

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 Evidentiary Hearing

Heard in Courtroom 15A
Sam M. Gibbons United States Courthouse
801 North Florida Avenue
Tampa, Florida 33602
Thursday - March 10, 2022
10:22 a.m. - 11:25 a.m.

BEFORE THE HONORABLE STEVEN D. MERRYDAY

UNITED STATES DISTRICT JUDGE

REBECCA M. SABO, RMR, CRR
Federal Official Court Reporter
Sam M. Gibbons United States Courthouse
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Proceedings recorded by machine shorthand
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PROCEEDINGS

1

2

(Open court.)

10:22:06AM

3

MR. STAVER: Okay. Very good.

10:22:07AM

4

With that in mind, we would like to just proceed with

10:22:12AM

5

the first witness --

10:22:12AM

6

THE COURT: You may.

10:22:14AM

7

MR. STAVER: -- which would be the Commander.

10:22:15AM

8

THE COURT: You may.

10:22:29AM

9

Good morning, sir. Let me ask you to pause and raise

10:22:29AM

10

your right hand.

10:22:29AM

11

COMMANDER SURFACE WARFARE OFFICER, UNITED STATES NAVY,

10:22:29AM

12

having been sworn or affirmed under oath, was examined and

10:22:36AM

13

testified as follows:

10:22:36AM

14

THE COURT: State your name, please.

10:22:38AM

15

Are you the Lieutenant Commander who is referred to

10:22:42AM

16

in the complaint in this action?

10:22:45AM

17

THE WITNESS: Yes, sir.

10:22:45AM

18

THE COURT: Please have a seat in the witness stand,

10:22:48AM

19

make yourself comfortable. We need to attach that microphone

10:22:55AM

20

with which I think you're familiar.

10:23:01AM

21

And I'll recognize Mr. Gannam for his direct

10:23:06AM

22

examination.

10:23:07AM

23

MR. GANNAM: Thank you, Your Honor.

10:23:07AM

24

May it please the Court.

10:23:07AM

25

///

10:23:11AM 1 ///

10:23:11AM 2 DIRECT EXAMINATION

10:23:11AM 3 BY MR. GANNAM:

10:23:16AM 4 Q. Commander, will you please just state again for the record
10:23:21AM 5 that you are in fact the Navy Commander Surface Warfare Officer
10:23:27AM 6 proceeding under pseudonym in this case?

10:23:30AM 7 A. I am the Navy Commander.

10:23:34AM 8 Q. And, Commander, are you aware of a preliminary injunction
10:23:37AM 9 order that was entered by this Court on February 18 essentially
10:23:42AM 10 prohibiting the Navy from taking any adverse action against you
10:23:45AM 11 as a result of your unvaccinated status?

10:23:48AM 12 A. Yes, sir.

10:23:49AM 13 Q. And are you aware that also on February 28th the
10:23:53AM 14 defendants filed an emergency motion in this court to stay that
10:23:58AM 15 preliminary injunction order?

10:23:59AM 16 A. Yes, I am.

10:24:00AM 17 Q. Have you read that motion to stay?

10:24:02AM 18 A. I have.

10:24:04AM 19 Q. I'm going to refer to a few portions of it.

10:24:08AM 20 On page 1, and this is, for the record, Document 118,
10:24:13AM 21 page 1, about three-quarters of the way down, it reads, "The
10:24:18AM 22 Order is an extraordinary intrusion upon the inner workings of
10:24:22AM 23 the military that presents a direct and imminent threat to
10:24:25AM 24 national security during a global military crisis, and it
10:24:29AM 25 indefinitely sidelines a Navy warship."

10:24:31AM 1 Had you read that statement in the motion?

10:24:34AM 2 A. Yes, sir, I did.

10:24:35AM 3 Q. And did you understand that warship to be referring to the
10:24:38AM 4 destroyer that you command?

10:24:40AM 5 A. Yes, sir.

10:24:42AM 6 Q. I also want to refer to page 16 of the same document,
10:24:46AM 7 Document 118, about halfway down it reads, "By forcing the Navy
10:24:50AM 8 to keep in place a commander of a destroyer who has lost the
10:24:55AM 9 trust of his superior officers and the Navy at large, this
10:24:58AM 10 Order effectively places a multi-billion dollar guided missile
10:25:02AM 11 destroyer out of commission."

