases that you just mentioned, I believe
- 01:09:39PM 6 earlier you described them as coming to you with complaints of
- 01:09:46PM 7 chest pain; is that correct?
- 01:09:48PM 8 A. That is -- I never said that they came to me with chest
- 01:09:52PM 9 pain, but that's usually the presentation.
- 01:09:55PM 10 Q. Oh, I see. Okay.
- 01:09:56PM 11 So how many people have actually come to you with
- 01:10:01PM 12 complaints of chest pain that you believe --
- 01:10:05PM 13 A. Out of those six?
- 01:10:07PM 14 Q. Yes.
- 01:10:08PM 15 A. Two.
- 01:10:09PM 16 Q. Okay. And is it your belief that those complaints were
- 01:10:17PM 17 related to the COVID vaccine?
- 01:10:21PM 18 A. After discussion with physicians and specialists who did
- 01:10:25PM 19 take care of them, it is my belief, yes, that it is.
- 01:10:28PM 20 Q. You didn't do any studies into it, though, however, right?
- 01:10:33PM 21 No studies into whether that was the case?
- 01:10:35PM 22 A. No, I didn't do studies. I don't have time for a study
- 01:10:39PM 23 when I'm on the border. I have no time.
- 01:10:41PM 24 Q. You didn't do any differential diagnosis --
- 01:10:45PM 25 A. Absolutely, we did a differential diagnosis. The

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

01:10:45PM 1 specialist did.

01:10:46PM 2 Q. You yourself did?

01:10:46PM 3 A. No, I did not. I'm a primary care doctor. That's left to

01:10:50PM 4 the specialists.

01:11:05PM 5 Q. Go ahead and turn to tab 6, and this is the VAERS

01:11:13PM 6 presentation that you were asked about earlier.

01:11:17PM 7 A. Yes, ma'am.

01:11:20PM 8 Q. VAERS data is self-reported, correct?

01:11:26PM 9 A. It's not specifically self-reported, no. Not correct.

01:11:29PM 10 Q. So, for example, if I were to suffer an adverse event, I

01:11:36PM 11 couldn't go into VAERS and self-report my adverse event?

01:11:39PM 12 A. You can do it, but it's not specifically self-reported.

01:11:44PM 13 That was the question, I believe.

01:11:45PM 14 Q. In your view, what's the difference between my ability,

01:11:47PM 15 for example, to self-report --

01:11:49PM 16 A. Mm-hmm.

01:11:50PM 17 Q. -- and the distinction that you're drawing about VAERS

01:11:53PM 18 data not being self-reported?

01:11:56PM 19 A. I'm not saying that it was not self-reported, I'm saying

01:11:59PM 20 it's not primarily or the only way. That's the way I

01:12:03PM 21 understood the question.

01:12:04PM 22 Q. I see. Okay.

01:12:05PM 23 Okay. So one component certainly of the data is

01:12:10PM 24 self-reporting?

01:12:10PM 25 A. Yes, sir.

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

- 01:12:10PM 1 Q. You would agree with that?
- 01:12:12PM 2 A. Absolutely.
- 01:12:12PM 3 Q. Okay. And another components would be the reports of
01:12:15PM 4 healthcare providers, correct?
- 01:12:17PM 5 A. Correct.
- 01:12:17PM 6 Q. There was a period, correct, when health providers were
01:12:22PM 7 required to report adverse events to VAERS, correct?
- 01:12:26PM 8 A. Yes.
- 01:12:27PM 9 Q. That was whether or not the healthcare provider had
01:12:30PM 10 determined there was actually any causal connection between the
01:12:33PM 11 two?
- 01:12:33PM 12 A. Correct.
- 01:12:45PM 13 Q. Okay. As a healthcare provider, was there any similar
01:12:51PM 14 requirement for you to enter data into VAERS for something like
01:12:58PM 15 the flu vaccines?
- 01:13:00PM 16 A. If the flu vaccine gave them a reaction, yes.
- 01:13:06PM 17 Q. That's required as well?
- 01:13:06PM 18 A. That's required by AR 40-562.
- 01:13:11PM 19 Q. Are you aware that the CDC and FDA then take this data
01:13:14PM 20 from VAERS, investigate it and figure out whether there is
01:13:17PM 21 actually a causal connection between the adverse event that was
01:13:20PM 22 reported and the COVID vaccine?
- 01:13:23PM 23 A. I'm not aware of that, but I am aware of the studies that
01:13:28PM 24 match up with the DMED data, almost exactly when you pull out
01:13:33PM 25 the VAERS military data and marry them up, they'll be able to

PETER CHAMBERS - CROSS-EXAM BY MS. YANG

- 01:13:37PM 1 show that.
- 01:13:38PM 2 Q. Specifically for the CDC and FDA --
- 01:13:41PM 3 A. Okay.
- 01:13:41PM 4 Q. -- do you know how many of these adverse events they
- 01:13:45PM 5 actually causally connected to the vaccine?
- 01:13:49PM 6 A. I'm going based off what I see on VAERS. But I use for
- 01:13:52PM 7 myself the DMED data because that's the population I'm taking
- 01:13:56PM 8 care of.
- 01:13:56PM 9 Q. I understand. I'm asking if you are aware --
- 01:13:56PM 10 A. Okay.
- 01:13:58PM 11 Q. -- one way or the other --
- 01:13:58PM 12 A. Yes, yes.
- 01:13:59PM 13 Q. -- of the number of these adverse events that CDC --
- 01:13:59PM 14 A. I'm not aware of the numbers --
- 01:13:59PM 15 Q. I'm sorry, just let me finish the question.
- 01:14:06PM 16 Are you aware of the number of adverse events that the CDC
- 01:14:12PM 17 and FDA actually causally connected to the COVID vaccine?
- 01:14:17PM 18 A. I'm aware based upon the VAERS system, yes. This is part
- 01:14:22PM 19 of the -- of that same CDC information and FDA.
- 01:14:36PM 20 Q. You also talked about DMED --
- 01:14:44PM 21 THE COURT: Ms. Yang, would this be a good time for
- 01:14:46PM 22 us to take the lunch break? You're a bit over five or ten
- 01:14:50PM 23 minutes.
- 01:14:50PM 24 MS. YANG: Oh, certainly. Sorry about that.
- 01:14:50PM 25 THE COURT: It's 1:15. So it may be drizzling

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

01:14:54PM 1 outside, but I couldn't tell. Would an hour and 15 minutes be
01:14:57PM 2 all right for everybody?

01:14:57PM 3 MR. STAVER: Yes, Your Honor.

01:14:58PM 4 THE COURT: All right. It's 1:15, so just to keep
01:15:01PM 5 the numbers even, we'll break now and we can come back at 2:30.

01:15:05PM 6 MS. YANG: Okay. Thank you.

01:15:06PM 7 THE COURT: We are in recess at this time. Enjoy
01:15:12PM 8 your lunch hour.

01:15:17PM 9 (Proceedings in recess from 1:15 p.m. until 2:28 p.m.)

02:28:56PM 10 THE COURT: The witness may return to the witness
02:28:57PM 11 stand, assuming he remains available for that purpose.

02:28:57PM 12 THE WITNESS: (Complies.)

02:29:25PM 13 THE COURT: Let's get that clipped on with the
02:29:29PM 14 microphone pointing toward his face or mouth, whatever. There
02:29:35PM 15 we go.

02:29:36PM 16 And, Ms. Yang, I believe that I interrupted your
02:29:39PM 17 cross-examination of this witness, so you are recognized to
02:29:42PM 18 resume that cross-examination uninterrupted.

02:29:45PM 19 MS. YANG: Thank you, Your Honor.

02:29:47PM 20 CONTINUED CROSS-EXAMINATION

02:29:47PM 21 BY MS. YANG:

02:29:49PM 22 Q. Welcome back, sir.

02:29:51PM 23 A. Thank you.

02:29:51PM 24 Q. Let's talk about the DMED data that you referenced in your
02:29:57PM 25 direct examination. Are you aware that the Defense Health

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

02:30:02PM 1 Agency reviewed the data in DMED after you reported your
02:30:07PM 2 concerns?

02:30:09PM 3 A. Yes.

02:30:10PM 4 Q. And that the Defense Health Agency compared the data that
02:30:14PM 5 was in DMED to the underlying data source; are you aware of
02:30:19PM 6 that?

02:30:19PM 7 A. I didn't look into that detail, because I came off the
02:30:23PM 8 mission at that point and was not taking care of soldiers at
02:30:28PM 9 that time.

02:30:28PM 10 Q. Are you aware that the Defense Health Agency published an
02:30:31PM 11 information paper reflecting their findings from their
02:30:34PM 12 investigation?

02:30:35PM 13 A. Yes.

02:30:36PM 14 Q. And is this the February 2022 paper that you started to
02:30:43PM 15 discuss in your direct examination?

02:30:48PM 16 A. February -- could you produce that for me?

02:30:51PM 17 Q. Certainly.

02:31:02PM 18 MS. YANG: Your Honor, may I approach?

02:31:04PM 19 THE COURT: You may. Yes, you may do so freely as
02:31:09PM 20 you want.

02:31:11PM 21 MS. YANG: And I have a copy for the Court as well.

02:31:15PM 22 THE COURT: Yes, please, if I don't have a copy of it
02:31:17PM 23 here. Thank you.

02:31:20PM 24 MR. STAVER: Your Honor, this was not something that
02:31:21PM 25 was discussed in direct, so I'm not quite sure what counsel may

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

02:31:24PM 1 be referring to.

02:31:25PM 2 THE COURT: Nor am I, but let's explore the matter.

02:31:31PM 3 MS. YANG: Thank you, Your Honor.

02:31:32PM 4 Q. (By Ms. Yang) Sir, have you seen this information paper
02:31:38PM 5 before?

02:31:39PM 6 A. No, I have not.

02:31:46PM 7 THE COURT: And you say the source of this is what?

02:31:48PM 8 MS. YANG: The Defense Health Agency. And if the
02:31:51PM 9 Court would prefer, we are happy to submit an authenticating
02:31:55PM 10 declaration after our proceeding today.

02:31:57PM 11 THE COURT: No, I just didn't hear what it is. Is it
02:31:59PM 12 publicly available?

02:32:01PM 13 MS. YANG: I believe it is, yes, sir.

02:32:02PM 14 MR. STAVER: Your Honor, there is no foundation for
02:32:04PM 15 it. And like last time, we had a declaration at the close of
02:32:08PM 16 evidence, and I don't -- hopefully we don't go down that same
02:32:13PM 17 road again today. I've never seen this document.

02:32:22PM 18 MS. YANG: Your Honor, may I proceed?

02:32:26PM 19 THE COURT: "Yes" is the answer to your question.
02:32:34PM 20 But just for my benefit as the factfinder, what is this?

02:32:37PM 21 MS. YANG: This is an information paper that was
02:32:39PM 22 published by the Defense Health Agency after they conducted a
02:32:43PM 23 review of the DMED data concerns that the witness testified
02:32:48PM 24 about earlier.

02:32:49PM 25 THE COURT: And you say it's published. Where is it

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

02:32:53PM 1 published?

02:32:54PM 2 MS. YANG: I am not certain of that. I can certainly
02:32:59PM 3 double check on that. But as I mentioned, we are very happy to
02:33:04PM 4 submit an authenticating declaration if authentication is a
02:33:08PM 5 concern to the Court.

02:33:10PM 6 THE COURT: Well, I'm not sure if it's authentication
02:33:13PM 7 or identification, but I did want to know. It has on its face
02:33:20PM 8 a date, but it doesn't have on its face -- at least at my
02:33:24PM 9 glance did not reveal a point of attribution.

02:33:31PM 10 MR. STAVER: There's no identifying indicia of this,
02:33:33PM 11 and the witness says he's never seen it.

02:33:39PM 12 MS. POWELL: Your Honor, do you mind if I'm heard?

02:33:42PM 13 THE COURT: That's fine.

02:33:43PM 14 MS. POWELL: Your Honor, obviously we only found out
02:33:49PM 15 these witnesses were testifying a couple of days ago. This
02:33:52PM 16 paper was produced and released to media and Congress not long
02:33:56PM 17 before that. In response to the allegations made by Lieutenant
02:34:01PM 18 Colonel Long and others in the media reporting about it, this
02:34:03PM 19 was created and released in response to that. I don't know if
02:34:06PM 20 it's publish --

02:34:06PM 21 THE COURT: It was released where or -- in other
02:34:09PM 22 words, I'm just trying to source it. What is the --

02:34:13PM 23 MS. POWELL: The Defense Health Agency is a subagency
02:34:16PM 24 within DoD that investigated the concerns raised by Lieutenant
02:34:20PM 25 Colonel Long and others, and sent this paper analyzing those

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

02:34:24PM 1 concerns and using DMED paper to various members of the media
02:34:28PM 2 and various members of Congress who had inquired about it.

02:34:31PM 3 You're correct that we don't -- since the witness is
02:34:33PM 4 not familiar with it, we don't have authentication on the
02:34:36PM 5 record, but we would be happy to create that -- a document that
02:34:40PM 6 identifies it. For now, as counsel, we're happy to represent
02:34:43PM 7 that we got it from DHA that has informed us that it has been
02:34:47PM 8 released to the public in general and that they created it
02:34:49PM 9 based on the DMED data and their review of the data that the
02:34:53PM 10 plaintiffs here have referred to.

02:34:55PM 11 THE COURT: Are you going to offer this into
02:34:57PM 12 evidence?

02:34:58PM 13 MS. POWELL: Yes.

02:35:01PM 14 THE COURT: All right. You didn't list it on your
02:35:02PM 15 evidence list.

02:35:03PM 16 MS. POWELL: No. We had no idea plaintiffs were
02:35:05PM 17 going to proffer witnesses on the safety and efficacy of the
02:35:09PM 18 vaccine or DMED. This is purely in rebuttal and impeachment to
02:35:12PM 19 the witnesses plaintiffs identified on their list later.

02:35:16PM 20 MR. STAVER: Your Honor, may I be heard?

02:35:17PM 21 THE COURT: Briefly, yes.

02:35:19PM 22 MR. STAVER: They had both doctors listed, and they
02:35:23PM 23 were going to do a global objection at the very beginning, as
02:35:27PM 24 this Court was informed, of all the witnesses with regard to
02:35:30PM 25 this issue, and on that witness list was information regarding

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

02:35:34PM 1 DMED. So if they want to rebut it, as of Tuesday when they got
02:35:38PM 2 our information, they could have done something in advance.
02:35:41PM 3 And, again, we're last minute, at the close of testimony -- or
02:35:44PM 4 at the end of testimony and wanting to do a post-hearing
02:35:48PM 5 declaration.

02:35:49PM 6 MS. POWELL: I'm not aware of any rule or order that
02:35:52PM 7 would require us to disclose rebuttal evidence that we only
02:35:55PM 8 came up with in response to their witness list. We had no
02:35:59PM 9 reason to think DMED data would be at issue before we got their
02:36:03PM 10 witness list.

02:36:04PM 11 THE COURT: I'm not sure how you define rebuttal
02:36:07PM 12 evidence here. I'm not sure that I know of any rule that
02:36:12PM 13 exempts you from including rebuttal evidence on an exhibit list
02:36:16PM 14 pretrial, but I know my standard order distinctly includes all
02:36:24PM 15 evidence that will be offered for any reason, although we
02:36:27PM 16 didn't issue such an order with respect to this hearing.

02:36:30PM 17 So you may mark it for identification, and you may
02:36:33PM 18 question the witness about it. This is Defense Exhibit 1?
02:36:38PM 19 Defense Exhibit 1, is that what it is?

02:36:40PM 20 MS. YANG: That's correct. Okay.

02:36:41PM 21 THE COURT: We'll identify it as Defense Exhibit 1,
02:36:44PM 22 and you may proceed.

11:12:37AM 23 (Defendants' Exhibit 1 admitted.)

02:36:47PM 24 THE COURT: Defense Exhibit 1 for identification.

02:36:50PM 25 Q. (By Ms. Yang) Sir, I believe you said you have not

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

02:36:52PM 1 reviewed this paper before today?

02:36:54PM 2 A. Correct, I have not reviewed this paper.

02:36:56PM 3 Q. Let me represent to you that this is a paper that was

02:37:02PM 4 created by the Defense Health Agency in which they correct the

02:37:08PM 5 data concerns that you and your colleagues had reported to

02:37:13PM 6 Congress and elsewhere, which you described in your direct

02:37:16PM 7 examination. And if you would please turn to page 2 of this

02:37:21PM 8 paper. Do you see the table on the bottom of that page?

02:37:26PM 9 A. Yes, I do.

02:37:27PM 10 Q. It goes on -- over to the top of the third page.

02:37:31PM 11 A. Okay. Yes.

02:37:32PM 12 Q. And do you see the headings for each of these three

02:37:36PM 13 columns, the first heading, Medical Encounter Conditions?

02:37:40PM 14 A. Yes, ma'am.

02:37:40PM 15 Q. And that lists the various conditions you had

02:37:44PM 16 identified the increases in 2021 that you believe were

02:37:49PM 17 associated with the COVID vaccine; is that right?

02:37:53PM 18 A. Correct.

02:37:53PM 19 Q. And the second column is headed Reported Change to Number

02:37:57PM 20 of Healthcare Encounters (2021 Compared to Last Five Years)

02:38:04PM 21 Using Erroneous Data. Do you see that?

02:38:08PM 22 A. I see that.

02:38:09PM 23 Q. And the numbers -- or the percentages in this column,

02:38:12PM 24 those are the same percentages that you had reported to

02:38:15PM 25 Congress and described earlier to the Court, correct?

PETER CHAMBERS - CONTINUED CROSS-EXAM BY MS. YANG

- 02:38:18PM 1 A. They look similar.
- 02:38:19PM 2 Q. The third column, the heading title is DMED Query Results
- 02:38:23PM 3 for Change to Number of Healthcare Encounters (2021 Compared to
- 02:38:28PM 4 Last Five Years) Following Data Correction. Do you see that
- 02:38:32PM 5 heading?
- 02:38:33PM 6 A. Yes, ma'am.
- 02:38:34PM 7 Q. And do you see that the percentage numbers following that
- 02:38:38PM 8 heading are different from the percentages you had described
- 02:38:43PM 9 earlier? Do you see that?
- 02:38:45PM 10 A. I do see that.
- 02:38:47PM 11 Q. So, for example, whereas before you had described a
- 02:38:52PM 12 1,048 percent increase in the diseases of the nervous system,
- 02:38:57PM 13 the corrected number is actually a 5.7 decrease. Do you see
- 02:39:00PM 14 that?
- 02:39:01PM 15 A. I do see that.
- 02:39:02PM 16 Q. For hypertension, whereas you had reported a 2,181 percent
- 02:39:07PM 17 increase, the corrected number actually shows a 1.9 percent
- 02:39:12PM 18 increase?
- 02:39:13PM 19 A. Yes, ma'am. I didn't report that, that was DMED that
- 02:39:15PM 20 reported that. I just read it.
- 02:39:18PM 21 Q. And the 30 percent -- excuse me, the 302 percent increase
- 02:39:24PM 22 in tachycardia that you had described earlier, that was
- 02:39:28PM 23 corrected to an 8.3 percent decrease. Do you see that?
- 02:39:32PM 24 A. Yes. I do see that on this paper, yes, ma'am.
- 02:39:34PM 25 Q. And on the next page, there is a condition that's

PETER CHAMBERS - REDIRECT EXAM BY MR. STAVER

02:39:38PM 1 demyelinating -- I don't know if I'm pronouncing that right,

02:39:42PM 2 but is that the condition that you have, sir?

02:39:46PM 3 A. That is the general descriptor. It would be a larger

02:39:50PM 4 diagnosis picture, but yes.

02:39:52PM 5 Q. Understood.

02:39:53PM 6 And whereas the concerns and the data that you had

02:39:57PM 7 reported showed 487 percent increase, do you see that the

02:40:01PM 8 corrected data actually accounts for a 17.7 percent decrease?

02:40:06PM 9 A. I see that.

02:40:11PM 10 MS. YANG: Thank you, Your Honor. No further

02:40:12PM 11 questions for this witness at this time.

02:40:17PM 12 MR. STAVER: Just a few, Your Honor.

02:40:18PM 13 THE COURT: Mr. Staver, you're recognized for your

02:40:21PM 14 redirect examination.

02:40:22PM 15 REDIRECT EXAMINATION

02:40:22PM 16 BY MR. STAVER:

02:40:26PM 17 Q. Counsel asked you about the Tonya Rans declaration. On

02:40:33PM 18 page 6 of her declaration, she says, "Just as it is

02:40:38PM 19 acknowledged that there are potential adverse events to

02:40:43PM 20 COVID-19 vaccines..." Do you agree with her statement there,

02:40:47PM 21 that there are potential adverse events to COVID-19 vaccines?

02:40:51PM 22 A. Yes, sir.

02:40:52PM 23 Q. And you have personally seen those?

02:40:55PM 24 A. Yes, sir.

02:40:56PM 25 Q. On page 22, she stated in her declaration, "Available

PETER CHAMBERS - REDIRECT EXAM BY MR. STAVER

02:41:16PM 1 evidence shows that fully" -- I'm sorry. On page 24 of her
02:41:21PM 2 declaration is what I'm looking at. "As previously stated,
02:41:26PM 3 identified in multiple -- as previously identified in multiple
02:41:29PM 4 studies, vaccination with an mRNA vaccine like Pfizer-BioNTech
02:41:36PM 5 was associated with an elevated risk of myocarditis compared to
02:41:39PM 6 those unvaccinated (risk difference 2.7 events/100,000
02:41:45PM 7 people)."

02:41:45PM 8 Do you agree with that, there was an increased risk of
02:41:48PM 9 myocarditis?

02:41:49PM 10 A. I agree that there was an increased risk, I could not
02:41:53PM 11 verify that percentage.

02:41:55PM 12 Q. And have you seen that increased risk in the FDA report
02:41:59PM 13 that we discussed October 22, 2020?

02:42:03PM 14 A. Yes, sir.

02:42:04PM 15 Q. And have you seen that increased risk in VAERS?

02:42:07PM 16 A. Yes, sir.

02:42:08PM 17 Q. Have you seen that increased risk in DMED?

02:42:12PM 18 A. Yes, sir.

02:42:13PM 19 Q. Have you personally, in your experience as a medical
02:42:16PM 20 physician treating soldiers, seen that increased risk in the
02:42:20PM 21 soldiers after taking the vaccine?

02:42:23PM 22 A. Yes, sir. Absolutely.

02:42:23PM 23 Q. In your discussion with other medical experts, have you
02:42:26PM 24 also discussed that increased risk with other medical experts
02:42:29PM 25 as well?

PETER CHAMBERS - REDIRECT EXAM BY MR. STAVER

02:42:30PM 1 A. Yes, sir. Consultation, yes, sir.

02:42:38PM 2 Q. Now, Rans goes on to say that, notwithstanding those
02:42:42PM 3 risks, that she continues to believe that vaccination --
02:42:47PM 4 universal vaccination is essentially the only way to protect
02:42:50PM 5 the military readiness of the force. You understand that
02:42:54PM 6 that's what she's saying?

02:42:55PM 7 A. I understand that.

02:42:55PM 8 Q. And in your medical and other opinions, empirically, in
02:43:00PM 9 your research, do you agree or disagree with that opinion?

02:43:03PM 10 A. I disagree with that opinion.

02:43:05PM 11 MR. STAVER: I don't have any other questions.

02:43:06PM 12 THE COURT: All right. Thank you.

02:43:08PM 13 With that, Mr. Chambers, if you'll disconnect that
02:43:12PM 14 microphone -- or let the CSO do that.

02:43:15PM 15 THE WITNESS: Yes, sir.

02:43:16PM 16 THE COURT: And you may step down, and you're excused
02:43:19PM 17 with our thanks.

02:43:27PM 18 All right. The plaintiffs are recognized to call
02:43:30PM 19 their next witness.

02:43:31PM 20 MR. STAVER: Yes, Your Honor.

02:43:32PM 21 We call Lieutenant Colonel Dr. Theresa Long.

02:44:04PM 22 THE COURT: Good afternoon.

02:44:06PM 23 THE WITNESS: Good afternoon, sir.

02:44:07PM 24 THE COURT: Let me ask you to pause a moment and
02:44:09PM 25 raise your right hand.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:44:10PM 1 THERESA MARIE LONG,
02:44:10PM 2 having been sworn or affirmed under oath, was examined and
02:44:15PM 3 testified as follows:
02:44:15PM 4 THE COURT: And state your name, please.
02:44:16PM 5 THE WITNESS: Theresa Long.
02:44:19PM 6 THE COURT: Please have a seat in the witness stand.
02:44:21PM 7 We'll need to connect that microphone.
02:44:46PM 8 With that, I'll recognize Mr. Staver for his direct
02:44:46PM 9 examination.
02:44:50PM 10 MR. STAVER: Thank you, Your Honor.
02:44:50PM 11 DIRECT EXAMINATION
02:44:50PM 12 BY MR. STAVER:
02:44:50PM 13 Q. Can you state your full name, please.
02:44:53PM 14 A. Theresa Marie Long.
02:44:57PM 15 Q. For the benefit of the Court, can you give us your
02:45:00PM 16 background and training and education from a medical doctor
02:45:05PM 17 perspective.
02:45:06PM 18 A. Yes, sir. I enlisted in the Army in 1991 as a combat
02:45:12PM 19 medic and did an assignment over in Germany, came back to
02:45:19PM 20 Washington, functioned as the trauma team leader at Madigan
02:45:23PM 21 Army Medical Center. After receiving my bachelor's degree from
02:45:26PM 22 the University of Texas at Austin in neurobiology/neuroscience,
02:45:30PM 23 I completed my medical degree from the University of Texas
02:45:34PM 24 Health Science Center at Houston Medical School in 2008.
02:45:34PM 25 Q. Okay.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:45:40PM 1 A. I served as a field surgeon for ten years in the Army out
02:45:45PM 2 of Fort Hood and completed a residency in aerospace and
02:45:50PM 3 occupational medicine at the United States Army School of
02:45:54PM 4 Aviation Medicine, Fort Rucker.

02:45:56PM 5 I hold a master's in public health. I am trained by
02:46:02PM 6 Combat Readiness Center, Fort Rucker, as an aviation safety
02:46:06PM 7 officer and an aircraft mishap investigator. Additionally, I
02:46:10PM 8 have been trained formally at Fort Detrick and USAMRIID in the
02:46:15PM 9 medical management of chemical and biological casualties, with
02:46:20PM 10 training in infectious disease from Army, Navy, and Air Force
02:46:24PM 11 at the Global Medicine Symposium, FEMA, the emergency
02:46:29PM 12 preparedness training, medical effects in ionizing radiation,
02:46:33PM 13 OSHA, Air Force toxicology, epidemiology, biostatistics, and
02:46:37PM 14 medical research, in addition to disaster planning.

02:46:45PM 15 I currently serve, sir, as a medical and scientific
02:46:49PM 16 advisor to the 1st Aviation Training Brigade at Fort Rucker,
02:46:55PM 17 with specific tasks to identify and mitigate -- create
02:47:01PM 18 mitigation strategies for COVID-19 infections, both in
02:47:07PM 19 vaccinated, unvaccinated soldiers, and to conduct
02:47:11PM 20 biostatistical analysis in the effort to mitigate lost training
02:47:19PM 21 time among pilots.

02:47:20PM 22 Q. I may have missed this, but where did you get your medical
02:47:23PM 23 degree?

02:47:23PM 24 A. From the United -- from Texas -- University of Texas
02:47:28PM 25 Health Science Center, Houston, Texas, sir.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:47:31PM 1 Q. And after that you got a master's in public health?

02:47:35PM 2 A. Yes, sir, I did.

02:47:35PM 3 Q. Can you explain what the difference would be and what
02:47:39PM 4 specialized training that equipped you to do.

02:47:43PM 5 A. Yes, sir. I got my master's in public health as part of
02:47:47PM 6 my aerospace medicine residency training. In order to receive
02:47:52PM 7 a master's in public health, you have to be formally trained in
02:47:56PM 8 epidemiology, biostatistics, in addition to population health,
02:48:07PM 9 emergency preparedness, behavioral health, emerging infectious
02:48:15PM 10 diseases were kind of the basis of it.

02:48:19PM 11 As part of my master's in public health, I was required to
02:48:23PM 12 complete a one-year-long research project. For that research
02:48:27PM 13 project, I was encouraged by senior medical leaders to use the
02:48:32PM 14 Defense Medical Epidemiology Database to conduct my research.

02:48:39PM 15 Q. So that was part of your research of one year?

02:48:42PM 16 A. Yes.

02:48:42PM 17 Q. To conclude your master's in public health?

02:48:45PM 18 A. Yes, sir. I was trained how to use the database and used
02:48:48PM 19 it to create my research paper on intervertebral disk disease
02:48:55PM 20 among aviators.

02:48:56PM 21 Q. You heard the testimony earlier of Dr. Chambers, correct?

02:48:59PM 22 A. Yes, sir, I did.

02:49:00PM 23 Q. He referred to you as "Lieutenant Theresa Long." And
02:49:04PM 24 that's you?

02:49:05PM 25 A. Lieutenant Colonel Theresa Long, yes, sir.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:49:06PM 1 Q. Lieutenant Colonel Theresa Long.

02:49:08PM 2 And he mentioned that you would be the one that has the

02:49:12PM 3 expertise in the DMED, particularly because of your background

02:49:18PM 4 and training.

02:49:18PM 5 A. Yes, sir, I do.

02:49:18PM 6 Q. So does your MPH particularly qualify you to analyze the

02:49:22PM 7 DMED data?

02:49:23PM 8 A. Yes, sir, it does.

02:49:25PM 9 Q. I'd like for you to look at --

02:49:26PM 10 MR. STAVER: And I'm just going to go, Your Honor, by

02:49:29PM 11 tab since she has that tabbed.

02:49:30PM 12 Q. (By Mr. Staver) But it's in the notebook tab 7, and that

02:49:36PM 13 is the information about the DMED in terms of what it is. Can

02:49:42PM 14 you read the purpose of what DMED is and how it is used by you

02:49:48PM 15 and other experts.

02:49:50PM 16 A. Sir, can I preference that I am not here in my official

02:49:55PM 17 capacity?

