

DUTY TO DISOBEY Legal Reference Guide

Upon viewing the *Duty to Disobey* documentary, questions may arise about claims that the Department of Defense's Covid-19 vaccine mandate was unlawful. This guide summarizes the core legal issues and provides the relevant sources.

1. The mandate identified the requirement to only use FDA-licensed products.¹
 - a. There were no fully FDA-licensed Covid-19 vaccines at the time of mandate implementation rendering it impossible to legally execute.
 - b. EUA products cannot be mandated, according to 21 U.S. Code § 360bbb-3(e)(1)(A)(ii)(III), which requires recipients be informed of “the option to accept or refuse administration.”² This was upheld in *Doe v Rumsfeld*, which found that without a presidential waiver, experimental products cannot be mandated and declared DoD's anthrax vaccine program illegal.³
 - c. The FDA-licensed *Comirnaty* product was unavailable at the time of the mandate and Pfizer stated it would not ship *Comirnaty* until stores of *BioNTech* were exhausted.⁴
 - d. A DoD memo signed by Dr. Terry Adirim and dated September 14, 2021, stated that the licensed (but unavailable) *Comirnaty* product and the available (but unlicensed) Pfizer *BioNTech* product would be used “interchangeably.”⁵ However, the legal conditions required in 42 U.S.C. § 262 for interchangeability were never met.⁶ No products are listed in the FDA's biologics database as biosimilar or interchangeable with *Comirnaty*.⁷
 - e. There is a statute specific to the military, 10 U.S.C. § 1107a, that permits the president to waive the requirement to provide informed consent (as mentioned above in 1b), to include informing the potential recipient of the right to refuse.⁸ This type of presidential waiver was never invoked during the mandate.
2. DoD violated the Religious Freedom Restoration Act (RFRA), found in 42 U.S.C. § 2000bb-1, which states that religious freedoms can only be limited when there is a “compelling governmental interest” and only limited via the “least restrictive means.”⁹
 - a. Many requests for religious accommodation were denied without due consideration, an issue highlighted in *U.S. Navy SEALs 1-26 v. Biden*.¹⁰
 - b. A federal district court found that the Navy likely violated RFRA and issued a preliminary injunction which blocked the Navy from punishing the unvaccinated. The U.S. government appealed to the Fifth Circuit Court and Supreme Court though the RFRA-related legal questions; issues were not decided upon by the higher courts.

¹ Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense

² §360bbb-3. Authorization for medical products for use in emergencies

³ *Doe v. Rumsfeld*, 297 F. Supp. 2d 119 - Dist. Court, Dist. of Columbia 2003

⁴ COVID-19 _ New Administration Code for Pfizer Pediatric Vaccine Booster Dose

⁵ Mandatory Vaccination of Service Members using the Pfizer-BioNTech COVID-19

⁶ §262. Regulation of biological products

⁷ Purple Book - Comirnaty

⁸ §1107a. Emergency use products

⁹ 42 USC Ch. 21B: Religious Freedom Restoration

¹⁰ *US Navy SEALs 1-26 v. Biden* (4:21-cv-01236)