10:25:03AM 12 Do you remember reading that statement in the motion?

10:25:06AM 13 A. Yes, sir, I do.

10:25:08AM 14 Q. On February 28th, when the defendants filed this motion
10:25:12AM 15 stating that your destroyer was indefinitely sidelined and
10:25:16AM 16 effectively out of commission, where were you?

10:25:19AM 17 A. I was out at sea.

10:25:22AM 18 Q. How were you out at sea, Commander?

10:25:24AM 19 A. I was commanding my warship on a two-week underway period
10:25:28AM 20 conducting training exercises.

10:25:31AM 21 Q. And can you explain what kind of training exercises you
10:25:35AM 22 were performing?

10:25:36AM 23 A. Yes, sir. Specifically my ship is in our training cycle,
10:25:43AM 24 and we have basic mission areas that we need to conduct
10:25:47AM 25 training, assessments, and certifications on to get us ready.

10:25:53AM 1 Most recently, my ship came out of a maintenance
10:25:56AM 2 availability last year, we came out of a shipyard. When you
10:25:58AM 3 come out of a shipyard, you also have to do some engineering
10:26:01AM 4 light-off assessments, dock trials, crew certification. We
10:26:05AM 5 fast cruise to make sure the ship is qualified, watch bills,
10:26:08AM 6 and ready to conduct sea trials, which was generally the first
10:26:12AM 7 underway period that the ship has since preceding the shipyard
10:26:16AM 8 availability window. We conducted that in December.

10:26:19AM 9 We closed out our maintenance phase window in that time
10:26:23AM 10 frame and started our basic phase training cycle; it's
10:26:27AM 11 generally about six months. We started that in January and it
10:26:30AM 12 will go into July.

10:26:32AM 13 Once our ship finishes that basic phase training cycle, we
10:26:36AM 14 start moving into integrative and advanced phases where we
10:26:41AM 15 integrate with other assets, working with, you know, a strike
10:26:43AM 16 group so we can, you know, certify to go on deployment.

10:26:47AM 17 My ship right now is in that basic window where we're
10:26:52AM 18 working on our basic certifications. Basic certifications are
10:26:55AM 19 not warfare specific. They include basic things that a warship
10:26:59AM 20 needs to do, like seamanship, navigation, damage control,
10:27:02AM 21 engineering, aviation, and communications. This past two-week
10:27:08AM 22 underway, we were specifically doing engineering training and
10:27:11AM 23 certifications to make sure we knew how to do engineering
10:27:15AM 24 evolutions, drills, and combat main space fire.

10:27:20AM 25 We did that all successfully. We finished that actually a

10:27:24AM 1 day early over that two-week period, and we were moving very
10:27:28AM 2 well in accordance of the assessment team that was onboard to
10:27:31AM 3 evaluate us. Most ships, and this is from the assessor's point
10:27:35AM 4 of view that I got, don't always finish that on time. They
10:27:37AM 5 have to, you know, continue, you know, doing these evolutions
10:27:42AM 6 and drills, you know, later underways which kind of prolong
10:27:45AM 7 their training time.

10:27:46AM 8 My ship was able to do that a day early. I try to move
10:27:50AM 9 forward and ask for to finish our certification altogether, we
10:27:54AM 10 didn't get approval to do that due to the inspection team's
10:27:57AM 11 shore leadership management, but that's okay. My ship
10:28:01AM 12 celebrated that victory for getting through our engineering
10:28:03AM 13 drills and certifications that we were required to complete in
10:28:04AM 14 that window.

10:28:06AM 15 Q. And were you in command of the ship throughout this
10:28:09AM 16 training exercise?

10:28:10AM 17 A. Yes, sir, I was.

10:28:11AM 18 Q. And were you in command of the ship -- or strike that.

10:28:14AM 19 The completion of the training exercise successfully was
10:28:21AM 20 all under your command, correct?

10:28:23AM 21 A. That is correct.

10:28:25AM 22 Q. Has the training schedule of your ship continued on the
10:28:32AM 23 same schedule as was in place prior to this Court entering its
10:28:36AM 24 preliminary injunction?