02:49:55PM 18 Q. Mm-hmm.

02:49:56PM 19 A. I am not wearing my uniform today, and my views do not

02:49:59PM 20 represent that of the DoD, the United States Army, or the 1st

02:50:05PM 21 Aviation Brigade.

02:50:06PM 22 Q. Okay. With that, can you go ahead and read what the

02:50:08PM 23 purpose of the DMED is.

02:50:10PM 24 A. Yes, sir.

02:50:12PM 25 It says, "DMED provides remote access to a subset of data

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:50:16PM 1 confined in the Defense Medical Surveillance System. DMSS
02:50:21PM 2 contains up-to-date historical data on diseases and medical
02:50:25PM 3 events, hospitalizations, ambulatory visits, reportable
02:50:29PM 4 diseases, and longitudinal data relevant to personal
02:50:33PM 5 characteristics and deployment experience for all active duty
02:50:37PM 6 and reserve component personnel. The DMED application provides
02:50:40PM 7 a user-friendly interface to perform queries regarding disease
02:50:45PM 8 and injury rates and relevant burdens of disease in active
02:50:49PM 9 component population.

02:50:50PM 10 "The purpose of DMED is to standardize the epidemiologic
02:50:55PM 11 method to collect, integrate, analyze active component service
02:51:00PM 12 member personnel medical event data and to provide authorized
02:51:04PM 13 users with remote access to the summarized data. Using
02:51:08PM 14 client-server technologies and database optimization, DMED
02:51:12PM 15 users have unprecedented access to epidemiologic data on active
02:51:18PM 16 component service members and tailored queries that respond in
02:51:22PM 17 a timely and efficient manner."

02:51:25PM 18 It goes on to say that the --

02:51:28PM 19 THE COURT: Well, let's not read it, because --

02:51:28PM 20 THE WITNESS: Oh, sorry.

02:51:30PM 21 THE COURT: -- I have it in front of me, so...

02:51:32PM 22 THE WITNESS: Okay.

02:51:32PM 23 Q. (By Mr. Staver) So as -- in the military, after your
02:51:36PM 24 master's in public health, did you have opportunity to access
02:51:40PM 25 DMED before 2021?

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:51:42PM 1 A. Yes, sir, I did.

02:51:43PM 2 Q. For what purpose did you access it?

02:51:47PM 3 A. Sir, I've been ordered not to answer.

02:51:51PM 4 Q. Okay. You also -- let me come back to -- in fact, let me

02:52:01PM 5 ask you this. If there's anything that I ask you that you've

02:52:06PM 6 been ordered not to answer, just feel free to tell the Court as

02:52:09PM 7 you just did.

02:52:11PM 8 A. (Nods head.)

02:52:12PM 9 Q. With regards to what you are --

02:52:13PM 10 THE COURT: Let me just inquire about this. Ordered

02:52:15PM 11 by whom?

02:52:16PM 12 THE WITNESS: Sir, last night, I received a phone

02:52:21PM 13 call from my command, followed by a written counseling

02:52:29PM 14 statement that -- do you have it? I don't.

02:52:31PM 15 THE COURT: Were you going to go into this,

02:52:33PM 16 Mr. Staver?

02:52:34PM 17 MR. STAVER: I was going to go into it, yes.

02:52:35PM 18 THE COURT: All right. I will yield back to you. I

02:52:38PM 19 just didn't want us to move on. I wanted -- I did not --

02:52:38PM 20 MR. STAVER: Okay.

02:52:40PM 21 THE COURT: -- understand --

02:52:40PM 22 THE WITNESS: So --

02:52:40PM 23 THE COURT: -- who was exercising control of this

02:52:42PM 24 witness's testimony.

02:52:43PM 25 MR. STAVER: Sure. Thank you, Your Honor. I will

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:52:44PM 1 get to that, and then we'll go through what we can with this
02:52:48PM 2 witness.

02:52:52PM 3 THE COURT: Are there any -- if there are any other
02:52:54PM 4 restrictions on your testimony that are pertinent, I'd like to
02:52:57PM 5 know about them.

02:52:58PM 6 THE WITNESS: Sir, I believe the information I have
02:53:04PM 7 is paramount to national security. And --

02:53:07PM 8 THE COURT: So --

02:53:07PM 9 THE WITNESS: And I also believe it's consistent with
02:53:11PM 10 my faith. In Leviticus 5:1 it says if you are called to
02:53:14PM 11 testify about something you have seen or that you know about,
02:53:19PM 12 it is sinful to refuse to testify and you will be punished for
02:53:23PM 13 your sin.

02:53:24PM 14 THE COURT: You may proceed, Mr. Staver.

02:53:26PM 15 MR. STAVER: Okay.

02:53:28PM 16 Q. (By Mr. Staver) You are here because you were subpoenaed
02:53:31PM 17 to be here, correct?

02:53:32PM 18 A. Yes, sir.

02:53:34PM 19 Q. Last night when we were going over your information, about
02:53:43PM 20 5 or 6 -- I think around 5 o'clock or so, did you receive a
02:53:47PM 21 telephone call?

02:53:48PM 22 A. Yes, sir, I did.

02:53:49PM 23 Q. Did you receive a telephone call just before that, perhaps
02:53:52PM 24 an hour earlier?

02:53:53PM 25 A. Yes, sir.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

- 02:53:53PM 1 Q. And that was a phone call from who?
- 02:53:57PM 2 A. Lieutenant Colonel Keith Haskins, who is the -- basically
- 02:54:07PM 3 the second command of the brigade.
- 02:54:08PM 4 Q. And what did he inform you?
- 02:54:10PM 5 A. That I would be receiving a counseling statement from the
- 02:54:13PM 6 brigade commander regarding coming down here and testifying.
- 02:54:19PM 7 Q. And you would be getting a call from that brigade
- 02:54:23PM 8 commander at a certain time?
- 02:54:24PM 9 A. Yes, sir.
- 02:54:24PM 10 Q. And you did get a call from that brigade commander?
- 02:54:28PM 11 A. Yes, sir, I did.
- 02:54:29PM 12 Q. Did you leave our presence then and go out where you spoke
- 02:54:32PM 13 to that brigade commander?
- 02:54:34PM 14 A. Yes, sir, I did.
- 02:54:35PM 15 Q. What did that brigade commander tell you?
- 02:54:39PM 16 A. The previous night he had -- he had called me and
- 02:54:45PM 17 questioned my integrity. He said he had heard that my brother
- 02:54:49PM 18 had had a stroke and that I had plans to go -- take leave and
- 02:54:53PM 19 go see my brother, but then he had heard that I had, in fact,
- 02:54:57PM 20 sneaked away to go testify in a court case. And he wanted to
- 02:55:00PM 21 know which is it, and I told him that both were true. My
- 02:55:06PM 22 brother had had a stroke. It was my intention to be up in
- 02:55:10PM 23 Minnesota seeing my brother this week, but I had received this
- 02:55:15PM 24 subpoena. And as I've had many, many brothers in the service
- 02:55:18PM 25 now have strokes, I felt compelled to come here and comply with

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:55:25PM 1 the subpoena.

02:55:26PM 2 So last night when he spoke to me, he said he was ordered
02:55:32PM 3 to give me a counseling statement prepared for him, basically
02:55:39PM 4 advising me that I couldn't discuss anything about the DoD, any
02:55:44PM 5 information about the DoD that I had obtained while at work,
02:55:52PM 6 and if I did, there would be adverse action.

02:55:55PM 7 I informed my commander that I was here because I had been
02:56:02PM 8 a whistleblower and I had come forth with information regarding
02:56:08PM 9 the DMED database that was previously surrendered to
02:56:13PM 10 Senator Johnson and that I felt -- and that was under
02:56:17PM 11 whistleblower protection and that I felt him calling me and
02:56:22PM 12 threatening me with adverse action if I complied and testified
02:56:28PM 13 was witness tampering and in an attempt to intimidate me from
02:56:34PM 14 coming forward with really important information that is
02:56:38PM 15 pertinent to all service members of all branches.

02:56:42PM 16 And so they basically closed off and told me to sign the
02:56:52PM 17 counseling statement and return it to them.

02:56:56PM 18 Q. And did you do that?

02:57:00PM 19 A. No, sir. I have not had my attorney review it.

02:57:04PM 20 Q. Okay. And you're not talking about us as your attorney;
02:57:07PM 21 you're talking about another attorney?

02:57:09PM 22 A. Correct. I have -- my attorney Dave Wilson is a JAG
02:57:14PM 23 officer and Todd Callender, in which I worked with for the
02:57:19PM 24 *Roberts v. Austin* case.

02:57:21PM 25 I would tell you, sir, that since discovering the DMED

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:57:25PM 1 data, it is not an embellishment to say I have feared for my
02:57:32PM 2 life. I have feared for the safety of my children and my
02:57:43PM 3 family.

02:57:43PM 4 Q. As you understand this instruction or order, however you
02:57:49PM 5 term it, this counseling, for which there would be consequences
02:57:52PM 6 if you violated it --

02:57:54PM 7 THE COURT: I'm slightly confused. Just let me ask
02:57:56PM 8 one question.

02:57:57PM 9 MR. STAVER: Sure.

02:57:58PM 10 THE COURT: Can you characterize that counseling
02:58:01PM 11 statement? What is it? What do you under- -- I take it you
02:58:05PM 12 read it. What is the nature of a counseling statement?

02:58:09PM 13 THE WITNESS: Basically, sir, they do not want me to
02:58:11PM 14 disclose or talk about anything going on, any of the harm I'm
02:58:11PM 15 being -- seen --

02:58:11PM 16 THE COURT: Okay.

02:58:17PM 17 THE WITNESS: -- per se.

02:58:17PM 18 THE COURT: You're talking about --

02:58:17PM 19 THE WITNESS: And --

02:58:17PM 20 THE COURT: You're talking about some kind of
02:58:21PM 21 direction that's been given to you, not advice that you've
02:58:24PM 22 received?

02:58:25PM 23 THE WITNESS: Yes, sir.

02:58:26PM 24 THE COURT: I see.

02:58:26PM 25 THE WITNESS: And if I -- and if I do that, that they

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

02:58:30PM 1 would take adverse action against me.

02:58:32PM 2 THE COURT: All right.

02:58:33PM 3 Excuse me, Mr. Staver. Go ahead.

02:58:35PM 4 MR. STAVER: We have a counseling that was sent to
02:58:38PM 5 her last night. It has not been signed by either party yet,
02:58:42PM 6 but I can indicate that what it says, it's called "a
02:58:47PM 7 counseling," but it's a directive. If you violate it, there
02:58:50PM 8 are consequences to that. And it's a counseling not to do
02:58:53PM 9 certain things. The breach of that would be a certain kind of
02:58:58PM 10 punishment. It doesn't list what that punishment would be, but
02:59:03PM 11 in paragraph 3 it says, "You will not disclose official
02:59:07PM 12 information. Official information is all information of any
02:59:11PM 13 kind, however stored, that is in the custody and control of the
02:59:16PM 14 DoD, relates to information in the custody and control of the
02:59:19PM 15 DoD, or was acquired by DoD personnel as part of their official
02:59:24PM 16 duties or because of their official status within the
02:59:28PM 17 department while such personnel are employed by or on behalf of
02:59:31PM 18 the department or in active duty with the United States Armed
02:59:37PM 19 Forces. You will not provide any expert or opinion testimony.
02:59:41PM 20 Additionally, you are not authorized to provide expert
02:59:45PM 21 testimony under the exception of AMEDD," A-M-E, double "D."
02:59:50PM 22 And it goes on and gives certain citations to that.

02:59:56PM 23 So it's unclear -- it's unclear how broad that is,
03:00:04PM 24 but it's quite broad.

03:00:06PM 25 THE COURT: Understood. All right. You may proceed.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:00:11PM 1 Q. (By Mr. Staver) Dr. Long, when you received that
03:00:21PM 2 communication from your commander, the commander said that he
03:00:25PM 3 was ordered to issue that counseling, correct?

03:00:31PM 4 A. Yes. He made it very clear to me that he was not the
03:00:35PM 5 originator of that document, that it was prepared for him to
03:00:39PM 6 give to me.

03:00:40PM 7 Q. And did he say that in response to your statement that
03:00:43PM 8 this could be witness tampering or coercion of testimony of a
03:00:47PM 9 witness?

03:00:48PM 10 A. Yes, sir. I made it clear to him that I felt very
03:00:52PM 11 intimidated and threatened by that counseling statement.

03:00:58PM 12 Q. After you received that conversation, did you feel
03:01:04PM 13 intimidated and threatened?

03:01:07PM 14 A. Yes, sir. I spent most of the night on the phone with
03:01:11PM 15 multiple attorneys, to include the ethics attorney from Fort
03:01:16PM 16 Rucker.

03:01:16PM 17 Q. Did you come back into the room where we had been
03:01:18PM 18 preparing and break down?

03:01:22PM 19 A. Yes, sir, I did.

03:01:23PM 20 Q. Why?

03:01:31PM 21 A. I have so many soldiers being absolutely destroyed by this
03:01:40PM 22 vaccine. And I have done everything I possibly can to inform
03:01:52PM 23 my command, to inform everyone I can through an affidavit
03:02:01PM 24 published in the *Robert v. Austin* case testimony before
03:02:06PM 25 Senator Johnson, multiple conversations and emails to every

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:02:11PM 1 senior leader, including Colonel Rans and Colonel Margaret
03:02:18PM 2 Ryan, of my concerns. And not a single member of my chain of
03:02:22PM 3 command, not a single senior medical leader, has investigated
03:02:28PM 4 or discussed with me these concerns.

03:02:33PM 5 People are getting hurt. People are having strokes.
03:02:38PM 6 Young people are being permanently harmed, and no one will talk
03:02:46PM 7 about it. And they don't want me to talk about it. If you
03:02:53PM 8 want to talk about medical readiness, that's medical readiness.
03:02:59PM 9 You are talking about the health of our entire Armed Forces.

03:03:04PM 10 I have nothing to gain and everything to lose from coming
03:03:09PM 11 forward and testifying and talking to people about this. I am
03:03:14PM 12 with a -- within a stone's throw of retirement. I could lose
03:03:18PM 13 my pension. I could lose my medical license. I could lose
03:03:23PM 14 everything. And I'm okay with that, because I'm watching
03:03:27PM 15 people get absolutely destroyed, and I am watching senior
03:03:31PM 16 leaders at the highest level have complete indifference to that
03:03:37PM 17 risk.

03:03:39PM 18 So, yes, I was incredibly upset. They're more concerned
03:03:48PM 19 about covering and keeping the narrative protected --

03:03:53PM 20 THE COURT: All right. This sounds unresponsive.

03:03:53PM 21 MR. STAVER: Okay.

03:03:55PM 22 THE COURT: Let's bring it back to another question,
03:03:57PM 23 Mr. Staver.

03:03:57PM 24 MR. STAVER: All right. Sounds good.

03:03:59PM 25 Q. (By Mr. Staver) The -- does your -- obviously your

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:04:05PM 1 information goes against the narrative of safe and effective
03:04:10PM 2 for these vaccines?

03:04:11PM 3 A. Absolutely.

03:04:12PM 4 Q. When you said you saw people -- you see people that are
03:04:17PM 5 getting vaccine injuries, is it related -- are you saying that
03:04:22PM 6 these are injuries because of the vaccine?

03:04:25PM 7 A. Yes, sir.

03:04:27PM 8 Q. In fact, yesterday did you not get several phone calls
03:04:31PM 9 from soldiers who got their MRI back that was positive for
03:04:39PM 10 myocarditis?

03:04:40PM 11 A. Yes, sir.

03:04:40PM 12 Q. Do --

03:04:42PM 13 A. Sir --

03:04:42PM 14 Q. Go ahead.

03:04:44PM 15 A. Ever since I filed an affidavit in September, anybody in
03:04:49PM 16 the Armed Forces can reach out to me via our global email
03:04:54PM 17 system. So I literally have been inundated morning, noon, and
03:04:58PM 18 night with text messages, phone calls, emails of people telling
03:05:03PM 19 me about how they've been bullied, threatened, and intimidated
03:05:09PM 20 by command, how they have suffered some kind of adverse event,
03:05:13PM 21 how they've had a loved one die from these vaccines, asking for
03:05:16PM 22 help. And so even outside of my duty day, I deal with service
03:05:24PM 23 members from every branch who have been injured by the vaccine.

03:05:30PM 24 Q. So you were in the United States Army, but you're talking
03:05:34PM 25 with individual service members in all the branches?

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:05:37PM 1 A. Yes, sir. In fact, and predominantly pilots from all
03:05:43PM 2 branches but most notably the Navy.

03:05:47PM 3 Q. The same branch that the commander serves in?

03:05:51PM 4 A. Yes, sir.

03:05:52PM 5 Q. With regards to pilots, are those individuals some of the
03:05:57PM 6 most -- should be generally some of the most healthy
03:06:01PM 7 individuals?

03:06:01PM 8 A. Pilots have to meet one of the highest standards for
03:06:04PM 9 fitness in the Army, and logically so because the constrains of
03:06:11PM 10 aviation environment can place significant demand on them. And
03:06:15PM 11 we have a long vested interest in them. There are basically
03:06:21PM 12 two points at which aviators are most likely to crash an
03:06:25PM 13 aircraft; it's early on in their career and -- you know, at
03:06:27PM 14 around 200 hours, and then later again around 2,000 hours. So
03:06:31PM 15 we expend a tremendous amount of resources and time training
03:06:36PM 16 pilots up. And currently in the Army there's a ten-year ADSO,
03:06:40PM 17 so an active duty service obligation. We -- so we need to know
03:06:45PM 18 that they're going to be able to stay in and be healthy for at
03:06:49PM 19 least ten years.

03:06:50PM 20 THE COURT: So you said there was a ten-year -- what
03:06:52PM 21 was the word?

03:06:53PM 22 THE WITNESS: Active duty service obligation. So
03:06:56PM 23 once we put them through flight training --

03:06:58PM 24 THE COURT: ADSO is what you said?

03:06:59PM 25 THE WITNESS: Yes.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:07:00PM 1 THE COURT: ADSO. Okay.

03:07:01PM 2 THE WITNESS: Yes. Once --

03:07:02PM 3 THE COURT: Because we don't know all these terms.

03:07:04PM 4 All right, Mr. Staver.

03:07:06PM 5 Q. (By Mr. Staver) So once a pilot qualifies as a pilot,

03:07:09PM 6 there's a obligation to serve for ten years; is that what

03:07:09PM 7 you're saying?

03:07:12PM 8 A. In the Army, yes, sir.

03:07:13PM 9 Q. In the Army. Okay.

03:07:15PM 10 Before 2021, have you seen the kind of increase in, say,

03:07:18PM 11 myocarditis or other health conditions in pilots, particularly,

03:07:23PM 12 compared to the other? Is that exceptional? Is it the same?

03:07:28PM 13 A. Well, I can speak to the fact that most physicians have

03:07:34PM 14 never seen a case of myocarditis in their career. Probably

03:07:39PM 15 most physicians could go their entire career and never see a

03:07:42PM 16 case of myocarditis. It is historically a rare condition, and

03:07:50PM 17 of late, it has not been -- it has not been rare.

03:07:55PM 18 I had specifically significant concerns, as an aerospace

03:08:00PM 19 medicine specialist, about myocarditis, because early on in

03:08:07PM 20 COVID, before the vaccine came out, they had come up with the

03:08:48PM 21 big -- what they called "The Big Ten study," where they looked

03:08:14PM 22 at the prevalence of myocarditis after infection with COVID.

03:08:18PM 23 And what they found, having given a symptom survey to all of

03:08:24PM 24 these athletes and doing a regular EKG, was that -- was like

03:08:31PM 25 .1 -- .13 percent of them were positive for myocarditis by

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:08:37PM 1 symptom survey and a simple EKG alone.

03:08:40PM 2 But when they went back and did a cardiac MRI on a hundred
03:08:43PM 3 percent of them, 2.3 percent were positive for myocarditis. So
03:08:47PM 4 this was the narrative used to say, "Hey, myocarditis is really
03:08:53PM 5 dangerous and potentially deadly, and we need to vaccinate all
03:08:57PM 6 these really young, healthy people to prevent myocarditis."

03:09:01PM 7 But my concern was, sir, that in June of 2021, the CDC
03:09:11PM 8 determined and had to come out with an emergency meeting about
03:09:15PM 9 the increased incidence of myocarditis in young, healthy males
03:09:21PM 10 that are age population from 16 to 30, I believe it was, and
03:09:28PM 11 that that was from the vaccine. So my concern, being trained
03:09:33PM 12 in epidemiology and biostatistics, is that if you have an
03:09:40PM 13 independent risk of 2.3 percent for myocarditis and then you
03:09:46PM 14 add on two more or potentially three more independent risks in
03:09:52PM 15 the form of each shot that independently has been found to
03:09:57PM 16 carry a risk for myocarditis, there is no studies that tell us
03:10:02PM 17 if the effect is cumulative or -- or is it going to be
03:10:08PM 18 synergistic? Are they going to end up with a 30 percent risk
03:10:13PM 19 of myocarditis when all of those things happen in succession?
03:10:16PM 20 There's no research on that.

03:10:20PM 21 And myocarditis, when you have the initial insult to the
03:10:24PM 22 heart -- and it can be bacterial, viral, toxins -- the person
03:10:29PM 23 may or may not have symptoms, but predominantly most people
03:10:33PM 24 don't have symptoms. And as the heart starts to recover and
03:10:38PM 25 heal, it scars, and when it scars, that can take three to six

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:10:44PM 1 months. And when it scars, you have an increased risk of
03:10:48PM 2 sudden cardiac death, arrhythmias, and heart failure.

03:10:54PM 3 None of those are acceptable in my patient population.
03:10:58PM 4 None of those are acceptable in young people. And, in fact,
03:11:02PM 5 when I testified before Senator Johnson, Ernest Ramirez, who
03:11:08PM 6 sat next to me, I had reviewed his case and the autopsy of his
03:11:10PM 7 son who was 16 years old, who dropped dead of myocarditis three
03:11:14PM 8 days after vaccination with Moderna.

03:11:20PM 9 Q. So the study that we discussed earlier with Dr. Chambers,
03:11:28PM 10 that came out in June of 2021.

03:11:31PM 11 A. Yes, sir, it did.

03:11:32PM 12 Q. You're familiar with that?

03:11:34PM 13 A. Yes, sir, I am.

03:11:34PM 14 Q. An increased risk of myocarditis in the military?

03:11:38PM 15 A. Yes, sir. In fact, I spoke to the authors of the paper.
03:11:45PM 16 I had communicated my concerns all the way up to Colonel
03:11:52PM 17 Margaret Ryan and Colonel Rans, and both of them were authors
03:11:59PM 18 on the paper. And --

03:12:01PM 19 Q. Colonel Rans was an author on that paper?

03:12:04PM 20 A. Yes, sir.

03:12:04PM 21 Q. The Colonel Rans that actually filed a declaration in this
03:12:08PM 22 court?

03:12:08PM 23 A. Yes, sir.

03:12:09PM 24 Q. So Colonel Rans is an author of a research paper that says
03:12:12PM 25 there's an increased risk of myocarditis in particularly males

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:12:16PM 1 in the military, 30 and under?

03:12:20PM 2 A. Yes, sir, she did.

03:12:21PM 3 Q. And have you brought these other concerns to her as well,
03:12:25PM 4 besides myocarditis, the other increase of adverse events?

03:12:29PM 5 A. To Colonel Margaret Ryan, who is the director of
03:12:33PM 6 immunizations for the Defense Health Agency, yes, sir, I did.
03:12:37PM 7 I brought her my concerns on or around 9 September. I
03:12:42PM 8 discussed a whole litany of research.

03:12:47PM 9 I had seen things that were concerning to me, and I had
03:12:52PM 10 been invited to be part of a group of over 450 scientists,
03:12:58PM 11 mathematicians, Nobel laureates, and doctors from around the
03:13:03PM 12 world who had worked in collaboration, in open discussion to
03:13:06PM 13 look at how to treat COVID in an outpatient setting and vaccine
03:13:11PM 14 safety. As part of that group, what you got was information
03:13:19PM 15 globally, especially from Israel, that is about three months
03:13:23PM 16 ahead of us. And the data coming out was incredibly
03:13:28PM 17 concerning, although not publicly available, because, one,
03:13:32PM 18 there's suppression of publication, scientific publications
03:13:36PM 19 that go against the narrative, and also the media does not
03:13:41PM 20 cover these things.

03:13:42PM 21 So I brought -- I reviewed literally thousands of pages of
03:13:48PM 22 scientific research and literature in this group, and we vetted
03:13:53PM 23 every paper that we covered and collectively determined whether
03:13:57PM 24 or not it was a valid scientific paper. The mathematicians
03:14:01PM 25 would weigh in and say they used horrible bio stats. And so

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:14:06PM 1 every specialist from every area would look at it, and we
03:14:09PM 2 picked only the best-quality research we could rely on and put
03:14:14PM 3 our names behind.

03:14:15PM 4 And I brought my concerns to Colonel --

03:14:25PM 5 Q. Rans?

03:14:26PM 6 A. -- Margaret Ryan.

03:14:26PM 7 Q. All right.

03:14:28PM 8 A. And what she said to me was, "Colonel Long, let's not
03:14:32PM 9 worry about everyone else. Let's just get you a medical
03:14:37PM 10 exemption." So I received from her a one-year temporary
03:14:42PM 11 medical exemption.

03:14:44PM 12 Q. Let me pause here for a minute and talk about your medical
03:14:48PM 13 exemption.

03:14:49PM 14 A. Yes, sir.

03:14:50PM 15 Q. In the past, you have had a medical exemption; is that
03:14:55PM 16 correct?

03:14:55PM 17 A. Yes. After giving birth to my firstborn, I had heart
03:15:01PM 18 failure, and I have a pacemaker. So --

03:15:04PM 19 Q. And you still have those medical conditions?

03:15:08PM 20 A. Yes, sir. I've been nondeployable for the last ten years
03:15:12PM 21 because of them.

03:15:12PM 22 Q. You say you've been nondeployable?

03:15:15PM 23 A. Yes, sir, I have been.

03:15:17PM 24 Q. But you're still in the military?

03:15:19PM 25 A. Yes, sir, I am.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:15:20PM 1 Q. So when you gave your testimony or information to
03:15:24PM 2 Senator Ron Johnson, what happened to your medical exemption?
03:15:27PM 3 A. It was revoked. They shortened it down. In fact, it
03:15:31PM 4 had -- I believe it expires on -- next week on 13 March 2022.
03:15:40PM 5 Q. So let me understand. During ten years you were, quote,
03:15:44PM 6 nondeployable but still not discharged from the military?
03:15:48PM 7 A. That is correct.
03:15:49PM 8 Q. But now if your religious exemption is denied and you're
03:15:55PM 9 considered nondeployable, the result is discharge?
03:16:01PM 10 A. Yes, sir.
03:16:02PM 11 Q. But for ten years, you were nondeployable. You're still
03:16:06PM 12 nondeployable, and you're still operating as a medical
03:16:09PM 13 physician within the United States Army?
03:16:12PM 14 A. And I served soldiers well.
03:16:14PM 15 Q. So is there other ways to deal with this, besides just
03:16:14PM 16 complete discharging these individuals who have religious
03:16:18PM 17 exemptions?
03:16:18PM 18 A. Well, I think I'm uniquely qualified to speak to that,
03:16:22PM 19 sir. For almost three years, I functioned adjudicating
03:16:27PM 20 disability cases in the military in determining whether or not
03:16:31PM 21 soldiers met retention standards, whether they had a medical
03:16:35PM 22 condition which could preclude them from service, and
03:16:40PM 23 determination of fitness for duty. So, for instance, if a
03:16:47PM 24 person with -- if someone was found to be HIV-positive, they
03:16:52PM 25 had to go through a medical evaluation board. And as a matter

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:16:58PM 1 of regulation, they are found fit for duty and returned to duty
03:17:02PM 2 if they want to stay on active duty, and if they want to leave,
03:17:06PM 3 they are allowed to leave.

03:17:08PM 4 Q. So, in other words, people with medical exemptions in
03:17:11PM 5 terms of your understanding and your service on this board --
03:17:16PM 6 is it a board?

03:17:18PM 7 A. It's the Integrated Disability Evaluation System, sir.

03:17:22PM 8 Q. And that's evaluating individuals that have medical issues
03:17:27PM 9 with regards to a potential disability or impairment?

03:17:30PM 10 A. Yes, sir. Although I would say I had never -- I have
03:17:35PM 11 never seen a policy in which -- say, like, we would have never
03:17:41PM 12 identified people that were at higher risk for getting HIV and
03:17:46PM 13 said, "Because you're higher risk, we're going to preemptively
03:17:51PM 14 put you out."

03:17:51PM 15 Q. And that's how it's operated up until COVID?

03:17:55PM 16 A. Yes, sir.

03:17:55PM 17 Q. Is that how it still operates?

03:17:57PM 18 A. Yes, sir.

03:17:58PM 19 Q. But it operates differently regarding religious exemption
03:18:02PM 20 requests; is that your understanding?