10:28:38AM 25 A. Yes, sir, for the most part. You know, if things do

10:28:42AM 1 change by, you know, training teams or schedule changes or
10:28:45AM 2 whatnot, you know, as long as we do it within our windows, we
10:28:47AM 3 are fine. And I say that under the auspices of, you know, last
10:28:51AM 4 time I testified in our January underway, our schedule was
10:28:55AM 5 impacted slightly by the weather and so we had to pull into
10:28:59AM 6 port and adjust our schedule for what training and
10:29:01AM 7 certifications we did, but we still completed them within our
10:29:05AM 8 allotted time.

10:29:06AM 9 Q. Has any aspect of your ship's training qualifications
10:29:09AM 10 schedule been impacted by your vaccine status?

10:29:12AM 11 A. No, sir, it has not.

10:29:15AM 12 Q. So is the work that you're doing for these training
10:29:19AM 13 qualifications, is it different from if your -- for example,
10:29:23AM 14 your ship was tasked with a combat mission?

10:29:27AM 15 A. Yes. So while we're in the basic phase training cycle,
10:29:32AM 16 it's kind of divided in half. You have Tier 1 certifications,
10:29:35AM 17 which are the non-warfare specific ones as previously
10:29:39AM 18 mentioned, and you have Tier 2 certifications, which go into
10:29:42AM 19 warfare specific areas, things like air warfare, surface
10:29:49AM 20 warfare, anti-submarine warfare, electronic warfare, so on and
10:29:51AM 21 so forth.

10:29:53AM 22 As a result of the USS Fitzgerald and John S. McCain
10:29:56AM 23 collisions back in 2017, the surface fleet and/or the Navy
10:30:00AM 24 adjusted the training cycle to make sure that, hey, we will not
10:30:04AM 25 task ships with missions unless they have met their basic

10:30:09AM 1 program certifications, and those are those Tier 1
10:30:12AM 2 certifications that I mentioned earlier, the seamanship,
10:30:14AM 3 navigation, damage control, engineering, aviation, and
10:30:17AM 4 communications.

10:30:18AM 5 My ship is still moving through those between now and the
10:30:21AM 6 end of April, so I would not be tasked to do any missions until
10:30:25AM 7 after we have met those minimum training requirements to
10:30:28AM 8 proceed forward. We have to get through our training
10:30:31AM 9 certifications right now to be able to do that. We don't take
10:30:34AM 10 ships that are, you know, in a shipyard or don't have the
10:30:38AM 11 proficiency or haven't been trained right to go out and do
10:30:41AM 12 missions that they're not properly certified to do. And my
10:30:43AM 13 ship is in that window right now while we're doing those things
10:30:47AM 14 as we speak.

10:30:47AM 15 Q. And is your ship on schedule to complete its necessary
10:30:51AM 16 training qualifications, that is, the schedule established by
10:30:55AM 17 the Navy prior to the Court entering its preliminary
10:30:58AM 18 injunction?

10:30:58AM 19 A. Yes, sir, we are.

10:31:00AM 20 Q. Now, when you go underway, or go out to sea on your ship,
10:31:05AM 21 do you -- are there certain COVID protocols that impact, you
10:31:09AM 22 know, what you have to do, for example, before you leave for a
10:31:12AM 23 trip?

10:31:16AM 24 A. Not necessarily before I leave anymore. And the COVID
10:31:19AM 25 policy seems to be changing, you know, every month in terms of

10:31:23AM 1 how we adapt and overcome.

10:31:25AM 2 I will tell you, you know, last -- or excuse me, in
10:31:28AM 3 January, the standard operational guidance for COVID policy was
10:31:33AM 4 released by the Navy, and it established conditions, for
10:31:37AM 5 example, for mask wear underway, in which, for the first ten
10:31:41AM 6 days underway, everyone has to wear masks in the conduct of our
10:31:45AM 7 duties as long as it doesn't impact the operations, and there
10:31:48AM 8 are some exceptions out there that I can make for, you know,
10:31:50AM 9 during flight operations, for example. They make exceptions
10:31:54AM 10 that, you know, if 75 percent of the eligible population that
10:32:02AM 11 has been boosted, has their booster shot, then the crew can
10:32:05AM 12 relax mask and you won't have to wear your mask underway.

10:32:09AM 13 That is an example of, you know, COVID protocols that we
10:32:12AM 14 still have in place. And most recently, last week, I think,
10:32:18AM 15 the indoor mask policy changed based on community level of
10:32:21AM 16 transmission.

10:32:23AM 17 THE COURT: I'm sorry. It changed based on?

10:32:25AM 18 THE WITNESS: (No oral response.)

10:32:26AM 19 THE COURT: I didn't hear what you said --

10:32:27AM 20 THE WITNESS: Yes, sir.

10:32:28AM 21 THE COURT: -- because your voice was a little soft.

10:32:30AM 22 Based on what?

10:32:32AM 23 THE WITNESS: Community level of transmission.

10:32:35AM 24 THE COURT: Got it. Thank you.

10:32:37AM 25 THE WITNESS: So there's a website on the CDC that

10:32:40AM 1 lists certain areas by county and gives their level of
10:32:44AM 2 transmission, low, medium, or high.

10:32:46AM 3 THE COURT: Yes.

10:32:48AM 4 THE WITNESS: And the DoD policy is for -- if you're
10:32:51AM 5 in areas of a low or medium level of transmission, indoor masks
10:32:55AM 6 are not required at indoor facilities. If it is high, then you
10:32:59AM 7 are required to wear that indoors. So right now, certainly in
10:33:01AM 8 Norfolk, indoor mask policy for my ship is relaxed because
10:33:06AM 9 Norfolk's level of transmission is low.

10:33:09AM 10 Q. (By Mr. Gannam) Have any COVID-related policies specific
10:33:15AM 11 to you because of your vaccination status impacted the ability
10:33:19AM 12 of your ship to complete its training qualifications or any
10:33:23AM 13 other tasks assigned to it?

10:33:25AM 14 A. No, sir.

10:33:26AM 15 Q. I'm going to refer again to the motion filed by the
10:33:31AM 16 defendants, specifically the attached declarations. So at
10:33:38AM 17 Document 118-4, which is the Admiral Gilday declaration. On
10:33:45AM 18 page 5, at the bottom, in paragraph 8, it reads, "The
10:33:50AM 19 effectiveness of mitigation measures is extremely limited on
10:33:54AM 20 ships where Sailors must live, work, eat, and sleep in close
10:33:58AM 21 proximity to other Sailors."

10:34:01AM 22 Had you seen that statement?

10:34:02AM 23 A. Yes, sir.

10:34:02AM 24 Q. Do you agree that's generally true?

10:34:04AM 25 A. Yes, sir.

10:34:05AM 1 Q. When you are underway for a training qualification
10:34:10AM 2 mission, do sailors have to live, work, eat, and sleep in close
10:34:14AM 3 proximity to other sailors?

10:34:16AM 4 A. Yes, they do.

10:34:16AM 5 Q. Is that close proximity any different when you're doing a
10:34:20AM 6 training qualification as opposed to when you're underway for a
10:34:23AM 7 combat mission?

10:34:24AM 8 A. No, sir, it does not.

10:34:25AM 9 Q. The second sentence of that paragraph reads, "Ships
10:34:27AM 10 typically have limited space to quarantine Sailors from the
10:34:31AM 11 rest of the crew, if such facilities exist at all."

10:34:35AM 12 You already testified that you have a specific berthing
10:34:38AM 13 area that you've established for quarantining anyone who tests
10:34:42AM 14 positive, correct?

10:34:42AM 15 A. That is correct. So all ships are supposed to have what's
10:34:45AM 16 called a quarantine or isolation instruction. And this
10:34:49AM 17 actually predated COVID, but it's obviously adapted for COVID,
10:34:54AM 18 such that if we do have somebody who develops symptoms underway
10:34:57AM 19 and gets tested and it comes up positive that we would put them
10:35:01AM 20 in isolation. The SOG 5.0, the standard operating guidance for
10:35:08AM 21 COVID that was released in January, even allows ships to
10:35:11AM 22 execute that ROM isolation period afloat, which is good, it
10:35:15AM 23 makes us more adaptable. We're moving with the policy, and we
10:35:19AM 24 can do that, we can execute that with our isolation protocols
10:35:22AM 25 that we have onboard our Navy vessels.