03:18:06PM 21 A. Well, sir, we're not really following our own regulations.
03:18:10PM 22 There are a number of exemptions given for medical that we're
03:18:17PM 23 not following. And religious, I've always understood it to be
03:18:21PM 24 a deeply held religious belief. Like, for example, sir, we've
03:18:26PM 25 had a number of individuals identify as Nordic paganism, and so

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

- 03:18:31PM 1 therefore they are given an exemption to have a beard.
- 03:18:35PM 2 Q. Let me stop you for just a second.
- 03:18:38PM 3 A. Mm-hmm.
- 03:18:39PM 4 Q. Are the religious exemption requests being treated
- 03:18:43PM 5 differently than your understanding of the past ten years or
- 03:18:47PM 6 more for medical exemptions where they're not being discharged
- 03:18:51PM 7 from the military?
- 03:18:53PM 8 A. Yes, sir.
- 03:18:53PM 9 Q. So you haven't had a chance to examine the commander of
- 03:18:59PM 10 the Navy surface warship?
- 03:19:01PM 11 A. No, sir, I have not.
- 03:19:02PM 12 Q. But you have talked to him, correct?
- 03:19:04PM 13 A. Yes, sir, I have.
- 03:19:04PM 14 Q. You haven't had a chance to do a physical exam of the
- 03:19:07PM 15 Lieutenant Colonel 2 of the United States Marines, but you've
- 03:19:12PM 16 talked to her, correct?
- 03:19:13PM 17 A. Yes, sir, I have.
- 03:19:14PM 18 Q. Is the least restrictive means for a commander of that,
- 03:19:17PM 19 based upon your understanding of how the military has
- 03:19:20PM 20 accommodated disabilities, to discharge the commander
- 03:19:23PM 21 completely from the Navy?
- 03:19:26PM 22 A. I find it highly irregular, sir.
- 03:19:30PM 23 Q. Let me ask you this: If he had a heart condition like you
- 03:19:35PM 24 have --
- 03:19:35PM 25 A. Yes, sir.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:19:37PM 1 Q. -- based upon your experience on this group of looking at
03:19:41PM 2 disabilities, would your experience say that he would be
03:19:45PM 3 discharged automatically from the military, or would there be
03:19:49PM 4 some other lesser restrictive means to keep him in the Navy?
03:19:53PM 5 A. Sir, he would have to meet certain criteria, but, yes, we
03:19:58PM 6 do have -- we would say, okay, he could not maybe perform the
03:20:03PM 7 job he's in here, but we could reassign him to a different type
03:20:07PM 8 of position.
03:20:08PM 9 Q. But that's not what they're doing regarding religious
03:20:12PM 10 exemptions?
03:20:14PM 11 A. No, sir.
03:20:14PM 12 Q. And is that the same answer that you would give for
03:20:18PM 13 Lieutenant Colonel 2?
03:20:19PM 14 A. Yes, sir.
03:20:19PM 15 Q. With regards to the commander, is he a high-risk or
03:20:23PM 16 low-risk category for COVID?
03:20:23PM 17 A. Well, sir, I -- he's very low-risk, as is most of our
03:20:29PM 18 healthy service members. And so even Colonel Rans said in her
03:20:36PM 19 statement -- she admitted that on active duty, only 30 service
03:20:41PM 20 members -- her words, not mine -- 30 service members died of
03:20:45PM 21 COVID the first year of the pandemic on active duty. And then
03:20:49PM 22 she went on to further say in her statement that 93 service
03:20:54PM 23 members, both active duty, Reserves, and National Guard, had
03:20:58PM 24 died total. This is an incredibly low number, 30 service
03:21:04PM 25 members out of 1.4 million service members.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:21:09PM 1 THE COURT: Did you see anywhere that those were
03:21:13PM 2 identified by age and the like?

03:21:17PM 3 THE WITNESS: Well, the reports that we have --

03:21:25PM 4 THE COURT: I didn't ask you what they said. I just
03:21:27PM 5 said, were they -- have you seen them identified by age and
03:21:31PM 6 otherwise disaggregated in some descriptive manner?

03:21:36PM 7 THE WITNESS: Yes, sir, I have.

03:21:39PM 8 Q. (By Mr. Staver) Is that one of the areas that you've been
03:21:40PM 9 ordered not to address?

03:21:43PM 10 A. Yes, sir.

03:21:43PM 11 Q. So you can't speak that today, and if you do, you would be
03:21:48PM 12 disciplined; is that correct?

03:21:50PM 13 A. Yes.

03:21:52PM 14 Q. Is that relevant information that we should know?

03:21:55PM 15 A. Yes, sir, it is very relevant.

03:22:02PM 16 Q. So the commander is not at risk for COVID because of his
03:22:08PM 17 fit status, his age, his health, has no comorbidities. But is
03:22:16PM 18 he at risk of these other conditions if he were to take the
03:22:19PM 19 COVID shot?

03:22:20PM 20 A. Well, this is exactly what I do, sir. In aviation
03:22:23PM 21 medicine, it's all about risk management, and in order to do
03:22:29PM 22 appropriate risk management, you have to know the risks and the
03:22:32PM 23 benefits to do an assessment.

03:22:34PM 24 THE COURT: Let me just bring you back to the
03:22:36PM 25 question, which was -- Mr. Staver?

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

- 03:22:38PM 1 Q. (By Mr. Staver) If -- he's not at risk for COVID because
03:22:42PM 2 of his fitness, his health, lack of comorbidity, but is he at
03:22:49PM 3 risk if he were to take the COVID vaccines?
- 03:22:53PM 4 A. Yes, sir. So my point is, when I look at a young
03:22:56PM 5 gentleman like him, his age and his fitness level, we know that
03:23:04PM 6 young men in his age group are at an increased risk of
03:23:11PM 7 myocarditis compared to the rest of the population. So asking
03:23:16PM 8 him to take the vaccination is actually asking him to take an
03:23:20PM 9 increased risk, more so than it would be for someone 80 years
03:23:28PM 10 old or for a female who is 54 years old, when it comes to the
03:23:33PM 11 risk of myocarditis.
- 03:23:36PM 12 Q. Now, regarding Lieutenant Colonel 2, is she at low risk
03:23:41PM 13 for getting an infection --
- 03:23:41PM 14 A. Excluding --
- 03:23:43PM 15 Q. -- or having some serious adverse action subsequent to
03:23:46PM 16 infection?
- 03:23:48PM 17 A. Again, she's a very -- she's a young, fit female, so she
03:23:54PM 18 has very, very low risk of dying from COVID. And she, too, has
03:24:02PM 19 a unique risk with the vaccination: as a woman in her
03:24:08PM 20 childbearing potential, that that would place her at increased
03:24:14PM 21 risk for any kind of damage to her reproductive system and
03:24:20PM 22 potential damage to her offspring when you take medications
03:24:25PM 23 that can have an impact on that, especially when we have no
03:24:29PM 24 long-term data that can tell us what that looks like for her.
- 03:24:38PM 25 Q. So in the October 22, 2020, FDA presentation before EUA

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:24:51PM 1 was granted, coming from the clinical trials, it says one of
03:24:54PM 2 the adverse event outcomes would be pregnancy and birth
03:24:58PM 3 outcomes. Do you remember that when you reviewed it in the
03:25:02PM 4 past?

03:25:02PM 5 A. Yes, sir, I do.

03:25:05PM 6 Q. And you have reviewed VAERS as well, or --

03:25:08PM 7 A. Yes, sir, I have.

03:25:10PM 8 Q. That VAERS chart is listed in tab 6. Can you look at
03:25:16PM 9 that.

03:25:16PM 10 A. Yes, sir.

03:25:17PM 11 Q. How are you familiar with VAERS?

03:25:21PM 12 A. From the onset of COVID, I've started watching VAERS.
03:25:28PM 13 It's kind of a natural thing for epidemiologic-type people just
03:25:34PM 14 coming out of that to look at trends. And so one thing -- the
03:25:40PM 15 FDA and the CDC had really touted that they had this great
03:25:44PM 16 system in place for monitoring adverse events.

03:25:48PM 17 And one of my coworkers and a good friend of mine suffered
03:25:53PM 18 an adverse event from the vaccine, and I first went in to the
03:25:59PM 19 VAERS to look and see if other similar events were being
03:26:02PM 20 reported. And I was reading the narratives in VAERS. You can
03:26:06PM 21 read, and it will say, you know, like, "25-year-old athlete
03:26:13PM 22 took the vaccination in the church parking lot vaccine rodeo
03:26:19PM 23 and dropped dead," and -- you know, and they'll kind of give
03:26:21PM 24 you a description of what happened.

03:26:22PM 25 It's pretty easy to pick out from there whether or not it

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:26:26PM 1 was reported by a layperson, a nonmedical person, or a doctor.

03:26:30PM 2 Q. Let me ask you about that question. Have you done

03:26:33PM 3 research or read anything with regards to the estimated

03:26:38PM 4 percentage that would be perhaps by experts such as yourself,

03:26:42PM 5 doctors, versus a layperson that has no medical training?

03:26:45PM 6 A. Yes, I have. And it's --

03:26:47PM 7 Q. What did you conclude?

03:26:48PM 8 A. It's my understanding that 85 percent of all VAERS reports

03:26:52PM 9 are submitted by medical professionals --

03:26:55PM 10 Q. And how -- and when you read these reports, can you tell,

03:26:59PM 11 as an expert in your field, whether somebody has no medical

03:27:04PM 12 training that has entered in symptoms versus someone who has

03:27:08PM 13 medical training that enters in symptoms?

03:27:11PM 14 A. Yes, sir. The reports are made under the threat of

03:27:14PM 15 perjury. So you can't just go in there and fake information.

03:27:17PM 16 It's very specific information they ask for, and they do ask

03:27:22PM 17 for your credentialing, so they can tell whether or not it was

03:27:25PM 18 a credentialed or -- I'm sorry -- a licensed medical provider.

03:27:31PM 19 Q. And on the second page of that VAERS document that is

03:27:36PM 20 tab 6 -- it's a different exhibit number, but it's tab 6 in

03:27:40PM 21 your notebook -- it lists there at the top 4,209 miscarriages.

03:27:40PM 22 A. Yes.

03:27:44PM 23 Q. Do you see that?

03:27:45PM 24 A. Yes, sir.

03:27:47PM 25 Q. Is that consistency with an adverse event that the FDA

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:27:51PM 1 warned about prior to EUA, in October 2020?

03:27:51PM 2 A. Yes --

03:27:55PM 3 Q. In other words, it says "pregnancy and birth outcomes" in

03:27:58PM 4 that slide, and now you're seeing miscarriages in VAERS?

03:28:02PM 5 A. Yes, sir. It says "pregnancy outcomes" in that slide. It

03:28:07PM 6 does say "miscarriages" here. There is a famous paper in which

03:28:11PM 7 they discussed miscarriages, and they manipulated the

03:28:15PM 8 statistics to make it seem as though the outcome would be

03:28:19PM 9 normal. They had -- I believe it was 827 reported pregnancies,

03:28:25PM 10 and they said that 104 miscarriages occurred out of the 827,

03:28:31PM 11 which we normally see a miscarriage is -- to the first 20 weeks

03:28:36PM 12 of pregnancy. So we normally see a 10 to 15 percent

03:28:41PM 13 miscarriage rate. But you had to look down in the research

03:28:45PM 14 paper to see that of the 827 pregnant women, 700 of them were

03:28:52PM 15 vaccinated in the second or third trimester that would not make

03:28:57PM 16 them eligible to have a miscarriage. They could only have an

03:29:01PM 17 abortion.

03:29:02PM 18 Q. So are you seeing --

03:29:02PM 19 A. So --

03:29:04PM 20 Q. -- miscarriages, or spontaneous abortions, if you will,

03:29:09PM 21 later in the pregnancy than you otherwise have in your history

03:29:12PM 22 of medical practice?

03:29:13PM 23 A. Oh, yes, sir. So that right there showed you that 104 out

03:29:18PM 24 of 127 first-trimester pregnancies ended in a dead baby.

03:29:27PM 25 Q. And at the end of that chart, still on this -- go to the

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:29:36PM 1 third page. I asked Dr. Chambers about this. But that first
03:29:40PM 2 graph, going from the deployment of the VAERS in June of 1990
03:29:46PM 3 until 2020 -- 2021, so that graph before you get to the spike,
03:29:52PM 4 is it your understanding that that's the cumulative number of
03:29:57PM 5 all vaccine-related adverse events of every vaccine, not just
03:30:04PM 6 one?

03:30:04PM 7 A. Yes, sir. I tried to -- I tried to count them all up, and
03:30:08PM 8 I do believe that that accounts for at least 37 vaccinations
03:30:14PM 9 from cradle to grave that individuals would get. And --

03:30:17PM 10 Q. And the adverse events were pretty consistent over the
03:30:22PM 11 1990-to-2020,-2021 timeframe?

03:30:26PM 12 A. Yes, sir. And actually in each of those ten years
03:30:29PM 13 preceding COVID, it is my understanding from what I researched
03:30:35PM 14 that we never exceeded 2- to 300 deaths per year from all of
03:30:41PM 15 those vaccines combined. Now, however, with COVID, just a few
03:30:47PM 16 months into it, we already had 5,000 deaths, and those deaths
03:30:54PM 17 are -- the majority of which are in the first three days after
03:31:00PM 18 vaccination currently. And --

03:31:01PM 19 Q. And on the VAERS document, page 1, as of February 25,
03:31:05PM 20 2022, it says 24,827 deaths have been recorded in VAERS?

03:31:13PM 21 A. Yes, sir.

03:31:13PM 22 Q. And that's in a year and a half, roughly, from essentially
03:31:18PM 23 January -- not even a year and a half, January of 2021 to early
03:31:25PM 24 March of 2022?

03:31:27PM 25 A. Yes, sir. And that would be the low end, given the

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:31:32PM 1 Harvard study showing that only 1 percent of adverse events are
03:31:32PM 2 reporting in the VAERS system. And that makes sense, because,
03:31:35PM 3 sir, if I gave you your vaccine today in the court and then
03:31:41PM 4 tomorrow you drove to Atlanta on vacation and you had a heart
03:31:46PM 5 attack and died in Atlanta, that doctor there would have no
03:31:50PM 6 idea that you just got your vaccine here. And so there's a lot
03:31:55PM 7 of reasons why they wouldn't --

03:31:58PM 8 Q. So the numbers in the Harvard study shows that are
03:32:02PM 9 drastically underreported?

03:32:04PM 10 A. So you can look at this number as -- yes, probably even if
03:32:10PM 11 you say that's 10 percent, but we know it's not even close to
03:32:15PM 12 the actual number.

03:32:18PM 13 Q. So in your practice with regards to treating soldiers, is
03:32:29PM 14 your -- what you're seeing consistent with what's reported in
03:32:32PM 15 VAERS, in the sense that there's a drastic increase, beginning
03:32:37PM 16 in 2021, of a lot of adverse events that you haven't
03:32:41PM 17 historically seen at this level before?

03:32:44PM 18 A. I can say that as a doctor who's been practicing since
03:32:50PM 19 2008, I've never filled out a VAERS report. I have filled out
03:32:54PM 20 numerous VAERS reports, and I have 24 more VAERS reports to
03:32:57PM 21 fill out when I get back to work.

03:33:01PM 22 Q. Are those all military?

03:33:05PM 23 A. I'm sorry, sir. I --

03:33:06PM 24 Q. Oh, you can't answer that? Okay. Yeah, just tell me when
03:33:10PM 25 you can't. I don't want to push you over --

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:33:16PM 1 A. Yes.

03:33:17PM 2 Q. -- the line that they have drawn for you because I don't
03:33:18PM 3 want to get you in any more situation than you're in with
03:33:23PM 4 regards to your religious exemption. And we'll get to that in
03:33:28PM 5 just a minute.

03:33:28PM 6 On page 8 -- you didn't introduce this, but this was
03:33:32PM 7 introduced during the testimony of Dr. Chambers. Is that your
03:33:39PM 8 name there at the end after the data that's listed there, the
03:33:48PM 9 chart, where it gets to Senator Ron Johnson's letter of
03:33:54PM 10 February 1?

03:33:54PM 11 A. Yes, sir, I did. I did.

03:33:56PM 12 Q. Are you listed in that document on the next page as a
03:34:02PM 13 whistleblower that presented information to the Senator?

03:34:05PM 14 A. Yes, I am.

03:34:06PM 15 Q. That's your name there, Theresa Long?

03:34:08PM 16 A. That is me.

03:34:11PM 17 Q. And those figures that are there, are those based on your
03:34:15PM 18 personal research in the DMED system, the figures that are on
03:34:21PM 19 the bottom of page 1, going on to top of page 2, with regards
03:34:25PM 20 to the increases of adverse events, comparing 2021 to the
03:34:30PM 21 previous five years?

03:34:31PM 22 A. Sir, I can confirm that as a whistleblower, I provided
03:34:37PM 23 Senator Johnson with all of this information.

03:34:41PM 24 Q. Now, the chart that was -- that we're not going to
03:34:44PM 25 introduce into evidence is what the -- somebody higher up in

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:34:48PM 1 the command doesn't want you to talk about, correct?

03:34:51PM 2 A. Yes, sir.

03:34:56PM 3 Q. Now, you heard in the cross-examination of Dr. Chambers

03:35:01PM 4 that after the January 24, 2022, presentation/information to

03:35:09PM 5 Senator Ron Johnson in Washington, D.C., with this information,

03:35:13PM 6 submitted to Secretary of Defense Lloyd Austin, that the

03:35:18PM 7 numbers have been changed?

03:35:20PM 8 A. Yes, I have heard that.

03:35:22PM 9 Q. When this information hit the media, what happened to the

03:35:26PM 10 DMED?

03:35:28PM 11 A. It was taken offline.

03:35:31PM 12 Q. So nobody could research it at that point?

03:35:33PM 13 A. No, sir.

03:35:34PM 14 Q. Even you?

03:35:35PM 15 A. No, sir -- yes --

03:35:36PM 16 Q. Completely taken offline?

03:35:38PM 17 A. Yes, sir.

03:35:38PM 18 Q. And the reason it was taken offline, as you understand

03:35:41PM 19 that it was reported, it was why?

03:35:43PM 20 A. Well, sir, I would say, in the military, normally if we

03:35:49PM 21 have a safety system failure -- and I consider the DMED a

03:35:54PM 22 safety system, as it's a warning system. When we have a safety

03:35:59PM 23 system failure, there are normal lines of communication for

03:36:03PM 24 communicating such a failure. I've never understood that

03:36:05PM 25 normal line of communication to include PolitiFact, but that is

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:36:10PM 1 the only way that the government communicated with anyone that
03:36:15PM 2 there was a glitch in the system.

03:36:22PM 3 Q. Did you -- you did research on DMED before 2021?

03:36:26PM 4 A. Yes, sir, I did.

03:36:27PM 5 Q. In your role as a physician in the United States Army?

03:36:32PM 6 A. As my role as a resident in training, yes.

03:36:37PM 7 Q. In training. Okay.

03:36:39PM 8 Were you able to rely upon the data before 2021?

03:36:43PM 9 A. Numerous people rely on that data. They do research
03:36:47PM 10 projects. Most of the people who are getting their master's in
03:36:50PM 11 public health are encouraged to use the DMED database and
03:36:56PM 12 encouraged -- because epidemiology is all about noticing when
03:37:03PM 13 you are seeing things increase that aren't normal incidences,
03:37:09PM 14 are new cases of a disease in a population, prevalence is kind
03:37:13PM 15 of the consistent number of cases.

03:37:17PM 16 So for me as a physician, for example, if I take care of a
03:37:23PM 17 population for, let's say, 13 years like I have and I've never
03:37:29PM 18 seen a stroke in my population in a young 20- or a 30-year-old
03:37:34PM 19 and I've never seen weird clots in people's livers and spleens
03:37:40PM 20 and I've never seen a whole bunch of cases of myocarditis and
03:37:46PM 21 cancer springing up left and right; if I've never seen those
03:37:50PM 22 and then, all of a sudden, right, it's like every week I have
03:37:54PM 23 somebody coming in with a stroke or myocarditis and all these
03:38:01PM 24 things, then normally any physician paying attention, but most
03:38:05PM 25 certainly a good epidemiologist, will pick up there is --

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:38:09PM 1 something has changed, something is wrong and then start
03:38:12PM 2 looking for it.

03:38:13PM 3 I spoke before -- if you don't mind me saying, when we
03:38:17PM 4 look at these numbers -- I looked at the top ten -- top 18
03:38:23PM 5 drugs pulled off the market historically, before COVID, and I
03:38:29PM 6 found that eight out of ten drugs pulled off the market
03:38:33PM 7 disproportionately harmed females more than males. Women have
03:38:33PM 8 this unique burden because, they have all the eggs they'll ever
03:38:39PM 9 have eggs from conception until menopause, and one of those
03:38:44PM 10 drugs was a synthetic estrogen called "DES." We thought it was
03:38:49PM 11 a great drug, and how bad would it be? It's a synthetic
03:38:53PM 12 estrogen. Males and females both have estrogens in them, and
03:38:58PM 13 so a synthetic estrogen couldn't be that bad.

03:39:02PM 14 But what we found was that mothers had babies and the
03:39:04PM 15 babies were fine, but when the daughters of mothers who took
03:39:08PM 16 the drug grew up to be about 19, 20 years old, we started to
03:39:13PM 17 see this upswing in a cancer we had never seen before, and it
03:39:18PM 18 was a rare cancer, clear cell carcinoma of the vagina. And so
03:39:24PM 19 intelligent doctors started saying, "What is going on? What
03:39:29PM 20 has changed? Why are we seeing this weird cancer popping up
03:39:29PM 21 and infertility in these young women?"

03:39:35PM 22 And they did a retrospective study and found that all of
03:39:38PM 23 their mothers had taken DES. It took us 40 years to figure out
03:39:44PM 24 that DES was not the wonder drug. It took us 40 years to
03:39:50PM 25 figure out that DES was causing infertility and cancer at 40 to

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:39:56PM 1 60 percent in the offspring of mothers who had taken it.

03:40:05PM 2 Q. So in this document that they presented, which we don't
03:40:15PM 3 know where it is housed, but it redoes all the numbers to make
03:40:19PM 4 it look like 2021 is just a similar year to the previous five
03:40:27PM 5 years. Do you have that document in front of you?

03:40:35PM 6 A. The one she introduced?

03:40:35PM 7 Q. Yes.

03:40:37PM 8 A. Oh, yes, sir. Okay.

03:40:40PM 9 Q. I believe it's on page 2.

03:40:49PM 10 A. Yes. It notes that there's -- but it still notes there's
03:40:53PM 11 a 25 percent increase in pulmonary embolisms and 20- -- almost
03:41:00PM 12 a 24 percent increase in ovarian dysfunction and a
03:41:14PM 13 17.7 percent -- let's see. It's saying a decrease in
03:41:18PM 14 demyelinating disease.

03:41:22PM 15 Q. Now, in terms of those numbers that they say there was a
03:41:27PM 16 glitch because of the server and now they've went back and they
03:41:32PM 17 redid them to make them similar to the previous five years, are
03:41:36PM 18 the numbers that you're seeing on that document before you
03:41:41PM 19 consistent or inconsistent with what you're seeing in your
03:41:46PM 20 practice?

03:41:46PM 21 A. Well, sir, I wouldn't just use a single point of reference
03:41:51PM 22 to make that evaluation. You have the VAERS system, which
03:41:58PM 23 covers vaccine adverse effects for the whole nation. You have
03:42:01PM 24 VAERS systems in other countries. You have the VAERS system
03:42:06PM 25 specific to service members. When you fill out the VAERS

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:42:09PM 1 report, there's a box you can check that says, "Is this person
03:42:12PM 2 a service member?" You would check "yes." If you pull the
03:42:15PM 3 numbers from the military vaccine adverse event reporting -- so
03:42:21PM 4 this is maintained by the CDC, not the DoD. So when I emailed
03:42:28PM 5 the CDC and asked them for the numbers of service members that
03:42:35PM 6 they had reported in VAERS, they said that that there were
03:42:39PM 7 9,428 total reports. Of the total adverse events, 2,000- --
03:42:47PM 8 there were -- 2,143 were deemed serious adverse events, with a
03:42:53PM 9 total of 119 deaths. Remember, I quoted from Colonel Rans, who
03:43:02PM 10 cited that in the two years of the pandemic, we've had a total
03:43:07PM 11 of 93 active duty -- we've had a total of 93 deaths. So we're
03:43:13PM 12 seeing in the military VAERS, provided by the CDC, not me, not
03:43:19PM 13 the DMED, that there was 119 deaths, that there was a total of
03:43:24PM 14 2,521 ER or hospitalizations, 300 total disabled people, 31
03:43:33PM 15 spontaneous abortions, 83 cancers, 120 anaphylactic adverse
03:43:40PM 16 events, seven cardiac arrests, 255 pulmonary embolisms, six
03:43:47PM 17 Guillain-Barre, one tuberculosis, 11 eczema, ten sepsis, and
03:43:54PM 18 three stillborns, and 155 cases of myocarditis, 213 cases of
03:44:01PM 19 female reproductive issues, 4,063 total neurologic adverse
03:44:08PM 20 events, 3,921 total cardiovascular events, 126 hepatological
03:44:17PM 21 events, 4,434 immunologic events, and 297 cases of depression
03:44:26PM 22 or anxiety.

03:44:32PM 23 Q. So that's not DMED?

03:44:34PM 24 A. No, sir, that's not DMED.

03:44:36PM 25 Q. But that's military in the private -- or the civilian side

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:44:43PM 1 of the VAERS?

03:44:44PM 2 A. These are reports submitted on service members, as
03:44:49PM 3 testified in the VAERS report that is submitted under the
03:44:53PM 4 penalty of perjury. So I will say that I have submitted
03:44:58PM 5 numerous VAERS reports. They're very difficult to report.
03:45:03PM 6 There's no, you know, financial incentive or anything. There's
03:45:06PM 7 no encouragement to fill them out.

03:45:09PM 8 THE COURT: Excuse me just a second. Please silence
03:45:11PM 9 that phone.

03:45:13PM 10 MS. YANG: I apologize, Your Honor.

03:45:15PM 11 THE COURT: All right.

03:45:16PM 12 Excuse me. Go ahead.

03:45:17PM 13 THE WITNESS: But I will say, out of all the VAERS
03:45:20PM 14 reports -- and I've filed numerous of them -- I have only had
03:45:26PM 15 one correspondence from the CDC in which they followed back up.
03:45:32PM 16 So I think it is absurd to say that the CDC has investigated
03:45:39PM 17 one million adverse events and 24,000 deaths, and I know that
03:45:46PM 18 because I know people who have died and I know their records
03:45:50PM 19 have not been pulled; and nor have I seen any published
03:45:55PM 20 research whatsoever from the CDC or the FDA saying, "We
03:46:00PM 21 investigated a million adverse events, and we found that 10,000
03:46:04PM 22 of them were hospice patients who were going to die anyways.
03:46:08PM 23 And 20,000 were, like, fake reports."

03:46:11PM 24 We have heard nothing. There has been no
03:46:15PM 25 transparency, no one coming back, even on the ones on service

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:46:20PM 1 members. You would think that there would be a good analysis
03:46:25PM 2 of this and someone would come back and present a white paper
03:46:30PM 3 and do an investigation and say, "Of the 9,428 reported VAERS
03:46:36PM 4 events on service members, we found," you know, "that 3,000 of
03:46:42PM 5 them were falsified or" -- you know, whatever -- "and that ten
03:46:47PM 6 of them were validated," because we have an electronic medical
03:46:53PM 7 records system.

03:46:54PM 8 Q. (By Mr. Staver) But we don't have any of that
03:46:56PM 9 information? We don't have any of that response from the CDC?

03:46:59PM 10 A. No, we do not.

03:47:00PM 11 Q. You mentioned that -- at the very end about depression --

03:47:04PM 12 A. Yes.

03:47:05PM 13 Q. -- subsequent to vaccination?

03:47:06PM 14 A. Yes, sir.

03:47:08PM 15 Q. With regards to the pressure -- well, let me back up.
03:47:13PM 16 You have filed a religious exemption; is that correct?

03:47:18PM 17 A. Yes, sir, that is correct.

03:47:18PM 18 Q. Is that pending?

03:47:19PM 19 A. Yes, sir, that is.

03:47:20PM 20 Q. At what level?

03:47:24PM 21 A. I'm not aware of what level it's at. It was, at one point
03:47:31PM 22 I was told, pushed beyond our base and then pulled back down to
03:47:34PM 23 our base. But what I do know is that it's listed in the
03:47:38PM 24 computer system as an administrative exemption.

03:47:41PM 25 Q. But you haven't gotten a religious exemption at this

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:47:45PM 1 point?

03:47:45PM 2 A. No, sir, I have not.

03:47:47PM 3 Q. With regards to the -- well, do you see pressure that's
03:47:53PM 4 being put on members of the military to get the COVID vaccine?

03:47:58PM 5 A. I would tell you that I think the pressure that I have had
03:48:05PM 6 communicated to me is overwhelming. I've received emails in my
03:48:10PM 7 personal capacity of -- just to give you an example, a very,
03:48:16PM 8 very high-ranking Navy officer whose daughter was five years
03:48:20PM 9 old, and she has a brain tumor. And he is a single father of
03:48:24PM 10 this child, and he says, "If I get the vaccine and something
03:48:28PM 11 happens to me, she has no one. And if I don't get the vaccine,
03:48:32PM 12 then I lose TRICARE. I have no way of providing medical care
03:48:35PM 13 for her."

03:48:39PM 14 This is a terrible situation to put people in, and I have
03:48:43PM 15 had a lot of soldiers reach out to me in complete and utter
03:48:49PM 16 despair.

03:48:49PM 17 Q. Do you have any instances where someone committed suicide
03:48:53PM 18 or has suicidal ideation as a result of the impending
03:48:57PM 19 discipline for failure to get a COVID vaccine?

03:49:01PM 20 A. I'm aware of two such cases of people who have committed
03:49:06PM 21 suicide.

03:49:08PM 22 Q. Because of the discipline that they would undergo if they
03:49:12PM 23 did not get the religious exemption granted?

03:49:16PM 24 A. I think it's -- I think it's breaking faith in service
03:49:24PM 25 members, realizing they've deployed multiple times and they've

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:49:28PM 1 given everything for the military and then the military will
03:49:33PM 2 throw them out in a heartbeat because they won't bend the knee
03:49:38PM 3 to something that someone has a -- an ethical or a moral
03:49:46PM 4 obligation to -- or objection to.

03:49:48PM 5 Q. Have you had others that had suicidal thoughts but did not
03:49:52PM 6 yet commit suicide?

03:49:54PM 7 A. Yes.

03:49:54PM 8 Q. About ending it all because of the pressure due to the
03:50:00PM 9 vax?

03:50:00PM 10 A. Yes.

03:50:00PM 11 Q. Is that why you feel that this is important for the Court
03:50:03PM 12 and the public to know?

03:50:11PM 13 A. I have been in the military and basically come from a
03:50:16PM 14 position of being almost homeless and on welfare. I'm a
03:50:22PM 15 Lieutenant Colonel in the Army, and I'm a doctor. I've lived
03:50:25PM 16 the American dream. Nobody has loved the opportunities and the
03:50:30PM 17 institution of the military, you know, as much as I have. And
03:50:37PM 18 to see what is happening is going to be devastating on the
03:50:43PM 19 morale, on the readiness for a long time to come.

03:50:50PM 20 Q. But they say that to maintain military readiness, that
03:50:56PM 21 there's only one solution with regards to COVID and that is
03:50:58PM 22 universal vaccination and absent that, you will be discharged.
03:51:04PM 23 Is the pressure that is being placed on them, in your
03:51:13PM 24 understanding and opinion, undermining military readiness
03:51:18PM 25 itself?

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:51:20PM 1 A. I think it undermines good order and discipline.

03:51:25PM 2 Q. Now, you've read Colonel Rans' affidavit -- or
03:51:30PM 3 declaration, correct?

03:51:31PM 4 A. Yes, sir, I have.

03:51:32PM 5 Q. Some of the things that she says I'm sure you would agree
03:51:34PM 6 with: There's an increase in myocarditis, there's an increase
03:51:37PM 7 in other adverse events, that natural immunity prevent --
03:51:42PM 8 presents some kind of -- or infection presents some kind of
03:51:49PM 9 natural immunity. You would agree with all those, correct?

03:51:52PM 10 A. Yes, sir, I do.

03:51:53PM 11 Q. But she concludes the same narrative that there's only one
03:51:55PM 12 solution, vaccines are safe and effective, everyone has to be
03:52:01PM 13 universally vaxxed, and absent that, you have to be discharged?

03:52:05PM 14 A. Yes, sir.

03:52:06PM 15 Q. Are there other -- you already addressed the safety. Have
03:52:10PM 16 you had experience with the efficacy? Is this, in fact, true
03:52:13PM 17 that getting the vaccine will protect you and be the magic
03:52:18PM 18 scenario to maintain military readiness?

03:52:23PM 19 A. Well, sir, at the onset of COVID, my cardiologist called
03:52:28PM 20 me and said, you know, "You're, like, the highest risk for
03:52:34PM 21 getting COVID, and I am afraid that if you get COVID, you will
03:52:40PM 22 die."

03:52:41PM 23 And he attempted to order me some hydroxychloroquine that
03:52:45PM 24 I could take prophylactically before the vaccine had ever come
03:52:50PM 25 out onto market. And the civilian pharmacy would not fill it.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:53:01PM 1 And I ended up getting some ivermectin and taking ivermectin
03:53:06PM 2 and reading up on -- the literature on nasal washes, rinses.

03:53:11PM 3 Q. Like Dr. Chambers spoke about?

03:53:13PM 4 A. Yes, and also things like Listerine, chlorhexidine, oral
03:53:19PM 5 washes, because COVID takes hold in the back of the throat, so
03:53:24PM 6 they -- recommendations for gargling for 30 seconds three times
03:53:27PM 7 a day with, like, Listerine Cool Mint or chlorhexidine could
03:53:33PM 8 inactivate the virus. And, actually, this is well known and
03:53:36PM 9 employed by the dentists throughout the military and across the
03:53:40PM 10 country, and they're -- and they report that there has not been
03:53:44PM 11 a single transmission from patient to dentist or vice versa,
03:53:50PM 12 even though they are in close proximity with aerosolized debris
03:53:55PM 13 coming out of the mouth.

03:53:58PM 14 And, also, with regard to least restrictive means, I had
03:54:07PM 15 the fortune of training at NASA. NASA, the Air Force, and the
03:54:13PM 16 Army had funded research on something called "the kryptonite"
03:54:19PM 17 or "the far UV." It's a light source that emits at
03:54:26PM 18 229 nanometers, that completely sanitizes the air, and it's the
03:54:32PM 19 equivalent of putting an N95 mask on everyone in the room. It
03:54:38PM 20 sanitizes not only the air but surfaces, and it poses no risk
03:54:42PM 21 of skin cancer or damage to the eyes. It -- so it was funded
03:54:47PM 22 by the military, and it's actually used in the Pentagon.

03:54:51PM 23 Q. Are you aware that the Department of Defense entered into
03:54:54PM 24 a study with United Airlines regarding that very thing, in
03:54:58PM 25 terms of air filtration on aircraft?

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:55:01PM 1 A. Yes, I am.

03:55:02PM 2 Q. And that was the DoD?

03:55:03PM 3 A. Yes, it was.

03:55:04PM 4 Q. And based on that technology that you talked about, that

03:55:07PM 5 flying an aircraft has been presented as safe or near zero

03:55:12PM 6 chance of exposure to the virus?

03:55:15PM 7 A. That is correct. And I actually spoke to a retired Navy

03:55:21PM 8 commander who taught physics at the Naval Academy and discussed

03:55:24PM 9 these UV lights and how easily and effective it would be to be

03:55:31PM 10 put in every naval ship and on -- aboard aircrafts and small

03:55:36PM 11 vehicles, where people are in confined spaces, because it is

03:55:40PM 12 highly effective.

03:55:41PM 13 Q. So instead of discharging a 17-, 18-year commander of a

03:55:47PM 14 Navy surface warship who is one the few that are

03:55:51PM 15 nuclear-trained, there are other ways, you're saying, that the

03:55:54PM 16 Navy warship could be fitted with this DoD technology?

03:55:58PM 17 A. I understand it's good enough to the Pentagon.

03:56:03PM 18 Q. And there's other ways to treat COVID besides the COVID

03:56:07PM 19 vaccines?

03:56:09PM 20 A. Yes, sir, there is numerous ways. There's nutraceuticals,

03:56:15PM 21 vitamin C, vitamin D, zinc, ivermectin. I've taken ivermectin

03:56:22PM 22 prophylactically. I've done CPR on COVID-positive patients.

03:56:25PM 23 I've interacted with COVID patients. I am not vaccinated. I

03:56:29PM 24 have never been vaccinated with a COVID vaccine, and I am

03:56:34PM 25 probably one of the few people I know that has never gotten

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

- 03:56:37PM 1 COVID. I know a lot of people who are on their second bout of
- 03:56:42PM 2 COVID.
- 03:56:42PM 3 Q. Now, before the August 24, 2021, directive from Secretary
- 03:56:48PM 4 Austin to have universal vaccine administered of the approved
- 03:56:54PM 5 FDA product, not the EUA but the approved one, you worked with
- 03:57:00PM 6 COVID patients before that, correct?
- 03:57:02PM 7 A. Yes, sir, I did.
- 03:57:03PM 8 Q. You were high-risk then as you're high-risk now?
- 03:57:06PM 9 A. Yes, sir, I am.
- 03:57:06PM 10 Q. Unvaccinated before, unvaccinated now?
- 03:57:09PM 11 A. Yes, sir.
- 03:57:10PM 12 Q. Where were you assigned to work?
- 03:57:12PM 13 A. As part of my residency, I had several rotations. One
- 03:57:17PM 14 included working at the civilian emergency room, Flowers
- 03:57:22PM 15 Hospital, Dothan, Alabama.
- 03:57:26PM 16 Q. So they were so concerned about your health that they put
- 03:57:30PM 17 you, a high-risk patient -- or high-risk individual, in the
- 03:57:33PM 18 midst of treating COVID patients?
- 03:57:36PM 19 A. Yes, sir.
- 03:57:37PM 20 Q. But now something's changed, and it's the mandate. Has
- 03:57:42PM 21 your health changed?
- 03:57:45PM 22 A. No, sir.
- 03:57:45PM 23 Q. Anything else change about the August 24 mandate?
- 03:57:48PM 24 A. A few whistleblower complaints.
- 03:57:51PM 25 Q. Other than that?

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:57:53PM 1 A. No, sir.

03:57:53PM 2 Q. Are there any other less restrictive means, besides total
03:57:57PM 3 discharge and separation from the military of these skilled,
03:58:01PM 4 experienced and otherwise qualified individuals, as it relates
03:58:06PM 5 to addressing COVID and military readiness, that you haven't
03:58:11PM 6 addressed?

03:58:12PM 7 A. Well, I think in the general population, there are
03:58:17PM 8 numerous things, but we -- I think, as a matter of fact,
03:58:23PM 9 suicide is a permanent solution to, most of the time, temporary
03:58:27PM 10 problems, and to totally get rid of somebody permanently for an
03:58:36PM 11 illness that is temporary -- and I've never known of a pandemic
03:58:44PM 12 to just go on forever in an unlimited fashion. That would be
03:58:52PM 13 pretty unheard of.

03:58:53PM 14 Q. Just a couple of questions and I'll be done. Are you
03:58:56PM 15 familiar with the bell curve of the wild version, the Delta
03:58:59PM 16 version, and now the Omicron version?

03:59:02PM 17 A. Yes, sir.

03:59:02PM 18 Q. And the bell curve would be that -- whatever version we're
03:59:05PM 19 in, it starts off, peaks -- sorry -- and then drops off?

03:59:08PM 20 A. Yes, sir.

03:59:10PM 21 Q. Comparing Florida, which has had no restrictions on houses
03:59:14PM 22 of worship, effective April 1, 2020, and was essentially open,
03:59:23PM 23 including in-person schools in September -- restaurants, bars,
03:59:29PM 24 gyms -- of 2020, with California, which is one the most
03:59:33PM 25 restrictive states in the nation, have you done some

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

03:59:36PM 1 comparisons with regards to the infection and mortality rate
03:59:40PM 2 between those two states?

03:59:42PM 3 A. Generally speaking, there was no difference between the
03:59:44PM 4 two.

03:59:45PM 5 Q. So no matter what happened, whether you did restrictions,
03:59:49PM 6 whether you got the shots, no shots, whether you were open, did
03:59:53PM 7 you still have the natural bell curve?

03:59:58PM 8 A. Well, it didn't seem to matter what you implemented. And
04:00:06PM 9 I think that nothing speaks better to that than when I did a
04:00:11PM 10 statistical analysis, at the beginning of this, of the
04:00:14PM 11 United States versus India. The United States has a density
04:00:19PM 12 per square mile of 35 people per square mile. India has a
04:00:23PM 13 density of like 545 people per square mile. So typically in
04:00:30PM 14 public health, the more dense a population is, the more
04:00:34PM 15 communicable highly transmissible diseases would be, and yet
04:00:39PM 16 India had a fraction of both the total cases of COVID and the
04:00:46PM 17 deaths of COVID.

04:00:47PM 18 And so you can look across in the different strategies and
04:00:53PM 19 look at the different countries that implemented things and
04:00:57PM 20 find that it was not the countries that were the most
04:01:02PM 21 restrictive. And if you look at Israel, the most vaccinated,
04:01:07PM 22 right, we're seeing the repercussions. They're three months
04:01:12PM 23 ahead of us. I've heard it's forthcoming that they have a
04:01:16PM 24 thousand percent increase in life insurance payouts, because of
04:01:21PM 25 non-COVID deaths.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

- 04:01:21PM 1 Q. I want you to look at tab 11.
- 04:01:29PM 2 A. Yes. Yes. There it is.
- 04:01:30PM 3 Q. Do you recognize that chart?
- 04:01:33PM 4 A. Yes, sir.
- 04:01:33PM 5 Q. And is that a chart of Israel at the top?
- 04:01:40PM 6 A. Yes, sir.
- 04:01:41PM 7 Q. Is that a chart of -- regarding infections and recovery,
- 04:01:45PM 8 as well as deaths?
- 04:01:47PM 9 A. Yes, sir.
- 04:01:48PM 10 Q. Now, Israel, you said, is one the most vaccinated nations
- 04:01:53PM 11 in the world, now on their fourth booster?
- 04:01:56PM 12 A. Yes, sir, they are.
- 04:01:58PM 13 Q. In the last few weeks, were they not also the highest
- 04:02:02PM 14 nation in the world per capita for COVID infections?
- 04:02:07PM 15 A. Yes, sir.
- 04:02:09PM 16 Q. And the vaccination that they used there is the Pfizer
- 04:02:13PM 17 two-dose, then three-dose, now four-dose shot?
- 04:02:17PM 18 A. Yes, sir.
- 04:02:18PM 19 Q. So what does this chart tell you?
- 04:02:21PM 20 A. It's the wrong strategy, sir.
- 04:02:23PM 21 Q. That despite the highest vaccinated -- or one of the
- 04:02:26PM 22 highest vaccinated nations in the world, they still have a
- 04:02:30PM 23 skyrocketing COVID infection rate?
- 04:02:35PM 24 A. Yes, sir.
- 04:02:36PM 25 MR. STAVER: I'd like to introduce that as

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

04:02:38PM 1 plaintiffs' next exhibit, Your Honor.

04:02:40PM 2 THE COURT: I believe that's 11.

04:02:42PM 3 MR. STAVER: I think so.

04:02:46PM 4 THE COURT: So subject to the earlier ruling, 11 --

04:02:46PM 5 MR. STAVER: The next --

04:02:52PM 6 THE COURT: -- Plaintiffs' Exhibit 11 is received.

04:02:52PM 7 Excuse me.

04:02:52PM 8 (Plaintiffs' Exhibit 11 admitted.)

04:02:56PM 9 MR. STAVER: Thank you.

04:02:56PM 10 Q. (By Mr. Staver) The next tab, if you'll look at that, is

04:02:59PM 11 the -- is Gibraltar, which I --

04:03:03PM 12 A. Yes.

04:03:05PM 13 Q. -- believe also uses Pfizer.

04:03:06PM 14 A. Yes, sir.

04:03:07PM 15 Q. And why is Gibraltar significant for doing your

04:03:10PM 16 epidemiological studies?

04:03:18PM 17 A. Again, it's another case where you can see clearly the

04:03:27PM 18 case are rising and not decreasing.

04:03:30PM 19 Q. Now, are you aware that Gibraltar claims that 100 percent

04:03:34PM 20 of the adult population --

04:03:35PM 21 A. Yes, sir.

04:03:36PM 22 Q. -- are vaccinated?

04:03:37PM 23 A. Yes, sir.

04:03:37PM 24 Q. And the vaccine they use is Pfizer?

04:03:41PM 25 A. Yes, sir.

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

04:03:41PM 1 Q. And despite that 100 percent vaccination, you still have
04:03:46PM 2 the same graph that exponentially skyrockets upwards. So what
04:03:53PM 3 does that tell you as an expert in this area of epidemiology?
04:03:58PM 4 A. The strategy is not working.
04:03:59PM 5 Q. That the vaccine is working or not working?
04:04:02PM 6 A. It -- this -- whatever strategy they're implementing, the
04:04:05PM 7 vaccine is not working. In fact, these -- all of these charts
04:04:09PM 8 could be very indicative of a state in which the vaccine itself
04:04:19PM 9 is causing worse outcomes in patients who are vaccinated, and
04:04:27PM 10 so --
04:04:27PM 11 Q. In the FDA document of October 22, 2020, the last
04:04:34PM 12 statement on the right side of that says --
04:04:40PM 13 A. "Vaccine enhancements."
04:04:43PM 14 Q. -- "vaccine enhancement disease."
04:04:45PM 15 A. Yes, sir.
04:04:45PM 16 Q. What is that?
04:04:46PM 17 A. It's when essentially the vaccine has the opposite effect.
04:04:51PM 18 It actually makes you more vulnerable to bad outcomes from
04:04:57PM 19 getting the -- in a sense, your immune system does worse by
04:05:04PM 20 being vaccinated than it would if you just experienced the
04:05:09PM 21 infection by natural immunity. It was one of the problems
04:05:14PM 22 identified very early on and concerns by people such as
04:05:18PM 23 Dr. Robert Malone, inventor of messenger RNA, that this
04:05:28PM 24 vaccine-induced enhancement could be a problem. And --
04:05:31PM 25 Q. And he's one of the doctors and experts that we've entered

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

04:05:37PM 1 into evidence here early on, in a declaration?

04:05:40PM 2 A. Yes, sir. He's one of the doctors I've worked with in
04:05:42PM 3 that group of 450,000. So amazing opportunity to have someone
04:05:47PM 4 who actually created the delivery mechanism used for this
04:05:53PM 5 vaccine, and he is -- has continually sounded the alarm from
04:05:59PM 6 the beginning of his concerns about this effect.

04:06:02PM 7 Q. The other expert that we had entered in last year when we
04:06:05PM 8 filed the case was Dr. Peter McCullough. Are you familiar with
04:06:10PM 9 him?

04:06:10PM 10 A. Yes, sir, I am.

04:06:11PM 11 Q. He's a cardiologist, internal medicine specialist, most
04:06:11PM 12 published in his field in the world in history, and an
04:06:17PM 13 epidemiologist?

04:06:17PM 14 A. That is correct.

04:06:18PM 15 Q. Does he -- do you and he share similar opinions on this
04:06:20PM 16 regarding safety and efficacy, or I should say, lack thereof?

04:06:26PM 17 A. Yes, sir. In fact, he's one of the first people that
04:06:29PM 18 called me and warned me about the emergency meeting by the CDC
04:06:37PM 19 and the risk of myocarditis and the need for informed consents,
04:06:43PM 20 especially given that the population that I take care of meets
04:06:49PM 21 the billet and is most at risk for myocarditis, that young 16-
04:06:55PM 22 to 30-, 40-year-old male. So...

04:06:59PM 23 Q. Are there any final comments that you want to make that we
04:07:02PM 24 haven't touched on?

04:07:14PM 25 A. I think that we have not set this precedent of

THERESA MARIE LONG - DIRECT EXAM BY MR. STAVER

04:07:20PM 1 preemptively kicking people out because they might get sick,
04:07:26PM 2 because they might, you know, have a problem.

04:07:31PM 3 Now, if we go down the road where people's religion does
04:07:37PM 4 not -- their deeply religious held beliefs don't matter, I ask
04:07:41PM 5 you, sir, what is the difference if one of our young female
04:07:49PM 6 plaintiffs was pregnant and I could argue she has to get an
04:07:53PM 7 abortion because she is affecting medical readiness. And I'm
04:07:57PM 8 not going to tolerate it, because I will tell you that this is
04:08:01PM 9 an issue that every commander has faced, where they have
04:08:06PM 10 females in critical positions -- and maybe they're a linguist
04:08:10PM 11 or maybe there's something else -- and they get pregnant. And
04:08:15PM 12 it's sometimes, a lot of times, unpredictable. But then if we
04:08:20PM 13 get to trump -- if we get to trump people's faith for this,
04:08:28PM 14 which has a negative efficacy, which has significant adverse
04:08:35PM 15 events, the likes of which people are going to be blown away
04:08:41PM 16 when they understand the magnitude of, if we say that we can
04:08:46PM 17 trample over people's deeply held religious beliefs in the name
04:08:50PM 18 of medical readiness, then we open that door for sterilizing --
04:08:57PM 19 and this seems extreme, but it is true -- sterilizing people in
04:09:01PM 20 the name of medical readiness and demanding abortions and
04:09:05PM 21 demanding that any vaccine made for profit or any drug made for
04:09:12PM 22 profit be injected or administered to a service member.

04:09:18PM 23 And we have no -- perhaps the biggest intersection that I
04:09:24PM 24 see is -- of a physician and a person of faith who has studied
04:09:29PM 25 this, is the potential impact on families, the ability to

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:09:34PM 1 procreate and have children. I raised my right hand to serve
04:09:40PM 2 in the military, but my children did not. And the potential
04:09:44PM 3 for this vaccine to impact people's families and their children
04:09:49PM 4 and their children's children is there, and that can never be
04:09:53PM 5 undone.

04:09:55PM 6 But if we go down this road, where faith does not matter
04:10:01PM 7 and we purge out from the military everybody of faith and
04:10:07PM 8 ethics who is concerned and has a deeply held religious belief,
04:10:16PM 9 I cringe. I cringe at what it is going to do to the morale,
04:10:21PM 10 and I cringe -- I don't know how it's compatible to swear to
04:10:27PM 11 uphold the constitution against all enemies foreign and
04:10:31PM 12 domestic and then also let our institution trample on our most
04:10:40PM 13 sacred rights as an American.

04:10:44PM 14 MR. STAVER: Thank you.

04:10:45PM 15 I don't have any other questions, Your Honor.

04:10:47PM 16 THE COURT: All right. Thank you, Mr. Staver.

04:10:49PM 17 Has the defense cross-examination for this witness?

04:10:54PM 18 MS. YANG: Yes, Your Honor.

04:10:56PM 19 THE COURT: You're recognized for that purpose.

04:11:00PM 20 MS. YANG: I am.

04:11:01PM 21 CROSS-EXAMINATION

04:11:01PM 22 BY MS. YANG:

04:11:02PM 23 Q. Good afternoon, ma'am.

04:11:04PM 24 A. Afternoon.

04:11:06PM 25 THE COURT: We came back at 2:30; is that right?

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:11:12PM 1 MS. YANG: That's correct.

04:11:12PM 2 THE COURT: We've been in session for a while. Would

04:11:16PM 3 you like a brief recess?

04:11:16PM 4 MR. STAVER: Sure.

04:11:17PM 5 THE COURT: Ms. Yang?

04:11:17PM 6 MS. YANG: That's fine with me. I'm ready to

04:11:19PM 7 proceed, but I'm happy --

04:11:19PM 8 THE COURT: All right. You may. Okay.

04:11:20PM 9 MS. YANG: Thank you. Okay. Thank you.

04:11:21PM 10 CROSS-EXAMINATION

04:11:21PM 11 BY MS. YANG:

04:11:22PM 12 Q. Ma'am, there is an Army regulation that provides that Army

04:11:27PM 13 personnel will not disclose official information when they

04:11:33PM 14 get -- official information in response to a subpoena unless

04:11:37PM 15 they receive written authorization from the Army legal advisor;

04:11:43PM 16 is that correct?

04:11:43PM 17 A. I'd have to see the regulation.

04:11:45PM 18 Q. Are you independently aware of that regulation?

04:11:50PM 19 A. Am I aware that the regulation exists --

04:11:53PM 20 Q. Yes.

04:11:53PM 21 A. -- covering the military? Yes, I am.

04:11:56PM 22 Q. Yes. Okay.

04:11:57PM 23 And you're aware that that applies to the Army as a

04:12:00PM 24 component of the military?

04:12:02PM 25 A. Yes, ma'am.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:12:03PM 1 Q. Did you get that written authorization today to testify?

04:12:08PM 2 A. No, ma'am, I did not.

04:12:09PM 3 Q. Did you request that authorization to testify today?

04:12:13PM 4 A. I got the subpoena over the weekend and spoke to people
04:12:20PM 5 within my command on Monday.

04:12:23PM 6 Q. Did you request the written authorization from Army legal
04:12:27PM 7 department?

04:12:29PM 8 A. I went through my attorney.

04:12:33PM 9 Q. So I just want to make sure I understand. You did, either
04:12:37PM 10 through yourself or through your attorney, request
04:12:40PM 11 authorization from the Army legal advisor to testify?

04:12:45PM 12 A. I spoke with my attorney about it.

04:12:48PM 13 Q. I understand that you spoke with your attorney, and
04:12:50PM 14 believe me, I'm not trying to get into the contents of that
04:12:54PM 15 discussion.

04:12:54PM 16 But my more specific question is, did you, either through
04:12:58PM 17 yourself or through your attorney, request a written
04:13:01PM 18 authorization from the Army legal advisor to testify today?

04:13:06PM 19 A. I believe my attorney did do that, yes, ma'am.

04:13:08PM 20 Q. When did he do -- he or she do that?

04:13:11PM 21 A. I really -- I can't speak to what he does and the
04:13:16PM 22 timetable on which he does it.

04:13:17PM 23 Q. There's also an Army regulation that provides that in no
04:13:26PM 24 event may Army personnel furnish expert or opinion testimony in
04:13:29PM 25 a case in which the United States has an interest for a party

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:13:33PM 1 whose interest are adverse to the interests of the
04:13:36PM 2 United States. Are you familiar with that regulation?
04:13:38PM 3 A. Yes, ma'am.
04:13:42PM 4 Q. And these two regulations that we just discussed, those
04:13:45PM 5 apply to all Army personnel, correct?
04:13:50PM 6 A. Yes. And I'm assuming the interest of the United States
04:13:52PM 7 is for their soldiers to be alive and healthy.
04:13:58PM 8 Q. Today is the first time that we've heard from you in this
04:14:01PM 9 case, correct?
04:14:04PM 10 A. Yes, ma'am.
04:14:05PM 11 Q. You haven't provided any written report in this case?
04:14:09PM 12 A. Are you asking me about my whistleblower complaint?
04:14:13PM 13 Q. No. I'm asking about any kind of written report that you
04:14:15PM 14 have provided for purposes of this case.
04:14:20PM 15 A. I provided a whistleblower complaint to Senator Johnson.
04:14:27PM 16 I've submitted two affidavits.
04:14:31PM 17 Q. Was any of that submitted in connection with this case?
04:14:35PM 18 A. No.
04:14:36PM 19 Q. And have you submitted any sort of other kind of writing
04:14:42PM 20 or declaration in support of this case?
04:14:49PM 21 A. No, ma'am.
04:14:50PM 22 Q. I believe you testified earlier that you have not ever
04:14:53PM 23 physically examined Navy Commander. Is that correct?
04:14:57PM 24 A. Physically examined him?
04:14:59PM 25 Q. Correct.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

- 04:15:00PM 1 A. No, ma'am.
- 04:15:01PM 2 Q. That you've never provided medical treatment to Navy
- 04:15:06PM 3 Commander?
- 04:15:06PM 4 A. This Navy commander?
- 04:15:07PM 5 Q. Correct. Yes, the individual who testified earlier today.
- 04:15:10PM 6 A. No, I have not.
- 04:15:12PM 7 Q. And the same is true for Lieutenant Colonel 2; you have
- 04:15:15PM 8 not examined Lieutenant Colonel?
- 04:15:18PM 9 A. No, I have not.
- 04:15:19PM 10 Q. Have not provided her any medical treatment?
- 04:15:21PM 11 A. No. And it is my understanding I was called here as a
- 04:15:30PM 12 fact witness, not an expert witness.
- 04:15:36PM 13 Q. You yourself do not have any specialized medical training
- 04:15:43PM 14 in immunology; is that correct?
- 04:15:46PM 15 A. Everyone who goes to medical school has training in
- 04:15:50PM 16 immunology.
- 04:15:50PM 17 Q. Do you have specialized training in immunology?
- 04:15:52PM 18 A. What would you quantify as specialized medical training?
- 04:15:56PM 19 Q. Well, let me ask you this: Are you board-certified in
- 04:15:58PM 20 immunology?
- 04:15:59PM 21 A. No, I'm not.
- 04:15:59PM 22 Q. And I believe you mentioned that you reviewed the
- 04:16:01PM 23 declaration of Colonel Rans. Is that correct?
- 04:16:05PM 24 A. Yes, I did.
- 04:16:06PM 25 Q. You're aware of that Colonel Rans is board-certified in

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

- 04:16:10PM 1 immunology, yes?
- 04:16:11PM 2 A. I believe she is. But yet a family medicine -- or -- I'm
- 04:16:14PM 3 sorry -- an internal medicine doctor revoked an immunization
- 04:16:19PM 4 exemption that she gave.
- 04:16:21PM 5 Q. Would you agree with me that board certification is
- 04:16:24PM 6 something that the medical profession places value in?
- 04:16:33PM 7 A. Well, I'm not sure. We have a number of service members
- 04:16:39PM 8 who've had board-certified specialists in immunology write that
- 04:16:43PM 9 they should not receive the vaccinations because they are
- 04:16:48PM 10 allergic to polyethylene glycol, and yet those exemptions have
- 04:16:54PM 11 been thrown in the trash, because people do not recognize their
- 04:16:58PM 12 board certifications because they do not like what they are
- 04:17:01PM 13 saying.
- 04:17:01PM 14 Q. My question is if the medical profession, of which you are
- 04:17:04PM 15 a part, recognizes board certification as something that is of
- 04:17:10PM 16 value.
- 04:17:12PM 17 A. Are we going to be consistent? I mean, a value? You
- 04:17:16PM 18 meaning that I should recognize -- for example --
- 04:17:22PM 19 Q. Let me rephrase the question in case there is any --
- 04:17:22PM 20 A. Yeah.
- 04:17:26PM 21 Q. -- disagreement over the word "value."
- 04:17:27PM 22 Board certification is a very extensive process. That's
- 04:17:31PM 23 fair to say, yes?
- 04:17:32PM 24 A. I have a board certification, yes.
- 04:17:33PM 25 Q. Right.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:17:34PM 1 And there is extensive studies that you have to go through
04:17:37PM 2 in order to get it. There's a whole test -- a series of tests
04:17:41PM 3 that you have to go through to obtain certification. Is that
04:17:43PM 4 correct?

04:17:44PM 5 A. Yes.

04:17:44PM 6 Q. It's a rigorous process?

04:17:46PM 7 A. Yes. But yet I had a patient who had cardiac issues, and
04:17:54PM 8 the cardiologist was not abreast of the latest information on
04:18:02PM 9 cardiac MRIs and myocarditis. And he ran an echo, a stress
04:18:05PM 10 test, and an EKG, all of which were normal, but I had to
04:18:09PM 11 educate a board-certified cardiologist on what the appropriate
04:18:15PM 12 test was. And he was pretty shocked when the test came back
04:18:20PM 13 positive for myocarditis, when he had assured me that he was a
04:18:27PM 14 board-certified cardiologist and did not see the need for that
04:18:31PM 15 test.

04:18:31PM 16 Q. You don't dispute that service members have died from
04:18:34PM 17 COVID, do you?

04:18:34PM 18 A. No, I don't.

04:18:35PM 19 Q. That thousands have required hospitalizations from COVID?

04:18:40PM 20 A. I don't know exactly what the number of active duty
04:18:43PM 21 service members who required hospitalization, no.

04:18:46PM 22 Q. Do you dispute that hundreds of thousands have contracted
04:18:49PM 23 COVID?

04:18:52PM 24 A. In the military?