10:35:25AM 1 Q. And is there any -- is the limited space available to
10:35:30AM 2 quarantine sailors on your ship any more limited when you are
10:35:34AM 3 doing a training qualification exercise as opposed to being on
10:35:39AM 4 a combat mission?

10:35:40AM 5 A. The ability to isolate people I don't think is more
10:35:43AM 6 limited due to training. We are able to execute that now, we
10:35:50AM 7 did execute it last month when I had a three-week scheduled
10:35:54AM 8 underway period, had to pull in for the weather and then get
10:35:58AM 9 back underway again. I had folks that did test positive during
10:36:03AM 10 that period coming back from the holidays, you know, that were
10:36:04AM 11 delayed. We were able to ROM COVID-positive cases onboard the
10:36:07AM 12 ship with permission of my commodore, with the permission that
10:36:10AM 13 is laid out in that SOG guidance. We had about eight males and
10:36:14AM 14 two females in those isolation areas and were able to execute
10:36:18AM 15 this under Navy guidance effectively.

10:36:21AM 16 So to answer your question, does it, you know, change
10:36:23AM 17 right now? No, we're still able to execute that even while
10:36:26AM 18 we're doing our training missions.

10:36:27AM 19 Q. I'm going to refer now to Document 118-6, which is Admiral
10:36:34AM 20 Dwyer's declaration attached to the stay motion. On page 3 of
10:36:37AM 21 that document, in paragraph 6, it reads, "The environment in
10:36:41AM 22 which the Navy -- in which Navy personnel operate at sea - in
10:36:45AM 23 close quarters for extended periods of time in spaces without
10:36:48AM 24 the availability of exterior ventilation (for example, inside
10:36:52AM 25 surface ships, submarines and aircraft) - renders our Sailors

10:36:57AM 1 susceptible to contagious respiratory diseases such as
10:37:02AM 2 COVID-19."

10:37:02AM 3 Have you seen that statement before?

10:37:04AM 4 A. I believe I did read that.

10:37:05AM 5 Q. And do you generally agree with that statement?

10:37:11AM 6 A. Yes. I mean, I think on a warship, yes, we are confined
10:37:14AM 7 with all those limitations. I would say that also it doesn't
10:37:17AM 8 matter whether we're doing a training certification or, you
10:37:20AM 9 know, underway deployment either.

10:37:23AM 10 Q. So are the quarters any closer on an underway deployment
10:37:28AM 11 as compared to doing training qualifications?

10:37:31AM 12 A. No, sir. It's the same.

10:37:33AM 13 Q. When the government said on February 28th that your
10:37:39AM 14 destroyer was indefinitely sidelined, do you believe that's an
10:37:43AM 15 accurate statement?

10:37:44AM 16 A. No, sir, I do not.

10:37:45AM 17 Q. And when the government said on February 28th that your
10:37:48AM 18 destroyer was effectively out of commission, do you believe
10:37:52AM 19 that's an accurate statement?

10:37:54AM 20 A. No, sir, I do not.

10:38:03AM 21 Q. Several -- there have been several allusions in the
10:38:08AM 22 various declarations and the motion to the concept of good
10:38:09AM 23 order and discipline. Can you sort of explain for the Court
10:38:13AM 24 what is good order and discipline and why is that important in
10:38:16AM 25 the Navy?

10:38:16AM 1 A. So good order and discipline is, you know, our requirement
10:38:20AM 2 under Navy regulations that, you know, I am to maintain both as
10:38:23AM 3 a commanding officer and as a service to ensure the proper
10:38:27AM 4 operations for what we do. It does talk about, you know,
10:38:31AM 5 following orders and the importance of that. It also talks
10:38:34AM 6 about the moral integrity that we're supposed to establish in
10:38:38AM 7 the profession of arms.

10:38:39AM 8 It is a good thing to have good order and discipline, and
10:38:42AM 9 I agree with that. The problem that I have with, you know,
10:38:46AM 10 throwing out good order and discipline, even in this case, is
10:38:49AM 11 it becomes a catchall for anything where -- goes against, you
10:38:54AM 12 know, an established or initial policy.

10:38:58AM 13 We are historically repeating bad patterns in our history
10:39:03AM 14 for discriminatory acts. For example, if you go back into
10:39:07AM 15 history and look at the integration of people of color into the
10:39:10AM 16 military service, and whether they were segregated or
10:39:13AM 17 integrated, the push of not doing that was because it was
10:39:16AM 18 contrary to good order and discipline.

10:39:19AM 19 It's the same thing that was repeated when, you know,
10:39:22AM 20 gender was an issue and trying to integrate women with men in
10:39:26AM 21 military service, whether your troops are on the ground or on
10:39:29AM 22 the ship or submarine or whatever the case may be, you don't
10:39:32AM 23 want to do this because it's contrary to good order and
10:39:34AM 24 discipline.

10:39:35AM 25 The same thing was repeated again in like the '80s and

10:39:39AM 1 '90s when sexual orientation of the people in the military
10:39:43AM 2 became an issue and they the established policies like "don't
10:39:45AM 3 ask, don't tell." If you do, your sexual orientation now is
10:39:50AM 4 going to be contrary to good order and discipline because we
10:39:52AM 5 can't have folks serving together with contrary points of view
10:39:56AM 6 on that. Even most recently, today, in the past five years,
10:40:00AM 7 the topic of, you know, transgender or your gender identity is
10:40:04AM 8 a topic of, you know, hey, how are we going to implement this
10:40:07AM 9 or execute this to not affect good order and discipline?

10:40:11AM 10 The Navy has undergone, and I assume the military at
10:40:17AM 11 large, this, you know, idea of, how do we get better at
10:40:20AM 12 diversity and inclusion, and we do training on, like, things
10:40:23AM 13 that you're not supposed to discriminate against. You're not
10:40:26AM 14 supposed to discriminate against race, ethnicity, gender,
10:40:30AM 15 sexual orientation, so on and so forth, but one of those is
10:40:33AM 16 also religion. It's founded in our Constitution.

10:40:37AM 17 I'm here today because the military is not executing this
10:40:44AM 18 policy while respecting the constitutional freedoms laid out in
10:40:49AM 19 the First Amendment or RFRA. I should not be the one standing
10:40:54AM 20 here to say that today; generals and admirals, the executives
10:40:59AM 21 in our service, should be here to say that to the politics, to
10:41:03AM 22 the bureaucracy, to their decision-making. It should also not
10:41:06AM 23 be my junior sailors or the hundreds of thousands of military
10:41:10AM 24 servicemen out there to say, "Hey, I have a religious objection
10:41:14AM 25 to this. Why is no one not speaking out that we can do this

10:41:17AM 1 and still do the job, the mission?" That's for me to do when
10:41:22AM 2 my superiors will not.

10:41:24AM 3 I understand that I took an oath to the Constitution, that
10:41:28AM 4 is what my oath is, and it's different than the enlisted oath,
10:41:31AM 5 which is to follow orders. Every general on flag takes the
10:41:35AM 6 same oath as me, to uphold the Constitution, to bear true faith
10:41:39AM 7 and allegiance to the Constitution and the country whose course
10:41:40AM 8 it directs. That requires that I know the Constitution.

10:41:44AM 9 Our religious freedoms are being attacked. And when I
10:41:47AM 10 read the declaration that talks about, you know, there are no
10:41:51AM 11 less restrictive means other than vaccination, and they use
10:41:55AM 12 examples in there such as, you know, the port entry
10:41:59AM 13 requirements such as the pre-ROM deployment sequester. Those
10:42:04AM 14 are less restrictive means in and of themselves.

10:42:08AM 15 Your Honor, I did that last year when we did a deployment.
10:42:11AM 16 My ship, regardless of vaccination status, is that was a
10:42:14AM 17 policy, and we did a pre-deployment ROM. We all, the day after
10:42:18AM 18 Christmas, had to report to a hotel and test in prior to going
10:42:23AM 19 there. And when we tested out, we were allowed to go back in a
10:42:27AM 20 bubble transport back to the ship deemed clean. And that
10:42:31AM 21 policy has shifted obviously over the past year and a half, and
10:42:35AM 22 it's, you know, somewhere in the degree of vaccinated personnel
10:42:37AM 23 do not have to execute that ROM sequester. At one period of
10:42:41AM 24 time unvaccinated did. If the ability for me to go on
10:42:46AM 25 deployment is dependent upon whether or not I have to do a

10:42:48AM 1 pre-deployment ROM sequester that is a less restrictive means
10:42:52AM 2 than me getting a vaccine that I have a religious objection to,
10:42:57AM 3 then I would execute that.