04:18:54PM 25 Q. In the military.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

- 04:18:56PM 1 A. I've been advised not to answer on that.
- 04:18:58PM 2 Q. Okay. And that includes -- the people who have contracted
- 04:19:03PM 3 COVID in the military includes people who are otherwise young
- 04:19:06PM 4 and in good physical condition; is that correct?
- 04:19:11PM 5 A. Again, are you asking me to -- to answer on information
- 04:19:17PM 6 contained within the DoD?
- 04:19:20PM 7 Q. I'm asking you whether you -- whether you dispute the
- 04:19:25PM 8 facts that have been offered in this litigation that hundreds
- 04:19:29PM 9 of thousands of service members have contracted COVID,
- 04:19:32PM 10 including people who are young and in good physical condition.
- 04:19:35PM 11 A. It is my understanding that of all the people who -- per
- 04:19:40PM 12 Colonel -- board-certified immunology, Colonel Rans, the people
- 04:19:44PM 13 who have contracted COVID in the military, 90 of them have --
- 04:19:51PM 14 93 of them have died.
- 04:19:53PM 15 Q. And my question wasn't about deaths in that instance but
- 04:19:57PM 16 rather that hundreds of thousands have contracted COVID,
- 04:20:01PM 17 period, correct?
- 04:20:03PM 18 A. Yes, ma'am.
- 04:20:05PM 19 Q. You talked earlier about myocarditis. And just so I'm
- 04:20:13PM 20 clear -- actually, let me ask you first about VAERS, since
- 04:20:17PM 21 there was some discussion of that.
- 04:20:23PM 22 All right. So you talked about the data that was
- 04:20:28PM 23 reflected in VAERS. Do you remember that?
- 04:20:31PM 24 A. Yes.
- 04:20:32PM 25 Q. And you are aware, right, that the FDA requires healthcare

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:20:38PM 1 providers to report any adverse event after a COVID-19

04:20:46PM 2 vaccination to VAERS, even if it's unclear whether the two

04:20:49PM 3 things are connected? You're aware of that?

04:20:51PM 4 A. I'm aware in the clinical study with the DoD -- I think it

04:20:55PM 5 is Clinical Study 3491011 -- where healthcare providers are

04:21:04PM 6 advised that even if the vaccine adverse event is not

04:21:09PM 7 attributable to the vaccine, if a serious event occurs, it must

04:21:14PM 8 be reported. The only reason I know that is because I read

04:21:17PM 9 that, not because it's ever been pushed down through

04:21:21PM 10 communications.

04:21:24PM 11 Q. Okay. And you would agree with me, as a general

04:21:26PM 12 principal, that there is a difference between correlation and

04:21:30PM 13 causation, yes?

04:21:32PM 14 A. Yes, ma'am.

04:21:34PM 15 Q. So now moving on to myocarditis, just so I'm clear, you

04:21:41PM 16 are not board-certified in cardiology, correct?

04:21:44PM 17 A. I think we've established that.

04:21:47PM 18 Q. That's a "you are not"?

04:21:49PM 19 A. Right.

04:21:56PM 20 Q. Could you turn to tab 3 in front of you. And then flip to

04:22:13PM 21 the study that plaintiffs' counsel and you were discussing.

04:22:19PM 22 You're familiar with this study titled Myocarditis Following

04:22:26PM 23 Immunization, published by the *JAMA Cardiology*?

04:22:30PM 24 A. Yes, I am.

04:22:30PM 25 Q. And if you turn to page 2 of this study. Do you see in

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

- 04:22:36PM 1 the upper right-hand corner there's a square box with the
- 04:22:39PM 2 heading "Key Points"?
- 04:22:42PM 3 A. Yes, I do.
- 04:22:42PM 4 Q. And a subheading under that with the word "meaning" in
- 04:22:47PM 5 red?
- 04:22:48PM 6 A. Yes.
- 04:22:48PM 7 Q. And do you see there that it says, "Vigilance for rare
- 04:22:52PM 8 adverse events, including myocarditis, after a COVID-19
- 04:22:56PM 9 vaccination is warranted but should not diminish overall
- 04:23:01PM 10 confidence in vaccination during the current pandemic"?
- 04:23:04PM 11 A. Yes. That --
- 04:23:04PM 12 Q. Do you see that?
- 04:23:04PM 13 A. That's an opinion. It's not a fact.
- 04:23:08PM 14 Q. Right.
- 04:23:09PM 15 That is the meaning drawn from this study, yes, as
- 04:23:13PM 16 reflected in the -- on the text here?
- 04:23:15PM 17 A. No, I wouldn't say that's the meaning of the study. I
- 04:23:19PM 18 would say that's someone's opinion in the study.
- 04:23:22PM 19 Q. Okay. If you turn to the next page, page 3 of this
- 04:23:27PM 20 report.
- 04:23:27PM 21 A. Yes.
- 04:23:28PM 22 Q. Do you see Table 3 in the upper right-hand corner?
- 04:23:32PM 23 A. Yes.
- 04:23:33PM 24 Q. And this is a table showing -- oh, excuse me -- a table
- 04:23:34PM 25 showing expected versus observed cases of myocarditis in

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

- 04:23:40PM 1 Military Health System patients?
- 04:23:43PM 2 A. Yes.
- 04:23:45PM 3 Q. And do you see where it says that 544,000 -- out of
- 04:23:52PM 4 544,000 second doses to military members, there were 19 cases
- 04:23:59PM 5 of myocarditis observed?
- 04:24:02PM 6 A. Yes.
- 04:24:03PM 7 Q. Do you see on the line below that that out of 436,000
- 04:24:08PM 8 second doses to male military members, that there were 19
- 04:24:12PM 9 instances of myocarditis observed?
- 04:24:15PM 10 A. What I see is that the observed was double the number
- 04:24:19PM 11 expected on both of -- almost both of those.
- 04:24:22PM 12 Q. The observed is 19 out of 436,000, yes?
- 04:24:26PM 13 A. The observed is twice as many as what was expected with
- 04:24:30PM 14 the normal incidence.
- 04:24:33PM 15 Q. Ma'am, I'm -- with respect, that's not my question. My
- 04:24:36PM 16 question is, yes or no, the number is 19 out of 436,000 doses?
- 04:24:42PM 17 A. Yes, that's what it says.
- 04:24:44PM 18 Q. If you turn to the next page, in the "Conclusions"
- 04:24:51PM 19 heading.
- 04:24:51PM 20 A. Yes.
- 04:24:51PM 21 Q. Do you see where the last sentence reads, "Concerns about
- 04:24:55PM 22 rare adverse events following immunization should not diminish
- 04:25:00PM 23 overall confidence in the value of vaccinations"?
- 04:25:03PM 24 A. Again, that's an opinion.
- 04:25:04PM 25 Q. Do you see that in the conclusions section?

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

- 04:25:08PM 1 A. Yes, I do.
- 04:25:10PM 2 Q. You can go ahead and set that aside.
- 04:25:16PM 3 A. (Complies.)
- 04:25:17PM 4 Q. You also discussed instances of death following the COVID
- 04:25:26PM 5 vaccine. Do you remember that?
- 04:25:27PM 6 A. Yes.
- 04:25:27PM 7 Q. And I can't remember exactly the number of events that you
- 04:25:32PM 8 said were reported in VAERS. But are you aware that -- are you
- 04:25:40PM 9 aware that the CDC and FDA have actually just attributed nine
- 04:25:46PM 10 deaths, out of all of the doses that have been administered, to
- 04:25:50PM 11 the COVID-19 vaccine?
- 04:25:52PM 12 A. Nine deaths for who, ma'am?
- 04:25:54PM 13 Q. Nine deaths out of the entire population of individuals
- 04:25:58PM 14 who have received a dose of the COVID-19 vaccine.
- 04:26:01PM 15 A. In the United States?
- 04:26:03PM 16 Q. Yes, ma'am.
- 04:26:11PM 17 A. I would love to see that.
- 04:26:13PM 18 Q. Certainly.
- 04:26:31PM 19 MS. YANG: Would you like a copy too?
- 04:26:38PM 20 THE COURT: Yes, please.
- 04:26:41PM 21 THE WITNESS: (Reviewing document.)
- 04:26:42PM 22 Q. (By Ms. Yang) Ma'am, do you see on the upper left-hand
- 04:26:46PM 23 corner of the first page --
- 04:26:48PM 24 THE COURT: Can I get you to just pause a moment.
- 04:26:51PM 25 MS. YANG: Of course.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:27:54PM 1 THE COURT: Is this just my copy, or does this have
04:27:57PM 2 something deleted on page 2?

04:27:59PM 3 THE WITNESS: It does.

04:27:59PM 4 MS. YANG: That's the way that it printed off the
04:28:00PM 5 website. I'm sure it's just a formatting error on my part.
04:28:05PM 6 But the HTML website information is on the bottom header.

04:28:11PM 7 THE COURT: I see it. All right. Go ahead.

04:28:16PM 8 MS. YANG: Thank you.

04:28:16PM 9 Q. (By Ms. Yang) Ma'am, do you see on the upper left-hand
04:28:19PM 10 corner of this document that there's the CDC logo and
04:28:22PM 11 identifies it as Centers for Disease Control and Prevention?

04:28:25PM 12 A. Yes, I do.

04:28:26PM 13 Q. And do you see on the bottom footer that there's a website
04:28:30PM 14 that starts with <https://www.cdc.gov> and it goes on?

04:28:38PM 15 A. Yes.

04:28:38PM 16 Q. Have you seen, you know -- have you seen this document,
04:28:42PM 17 you know -- this document before or some variation of this
04:28:48PM 18 document before on the CDC website?

04:28:52PM 19 A. No. I generally don't get my scientific information from
04:28:57PM 20 the CDC.

04:28:58PM 21 Q. I see. Okay.

04:28:59PM 22 So do -- is it fair to say you don't regularly visit the
04:29:03PM 23 CDC website for information on COVID?

04:29:07PM 24 A. No, I do not.

04:29:08PM 25 Q. Okay.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

- 04:29:08PM 1 A. I don't consider them reputable, and I think there are
- 04:29:11PM 2 conflicts of interest.
- 04:29:13PM 3 Q. The title of this web page is Selected Adverse Events
- 04:29:18PM 4 Reported After COVID-19 Vaccination, correct?
- 04:29:21PM 5 A. Selected, yes.
- 04:29:22PM 6 Q. Right.
- 04:29:22PM 7 And do you see that it was last updated March 1, 2022?
- 04:29:27PM 8 A. Yes.
- 04:29:28PM 9 Q. And just -- you know, there's other information on this
- 04:29:31PM 10 page. But since we were just discussing the -- your testimony
- 04:29:35PM 11 on the deaths, if you flip to the second page, do you see the
- 04:29:40PM 12 bullet point on the bottom half of that page that starts with,
- 04:29:44PM 13 "Reports of deaths after COVID-19 vaccination are rare"?
- 04:29:48PM 14 A. That's what it says.
- 04:29:49PM 15 Q. Do you see in that same paragraph where it's in bolded
- 04:29:55PM 16 font, "Reports of adverse events to VAERS following
- 04:29:58PM 17 vaccination, including deaths, do not necessarily mean that a
- 04:30:02PM 18 vaccine caused a health problem"?
- 04:30:03PM 19 A. I do see that.
- 04:30:04PM 20 Q. Do you see the next sentence? It says, "More than
- 04:30:07PM 21 553 million doses of COVID-19 vaccines were administered in the
- 04:30:11PM 22 United States from December 14, 2020, through February 22,
- 04:30:17PM 23 2022"?
- 04:30:17PM 24 A. I do.
- 04:30:18PM 25 Q. And that during this time, the next sentence, "VAERS

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:30:23PM 1 received 12,775 preliminary reports of death (0.0023 percent)
04:30:33PM 2 among people who received a COVID-19 vaccine"?

04:30:38PM 3 A. Yes.

04:30:40PM 4 Q. And then there's more information, but for our purposes
04:30:43PM 5 today, can you go to the concluding paragraph there. It's a
04:30:48PM 6 very short paragraph, but it says, "Continued monitoring has
04:30:54PM 7 identified nine deaths causally associated with J&J/Janssen
04:30:59PM 8 COVID-19 vaccination."

04:31:00PM 9 A. I don't think you read that correctly, ma'am.

04:31:02PM 10 Q. Oh, I did not read that correctly?

04:31:04PM 11 A. No, you didn't.

04:31:05PM 12 Q. Okay. Let me try one more time.

04:31:06PM 13 A. "Continued" --

04:31:07PM 14 Q. "Continued monitoring has identified nine" --

04:31:09PM 15 THE COURT: I can read it for myself, and it's in the
04:31:12PM 16 record. What is the question?

04:31:14PM 17 Q. (By Ms. Yang) Whether you're familiar with this data.

04:31:16PM 18 A. But you just said that only nine deaths have been
04:31:21PM 19 attributable to Johnson & Johnson or the messenger RNA
04:31:29PM 20 vaccines. "Continuing monitoring has identified nine deaths
04:31:33PM 21 causally associated with J&J COVID-19 vaccines."

04:31:37PM 22 That does not say that they have investigated all
04:31:43PM 23 24,000 cases and only nine of them are attributable to the
04:31:48PM 24 vaccine. That is not what that says, ma'am.

04:31:50PM 25 Q. I see. Okay.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:31:51PM 1 So you dispute this report that only nine deaths have been
04:31:57PM 2 causally associated with --

04:31:57PM 3 A. No, ma'am --

04:31:58PM 4 Q. -- the J&J 19 -- the --

04:32:00PM 5 A. -- it does not say what you are inferring it says. It
04:32:02PM 6 says what it says: "Continuing monitoring has identified..."
04:32:07PM 7 It doesn't tell you continuing monitoring from the date the
04:32:12PM 8 vaccines were rolled out until today. "Continuing monitoring,"
04:32:16PM 9 that could be continuing monitoring last week. That could be
04:32:20PM 10 continuing monitoring a month ago. That doesn't give you any
04:32:25PM 11 time period. It doesn't tell you -- like, normally in an
04:32:28PM 12 epidemiologic report, we would normally see a breakdown where
04:32:32PM 13 they would say 24- -- 25,000 deaths were reported, 2,000 of
04:32:38PM 14 those were from strokes, 2,000 were from heart attacks, there
04:32:43PM 15 were confounding factors in this many, this many could not be
04:32:47PM 16 verified, autopsies weren't obtained on this many, this many
04:32:53PM 17 just didn't have any identifying information in which they
04:32:57PM 18 could be further investigated.

04:33:00PM 19 This does not tell you that only nine deaths have occurred
04:33:08PM 20 from the vaccine, and I'm sorry if that is your interpretation
04:33:14PM 21 of that sentence, because it is factually inaccurate.

04:33:20PM 22 Q. Ma'am, have you yourself conducted any studies to
04:33:22PM 23 determine the number of deaths that are causally associated
04:33:25PM 24 with the COVID-19 vaccine?

04:33:27PM 25 A. Yes, but I'm not allowed to talk about those.

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:33:29PM 1 Q. Have you conducted peer-reviewed studies on that topic?

04:33:34PM 2 A. Yes, I have.

04:33:36PM 3 Q. Peer-reviewed by whom?

04:33:41PM 4 A. Peer-reviewed journal articles.

04:33:43PM 5 THE COURT: Are you suggesting that this CDC report
04:33:45PM 6 that you're looking at is peer-reviewed?

04:33:48PM 7 MS. YANG: I am not certain, Your Honor, to be
04:33:53PM 8 honest. I'm working --

04:33:53PM 9 THE COURT: Well, I think you can be pretty sure that
04:33:55PM 10 it has not been, can't you?

04:33:58PM 11 MS. YANG: I'm sorry?

04:33:59PM 12 THE WITNESS: Yes. The CDC doesn't -- this isn't --
04:33:59PM 13 this hasn't gone through publication.

04:34:01PM 14 MS. YANG: Okay.

04:34:02PM 15 THE WITNESS: This isn't published in a journal.
04:34:03PM 16 It's published on a website for the CDC, the same CDC that told
04:34:08PM 17 us we didn't have to wear masks, that masks didn't make any
04:34:11PM 18 difference, the same CDC that --

04:34:12PM 19 THE COURT: All right. All right. Let's respond to
04:34:15PM 20 a question.

04:34:16PM 21 Q. (By Ms. Yang) So it's fair to say, ma'am, that you
04:34:19PM 22 disagree with any of the conclusions or data that CDC has put
04:34:22PM 23 out about the COVID-19 vaccine?

04:34:24PM 24 A. No. I'm telling you I disagree with your interpretation
04:34:27PM 25 of what that sentence says. And, no, I think that there --

THERESA MARIE LONG - CROSS-EXAM BY MS. YANG

04:34:36PM 1 that does not tell you that they have fully investigated a
04:34:40PM 2 million adverse events and that they have only attributed nine
04:34:45PM 3 to the vaccines.

04:34:46PM 4 Q. Okay. And if you turn back to the first page, under the
04:34:49PM 5 "What You Need to Know" heading, do you see the first bullet
04:34:54PM 6 reads, "COVID-19 vaccines are safe and effective"?

04:34:57PM 7 A. Yes, I do.

04:34:58PM 8 Q. And you would dispute that conclusion, yes?

04:35:00PM 9 A. Well, this isn't a peer-reviewed journal article. I mean,
04:35:05PM 10 just because someone puts something on the web and says it's
04:35:08PM 11 safe and effective -- I got a whole bunch of people with
04:35:14PM 12 strokes and heart problems and other issues that would strongly
04:35:20PM 13 contest "safe and effective."

04:35:22PM 14 Q. And you also --

04:35:22PM 15 A. So --

04:35:23PM 16 Q. Would you also dispute the conclusion of the FDA that the
04:35:27PM 17 COVID vaccines are safe and effective?

04:35:31PM 18 A. The FDA that just -- they -- I don't know if they mean
04:35:35PM 19 "safe" the way I mean "safe," but when I tell a patient
04:35:38PM 20 something is safe, it doesn't contain over 1200 adverse events
04:35:42PM 21 that could possibly occur. I don't recommend things that could
04:35:49PM 22 have devastating outcomes on my patients, that have eight
04:35:55PM 23 pages, single-space, tiny print, adverse events.

04:35:59PM 24 So the FDA says "safe and effective," and then only by
04:36:04PM 25 court order do they release documents that they did not want

THERESA MARIE LONG - REDIRECT EXAM BY MR. STAVER

04:36:07PM 1 released for over 75 years, that show the public what their
04:36:12PM 2 idea of safe and effective mean. I have soldiers and I have
04:36:18PM 3 people that prove it is not safe.

04:36:23PM 4 Q. And if I were to show you the statements issued by various
04:36:28PM 5 health professional organizations, medical organizations,
04:36:33PM 6 contending -- concluding and advising individuals to get
04:36:36PM 7 vaccinated because the COVID-19 vaccines are safe and
04:36:39PM 8 effective, you would dispute those conclusions as well?

04:36:43PM 9 A. I could bring just as many, if not more, peer-reviewed
04:36:46PM 10 journal articles, Nobel laureates, specialists, board-certified
04:36:51PM 11 in everything, that would dispute that, and that is called
04:36:55PM 12 science.

04:36:57PM 13 MS. YANG: Okay. Thank you, ma'am.

04:37:00PM 14 No further questions, Your Honor.

04:37:01PM 15 THE COURT: All right. Thank you, Ms. Yang.

04:37:05PM 16 Mr. Staver?

04:37:06PM 17 MR. STAVER: Very little, very little.

04:37:10PM 18 REDIRECT EXAMINATION

04:37:10PM 19 BY MR. STAVER:

04:37:15PM 20 Q. Whatever the value of this document, as you read it, it
04:37:21PM 21 refers only to one vaccine, Janssen and Janssen, which is
04:37:25PM 22 Johnson & -- or Janssen, which is Johnson & Johnson, right?

04:37:28PM 23 A. Yes, sir.

04:37:28PM 24 Q. It's not referring to Pfizer or Moderna?

04:37:32PM 25 A. No, sir, it's not.

THERESA MARIE LONG - REDIRECT EXAM BY MR. STAVER

04:37:33PM 1 Q. But the document that Pfizer released, which is part of --
04:37:37PM 2 I should say, the FDA released, that it has in its possession,
04:37:43PM 3 regarding Pfizer, which is part of tab 5, are you familiar with
04:37:47PM 4 that document that has 1291 adverse events, including
04:37:56PM 5 demyelination, which is the adverse event from which
04:38:01PM 6 Dr. Chambers is now suffering subsequent to taking Moderna?

04:38:04PM 7 A. I'm familiar with that, sir. I'm also familiar with the
04:38:07PM 8 page on here that discuss pregnancy outcomes.

04:38:11PM 9 THE COURT: Mr. Staver, respectfully, let's not
04:38:13PM 10 repeat.

04:38:14PM 11 MR. STAVER: Yeah. I'm done.

04:38:14PM 12 THE COURT: I pretty much --

04:38:15PM 13 MR. STAVER: I'm good.

04:38:15PM 14 THE COURT: -- have a grasp of what's been --

04:38:17PM 15 MR. STAVER: That was all -- that was my last
04:38:18PM 16 question anyway. So I have no further questions for this
04:38:21PM 17 witness.

04:38:21PM 18 THE COURT: All right. Thank you very much.

04:38:21PM 19 MR. STAVER: Thank you.

04:38:24PM 20 THE COURT: With that -- and we need to remember to
04:38:26PM 21 disconnect that --

04:38:26PM 22 THE WITNESS: Yes, sir.

04:38:27PM 23 THE COURT: -- that little microphone. You may step
04:38:30PM 24 down, and you're excused with our thanks.

04:38:42PM 25 Let me inquire if the plaintiffs intend to offer any

THERESA MARIE LONG - REDIRECT EXAM BY MR. STAVER

04:38:46PM 1 further witnesses or evidence.

04:38:48PM 2 MR. STAVER: One more, Your Honor.

04:38:50PM 3 THE COURT: And what is the expected duration?

04:38:53PM 4 MR. STAVER: I would say, from my standpoint,
04:38:55PM 5 45 minutes, max.

04:38:57PM 6 THE COURT: All right. Well, we will take a brief
04:38:59PM 7 recess, since we've been over two hours, I think, at this
04:39:03PM 8 point. We'll take a brief recess, and then we'll come back in
04:39:06PM 9 about 15 minutes or so and hear that testimony.

04:39:07PM 10 MR. STAVER: Okay. Thank you.

04:39:10PM 11 (Proceedings in recess from 4:39 p.m. until 5:00 p.m.)

05:00:48PM 12 THE COURT: Please be seated. Thank you.

05:00:50PM 13 All right. The plaintiffs are recognized to call
05:01:01PM 14 their next witness.

05:01:02PM 15 MR. STAVER: Thank you, Your Honor. I'll call
05:01:04PM 16 Dr. Stewart Tankersley.

05:01:13PM 17 THE COURT: Good afternoon, sir.

05:01:14PM 18 THE WITNESS: Good afternoon. Thank you.

05:01:15PM 19 THE COURT: Let me ask you to pause just one moment
05:01:17PM 20 and raise your right hand.

05:01:21PM 21 STEWART HILL TANKERSLEY,

05:01:21PM 22 having been sworn or affirmed under oath, was examined and
05:01:23PM 23 testified as follows:

05:01:23PM 24 THE COURT: State your name, please.

05:01:25PM 25 THE WITNESS: Stewart Hill Tankersley,

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:01:29PM 1 T-a-n-k-e-r-s-l-e-y.

05:01:32PM 2 THE COURT: L-e-y?

05:01:34PM 3 THE WITNESS: L-e-y, correct.

05:01:34PM 4 THE COURT: Please have a seat in the witness stand.

05:01:38PM 5 You need to connect that microphone to some useful spot.

05:01:55PM 6 And I'll recognize Mr. Staver for your direct

05:01:59PM 7 examination.

05:01:59PM 8 MR. STAVER: Thank you, Your Honor.

05:02:00PM 9 DIRECT EXAMINATION

05:02:00PM 10 BY MR. STAVER:

05:02:00PM 11 Q. Can you state your full name.

05:02:01PM 12 A. Stewart Hill Tankersley.

05:02:04PM 13 Q. For the benefit of the Court, can you give a background of
05:02:07PM 14 your medical training and education?

05:02:11PM 15 A. Yes, sir. I was enlisted in '91; did OCS. I graduated in
05:02:18PM 16 '93, on Saturday, and on Monday I started at UAB. Finished
05:02:22PM 17 there, then went to two years of OB residency, took a year
05:02:27PM 18 missionary training. And then I finished family medicine
05:02:30PM 19 residency 2 1/2 years later. I've been in private practice
05:02:35PM 20 since. I was, as family medicine, boarded, and I have been in
05:02:43PM 21 the military. After OCS, I came in the medical corp after
05:02:49PM 22 graduating medical school. I've been deployed three times. I
05:02:52PM 23 reached the rank of colonel at 18 years, and I am a flight
05:02:56PM 24 surgeon as well.

05:02:59PM 25 Q. Have you recently retired from the Army as a colonel?

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:03:02PM 1 A. I did.

05:03:03PM 2 Q. And --

05:03:03PM 3 A. On September -- end of September.

05:03:05PM 4 Q. 2021?

05:03:06PM 5 A. Yes, sir.

05:03:09PM 6 Q. In your medical practice, do you treat COVID patients?

05:03:13PM 7 A. I do. I am unfortunately one of the few in our community

05:03:18PM 8 that does treat and doesn't do what the CDC has advised all

05:03:23PM 9 along, basically go home and if you get bad enough, come on

05:03:26PM 10 back. They have in the last several months advocated the

05:03:29PM 11 monoclonal antibodies.

05:03:31PM 12 I also have been associated the last 20 months with a

05:03:34PM 13 group of doctors around the state -- it started with four or

05:03:37PM 14 five of us, we've grown to approximately 50 -- we're on weekly

05:03:41PM 15 calls together at least once a week, and we're keeping each

05:03:45PM 16 other updated, and about a dozen of us have accumulated -- this

05:03:50PM 17 data is from, like, six weeks ago -- have accumulated about

05:03:54PM 18 18,000 patients we've treated.

05:03:57PM 19 Personally I've treated several hundred. A couple of the

05:04:00PM 20 doctors in our group own medical clinics, urgent care

05:04:05PM 21 facilities, and we've treated over 18,000. None of my personal

05:04:09PM 22 patients have died. And of the eight of the 18,000 or more

05:04:13PM 23 patients that have died, all of them came to us after day 8 --

05:04:18PM 24 no, correction, after day 5, and they did not follow the

05:04:21PM 25 treatment plans that we've advocated for the other patients.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:04:27PM 1 Q. As a result of your treatment in practice, in general
05:04:30PM 2 practice, but also specifically in treating COVID patients,
05:04:33PM 3 have you been asked to serve in any task force related to
05:04:37PM 4 COVID?

05:04:37PM 5 A. Yes, sir. I was initially -- this is what led to my
05:04:41PM 6 jumping in the deep end in COVID in February of '20. I'm one
05:04:46PM 7 of five -- I was one of five colonels in the Alabama
05:04:48PM 8 National -- Army National Guard, and we were put on a task
05:04:53PM 9 force in order to come up with contingency plans to give to our
05:04:58PM 10 governor. As a civilian, I went to them and talked to the
05:05:02PM 11 governor about 45 minutes -- this was at the end of March --
05:05:06PM 12 advocated, based on the data we knew then, we did not need to
05:05:09PM 13 close the state. They said I was the only one that --

05:05:12PM 14 Q. Okay. Let me back up.

05:05:14PM 15 THE COURT: Hold on one second.

05:05:14PM 16 MR. STAVER: I'm sorry.

05:05:16PM 17 THE COURT: You live where?

05:05:17PM 18 THE WITNESS: In Montgomery, Alabama.

05:05:19PM 19 THE COURT: All right. And that's where you're --
05:05:21PM 20 you're in the Alabama National Guard?

05:05:24PM 21 THE WITNESS: I retired last September.

05:05:26PM 22 THE COURT: I see.

05:05:26PM 23 From the Guard?

05:05:27PM 24 THE WITNESS: Yes, sir.

05:05:27PM 25 THE COURT: All right.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:05:28PM 1 Excuse me. Go ahead.

05:05:30PM 2 MR. STAVER: No problem. Thank you.

05:05:31PM 3 Q. (By Mr. Staver) So you have been asked to serve on a
05:05:34PM 4 COVID task force?

05:05:35PM 5 A. Yes, sir. And so that led to a big awakening in the
05:05:40PM 6 Governor's office at the end of March, because they didn't
05:05:42PM 7 follow my advice, they closed things down, they realized things
05:05:44PM 8 weren't going well. So they started calling me more and more
05:05:46PM 9 that summer. That led to, in October of that -- of '20, the
05:05:50PM 10 CDC put out a directive to all the states that they come up a
05:05:55PM 11 vaccine working group.

05:05:57PM 12 A couple of days after that directive, the State of
05:06:01PM 13 Alabama's health officer put forward their list of 65
05:06:04PM 14 personnel. Three of those are clergy. Of the -- besides those
05:06:08PM 15 three, all of them are affiliated with the State. And so the
05:06:11PM 16 Governor then said, "Dr. Tankersley, will you" -- as a
05:06:15PM 17 civilian, not as a guardsmen -- "will you go serve on that task
05:06:18PM 18 force?" I was their sole appointee to it. And --

05:06:21PM 19 Q. So is that something that you have been doing over the
05:06:23PM 20 last several months?

05:06:25PM 21 A. I have been -- I started that next week and was appalled
05:06:30PM 22 by what I -- all the things I saw that were done so improperly.
05:06:34PM 23 And as a result of this -- I've been an -- always an advocate
05:06:38PM 24 for vaccines, but then I saw about the evidence coming out
05:06:41PM 25 about this, really --

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:06:43PM 1 Q. When you say "this," you're talking about COVID vaccines?

05:06:46PM 2 A. COVID vaccines, yes, sir. That was the test.

05:06:47PM 3 Q. So you've been a vaccine advocate but have changed your
05:06:52PM 4 position with regards to COVID vaccines?

05:06:54PM 5 A. Amen. Yes, sir, because --

05:06:55PM 6 Q. All right. Let me ask you --

05:06:56PM 7 MR. STAVER: Let me present Dr. Tankersley as a
05:06:59PM 8 expert in family medicine who also is an expert in treating
05:07:04PM 9 COVID patients. I want to tender him to the Court.

05:07:08PM 10 THE WITNESS: Outpatient. Yes, sir. Outpatient --

05:07:09PM 11 MR. STAVER: In outpatient situations.

05:07:12PM 12 THE COURT: All right. Would the defense like to
05:07:13PM 13 voir dire this witness?

05:07:15PM 14 MS. POWELL: Yes. And we're happy to hold that until
05:07:18PM 15 it's done, or we can do it now. It's your preference.

05:07:21PM 16 THE COURT: It's your preference.