10:42:58AM 4 The port of entry requirements, it's also laid out there,
10:43:01AM 5 that says my vaccination is going to affect that is confusing
10:43:04AM 6 to me, and I don't understand how they're saying that. Other
10:43:08AM 7 nations cannot tell our ship what to do as a sovereign-immune
10:43:14AM 8 vessel in terms of the interworkings of our ship. They can't
10:43:17AM 9 tell what our sailors can do onboard the ship or what we have
10:43:19AM 10 to do. They don't review or medical records; we don't give
10:43:22AM 11 that stuff up.

10:43:24AM 12 They can put restrictions on if people go out in town on
10:43:28AM 13 liberty or official business, that is true. But if I'm an
10:43:32AM 14 unvaccinated sailor and the choice is, hey, when you pull into
10:43:34AM 15 a port, if you're unvaccinated, you can't go out in town
10:43:39AM 16 because that's what the host country requirements are, right
10:43:41AM 17 when I step off that vessel, okay, I can stay on the ship.
10:43:44AM 18 That is my home, that's where I live, that is a less
10:43:47AM 19 restrictive means, and I would do that. We have done that over
10:43:50AM 20 the past two years.

10:43:52AM 21 I did a seven-month deployment in 2020 during the COVID
10:43:56AM 22 pandemic, we were not allowed to pull in anywhere. I did
10:43:59AM 23 another deployment in 2021 for 60 days, we pulled in seven
10:44:02AM 24 places -- around seven places in the Caribbean and we were not
10:44:06AM 25 allowed to leave the pier, and this was regardless of

10:44:09AM 1 vaccination status. The one time we were able to go on the
10:44:12AM 2 pier was in Guantanamo, and that's a U.S. base so we could do
10:44:16AM 3 that. The point is that is a less restrictive means to taking
10:44:20AM 4 the vaccine if you have a religious objection to it. We have
10:44:24AM 5 demonstrated resiliency and adaptability during the COVID
10:44:25AM 6 pandemic to execute our mission, and we can do that.

10:44:29AM 7 The Navy has policies right now in place where we set
10:44:32AM 8 accommodations in place just by policy. The standard operating
10:44:37AM 9 guidance that was just released in January did that when it
10:44:40AM 10 talked about the mask wear guidance underway. So if 25 percent
10:44:48AM 11 of the eligible population is not boosted, 75 percent are, like
10:44:53AM 12 that's an accommodation. The whole ship can now relax mask if
10:44:57AM 13 75 percent of the boosted population has met that requirement,
10:44:59AM 14 and it's not based on your medical or religious exemptions for
10:45:03AM 15 that other 25 percent, that's an accommodation.

10:45:07AM 16 The recent indoor mask guidance, that's an accommodation.
10:45:11AM 17 The fact that I can isolate people who are COVID-positive
10:45:17AM 18 regardless of their vaccination status underway and still
10:45:21AM 19 execute my mission is an accommodation. It isn't based on
10:45:25AM 20 religious objection, it's based on the fact that you are
10:45:29AM 21 COVID-positive. And for me to be able to execute my mission,
10:45:31AM 22 if you are only isolated for five days and I'm out at sea for
10:45:34AM 23 longer than that, I can still do that with minimum impact.
10:45:38AM 24 That's a good thing. But I accommodated vaccinated sailors in
10:45:44AM 25 that process as well, and I did. Every person that I ROM'd on

10:45:49AM 1 onboard my ship underway in January, it was about ten sailors,
10:45:50AM 2 they were all vaccinated sailors that were COVID-positive.
10:45:54AM 3 That's okay.