05:07:23PM 17 MR. STAVER: Do you want to wait for -- whatever.
05:07:27PM 18 I'm okay either way.

05:07:27PM 19 MS. POWELL: We'll wait.

05:07:28PM 20 MR. STAVER: All right.

05:07:28PM 21 THE COURT: All right.

05:07:28PM 22 MR. STAVER: All right. Very good. Thank you.

05:07:29PM 23 Q. (By Mr. Staver) All right. I want you to -- just because
05:07:32PM 24 of time, we have to move through this fairly quickly. I want
05:07:35PM 25 you to look at page -- or tab 9, the notebook in front of you.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:07:49PM 1 Have you, in your research with regards to treating COVID,
05:07:53PM 2 researched this particular article under tab 9?

05:07:58PM 3 A. Yes, sir.

05:08:00PM 4 Q. And in this particular article, it talks about the
05:08:10PM 5 mRNA-LNP platform that's in the Pfizer and Moderna shots; is
05:08:16PM 6 that correct?

05:08:16PM 7 A. Yes, sir.

05:08:17PM 8 Q. And the LNP is what?

05:08:19PM 9 A. The lipid nanoparticle. It is the designed envelope in
05:08:24PM 10 which the SARS2 is injected into the body.

05:08:29PM 11 Q. And the lipid nanoparticle, as it relates to mRNA, is
05:08:35PM 12 designed to be a transmitter of the mRNA into the cells in a
05:08:41PM 13 quicker way than just having the mRNA by itself?

05:08:45PM 14 A. Exactly. And that's a very important point you make,
05:08:47PM 15 because the lipid nanoparticle envelope that is in the Pfizer
05:08:52PM 16 did not release it to other countries, but Japan required them
05:08:56PM 17 to get -- release that data initially in order to get the
05:08:59PM 18 approval in Japan.

05:09:00PM 19 When they gave them the data, it was then transcribed into
05:09:05PM 20 English. A few months later, somebody found out about it,
05:09:09PM 21 Dr. Brown -- it showed that the -- that this nanoparticle, this
05:09:13PM 22 lipid nanoparticle, accumulates within hours throughout the
05:09:17PM 23 body, in every organ.

05:09:18PM 24 Q. So it doesn't stay in the injection site?

05:09:21PM 25 A. It does not.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:09:21PM 1 Q. And did that Japanese study, with regards to the mRNA
05:09:26PM 2 vaccines with the lipid nanoparticle, indicate that it had a
05:09:30PM 3 high concentration in the liver and, I believe, spleen but at
05:09:34PM 4 least liver and also the ovaries?

05:09:36PM 5 A. Not as much the liver. This is not a study that was done
05:09:39PM 6 by Japan. This was Pfizer's own data, and so it showed that
05:09:44PM 7 the -- accumulates. This lipid nanoparticle, which was studied
05:09:47PM 8 differently than the -- the outside of the messenger RNA inside
05:09:55PM 9 of it, but it itself accumulates. And not only that -- and
05:09:55PM 10 this study points to it -- it is highly inflammatory.

05:09:59PM 11 Q. I want you to look at page 8 of that article. It talks
05:10:07PM 12 about the vaccination, the mRNA vaccination with the LNP, the
05:10:14PM 13 delivery mechanism --

05:10:14PM 14 A. The lipid --

05:10:15PM 15 Q. -- that bypasses your typical immune system, that it is
05:10:19PM 16 likely associated with robust innate inflammation --

05:10:19PM 17 A. That's right.

05:10:25PM 18 Q. -- introduced by the LNPs. Do you see that?

05:10:27PM 19 A. I -- yes, sir. And that's important because of -- it's
05:10:30PM 20 the innate system that is inflamed and that can lead to other
05:10:35PM 21 problems like what we're fearful of. The evidence in prior
05:10:38PM 22 studies before 2021 -- before 2020 that if you -- that these,
05:10:47PM 23 in other messenger RNA studies, can potentiate a change in
05:10:52PM 24 cells in the human body, and that inflammation that the
05:10:56PM 25 envelope allows for is what adds to the potential downside.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:11:02PM 1 Q. It increases the inflammation?

05:11:04PM 2 A. Yes, sir.

05:11:04PM 3 Q. So mRNA had never been used before in human vaccinations?

05:11:09PM 4 A. I think they have been used in -- in the 60s tried it with

05:11:13PM 5 RSV, and it was a failure. More children died from the -- that

05:11:17PM 6 were vaccinated than without it.

05:11:18PM 7 Q. And then adding to the mRNA, which is Pfizer and Moderna,

05:11:21PM 8 you have the delivery mechanism, which is the lipid

05:11:25PM 9 nanoparticles?

05:11:25PM 10 A. Yes, sir. But it's super important that you understand

05:11:28PM 11 what you're -- what -- of this article. The inflammation

05:11:31PM 12 caused by the lipid nanoparticle and the potential changes that

05:11:36PM 13 it results in that can lead to -- and we're very fearful of --

05:11:40PM 14 an increase in cancers.

05:11:42PM 15 Q. I want to get to that in a few moments.

05:11:45PM 16 MR. STAVER: I'd like to introduce that as another

05:11:47PM 17 plaintiffs' exhibit, which is tab 9, that may be -- I don't

05:11:51PM 18 have the numbers in front of me, Your Honor. It may be 12. I

05:11:54PM 19 don't know what the next one is there.

05:11:55PM 20 THE COURT: The article is 9.

05:11:57PM 21 MR. STAVER: Yes, the article is tab 9.

05:12:03PM 22 THE WITNESS: Exhibit 11.

05:12:03PM 23 THE COURT: So Plaintiffs' 9 is received --

05:12:03PM 24 MR. STAVER: Okay.

05:12:05PM 25 THE COURT: -- subject to the earlier ruling.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:12:05PM 1 (Plaintiffs' Exhibit 9 admitted.)

05:12:05PM 2 MR. STAVER: Thank you.

05:12:09PM 3 Q. (By Mr. Staver) I want to take you to tab 10, continuing
05:12:11PM 4 on the inflammation and the mRNA and the LNP. Have you
05:12:18PM 5 reviewed that article as part of your --

05:12:18PM 6 A. Yes, sir.

05:12:19PM 7 Q. -- research and treatment?

05:12:21PM 8 A. And this is a Dr. Seneff, I've followed her, read many of
05:12:27PM 9 her articles. She's a brilliant lady out of --

05:12:27PM 10 THE COURT: Let me ask you to stop just a second.

05:12:29PM 11 You're going to need to slow down just a little bit. And I
05:12:32PM 12 know everybody's conscious of time, but we can't blitz through
05:12:36PM 13 this. And we need to wait until he finishes the question --

05:12:39PM 14 THE WITNESS: Yes, sir.

05:12:40PM 15 THE COURT: -- before you begin the answer, and then
05:12:42PM 16 it might be good to just let a little bit of a second pass
05:12:45PM 17 between the two.

05:12:45PM 18 THE WITNESS: Yes, sir. I'm sorry.

05:12:46PM 19 THE COURT: All right. Can you resume?

05:12:50PM 20 Q. (By Mr. Staver) So the question is, have you reviewed
05:12:54PM 21 this article regarding innate immune suppression by SARS-CoV-2
05:13:01PM 22 mRNA vaccinations?

05:13:02PM 23 A. Yes, sir.

05:13:02PM 24 Q. You've done that as part of your research and treatment?

05:13:05PM 25 A. Yes, sir. I've read plenty of her articles. She's out of

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

- 05:13:08PM 1 MIT and is very, very well respected.
- 05:13:11PM 2 Q. Now, this article says that the mRNA vaccinations in this
- 05:13:15PM 3 context of infections has no prior precedent.
- 05:13:20PM 4 A. That is correct.
- 05:13:20PM 5 Q. Do you agree with that?
- 05:13:22PM 6 A. I would definitely agree with that.
- 05:13:24PM 7 Q. Let me just hit some of the highlights, because it's too
- 05:13:29PM 8 much for us to go through in the short time that we have. But
- 05:13:33PM 9 I want you to -- I want you to go to page 6 of that article,
- 05:13:48PM 10 beginning of the second paragraph. This goes back to the first
- 05:13:51PM 11 article about the delivery mechanism.
- 05:13:56PM 12 It says, "For a successful mRNA vaccine design, the mRNA
- 05:13:59PM 13 needs to be encapsulated in carefully constructed particles
- 05:14:02PM 14 that can protect the RNA from degradation by RNA
- 05:14:11PM 15 depolymerases." Do you see that?
- 05:14:12PM 16 A. I do, yes, sir.
- 05:14:13PM 17 Q. Is that the same thing we were talking about in the
- 05:14:15PM 18 previous article? To deliver the mRNA, it has to have this
- 05:14:18PM 19 encapsulation?
- 05:14:20PM 20 A. Yes, sir.
- 05:14:21PM 21 Q. Now, the article also says, on page 13, under the
- 05:14:30PM 22 Section 9, regarding impaired DNA repair and adaptive immunity.
- 05:14:30PM 23 You see that?
- 05:14:38PM 24 A. Yes, sir.
- 05:14:38PM 25 Q. And in the natural course of situations without the mRNA

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:14:40PM 1 introduced into your system with the lipid nanoparticle, does
05:14:44PM 2 your DNA fray or get damaged?

05:14:48PM 3 A. That's right. Our DNA normally, just in everyday --
05:14:55PM 4 pre-COVID, you know -- it has nothing to do with whether we're
05:14:58PM 5 in COVID or not. It's just that's the way we are -- I mean
05:15:01PM 6 the -- our body normally -- it's normal part of every cell,
05:15:08PM 7 that it can potentially be injured.

05:15:11PM 8 Q. Okay. So then when you have the mRNA with this delivery
05:15:14PM 9 mechanism of the lipid nanoparticle, does that interfere with
05:15:20PM 10 your body's innate ability to repair damaged DNA?

05:15:24PM 11 A. Exactly. The innate ability of our body the Lord's given
05:15:28PM 12 us is, if it sees in -- if we have breaks in the DNA that are
05:15:33PM 13 abnormal, we have reparative processes that our body does all
05:15:38PM 14 the time.

05:15:40PM 15 Q. Now, this article also talks about damaged DNA and the
05:15:44PM 16 development of thrombocytopenia, as well as the developments of
05:15:49PM 17 cancer post the RNA vaccine. Are you aware of that?

05:15:54PM 18 A. Yes, sir.

05:15:54PM 19 Q. And is that because your innate immune system is damaged
05:15:58PM 20 by the introduction of this vaccines with regards to RNA?

05:16:03PM 21 A. It is potentially for one of the types of thrombocytopenia
05:16:07PM 22 but not for the other one that has one of the -- it's one of
05:16:08PM 23 the four prevent- -- four causes of not receiving the vaccine.
05:16:14PM 24 It's vaccine-induced thrombocytopenia.

05:16:19PM 25 Q. Okay. And are you aware of individuals getting cancer

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:16:23PM 1 that were not cancer-symptomatic prior to these mRNA and that
05:16:28PM 2 the cancer rapidly advanced after the mRNA injected into their
05:16:32PM 3 body?

05:16:33PM 4 A. The signals are there, but, once again, we don't get to
05:16:36PM 5 have the end-up study that we would normally expect from the
05:16:40PM 6 bigger larger scientific community. But the pathological
05:16:44PM 7 process, we believe, is firm.

05:16:47PM 8 Q. So the pathological process is there to allow something
05:16:50PM 9 like that to happen, is what you're saying?

05:16:52PM 10 A. Yes, sir. We think the science -- I believe the science
05:16:54PM 11 to be firm on that.

05:16:55PM 12 Q. Now, when you're seeing somebody in your office, as a
05:16:59PM 13 family practice, general medicine doctor, and they say, "I
05:17:02PM 14 didn't have any back pain, but I lifted, I turned something.
05:17:07PM 15 Now I have back pain that is radiating into my sciatica," do
05:17:14PM 16 you, based on that, develop a causal relationship just by
05:17:18PM 17 clinical examination without an empirical study?

05:17:21PM 18 A. Are you referring to somebody after the vaccine or just in
05:17:23PM 19 general?

05:17:23PM 20 Q. I'm just talking about in general.

05:17:25PM 21 A. Sure.

05:17:25PM 22 Q. You don't need a --

05:17:25PM 23 A. Exactly, yes.

05:17:26PM 24 Q. -- clinical study for every diagnosis in your office, do
05:17:29PM 25 you?

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

- 05:17:29PM 1 A. That's right. No, you don't.
- 05:17:30PM 2 Q. You listen to the clinical findings -- the clinical
- 05:17:33PM 3 presentation?
- 05:17:34PM 4 A. Yes, sir.
- 05:17:34PM 5 Q. And you look at time before and after an event happened --
- 05:17:38PM 6 A. Yes, sir.
- 05:17:38PM 7 Q. -- that didn't happen before, and now you're seeing a
- 05:17:41PM 8 patient because of an event that interceded --
- 05:17:43PM 9 A. That is correct.
- 05:17:44PM 10 Q. -- is that right?
- 05:17:45PM 11 A. That is correct.
- 05:17:46PM 12 Q. That being the case, have you seen or are you aware of
- 05:17:49PM 13 those situations in which mRNA was introduced into somebody who
- 05:17:53PM 14 was cancer-free or nonsymptomatic and developed a rapid onset
- 05:17:57PM 15 of cancer?
- 05:17:58PM 16 A. I've had patients and this group of doctors we speak of --
- 05:18:01PM 17 with every week, multiple times a week obviously, we have seen
- 05:18:07PM 18 cases since, but the whole point is that the evidence for --
- 05:18:12PM 19 it's not my opinion -- the evidence for this type of mechanism
- 05:18:16PM 20 to occur --
- 05:18:16PM 21 Q. Right.
- 05:18:17PM 22 It's already been established?
- 05:18:19PM 23 A. Right.
- 05:18:19PM 24 Q. Okay. So on page 16, down at the bottom, the condition
- 05:18:25PM 25 from which Dr. Chambers testified he's suffering from following

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:18:30PM 1 the mRNA Moderna vaccine, is that listed there, with regards to
05:18:33PM 2 a demyelinating disease happening within 21 days of the
05:18:38PM 3 introduction?

05:18:39PM 4 A. It is. Chronic neuroinflammation mediated by -- yes, sir.

05:18:43PM 5 Q. On page 17, is -- toward the bottom of that second
05:18:48PM 6 paragraph, does it also indicate that as a result of the mRNA
05:18:54PM 7 vaccines, that -- increase risk of myocarditis?

05:18:59PM 8 A. It sure does. And I believe that some countries in Europe
05:19:03PM 9 have already banned it in those under 30.

05:19:06PM 10 Q. What would be in terms of your final conclusion as to how
05:19:09PM 11 you as a physician would practice with regards to these
05:19:14PM 12 vaccines and treatment of patients, based upon this article
05:19:17PM 13 and -- particularly this article?

05:19:19PM 14 A. Right. This article validates several other articles.
05:19:23PM 15 And this gets to one of the two biggest problems that this --
05:19:28PM 16 that has been revealed, in my opinion, in the last two years,
05:19:30PM 17 and that is the lack of dialogue.

05:19:32PM 18 Q. Could I ask you to, while you're doing that, look at the
05:19:34PM 19 conclusions section on page 21.

05:19:37PM 20 A. Yes, sir. So the lack of dialogue in science, it's a --

05:19:42PM 21 Q. In terms of the conclusion that's listed there?

05:19:46PM 22 A. Right.

05:19:47PM 23 Q. It says, "It is imperative that worldwide administration
05:19:49PM 24 of the mRNA vaccinations be stopped immediately until further
05:19:53PM 25 studies are conducted to determine the extent of the potential

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:19:58PM 1 pathologic consequences outlined in this paper."

05:20:02PM 2 And do you agree with that?

05:20:07PM 3 A. Absolutely. It should have been --

05:20:07PM 4 Q. And you were talking about the lack of dialogue when you
05:20:10PM 5 have papers that are written in scientific journals like this,
05:20:15PM 6 raising alarms, and yet there's suppression of dialogue. Is
05:20:18PM 7 that what you were getting ready to refer to?

05:20:21PM 8 A. That's exactly right, because I was asked to be -- to come
05:20:24PM 9 before the Alabama board of medical association in May by the
05:20:28PM 10 president, because I'd been talking to him, I'd known him for
05:20:32PM 11 years, and he said, "I finally understand what you've been
05:20:35PM 12 telling me."

05:20:36PM 13 When I made the presentation, he invited me to come, I
05:20:39PM 14 went with three of the -- my colleagues, and we presented
05:20:42PM 15 evidence for 2 1/2 hours. This has never been done on the
05:20:45PM 16 board, and they sat there for 2 1/2 hours receiving the data.
05:20:49PM 17 We begged for dialogue; they refused.

05:20:53PM 18 Q. At the conclusion paragraph, in the end it says, "We are
05:20:58PM 19 not exaggerating to say that billions of lives are at stake.
05:21:02PM 20 We call upon the public health institutions to demonstrate with
05:21:06PM 21 evidence why the issues discussed in this paper are not
05:21:09PM 22 relevant to public health or to acknowledge that they are and
05:21:13PM 23 to act accordingly."

05:21:15PM 24 That is what you're referring to in terms of scientific
05:21:18PM 25 medical dialogue that is necessary?

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:21:20PM 1 A. They refused to ask why nine people or 25,000 or 250,000
05:21:28PM 2 in the CDC VAERS site have died. Because there has to be --
05:21:33PM 3 it's not the needle in the arm. There's a pathophysiological
05:21:38PM 4 process going on, and they refused to dialogue about what that
05:21:42PM 5 that process may be. And we think there's evidence that that
05:21:47PM 6 is clearly the spike protein and the lipid nanoparticle.

05:21:52PM 7 Q. Has there been any kind of suppression of this kind of
05:21:53PM 8 dialogue, in the history of your medical practice, that you've
05:21:55PM 9 seen with regards to COVID?

05:21:57PM 10 A. I've never seen anything like this. Both in the military
05:22:01PM 11 and in the civilian world, I've never seen anything like this.

05:22:06PM 12 Q. You've had your feet in both worlds for some time until
05:22:09PM 13 September of 2021, correct?

05:22:10PM 14 A. Yes, sir.

05:22:11PM 15 Q. Military and civilian?

05:22:13PM 16 A. Yes, sir.

05:22:13PM 17 Q. And have you seen it both in the military as well as the
05:22:13PM 18 civilian?

05:22:16PM 19 A. Yes, sir. A good friend of mine who is a state surgeon
05:22:19PM 20 and been -- I've known him for 25 years. I begged him to look
05:22:22PM 21 at the data. He knew my background. He knew what I knew about
05:22:25PM 22 it. He said, "I can't. This is from NGB, National Guard
05:22:29PM 23 Bureau, the order. Everybody is going to get the jab."

05:22:32PM 24 Q. All right. I want you to turn to what's tab 18, and I
05:22:38PM 25 want you to identify what that document is, the first part of

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:22:42PM 1 it. There's two documents under tab 18. First one is entitled
05:22:47PM 2 COVID-19 Early Treatment, Real-Time Analysis of 1514 Studies.
05:22:54PM 3 Are you familiar with that?
05:22:54PM 4 A. I do. Yes, sir.
05:22:55PM 5 Q. And where is that from?
05:22:57PM 6 A. This is on tab 17 -- 18?
05:23:00PM 7 Q. Tab 18.
05:23:00PM 8 A. Oh, great. Yes.
05:23:01PM 9 Q. Who produces that?
05:23:03PM 10 A. This is the most important website to medicine, I believe,
05:23:08PM 11 that's been created in the last year and a half. This is the
05:23:11PM 12 association -- the American Association of Physicians and
05:23:17PM 13 Surgeons' c19data -- c19study.com. This is a repository of all
05:23:24PM 14 agents that are being looked at for treating COVID. It is
05:23:29PM 15 daily updated.
05:23:31PM 16 Q. And, in fact, while it's -- you're looking at it daily
05:23:33PM 17 updated, I want you to look quickly toward the -- these pages
05:23:38PM 18 aren't numbered, but if you flip to the end, you'll see recent
05:23:43PM 19 studies, March 8, March 7, March 4, March 4, March 3, March 2,
05:23:48PM 20 March 2. Do you see that?
05:23:50PM 21 A. Yes, sir. And that's of any of these 30 or so agents.
05:23:53PM 22 Q. All right. So that -- whenever a new study worldwide
05:23:57PM 23 comes out in any of these 30 medications, it adds to this --
05:24:01PM 24 A. They review and --
05:24:02PM 25 THE COURT: One at a time.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:24:02PM 1 THE WITNESS: Yes, sir. I'm sorry.

05:24:02PM 2 THE COURT: One at a time, and slow down just a bit
05:24:03PM 3 so we can follow you and so we don't --

05:24:05PM 4 THE WITNESS: I'm so sorry. Yeah.

05:24:08PM 5 THE COURT: -- don't completely exhaust the reporter.

05:24:10PM 6 THE WITNESS: Yeah, I'm sorry.

05:24:10PM 7 Q. (By Mr. Staver) So anytime a study globally comes out in
05:24:14PM 8 any one of these 30 medications with regards to treatment of
05:24:19PM 9 COVID-19, they review it, and when that is reviewed, it is
05:24:24PM 10 added to this database?

05:24:26PM 11 A. If they believe it to be credible, which the vast majority
05:24:29PM 12 of times, they do.

05:24:30PM 13 Q. Okay. So the very first one is Paxlovid, and it says
05:24:35PM 14 there's an 83 percent improvement, but there's only two
05:24:39PM 15 studies; is that right?

05:24:41PM 16 A. Paxlovid, yes, sir.

05:24:41PM 17 Q. And is that because those are Pfizer studies?

05:24:45PM 18 A. Well, they are both -- both of the Paxlovid studies are --

05:24:48PM 19 Q. Are Pfizer. In other words, there's no other study yet on
05:24:51PM 20 Paxlovid, except for Pfizer?

05:24:52PM 21 A. That's correct.

05:24:52PM 22 Q. And that is a -- Paxlovid is a Pfizer product?

05:24:55PM 23 A. Yes, sir.

05:24:55PM 24 Q. Okay. On the same page, ivermectin. We've heard that
05:24:59PM 25 several times. 81 studies, and it has 64 -- 65 percent

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:25:06PM 1 improvement with regards to treating of COVID. Do you see
05:25:11PM 2 that?

05:25:11PM 3 A. I'm familiar with ivermectin being very effective.

05:25:14PM 4 Q. So the rest of the column, without going through each one
05:25:18PM 5 of these, of course, it gives, based upon the cumulative
05:25:20PM 6 studies that come in for each one of these medications, the
05:25:26PM 7 percentage of improvement that that particular medication has
05:25:30PM 8 evidenced, combined with the others that are already in
05:25:34PM 9 existence in this database; is that right?

05:25:37PM 10 A. Yes, sir.

05:25:39PM 11 Q. So the one that Dr. Fauci has recommended is remdesivir
05:25:45PM 12 once you get hospitalized, and yet that shows it almost at the
05:25:48PM 13 bottom of effectiveness?

05:25:50PM 14 A. Yes, sir.

05:25:51PM 15 Q. The point is, are there other kinds of treatment, other
05:25:55PM 16 than the vaccine itself, to introduce the mRNA or the DNA-type
05:26:00PM 17 of version of the Janssen into your body -- are there other
05:26:06PM 18 kinds of ways to treat and prevent COVID than the vaccines that
05:26:11PM 19 are in existence?

05:26:13PM 20 A. Absolutely, yes, sir. And the safety profile is
05:26:18PM 21 staggeringly different.

05:26:19PM 22 Q. What do you mean by that?

05:26:20PM 23 A. The safety profile of ivermectin has been around for
05:26:26PM 24 50 years. Some studies say zero, some studies say 340 people
05:26:31PM 25 in the world, in 4 billion doses, have died from it -- as a

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:26:36PM 1 result of it in its history. And yet remdesivir, on -- in the
05:26:42PM 2 middle of September last year, there was a large study done
05:26:44PM 3 that should have put the nail in the coffin for remdesivir, but
05:26:49PM 4 it is a huge moneymaking medicine. There are too many -- I
05:26:57PM 5 think it would be appropriate to say unethical contractual
05:27:04PM 6 obligations between the hospitals to give this medication that
05:27:08PM 7 has so poor of a record -- track record with the evidence, but
05:27:11PM 8 they are obligated by -- under NIH protection to giving it to
05:27:16PM 9 their patients.

05:27:17PM 10 Q. So any physician, whether in the military or in civilian
05:27:21PM 11 practice, can have access to this and determine what's the most
05:27:24PM 12 effective medication that's been on the market other than
05:27:28PM 13 Paxlovid, because that's new, and remdesivir is new. But many
05:27:32PM 14 of these have been on the market for a long time in terms of
05:27:35PM 15 treating COVID; is that right?

05:27:36PM 16 A. That is what we've had wonderful success with, yes.

05:27:39PM 17 MR. STAVER: I'd like to introduce that article
05:27:41PM 18 there -- that document there, which is tab 18 as the next
05:27:48PM 19 plaintiffs' exhibit, and then --

05:27:49PM 20 THE COURT: In accord with the earlier ruling --

05:27:49PM 21 MR. STAVER: Okay.

05:27:51PM 22 THE COURT: -- the Plaintiffs' 18 is received.

05:27:55PM 23 (Plaintiffs' Exhibit 18 admitted.)

05:27:55PM 24 Q. (By Mr. Staver) The next one behind that c19 document, in
05:28:00PM 25 the same tab 18, is an article from ScienceDirect. Have you

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

- 05:28:07PM 1 read that article? And this is an abstract of it. Have you
- 05:28:10PM 2 read the full article?
- 05:28:11PM 3 A. It came out last Friday, I believe.
- 05:28:14PM 4 Q. So this is brand-new?
- 05:28:15PM 5 A. (Nods head.)
- 05:28:16PM 6 Q. And it says -- at the conclusion on the second, it says,
- 05:28:21PM 7 for example, that this study included 1,761,060 patients,
- 05:28:31PM 8 COVID-19 patients. You see that at the top of page 2?
- 05:28:35PM 9 A. I hear what -- yes, sir.
- 05:28:39PM 10 Q. That's one of the largest studies of this kind in the
- 05:28:42PM 11 world?
- 05:28:42PM 12 A. It is. But it's a little different than just that
- 05:28:46PM 13 1.7 million stunning, huge number. This is a -- an intentional
- 05:28:51PM 14 look at its effect on -- because part of that number comes from
- 05:28:58PM 15 2009 until now.
- 05:28:58PM 16 Q. Okay.
- 05:28:59PM 17 A. So when you dial down into it, you see that it is being
- 05:29:04PM 18 directly compared in the last two years -- or in the last year
- 05:29:08PM 19 and a half to remdesivir.
- 05:29:10PM 20 Q. So, in fact, the conclusion is that ivermectin was
- 05:29:13PM 21 associated with decreased mortality in patients with COVID-19
- 05:29:16PM 22 compared to remdesivir?
- 05:29:19PM 23 A. Absolutely. 70 percent.
- 05:29:21PM 24 Q. Okay.
- 05:29:22PM 25 A. 70 percent.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:29:24PM 1 MR. STAVER: I want to introduce that as our
05:29:26PM 2 plaintiffs' next exhibit, Your Honor.

05:29:29PM 3 THE COURT: Is this 19?

05:29:30PM 4 MR. STAVER: This would be our tab 19. That's -- I'm
05:29:33PM 5 sorry -- our tab 18 at the very end. It's a two-page document,
05:29:38PM 6 just before tab 19.

05:29:38PM 7 THE COURT: Yeah, it's just before tab 19. All
05:29:38PM 8 right.

05:29:38PM 9 MR. STAVER: Yeah, yeah.

05:29:41PM 10 THE COURT: So that -- 18 is received, in accord with
05:29:45PM 11 the earlier ruling.

05:29:48PM 12 Q. (By Mr. Staver) And I think the final one,
05:29:51PM 13 Dr. Tankersley, is -- if you can turn to tab 19. Is this an
05:29:59PM 14 article that you also, as part of your practice and research,
05:30:01PM 15 have reviewed with regards to treating COVID patients?

05:30:06PM 16 A. Yes, sir.

05:30:07PM 17 Q. Now, what is the conclusion of that article, in your
05:30:13PM 18 opinion?

05:30:13PM 19 A. It's unequivocal, its benefit -- ivermectin's benefit in
05:30:16PM 20 the prophylaxis and treatment.

05:30:18PM 21 You might note that this is the *American Journal of*
05:30:22PM 22 *Therapeutics*. It was printed last year. I think it was around
05:30:25PM 23 the -- in the summertime of last year. But more importantly
05:30:27PM 24 than this, even, is the state -- it came out of Brazil at the
05:30:32PM 25 end of the year, December 28th, I believe. 220,000 people.

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:30:37PM 1 220,000 people is a huge population showed as prophylaxis early
05:30:44PM 2 and late treatment.

05:30:46PM 3 For prophylaxis, it's hard to win on patients that have
05:30:48PM 4 diabetes because their immune system. In that study, if they
05:30:53PM 5 took it prophylactically, it reduced the diabetics' mortality
05:30:57PM 6 81 percent. 30, 40 percent is a big win with diabetics.
05:31:04PM 7 81 percent in that study. And this validates -- of course, it
05:31:07PM 8 validates what this study is talking about.

05:31:09PM 9 Q. Are you familiar with the term "meta-analysis"?

05:31:12PM 10 A. Yes, sir.

05:31:12PM 11 Q. And a meta-analysis is an analysis of other studies?

05:31:16PM 12 A. It's a combination evaluation.

05:31:20PM 13 Q. So this conclusion is, "Meta-analysis based on 18
05:31:23PM 14 randomized controlled treatment trials of ivermectin and
05:31:30PM 15 COVID-19 have found large statistically significant reductions
05:31:34PM 16 in mortality, time to clinical recovery, and time to viral
05:31:41PM 17 clearance. Furthermore, the results from numerous controlled
05:31:45PM 18 prophylaxis trials report significantly reduced risk of
05:31:49PM 19 contracting COVID-19 with the regular use of ivermectin.
05:31:54PM 20 Finally, the many examples of ivermectin distribution campaigns
05:31:59PM 21 leading to rapid population-wide decreases in morbidity and
05:32:04PM 22 mortality indicate that an oral agent effective in all phases
05:32:08PM 23 of COVID-19 has been identified."

05:32:10PM 24 Do you agree with that assessment, based upon your
05:32:13PM 25 research and your clinical experience in treating COVID

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:32:17PM 1 patients?

05:32:18PM 2 A. Absolutely, yes, sir.

05:32:19PM 3 MR. STAVER: I would like to introduce that as our
05:32:22PM 4 next exhibit, Your Honor.

05:32:23PM 5 THE COURT: And that is 19?

05:32:25PM 6 MR. STAVER: That is our tab 19. That's correct.

05:32:27PM 7 THE COURT: And Plaintiffs' 19 is received, again,
05:32:30PM 8 subject to the earlier ruling.

05:32:32PM 9 MR. STAVER: Thank you, Your Honor.

05:32:33PM 10 (Plaintiffs' Exhibit 19 admitted.)

05:32:33PM 11 Q. (By Mr. Staver) With regards to the issues of safety, do
05:32:44PM 12 you agree with the testimony that has been before you that
05:32:49PM 13 there are significant risks with regards to all of the COVID
05:32:54PM 14 vaccines?

05:32:54PM 15 A. I don't see how anybody can look at last Monday's data
05:32:58PM 16 that was released about Pfizer's own knowledge of a year ago --
05:33:05PM 17 could conclude anything other than that.

05:33:07PM 18 Q. With regards to the testimony with respect to efficacy,
05:33:10PM 19 whether it's preventing transmission or serious conditions of
05:33:13PM 20 COVID, do you agree with the previous testimony that it is
05:33:20PM 21 lacking effectiveness in preventing transmission, particularly
05:33:23PM 22 with Omicron?

05:33:25PM 23 A. There is, without doubt, if you look at just within the
05:33:28PM 24 last month -- you mentioned it, but I don't think you went into
05:33:31PM 25 it -- very briefly -- that Israel had the -- one of the highest

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:33:35PM 1 vaccination rates and during the two-week period that I know
05:33:38PM 2 of, in looking at the data, had the highest per capita
05:33:43PM 3 positivity in the world. And that brings to a very important
05:33:47PM 4 point. If America is so adamant about getting this right --
05:33:52PM 5 and this was my presentation to Senator Tuberville before he
05:33:58PM 6 spoke to -- he's on the health committee in the Senate. And I
05:34:00PM 7 started with, "How are we" -- "What would you grade America's
05:34:03PM 8 response?"

05:34:03PM 9 He said an F. He -- an F. I said I agree. Why are we
05:34:07PM 10 still on Johns Hopkins website -- it's updated weekly. We are
05:34:13PM 11 still in the bottom 20. We range from 17 to 20 out of 185
05:34:18PM 12 countries in the world that -- on mortality rate. This is
05:34:24PM 13 Johns Hopkins data. We are abysmal. This is not the
05:34:28PM 14 United States I thought we were.

05:34:30PM 15 Q. You've heard the testimony of the commander. You heard
05:34:35PM 16 the -- and you reviewed these affidavits that were filed --
05:34:40PM 17 well, let me ask -- go back.

05:34:41PM 18 You heard the testimony of the commander today, correct?

05:34:44PM 19 A. Yes, sir.

05:34:44PM 20 Q. Did you review the declarations that were filed by the
05:34:49PM 21 defendants? I'm not going to, because of time, go into those.

05:34:52PM 22 A. I did.

05:34:53PM 23 Q. That would include Lescher, Yun, Rans, and Marks?

05:34:59PM 24 A. Yes, sir.

05:35:01PM 25 Q. Do you have an opinion as to whether COVID vaccination is

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:35:05PM 1 the only way, particularly in the military for our plaintiffs

05:35:09PM 2 here, to be protected from COVID?

05:35:13PM 3 A. Apparently, they have no view outside of that, based on

05:35:16PM 4 what I read. But I think that the evidence --

05:35:18PM 5 Q. What is your opinion?

05:35:19PM 6 A. -- yes, it is case --

05:35:20PM 7 Q. Do you disagree with their opinion that everyone would

05:35:24PM 8 have to be vaccinated in order to have military readiness?

05:35:28PM 9 A. When I was deployed in '04, '05, and '08, several of the

05:35:33PM 10 people who came through did not get the anthrax. We did not

05:35:37PM 11 turn them around and send them home. I don't know why that

05:35:40PM 12 would be the case here, when anthrax is more lethal.

05:35:45PM 13 Q. And, in fact, the anthrax vaccinations was rushed, was it

05:35:49PM 14 not?

05:35:49PM 15 A. It was.

05:35:51PM 16 Q. And was there not injuries, people still suffering --

05:35:51PM 17 A. Absolutely.

05:35:54PM 18 Q. -- from it today?

05:35:54PM 19 A. Sorry.

05:35:54PM 20 Q. Is that correct?

05:35:54PM 21 A. That is correct.

05:35:55PM 22 Q. In the military?

05:35:56PM 23 A. Yes, sir.

05:35:57PM 24 Q. And, finally, based upon your clinical experience and your

05:36:00PM 25 expertise and your research, are there other alternative ways

STEWART TANKERSLEY - DIRECT EXAM BY MR. STAVER

05:36:04PM 1 to prevent and treat COVID than vaccination?

05:36:08PM 2 A. The first data came out that the saline nasal rinse that's

05:36:12PM 3 been mentioned, it's -- now we add Betadine to it. Two

05:36:15PM 4 studies, one in Italy, one in France, showed that if you used

05:36:19PM 5 it in hospitalized patients, it decreased their

05:36:22PM 6 hospitalizations. Saline nasal rinse, just adding that,

05:36:27PM 7 decreased their hospitalization by 2.8 days. And their other

05:36:29PM 8 study showed ICU patients -- I don't know how -- ICU patients

05:36:33PM 9 decreased their hospitalization by two days, 2.0 days.

05:36:39PM 10 Q. And in addition to nasal rinse, other medications that

05:36:43PM 11 you're using as a physician --

05:36:43PM 12 A. Ivermectin --

05:36:43PM 13 Q. Wait until I finish.

05:36:43PM 14 A. Sorry.

05:36:50PM 15 Q. In addition to the nasal rinse, other medications that are

05:36:54PM 16 in existence are effective that are on that list for treating

05:36:59PM 17 COVID?

05:37:00PM 18 A. Yes, sir.

05:37:01PM 19 MR. STAVER: I don't have any other questions.

05:37:03PM 20 THE COURT: All right. Thank you, Mr. Staver.

05:37:05PM 21 Has the defense cross-examination of this witness?

05:37:10PM 22 MS. POWELL: Yes, Your Honor.

05:37:12PM 23 THE COURT: You're recognized for that purpose,

05:37:15PM 24 Ms. Powell.

05:37:15PM 25 MS. POWELL: Yes.

STEWART TANKERSLEY - CROSS-EXAM BY MS. POWELL

CROSS-EXAMINATION

05:37:17PM 1

05:37:17PM 2 BY MS. POWELL:

05:37:20PM 3 Q. Dr. Tankersley, have you submitted in this case a

05:37:22PM 4 declaration?

05:37:23PM 5 A. I have not.

05:37:24PM 6 Q. Or an expert report?

05:37:26PM 7 A. No, I have not.

05:37:27PM 8 Q. Any other written material by you?

05:37:29PM 9 A. No.

05:37:32PM 10 Q. Have you ever medically examined Navy Commander, the

05:37:36PM 11 plaintiff in this --

05:37:37PM 12 A. No.

05:37:39PM 13 Q. Have you ever treated him?

05:37:39PM 14 A. No.

05:37:40PM 15 Q. Have you ever medically examined Lieutenant Colonel 2?

05:37:42PM 16 A. No.

05:37:42PM 17 Q. Or treated her?

05:37:44PM 18 A. No.

05:37:46PM 19 Q. You did your residency in family medicine, correct?

05:37:49PM 20 A. Yes. Yes.

05:37:50PM 21 Q. Did you also do a residency in obstetrics?

05:37:53PM 22 A. Two years.

05:37:54PM 23 Q. Okay. Do you have residency or certification in

05:38:01PM 24 immunology?

05:38:03PM 25 A. Not --

STEWART TANKERSLEY - CROSS-EXAM BY MS. POWELL

- 05:38:03PM 1 Q. Or --
- 05:38:04PM 2 A. -- other than what we would normally be trained with.
- 05:38:07PM 3 Q. Sure, sure.
- 05:38:07PM 4 Genetics?
- 05:38:09PM 5 A. Other than what we would normally be trained with. But in
- 05:38:11PM 6 OB, we got a little more than normal.
- 05:38:14PM 7 Q. Or epidemiology?
- 05:38:17PM 8 A. I do not have.
- 05:38:21PM 9 Q. The plaintiffs, I believe, said they were qualifying you
- 05:38:25PM 10 as an expert on family medicine and COVID treatment. Are COVID
- 05:38:36PM 11 vaccines a treatment for COVID?
- 05:38:38PM 12 A. They've turned into that. They usually weren't
- 05:38:41PM 13 considered -- vaccines weren't considered that, but apparently
- 05:38:44PM 14 some people now view the vaccines as treatment.
- 05:38:46PM 15 Q. They're considered a preventative, right, not a
- 05:38:50PM 16 therapeutic?
- 05:38:51PM 17 A. That's what they have traditionally been.
- 05:38:54PM 18 Q. You talked a little bit about data you've collected on
- 05:38:58PM 19 your patients and other patients of doctors. That's not
- 05:39:01PM 20 something that is here for us to examine, right? It's not
- 05:39:05PM 21 submitted to the Court?
- 05:39:06PM 22 A. That is correct.
- 05:39:12PM 23 Q. I want to ask you -- it's always dangerous when I start
- 05:39:18PM 24 asking questions about things I don't know much about, but I
- 05:39:22PM 25 did want to ask you questions about a couple of these articles

STEWART TANKERSLEY - CROSS-EXAM BY MS. POWELL

05:39:27PM 1 you talked about before. If you flip to Article 9. Please
05:39:39PM 2 correct me if I mischaracterize your testimony. But I
05:39:42PM 3 understood you to say that this stood for the proposition that
05:39:45PM 4 the liquid nanoparticles used in some mRNA vaccines are highly
05:39:51PM 5 inflammatory. Correct?

05:39:52PM 6 A. In all of the mRNA vaccines, yes, that is correct.

05:39:58PM 7 Q. And this study is based on certain preclinical studies in
05:40:02PM 8 mice?

05:40:02PM 9 A. That's what this study is based off of, yes.

05:40:05PM 10 Q. Where they use much higher doses and volumes than would be
05:40:10PM 11 used in humans?

05:40:12PM 12 A. The volume in mice would be higher than humans. I doubt
05:40:17PM 13 they put a hundred micrograms of Moderna or 40 micrograms of
05:40:24PM 14 Pfizer in this. I do not recall that at all.

05:40:26PM 15 Q. I'm sorry, can you say that again?

05:40:30PM 16 A. I don't agree that they put more in these mice than they
05:40:33PM 17 did in humans. In fact, it says here we injected
05:40:38PM 18 10 micrograms, 5 micrograms, and 2.5 micrograms.

05:40:43PM 19 Q. But if you compare, say -- okay. If you turn to page 8,
05:40:50PM 20 under "Limitations of the Study." The second sentence reads,
05:40:55PM 21 "Vaccines -- Because vaccine doses and volumes utilized in
05:40:58PM 22 rodents are much higher than those in humans, detailed dose
05:41:02PM 23 volume response studies would be required."

05:41:06PM 24 A. Mm-hmm.

05:41:06PM 25 Q. Doesn't that indicate that the doses and volumes were

STEWART TANKERSLEY - CROSS-EXAM BY MS. POWELL

- 05:41:09PM 1 higher in rodents?
- 05:41:10PM 2 A. The volumes were not higher, but per mass they were.
- 05:41:14PM 3 Q. That makes sense.
- 05:41:16PM 4 Does this study conclude that the mRNA vaccines are
- 05:41:31PM 5 therefore too dangerous to use?
- 05:41:36PM 6 A. This study does not prove that messenger RNA vaccines are
- 05:41:41PM 7 too dangerous to use.
- 05:41:44PM 8 Q. You stated at one point, I thought, that you weren't aware
- 05:41:47PM 9 of any previous use of mRNA vaccines in humans prior to these
- 05:41:52PM 10 vaccines. Is that correct?
- 05:41:53PM 11 A. I did not say that.
- 05:41:54PM 12 Q. Okay. Because there have been previous human trials of
- 05:41:59PM 13 mRNA vaccines, correct?
- 05:42:00PM 14 A. Correct.
- 05:42:00PM 15 Q. Including for Zika virus and, I think, some others as
- 05:42:04PM 16 well?
- 05:42:05PM 17 A. Right.
- 05:42:16PM 18 Q. The -- if you'd -- the article at tab 10 about innate
- 05:42:23PM 19 immune suppression --
- 05:42:24PM 20 A. Right.
- 05:42:25PM 21 Q. -- I honestly could not tell from looking at it. Is this
- 05:42:28PM 22 published in a medical journal?
- 05:42:43PM 23 A. (No oral response.)
- 05:42:45PM 24 Q. "I don't know" is a fine response, too, if you don't know,
- 05:42:48PM 25 because I don't know.

STEWART TANKERSLEY - CROSS-EXAM BY MS. POWELL

- 05:42:53PM 1 A. (Reviewing document.) I do not know.
- 05:42:58PM 2 Q. Okay. You indicated that you reviewed Colonel Rans'
- 05:43:15PM 3 declaration, among others, correct?
- 05:43:18PM 4 A. Yes, ma'am.
- 05:43:19PM 5 Q. And I take it that you disagree with large swaths of it.
- 05:43:24PM 6 Do you dispute that COVID-19 is a highly infectious disease
- 05:43:28PM 7 that the military has to take seriously?
- 05:43:31PM 8 A. We have.
- 05:43:33PM 9 Q. Sorry. The question was whether you disagree with that
- 05:43:35PM 10 statement.
- 05:43:35PM 11 A. Oh, I agree we -- with that we should take it seriously.
- 05:43:40PM 12 Q. And that at the very least, dozens of service members have
- 05:43:44PM 13 died from COVID?
- 05:43:45PM 14 A. Per her testimony.
- 05:43:48PM 15 Q. Would you dispute that thousands have been hospitalized
- 05:43:51PM 16 from COVID? Service members --
- 05:43:54PM 17 A. No.
- 05:43:54PM 18 Q. -- to be specific.
- 05:43:55PM 19 And that those numbers include people who are otherwise
- 05:43:58PM 20 young and in good physical condition?
- 05:44:00PM 21 A. Yes.
- 05:44:05PM 22 Q. You do generally -- did I understand you to conclude that
- 05:44:10PM 23 in your opinion, the COVID-19 vaccines are not safe and
- 05:44:14PM 24 effective? Is that your testimony?
- 05:44:16PM 25 A. I think the evidence that we have is, without doubt -- is

STEWART TANKERSLEY - CROSS-EXAM BY MS. POWELL

05:44:19PM 1 not true -- that is a true statement. They are not safe and
05:44:23PM 2 effective.

05:44:23PM 3 Q. And you certainly recognize that your conclusion is
05:44:26PM 4 contrary to that of, say, the FDA?

05:44:29PM 5 A. And the CDC. Yes, I know that.

05:44:31PM 6 Q. And also the American College of Physicians?

05:44:33PM 7 A. Okay.

05:44:34PM 8 Q. And also the American Board of Family Medicine?

05:44:39PM 9 A. Yes.

05:44:39PM 10 Q. And Colonel Rans?

05:44:41PM 11 A. Yes.

05:44:42PM 12 Q. And Major Stanley?

05:44:42PM 13 A. Yes --

05:44:42PM 14 Q. And --

05:44:45PM 15 A. -- whoever -- I don't know Major Stanley.

05:44:47PM 16 Q. Oh. Fair.

05:44:48PM 17 Were you ever disciplined by the Alabama medical board?

05:45:01PM 18 A. Yes.

05:45:03PM 19 Q. When was that?

05:45:05PM 20 A. Three or four years ago.

05:45:07PM 21 Q. Okay.

05:45:11PM 22 MS. POWELL: I think those are all the questions I
05:45:13PM 23 have.

05:45:16PM 24 THE COURT: All right. Thank you, Ms. Powell.

05:45:18PM 25 Anything further, Mr. Staver?

STEWART TANKERSLEY - REDIRECT EXAM BY MR. STAVER

05:45:26PM 1 MR. STAVER: Just a --

05:45:31PM 2 REDIRECT EXAMINATION

05:45:31PM 3 BY MR. STAVER:

05:45:31PM 4 Q. Are you a physician licensed to practice in Alabama in

05:45:34PM 5 good standing?

05:45:36PM 6 A. I am.

05:45:36PM 7 Q. Are there any disciplinary actions against you?

05:45:39PM 8 A. Yes, there were, three or four years ago when I was three

05:45:42PM 9 days late in turning in my fees for a controlled substance that

05:45:51PM 10 was a administrative -- my fault. Paid a heavy fine for it,

05:45:57PM 11 \$2500.

05:45:58PM 12 Q. Because you have to turn in certain fees once you --

05:46:02PM 13 A. Every year.

05:46:03PM 14 Q. Every year.

05:46:03PM 15 With regards to prescribing controlled substances?

05:46:08PM 16 A. Yes, sir.

05:46:09PM 17 Q. And that was just missed, and that's what that was about?

05:46:13PM 18 A. Three days late, yes, sir.

05:46:15PM 19 Q. Has your expertise or your ethics in medicine ever been

05:46:20PM 20 questioned or disciplined?

05:46:22PM 21 A. No, sir.

05:46:22PM 22 MR. STAVER: I don't have any other questions.

05:46:24PM 23 THE COURT: All right. Thank you, Mr. Staver.

05:46:26PM 24 Then, sir, remembering to disconnect that microphone

05:46:32PM 25 wherever it is, you may step down and you're excused with our

CLOSING ARGUMENTS BY MS. POWELL

05:46:35PM 1 thanks.

05:46:53PM 2 Has the plaintiff any further evidence to offer by
05:46:57PM 3 live testimony or otherwise?

05:46:59PM 4 MR. STAVER: No, Your Honor, no other evidence, just
05:47:01PM 5 some brief closing arguments.

05:47:03PM 6 THE COURT: Let me just double check and make sure
05:47:06PM 7 that the defense has no evidence or witnesses to offer.

05:47:10PM 8 MS. POWELL: No other evidence. A couple of quick
05:47:13PM 9 points I'd like to make at some point before we close.

05:47:16PM 10 THE COURT: Well, why don't you make them now.

05:47:18PM 11 MS. POWELL: Thank you, Your Honor.

05:47:22PM 12 There were a few points that came up in testimony I
05:47:24PM 13 wanted to respond to very briefly. I have a list of six points
05:47:27PM 14 here, but feel free to cut me off or direct my attention.

05:47:30PM 15 THE COURT: I'm not going cut you off or anything
05:47:33PM 16 like that.

05:47:33PM 17 MS. POWELL: The first was in Navy Commander's
05:47:37PM 18 testimony. He testified that foreign countries could not tell
05:47:40PM 19 the U.S. what to do on its warships; that is true insofar as it
05:47:44PM 20 goes. But they can make requirements about who can enter their
05:47:46PM 21 ports and about who can disembark from those ships, and they
05:47:49PM 22 do. That's set forth in both the Dwyer declaration and the
05:47:53PM 23 Merz declaration we've submitted in connection with this
05:47:56PM 24 matter.

05:47:56PM 25 Second, Navy Commander made much of the fact that his

CLOSING ARGUMENTS BY MS. POWELL

05:48:01PM 1 ship has been underway, and that -- in his opinion, that the
05:48:06PM 2 COVID risks from that would be much the same as under
05:48:09PM 3 deployment. His ship -- to be clear, his ship has continued
05:48:16PM 4 making preparations for eventual deployment and has continued
05:48:20PM 5 certification so that it is not simply sitting idle, that is
05:48:24PM 6 true, but it has only gone underway with additional supervision
05:48:28PM 7 on the board, and the Navy feels strongly that it can only go
05:48:32PM 8 underway with additional supervision onboard. And of course
05:48:34PM 9 the risks associated with those training exercises, while not
05:48:39PM 10 zero by any means, are significantly less than those that would
05:48:42PM 11 occur on an actual deployment.

05:48:45PM 12 Plaintiffs made mention of the statement by Admiral
05:48:52PM 13 Merz in the *Navy Times* that the Navy was functioning just fine
05:48:56PM 14 under the threat of Omicron. That is true, but it is also true
05:49:00PM 15 on the face of the article that he says that is specifically
05:49:03PM 16 because the operational vehicles are fully vaccinated. It's
05:49:07PM 17 apparent from the face of the article where he's talking about
05:49:10PM 18 the incident on the USS Milwaukee, and he confirms as much in
05:49:12PM 19 the declaration we submitted to this Court, that the reason
05:49:15PM 20 that operational vehicles are so much more effective now than
05:49:18PM 21 they were during the Delta surge is because those units are
05:49:21PM 22 fully vaccinated. That would not have been the case had there
05:49:24PM 23 been unvaccinated people onboard that ship. And he makes the
05:49:28PM 24 point that even a single unvaccinated sailor can change the
05:49:32PM 25 outcome.

CLOSING ARGUMENTS BY MS. POWELL

05:49:32PM 1 I wanted to touch very briefly on the VAERS data. I
05:49:41PM 2 think these points were made during the cross-examination, but
05:49:44PM 3 I wanted to make sure they were clearly laid out as well. It
05:49:47PM 4 is true that there is VAERS data about adverse vaccine events.
05:49:51PM 5 That does not mean that each one of those reports corresponds
05:49:53PM 6 to an actual adverse vaccine event.

05:49:56PM 7 Unlike previous vaccines and unlike previous VAERS
05:50:00PM 8 reports, the emergency use authorization connected with the
05:50:02PM 9 COVID 19 vaccines required healthcare providers to report all
05:50:07PM 10 adverse events, even if they don't believe that they're
05:50:10PM 11 connected to the vaccine, and without any time limitation as
05:50:14PM 12 between when the adverse event occurred.

05:50:16PM 13 Also unlike previous VAERS reports and previous
05:50:21PM 14 vaccines, the health authorities have ruled out a program in
05:50:26PM 15 which pretty much anyone who gets the vaccine is asked to
05:50:30PM 16 provide their email address and directly email the link where
05:50:33PM 17 they can report adverse events, and then in fact email the
05:50:36PM 18 followup link in a few weeks to follow up with any adverse
05:50:40PM 19 events, so you see significantly more self-reporting than has
05:50:43PM 20 been true in the past.

05:50:44PM 21 Between those two things, it's not possible to
05:50:46PM 22 compare the current reporting with past reporting and conclude
05:50:49PM 23 that there is more of a problem with their vaccine. Point of
05:50:53PM 24 fact, hundreds of millions of people have gotten doses of the
05:50:56PM 25 vaccines; serious adverse events are exceedingly rare.

CLOSING ARGUMENTS BY MS. POWELL

05:51:00PM 1 And the final -- well, two things. I did want to
05:51:07PM 2 touch briefly on the pressure that Lieutenant Colonel Long
05:51:14PM 3 claimed she felt not to testify today. It was my understanding
05:51:17PM 4 that she was counseled as to Army regulations and DoD ethics
05:51:21PM 5 guidelines that prevent someone --

05:51:25PM 6 THE COURT: Feel free to get some water if you want,
05:51:28PM 7 Ms. Powell.

05:51:28PM 8 MS. POWELL: Thank you.

05:51:28PM 9 THE COURT: That's fine.

05:51:44PM 10 MS. POWELL: -- does prevent Army personnel from
05:51:46PM 11 testifying in an official capacity as an expert against the
05:51:49PM 12 government; it's a matter of ethics, regulations, and conflicts
05:51:54PM 13 of interest do not constitute witness tampering. We've not
05:51:56PM 14 asked the Court to exclude her testimony on that basis today.

05:52:03PM 15 THE COURT: And I didn't receive her as an expert,
05:52:09PM 16 and I don't think she was proffered that way. I think a couple
05:52:12PM 17 of the questions may have been in that form, but if they called
05:52:17PM 18 for an opinion, a mere opinion and by a nonexpert witness, then
05:52:24PM 19 I would treat it accordingly.

05:52:26PM 20 MS. POWELL: I certainly gathered that several of
05:52:28PM 21 these witnesses were attempting to walk that line without
05:52:31PM 22 providing expert testimony, but it seemed to be based on their
05:52:34PM 23 expert conclusions on how safe and effective the vaccine was.

05:52:40PM 24 THE COURT: Well, that's a recurrent problem in
05:52:42PM 25 litigation, because it's certainly possible for someone who has

CLOSING ARGUMENTS BY MS. POWELL

05:52:45PM 1 expertise to testify as a fact witness without the need for
05:52:53PM 2 qualifying as a so-called expert and responding to questions
05:52:58PM 3 and testifying in the form of an opinion. And it's possible,
05:53:01PM 4 as you know, for certain laypersonnel to provide opinion
05:53:05PM 5 testimony depending upon what the circumstances are.

05:53:08PM 6 MS. POWELL: Sure.

05:53:09PM 7 THE COURT: But typically someone can provide
05:53:14PM 8 observational fact-based witness testimony without qualifying
05:53:21PM 9 as an expert, as you know.

05:53:24PM 10 MS. POWELL: So my last two points is -- are -- oh,
05:53:31PM 11 one, plaintiffs' counsel claims that he asked us to bring
05:53:36PM 12 witnesses here today. To my knowledge, the only witness they
05:53:39PM 13 asked us to bring was Captain Brandon, who is at sea today, and
05:53:44PM 14 in any event was not subject to a Rule 45 subpoena. For policy
05:53:49PM 15 reasons, we generally don't offer up witnesses outside the
05:53:53PM 16 subpoena power, especially at this preliminary stage. But they
05:53:57PM 17 certainly didn't ask us to bring anyone other than Captain
05:54:01PM 18 Brandon. I do realize that the Court suggested as much, that
05:54:05PM 19 the Court might want to hear from some of our declarants.

05:54:08PM 20 And I did want to just sort of reiterate what we've
05:54:14PM 21 said before, because I think it's important, that we feel like
05:54:19PM 22 the record is adequate as it is, because these declarants are
05:54:24PM 23 entitled to substantial deference on their expert military
05:54:28PM 24 judgment, but on the other issues on which they've offered
05:54:31PM 25 meaningful opinions in which they speak on behalf of the

CLOSING ARGUMENTS BY MR. GANNAM

05:54:36PM 1 military. The Supreme Court has said in *Rostker*, and in *Hawaii*
05:54:40PM 2 *versus Trump*, and other cases we've cited in our briefs that
05:54:43PM 3 other expert opinions, other opinions from within the military
05:54:46PM 4 even are quite beside the point in cases like this and should
05:54:50PM 5 be disregarded.

05:54:51PM 6 Here, the evidence shows -- the evidence shows the
05:55:06PM 7 military has an extremely strong interest in vaccinating these
05:55:10PM 8 two particular officers and that less restrictive means offered
05:55:14PM 9 do not allow the military to address those concerns.

05:55:17PM 10 I welcome any questions from the Court.

05:55:20PM 11 THE COURT: All right. Thank you very much. Thank
05:55:22PM 12 you, Ms. Powell.

05:55:26PM 13 Mr. Gannam.

05:55:48PM 14 MR. STAVER: Your Honor, I'll have just a short
05:55:50PM 15 argument after his, and we'll be done.

05:55:56PM 16 MR. GANNAM: May it please the Court:

05:55:57PM 17 Your Honor, the defendants have not met their burden
05:56:00PM 18 to obtain a stay of the Court's preliminary injunction. As we
05:56:04PM 19 showed in our response -- in our written response, it's quite
05:56:08PM 20 unusual for a court to enter a stay of its own preliminary
05:56:11PM 21 injunction because the standard or the factors are so similar.
05:56:16PM 22 This is not the kind of extraordinary case where there's
05:56:19PM 23 something new or something compelling presented by the defense
05:56:22PM 24 to justify this Court staying its own injunction.

05:56:26PM 25 On the first point, the defense hasn't made a strong

CLOSING ARGUMENTS BY MR. GANNAM

05:56:29PM 1 showing that they're likely to succeed on the merits. They
05:56:33PM 2 didn't meet their evidentiary burden at the PI hearing. We
05:56:36PM 3 think the Court has recognized that and said so explicitly both
05:56:40PM 4 in the PI order itself and in the preparatory order that the
05:56:44PM 5 Court entered after the emergency motion.

05:56:47PM 6 Their evidence is insufficient, to quote the Court's
05:56:50PM 7 March 2nd order, to answer the question that RFRA burdens them
05:56:54PM 8 to answer. And this is all despite the Court extending an
05:56:57PM 9 explicit invitation for the defendants to bring their witnesses
05:57:01PM 10 to be subjected to cross-examination, to address particular
05:57:05PM 11 items of proof that the Court viewed were deficient, and the
05:57:09PM 12 defense has declined to do any of those things.

05:57:11PM 13 There is no reliable empirical evidence in the record
05:57:16PM 14 that any unvaccinated service member is more likely to transmit
05:57:20PM 15 the COVID-19 virus to another service member. And apparently
05:57:24PM 16 in recognition of this point, the defense -- the defendants
05:57:27PM 17 focus mainly on an alleged higher likelihood of severe illness
05:57:31PM 18 being caused or hospitalization being experienced by
05:57:36PM 19 unvaccinated service members as compared to vaccinated.

05:57:39PM 20 But even if they can claim that at some point in time
05:57:43PM 21 it was ten times higher or 20 times higher for the unvaccinated
05:57:47PM 22 service member, the question that the defendants don't really
05:57:50PM 23 answer is: Ten times or 20 times higher than what? And that
05:57:54PM 24 "what" is a really small number that is declining
05:57:59PM 25 precipitously. Just last week, according to the CDC, the risk

CLOSING ARGUMENTS BY MR. GANNAM

05:58:03PM 1 of severe illness and hospitalization and death has been
05:58:07PM 2 greatly reduced for most people. And that's not just for
05:58:12PM 3 vaccinated people, that's for most people, including the
05:58:14PM 4 unvaccinated.

05:58:15PM 5 In the exhibit we put into evidence today, the
05:58:18PM 6 commander of U.S. SPACECOM adopted that very language in
05:58:22PM 7 notifying the 18,000 or so under his command that we don't need
05:58:27PM 8 to -- the mask policies were changing, and it's because there
05:58:31PM 9 is much lower risk for most people of hospitalization or severe
05:58:35PM 10 illness from COVID.

05:58:37PM 11 The defendants' evidence does not account for any
05:58:42PM 12 individualized risk factors that any plaintiff, either the two
05:58:46PM 13 that we're here about today, any other named plaintiff, or any
05:58:50PM 14 class member. The defendants are utterly unable to account for
05:58:53PM 15 any individualized risk factors that would make their already
05:58:57PM 16 speculative future harms either better or worse.

05:59:01PM 17 For example, the defendants can't say that an
05:59:04PM 18 unvaccinated Navy commander is any times more likely to be
05:59:08PM 19 hospitalized or severely ill than any vaccinated service
05:59:13PM 20 member. The defendants can't say that an unvaccinated
05:59:13PM 21 lieutenant colonel is any times more likely to be hospitalized
05:59:17PM 22 or experience severe illness than a vaccinated service member
05:59:22PM 23 either now or in the future. In fact, the defendants can't
05:59:25PM 24 rule out that either the Navy commander or the lieutenant
05:59:29PM 25 colonel are less likely to become severely ill or hospitalized

CLOSING ARGUMENTS BY MR. GANNAM

05:59:33PM 1 as compared to vaccinated service members, because their
05:59:37PM 2 evidence doesn't -- they don't attempt to take into account any
05:59:41PM 3 of the individualized factors that requires them to consider --
05:59:46PM 4 they've never attempted to do this, the defendants are utterly
05:59:48PM 5 unable, they have no process, they have no intent to evaluate
05:59:52PM 6 these individualized considerations.

05:59:58PM 7 The defense makes the argument that they are excused
06:00:02PM 8 from proving a strong likelihood of success on the merits, that
06:00:07PM 9 they only have to prove a substantial case, and they cite a
06:00:11PM 10 case, the *LabMD, Inc.*, case. But the full quote says that they
06:00:16PM 11 are only able to make this lower showing if the other three
06:00:20PM 12 factors, factors two, three, and four, weigh heavily in their
06:00:24PM 13 favor.

06:00:24PM 14 Well, that's not going to work here. Well, first of
06:00:27PM 15 all, the defendants don't even make a substantial case of
06:00:30PM 16 likelihood of success on the merits, but beyond that, the other
06:00:33PM 17 three factors all weigh very heavily against the stay in this
06:00:38PM 18 case, and so their burden on the likelihood-of-success factor
06:00:42PM 19 cannot be lowered.

06:00:43PM 20 Factor number two is irreparable harm to the
06:00:47PM 21 government. The government hasn't shown any irreparable harm
06:00:51PM 22 that it will suffer if the Court does not enter a stay. The
06:00:54PM 23 evidence shows that the Navy commander is doing his job and
06:00:56PM 24 he's doing it well, he's doing it with excellence, he's doing
06:00:59PM 25 it on schedule, he's doing it even with distinction as

CLOSING ARGUMENTS BY MR. GANNAM

06:01:03PM 1 communicated to him by the superior officer who accompanied him
06:01:07PM 2 at the direction of Captain Brandon.

06:01:10PM 3 And so there's no evidence in the record that
06:01:14PM 4 Lieutenant Colonel 2 is unable to perform her duties that are
06:01:17PM 5 assigned to her right now justifying some emergency stay of the
06:01:23PM 6 preliminary injunction. All we have are the defendants'
06:01:25PM 7 speculations and say-so that things might go bad in the future
06:01:29PM 8 and therefore they must get a stay now so that they can take
06:01:32PM 9 action against these two.

06:01:35PM 10 The evidence here that the defendants have put on
06:01:38PM 11 only in the form of declarations is really self-defeating. The
06:01:44PM 12 first Brandon declaration, which appears in the record at
06:01:48PM 13 Document 74-12, in paragraph 4, makes a statement that "I have
06:01:54PM 14 not lost trust and confidence in Plaintiff because of his
06:01:58PM 15 religious beliefs. Rather, once his religious accommodation
06:02:01PM 16 appeal was denied, he was issued an order giving him five days
06:02:04PM 17 to receive the COVID-19 vaccine, but he refused to do so." So
06:02:09PM 18 as of the time of that first declaration, the loss of
06:02:12PM 19 confidence was because his appeal was denied and he didn't get
06:02:15PM 20 vaccinated.

06:02:16PM 21 Well, if we fast forward just a short while later to
06:02:20PM 22 February 9th and the second Brandon declaration at
06:02:25PM 23 Document 81-1, in paragraph 19, he says, "My loss of confidence
06:02:31PM 24 in Plaintiff Navy Commander is not based on his vaccination
06:02:34PM 25 status or his denied request for religious exemption."

CLOSING ARGUMENTS BY MR. GANNAM

06:02:40PM 1 So just a few days later, the loss of confidence was
06:02:42PM 2 because of something that happened back in November; a false
06:02:45PM 3 accusation that the commander didn't report COVID symptoms and
06:02:50PM 4 went about his day, when the unrefuted testimony shows that he
06:02:53PM 5 had no COVID symptoms as confirmed by the ship's doc. He had a
06:02:59PM 6 loss of voice, which isn't listed in any Navy regulation or
06:03:03PM 7 guidance as a COVID symptom. So the target is always moving
06:03:08PM 8 for why Captain Brandon supposedly has lost confidence in the
06:03:13PM 9 Navy commander.

06:03:13PM 10 And that brings us to the unequivocal statements in
06:03:17PM 11 the government's motion -- in the defendants' motion for
06:03:21PM 12 emergency stay that says that the ship was essentially -- it
06:03:26PM 13 was indefinitely sidelined and effectively out of commission.
06:03:31PM 14 When they filed that declaration, he was literally underway at
06:03:35PM 15 sea, driving his ship, doing everything right, meeting his
06:03:38PM 16 qualifications, getting recognized by his superior officer.
06:03:43PM 17 There is simply no excuse for telling the Court that the reason
06:03:48PM 18 for -- that an emergency stay is needed because the ship's out
06:03:53PM 19 of commission and sidelined when the ship is literally out at
06:03:56PM 20 sea.

06:03:57PM 21 Here, I'm going to take issue with a statement -- or
06:03:59PM 22 with an argument that the defendants made both in their motion
06:04:02PM 23 and in closing argument. There is no case that stands for the
06:04:06PM 24 proposition that military officer declarations are
06:04:10PM 25 automatically due deference or automatically to be believed.

CLOSING ARGUMENTS BY MR. GANNAM

06:04:13PM 1 The case *Coburn v. McHugh*, cited by the defendants,
06:04:18PM 2 was an Administrative Procedure Act case where the Court made
06:04:21PM 3 an unremarkable observation that when reviewing administrative
06:04:27PM 4 agency actions that military administrators are due the same
06:04:32PM 5 deference as other public administrators in carrying out agency
06:04:36PM 6 action. There's nothing in that case that says that military
06:04:40PM 7 officer declarations are entitled to be believed and shouldn't
06:04:43PM 8 be subjected to scrutiny or cross-examination. We don't get
06:04:47PM 9 the opportunity to cross-examine any of these witnesses,
06:04:49PM 10 because the defendants declined the Court's invitation to bring
06:04:53PM 11 them. So what that leaves us with is there is no irreparable
06:04:58PM 12 harm to the government to satisfy the second requirement. The
06:05:02PM 13 only harm here is to the government's hubris in thinking that
06:05:05PM 14 it can do whatever it wants and continually move the target.

06:05:09PM 15 That brings us to the third element, which is, will
06:05:13PM 16 there be irreparable harm to the plaintiffs if the stay is
06:05:19PM 17 entered, and clearly there will be. We know just from the
06:05:22PM 18 course of proceedings since the Court's preliminary injunction
06:05:27PM 19 was entered that Captain Brandon wants to get Navy Commander
06:05:31PM 20 off of that ship, wants to remove him from command, and has
06:05:34PM 21 done a lot of things since the preliminary injunction was
06:05:37PM 22 entered to make life hard on him, even to the point of sending
06:05:40PM 23 someone to constantly watch over his shoulder. It hasn't
06:05:42PM 24 affected the commander's performance, but it's pretty clear
06:05:46PM 25 that, both in the case of Navy Commander and the lieutenant

CLOSING ARGUMENTS BY MR. GANNAM

06:05:50PM 1 colonel, their careers have been marked for death.

06:05:52PM 2 They have been given this stain of order disobeyers
06:05:56PM 3 that will not leave them if this Court enters a stay -- or
06:06:00PM 4 stays its injunction and allows the military to do what it will
06:06:04PM 5 with these two officers. It's clear that this stain of
06:06:08PM 6 disobeying an order can't be removed and won't be removed, it's
06:06:12PM 7 going to follow them, even if takes a couple of months for the
06:06:15PM 8 military to finally kill their careers instead of just holding
06:06:20PM 9 them in place where they are now.

06:06:21PM 10 The fourth factor is the public interest factor, and
06:06:24PM 11 there's absolutely no public interest in dismissing these
06:06:29PM 12 officers from the service. The public interest favors keeping
06:06:33PM 13 honorable, well-trained, loyal, excellent officers in service,
06:06:39PM 14 and it also favors stopping the military from burdening their
06:06:43PM 15 religious exercise when there are demonstrably effective, less
06:06:48PM 16 restrictive means of protecting the health and safety of the
06:06:50PM 17 military that have been working and will continue to work.

06:06:53PM 18 So in sum, Your Honor, the defendants have not met
06:06:56PM 19 their burden of obtaining a stay. The requirement for them
06:07:02PM 20 showing a strong likelihood of success on the merits is not
06:07:06PM 21 relaxed, because the other three factors don't weigh in the
06:07:09PM 22 defendants' favor, in fact they all weigh in favor of the
06:07:13PM 23 plaintiffs.

06:07:13PM 24 Thank you.

06:07:14PM 25 THE COURT: Did you want to comment on the

CLOSING ARGUMENTS BY MR. GANNAM

06:07:19PM 1 argument -- let me just use a generic term -- the argument
06:07:23PM 2 about deployability?

06:07:27PM 3 MR. GANNAM: Well, Your Honor --

06:07:27PM 4 THE COURT: I hesitate to say anything, because I'll
06:07:29PM 5 use the wrong word or something and set off dynamite capsules.
06:07:33PM 6 But in general, I understand the defendants to say that,
06:07:37PM 7 setting aside the issue about the alleged deception of the
06:07:46PM 8 commander and setting aside the issue about not reporting the
06:07:50PM 9 COVID symptoms last September, but that there is available to
06:07:54PM 10 them and within their discretion a neutral principle of
06:07:59PM 11 deployability. And that even if granted a religious exemption,
06:08:08PM 12 the Navy commander would not be deployable on the vessel,
06:08:15PM 13 couldn't enter a foreign port, and I certainly heard what Navy
06:08:21PM 14 Commander said about that.

06:08:22PM 15 But what do you say about that that is not a facially
06:08:30PM 16 retaliatory reason to remove him from his command and it is one
06:08:36PM 17 that is based on a neutral principle generally applicable in
06:08:40PM 18 the Armed Forces? So what do you say to that?

06:08:43PM 19 MR. GANNAM: Well, Your Honor, it's no different from
06:08:49PM 20 the military simply saying he can't be accommodated because we
06:08:52PM 21 say so. Whether he's deployable is a decision that's entirely
06:08:55PM 22 up to the U.S. military. They have not put on any evidence to
06:09:00PM 23 the contrary. As the Navy commander testified, if the port
06:09:05PM 24 they pull up to doesn't let unvaccinated sailors off the boat,
06:09:09PM 25 he stays on the boat. There's nothing that says he can't enter

CLOSING ARGUMENTS BY MR. GANNAM

06:09:13PM 1 a port because there are unvaccinated sailors on his ship.
06:09:17PM 2 He's demonstrated his deployability throughout the pandemic,
06:09:23PM 3 because it is a -- he's been able to be underway for 300 out of
06:09:29PM 4 400 days during a time when there was no vaccine available.

06:09:34PM 5 So the deployability argument, it's really pretextual
06:09:36PM 6 and it's just the military saying, well, we can't accommodate
06:09:39PM 7 him because we say so. The military could accommodate him by
06:09:42PM 8 allowing him to be deployed, by applying COVID protocols that
06:09:47PM 9 are constantly now being relaxed. The military can accommodate
06:09:51PM 10 him by letting him do what he's been doing this entire time.

06:09:54PM 11 So the deployability principle, it's not subject to
06:09:58PM 12 any outside factors that are outside the control of the
06:10:01PM 13 military. If RFRA requires an accommodation, then
06:10:06PM 14 deployability is on the table and the military can't just say,
06:10:09PM 15 well, we're going to avoid RFRA by saying we have this neutral
06:10:14PM 16 principle over here of deployability and we simply can't
06:10:16PM 17 accommodate him.

06:10:17PM 18 But this would also be a much different case if the
06:10:21PM 19 military said everyone who asks for a religious accommodation
06:10:24PM 20 got one, we're just going to move you into a nondeployable
06:10:28PM 21 position for a period of time, or even permanently. The
06:10:31PM 22 military isn't even offering that. The military is saying
06:10:35PM 23 we're going to separate you from the service if you don't get
06:10:38PM 24 vaccinated. So the deployability issue, it's really a red
06:10:42PM 25 herring, because the military has never even considered or

CLOSING ARGUMENTS BY MR. GANNAM

06:10:44PM 1 offered, like they do, for example, for temporary medical
06:10:47PM 2 exemptions, let's give temporary religious exemptions, give
06:10:51PM 3 them the same treatment, and in six months see how COVID's
06:10:54PM 4 going, see if there's really a need for continuing to require
06:10:56PM 5 this vaccination.

06:10:58PM 6 So the military has done nothing short of simply
06:11:01PM 7 saying we're going to separate people who are denied a
06:11:06PM 8 religious accommodation; that falls short of what RFRA
06:11:09PM 9 requires. And by calling it a deployability decision instead
06:11:14PM 10 of just refusing accommodation we don't think changes anything
06:11:17PM 11 in the analysis, and that's also why we think this
06:11:21PM 12 loss-of-confidence idea is really the same thing. If we can't
06:11:24PM 13 get them with -- we can't say we're going to kick you out
06:11:29PM 14 for -- because you're not vaccinated, we'll just come up with
06:11:32PM 15 something else. Or we'll say, you know, you didn't follow this
06:11:35PM 16 order to get vaccinated, even though you had an injunction from
06:11:38PM 17 a federal court against enforcement of that order, we're going
06:11:42PM 18 to say that we've lost confidence in you, and that just gives
06:11:46PM 19 the military the ability to get rid of somebody anyway. And in
06:11:50PM 20 both cases, there's kind of two sides of the same coin. It's a
06:11:53PM 21 blanket policy that's really a pretext for not granting the
06:11:57PM 22 accommodation that RFRA requires.

06:11:59PM 23 And it's -- if the military had simply treated
06:12:08PM 24 religious accommodation the same as it's treated medical
06:12:11PM 25 accommodations, we probably wouldn't be here. Or if the

CLOSING ARGUMENTS BY MR. GANNAM

06:12:11PM 1 military had --

06:12:14PM 2 THE COURT: Say that again.

06:12:15PM 3 MR. GANNAM: If the military had simply treated
06:12:18PM 4 religious accommodations the same as it treated medical
06:12:21PM 5 accommodations, we probably wouldn't be here. If the military
06:12:25PM 6 had done anything that provided meaningful accommodation to
06:12:27PM 7 service members, we probably wouldn't be here. But there's
06:12:29PM 8 really only two choices, it's either get vaccinated or get
06:12:31PM 9 kicked out. That doesn't satisfy RFRA.

06:12:34PM 10 And so apart from the merits of the case, the
06:12:38PM 11 defendants certainly haven't shown that they're entitled to a
06:12:41PM 12 stay of the Court's preliminary injunction. We think that
06:12:45PM 13 preliminary injunction ought to be extended to the entire
06:12:47PM 14 class, because they're all in the same position, they're all in
06:12:52PM 15 a -- not getting an individualized determination. All members
06:12:55PM 16 of the class are being refused an accommodation based on a
06:13:00PM 17 blanket policy, whether it's called nondeployability or
06:13:03PM 18 something else, they're all getting the same treatment, and
06:13:06PM 19 that's why we think that that's the way to manage the case
06:13:09PM 20 going forward, is to extend that preliminary injunction to all.

06:13:11PM 21 But for today's purposes, the defendants certainly
06:13:14PM 22 aren't entitled to a stay. They didn't prove their case to
06:13:18PM 23 avoid the preliminary injunction as the burden was shifted to
06:13:21PM 24 them by well-covered case law, and they haven't done anything
06:13:26PM 25 different today to justify a stay.

CLOSING ARGUMENTS BY MR. GANNAM

06:13:35PM 1 THE COURT: Begging the pardon of everyone present
06:13:38PM 2 and not suggesting there's any truth to this matter, you
06:13:42PM 3 don't -- or do you interpret the injunction in its present form
06:13:48PM 4 to require the Navy, if Navy Commander hypothetically disobeyed
06:13:58PM 5 some other order, or showed up drunk, if that's a typical
06:14:05PM 6 reason for relieving someone of command, I don't know, I assume
06:14:08PM 7 it might be at least temporarily, you don't interpret the
06:14:13PM 8 injunction in its present form to require the military, if that
06:14:17PM 9 occurred, say, tomorrow, to come here and get permission from
06:14:21PM 10 me to discipline Navy Commander?

06:14:26PM 11 MR. GANNAM: I think I agree with the point. I think
06:14:29PM 12 if it is a legitimate situation -- a legitimate charge of
06:14:33PM 13 disobeying an order and not something that, you know, we would
06:14:37PM 14 say -- really just arises from the same continuing effort to
06:14:40PM 15 get rid of him, but if it's a legitimate, you know, violation
06:14:43PM 16 of an order, violation of a policy, something that would
06:14:46PM 17 justify removing him from command entirely independent from not
06:14:51PM 18 only his vaccination status but these proceedings, then I think
06:14:54PM 19 that could be justified. Were that to happen, we would
06:14:58PM 20 certainly scrutinize it and would look to see whether it would
06:15:02PM 21 be something in contempt of the Court's order. But we would
06:15:05PM 22 never assert that it's impossible for the military to take such
06:15:09PM 23 action against the commander if that's justified.

06:15:14PM 24 THE COURT: All right. Thank you.

06:15:17PM 25 MR. GANNAM: Thank you, Your Honor.

CLOSING ARGUMENTS BY MR. STAVER

06:15:17PM 1 THE COURT: Mr. Staver.

06:15:23PM 2 MR. STAVER: Your Honor, I would add if the commander
06:15:25PM 3 showed up drunk on his ship, we would be here to ask you to
06:15:28PM 4 remove him from that position. I don't think that's going to
06:15:32PM 5 happen.

06:15:32PM 6 But what we have here is the, quote, nondeployability
06:15:36PM 7 is related to his vaccinated status. That's clear. And it was
06:15:43PM 8 clear also before this Court issued a TRO on February the 2nd
06:15:49PM 9 protecting him temporarily as this Court considered it with
06:15:52PM 10 regards to his impending discipline and removal on February
06:15:59PM 11 the 3rd because his appeal for vaccination had been denied.
06:16:03PM 12 Everything changed since then. There was no problem before
06:16:08PM 13 February 2, 3. In fact, he went out and took the ship out on
06:16:12PM 14 February the 4th, that Friday. But he was threatened by the
06:16:16PM 15 commodore. "The next time I see you -- I can't do anything to
06:16:21PM 16 you right now. The next time I see you, I will remove you from
06:16:24PM 17 command."

06:16:24PM 18 This Court then issued a preliminary injunction, and,
06:16:27PM 19 again, the commodore said, "The reason why I lost confidence in
06:16:31PM 20 him as my colleague is because of his vaccination status. He
06:16:35PM 21 lost his appeal and he refused to get the vaccination." That's
06:16:38PM 22 why they are now saying he's nondeployable.

06:16:41PM 23 The commander tells me right now that there are
06:16:44PM 24 female commanders, similar to what he does, piloting,
06:16:47PM 25 captaining these ships; they are childbearing age. They have

CLOSING ARGUMENTS BY MR. STAVER

06:16:52PM 1 the probability or possibility of being pregnant during the
06:16:56PM 2 time of war. They may have to be temporarily removed from that
06:17:01PM 3 while they're pregnant because of obviously pregnancy reasons,
06:17:06PM 4 but they're not separated from the Navy.

06:17:10PM 5 And in this particular situation, the only means that
06:17:14PM 6 they say is, number one, everyone has to be universally
06:17:19PM 7 vaccinated, and that vaccination is the magic stroke that will
06:17:25PM 8 prevent the degradation of military readiness. And absent
06:17:31PM 9 that, there is no middle ground, there is no middle ground,
06:17:34PM 10 there is no temporary assignments, there's nothing, there's no
06:17:36PM 11 other kinds of alternative, less restrictive means, as the
06:17:41PM 12 commander testified to it today, went through many of those
06:17:43PM 13 less restrictive means.

06:17:44PM 14 We talked about it today, about less restrictive
06:17:47PM 15 means in terms of treating COVID as well. There's no middle
06:17:51PM 16 ground. If you don't get the vaccination, you are permanently
06:17:55PM 17 separated, even if we're on the failing side, the opposite side
06:17:59PM 18 of the bell curve, and Omicron, we're hopefully looking at that
06:18:03PM 19 in our rearview mirror. That may be gone pretty quickly. It's
06:18:07PM 20 really on the downside now, but they want to permanently remove
06:18:10PM 21 this 17-, 18-year veteran, who loves God, loves the Navy and
06:18:16PM 22 wants to serve our country, and does it very well.

06:18:18PM 23 They have continually ignored this Court's
06:18:22PM 24 instruction with regards to RFRA. Because even if you have a
06:18:25PM 25 neutral nondeployability issue, it's not being applied in this

CLOSING ARGUMENTS BY MR. STAVER

06:18:30PM 1 case. It's being applied because of his vaccination status,
06:18:34PM 2 because he made that decision based upon his religious beliefs
06:18:37PM 3 which has been sincerely held and burdened, and they've
06:18:41PM 4 acknowledged that, and they have refused to this day to
06:18:45PM 5 individualize the compelling interest and the least restrictive
06:18:49PM 6 means to this commander and to this lieutenant colonel. And,
06:18:52PM 7 frankly, as this Court has observed already, they're using
06:18:55PM 8 magic words and they are doing rubber stamp across all branches
06:18:59PM 9 of the military, and we respectfully request this Court to
06:19:04PM 10 continue to require the United States military to comply by the
06:19:09PM 11 Constitution and the federal Religious Freedom Restoration Act.
06:19:15PM 12 They are not above the law, Your Honor.

06:19:16PM 13 THE COURT: Mr. Staver, you mentioned a moment ago
06:19:19PM 14 the compelling interest question. Two part question: A, do
06:19:28PM 15 you understand compelling interest to mean compelling interest
06:19:32PM 16 in vaccinating the force, or do you understand it to mean a
06:19:36PM 17 compelling interest in vaccinating, for example, Navy Commander
06:19:41PM 18 or Lieutenant Colonel 2 individually; and, two, does it make
06:19:45PM 19 any difference?

06:19:46PM 20 MR. STAVER: I understand compelling interest that
06:19:51PM 21 would be in the safety and military readiness, they've narrowed
06:19:56PM 22 that down to a blanket compelling interest of universal
06:20:00PM 23 vaccination. I don't think they have a compelling interest in
06:20:06PM 24 universal vaccination, but I think specifically RFRA requires,
06:20:09PM 25 as this Court has noted, is not this generic compelling

CLOSING ARGUMENTS BY MR. STAVER

06:20:11PM 1 interest that may apply as a blanket, but as it relates to the
06:20:17PM 2 person.

06:20:17PM 3 And I think it does make some difference with regards
06:20:21PM 4 to these two individuals, they haven't shown it, but I think
06:20:24PM 5 they lack a blanket compelling interest as well with regards to
06:20:28PM 6 all the branches of the military based upon what we have
06:20:32PM 7 presented by declaration from one of the world's recognized
06:20:37PM 8 experts, Dr. Peter McCullough -- we did that with his 38-page
06:20:42PM 9 affidavit and about 200 pages of exhibits in October when we
06:20:46PM 10 filed the case -- Dr. Robert Malone, the inventor of the mRNA
06:20:50PM 11 platform.

06:20:51PM 12 The testimony today with regards to what is happening
06:20:56PM 13 in terms of the lack of safety, the lack of efficacy and
06:21:00PM 14 alternative means, I think they don't even have a compelling
06:21:03PM 15 interest across the board to enforce this as the only way to
06:21:08PM 16 deal with COVID. They have a singular way to deal with COVID,
06:21:11PM 17 and it's universal vaccination. And I don't think that they
06:21:15PM 18 have a compelling interest on that universal vaccination
06:21:18PM 19 without other alternative ways that they can accomplish the
06:21:22PM 20 same purpose. So I think they fail -- as a blanket matter, I
06:21:28PM 21 think they fail even worse as an individualized matter.

06:21:32PM 22 THE COURT: So you don't think the statute -- you
06:21:36PM 23 think the statutory term is directed to both -- in other words,
06:21:43PM 24 when the statute talks about a compelling governmental
06:21:48PM 25 interest, you think it applies both to what I've characterized

CLOSING ARGUMENTS BY MR. STAVER

06:21:52PM 1 as their interest in -- I don't think I said universal, but
06:21:58PM 2 completely or substantially completely vaccinating the force,
06:22:04PM 3 or does the statute refer to compelling interest in our
06:22:10PM 4 instance, for example, in vaccinating Navy Commander?

06:22:19PM 5 MR. STAVER: The statute.

06:22:20PM 6 THE COURT: Or does it make a difference?

06:22:22PM 7 MR. STAVER: For purposes of this motion, I don't
06:22:26PM 8 think it makes a difference. But for purposes of a broader
06:22:29PM 9 motion --

06:22:29PM 10 THE COURT: Well, for purposes of understanding what
06:22:31PM 11 the statute is talking about.

06:22:32PM 12 MR. STAVER: Well, the statute -- the *Gonzales*
06:22:36PM 13 case -- or the *O Centro* case --

06:22:39PM 14 THE COURT: *O Centro*, yes.

06:22:40PM 15 MR. STAVER: -- said RFRA -- as you're familiar with
06:22:42PM 16 that --

06:22:42PM 17 THE COURT: I am.

06:22:42PM 18 MR. STAVER: -- says "that the compelling interest
06:22:46PM 19 test is satisfied through application of the challenged law,"
06:22:51PM 20 quote within a quote, "'to the person.'"

06:22:53PM 21 THE COURT: Right. That's the language I used in my
06:22:55PM 22 order.

06:22:55PM 23 MR. STAVER: That's the language that you used in
06:22:57PM 24 your order.

06:22:58PM 25 THE COURT: Yes.

CLOSING ARGUMENTS BY MS. POWELL

06:22:58PM 1 MR. STAVER: And I think that language actually -- if
06:22:59PM 2 you don't mind, I can get the RFRA statute, but the language
06:23:05PM 3 actually uses that language "to the person," which this is what
06:23:08PM 4 it is quoting.

06:23:09PM 5 THE COURT: All right. Thank you, Mr. Staver.

06:23:12PM 6 MR. STAVER: Thank you.

06:23:12PM 7 THE COURT: Ms. Powell, did you want -- I'll give you
06:23:14PM 8 the last word if you want it.

06:23:18PM 9 MS. POWELL: Only one final point -- to return to my
06:23:24PM 10 ask -- that the Court exclude the testimony of the three
06:23:27PM 11 witnesses I talked about earlier today who I don't think spoke
06:23:30PM 12 to any issue that is properly before the Court in the stay
06:23:34PM 13 motion.

06:23:35PM 14 THE COURT: I'll have to give that some thought. I
06:23:37PM 15 received the testimony, so at least at the moment I'm going to
06:23:39PM 16 leave it the way it is. How much probative value it had and as
06:23:45PM 17 to exactly what point, we'll leave that unspecified for the
06:23:48PM 18 moment.

06:23:49PM 19 So thank you very much. I appreciate everyone's
06:23:52PM 20 patience today. You're going to see Judge Porcelli and perhaps
06:23:55PM 21 me tomorrow morning at 10. So given the fact that it's almost
06:23:59PM 22 6:30, we'll leave it at that. So we are in recess.

06:24:04PM 23 I will, and think I can, rule before dark tomorrow.
06:24:08PM 24 If not, keep an eye on your inbox Saturday. But I'll get it
06:24:14PM 25 tomorrow or soon thereafter.

06:24:17PM 1 MR. STAVER: Your Honor, before the mediation
06:24:18PM 2 tomorrow at 10, you'll be there before the mediation starts?

06:24:25PM 3 THE COURT: If I'm going to be involved before you
06:24:28PM 4 talk to -- I'm going to talk to Judge Porcelli and see whether
06:24:32PM 5 he'd prefer me to begin with you at 10 and him defer a few
06:24:36PM 6 minutes, or whether he'd want me to come in afterwards. I'm
06:24:40PM 7 going to leave that to him.

06:24:41PM 8 MR. STAVER: We would like to present to you and/or
06:24:44PM 9 Judge Porcelli the outstanding motions that are paramount of
06:24:50PM 10 importance so we don't keep coming back with TROs.

06:24:53PM 11 THE COURT: We're aware of the motions, can I just
06:24:57PM 12 say, painfully aware of.

06:24:58PM 13 MR. STAVER: I understand.

06:24:59PM 14 THE COURT: We're in recess. We're in adjournment.
06:24:59PM 15 (Whereupon, the Court adjourned at 6:25 p.m.)

06:24:59PM 16 --oo0oo--

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REPORTER'S CERTIFICATE

I, REBECCA M. SABO, a Registered Merit Reporter and Certified Realtime Reporter, certify that the foregoing transcript is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription; that after being reduced to typewriting, a certified copy of the transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Tampa, Florida, this 31st day of March, 2022.

/s/ Rebecca M. Sabo

Rebecca M. Sabo, RMR, CRR
United States Court Reporter