10:45:55AM 4 There are other examples out there where we make
10:45:58AM 5 accommodations. I mean the flu shot, I think I testified last
10:46:01AM 6 month, is another example of that. The flu shot policy that we
10:46:05AM 7 release every October-November time frame says, hey, everyone
10:46:08AM 8 is supposed to go do that, get evaluated by your medical
10:46:10AM 9 provider. The minimum requirement is 90 percent. What is that
10:46:15AM 10 10 percent delta based off of? I don't know that it's based
10:46:18AM 11 off of religion or anything else, it's by policy.

10:46:21AM 12 So if I have people that don't get the flu shot but the
10:46:24AM 13 rest of my ship is 90 percent or higher, we move forward. We
10:46:28AM 14 don't go after to separate them, we don't kick them off the
10:46:31AM 15 ship. Whether the people come and go or my flu shot inventory
10:46:37AM 16 expires and I have people that come and go, as long as I'm
10:46:41AM 17 above 90 percent, there is no question. That's okay.

10:46:43AM 18 The same should be true with the COVID policy. And we are
10:46:49AM 19 going out after people and separating people and removing them
10:46:52AM 20 from their job and making blanket policy statements to say they
10:46:55AM 21 can't execute their mission without respect to their religious
10:46:59AM 22 objections, which is required by law and enshrined in our
10:47:02AM 23 Constitution, and that is wrong.

10:47:05AM 24 Q. Let me ask you this, Commander. Has your vaccination
10:47:09AM 25 status in any way undermined the good order and discipline on

10:47:12AM 1 your destroyer?

10:47:13AM 2 A. I do not think so. I would say no.

10:47:17AM 3 Q. And how do you know?

10:47:19AM 4 A. My ship is performing everything that they need to do.

10:47:22AM 5 They are doing extremely well. As we go through our basic

10:47:27AM 6 phase training cycle, in terms of meeting our mission

10:47:30AM 7 objectives, we are doing that.

10:47:32AM 8 Just this week, I talked about engineering when we were

10:47:35AM 9 underway, we're finishing out our damage control

10:47:37AM 10 certifications. I was there for the first two days, we were --

10:47:40AM 11 it's a five-day event, we were on track to finish it on

10:47:43AM 12 Wednesday. My ship didn't need me there on Wednesday to

10:47:46AM 13 execute that, and they did, and they completed it, so now we

10:47:49AM 14 are damage control certified as we move out of the basic phase,

10:47:52AM 15 and that's a good thing.

10:47:53AM 16 The things that my ship are supposed to be doing, they are

10:47:56AM 17 doing well. I'm not saying we're perfect, because there are

10:47:59AM 18 obviously personnel, equipment issues, maintenance issues, and

10:48:01AM 19 training things that every ship does differently, but in terms

10:48:05AM 20 of meeting our mission objectives, we are doing well.

10:48:09AM 21 Q. And in your last training exercise that you just returned

10:48:13AM 22 from, were there any superior officers along the way with you

10:48:17AM 23 who gave you feedback about that particular mission?

10:48:19AM 24 A. Yes, there was.

10:48:21AM 25 Q. And who was that?

10:48:23AM 1 A. So my deputy commodore was sent to observe our two-week
10:48:28AM 2 underway period. He and another member of his staff, who is an
10:48:32AM 3 engineering readiness assessor, which is the purpose of our
10:48:36AM 4 underway, was there, and the deputy commodore was there,
10:48:41AM 5 purportedly, to observe me and make sure that the ship was
10:48:42AM 6 doing all right.

10:48:45AM 7 A welcoming to the crew, he observed our training, he
10:48:47AM 8 observed our evolutions, talked to me, gave me daily updates,
10:48:52AM 9 provided recommendations on how we can do better, which I
10:48:56AM 10 welcome. I always want to know how we can be better. And as a
10:49:00AM 11 post commanding guy, he has a good perspective how we can do
10:49:04AM 12 that. That's a part of his job.

10:49:04AM 13 So after the end of those two weeks, he sat down with me
10:49:07AM 14 and my executive officer the night before we pulled in and gave
10:49:11AM 15 us the download for his observations, and he did say we had a
10:49:15AM 16 very successful underway. He was very pleased that the ship
10:49:17AM 17 did more than just the engineering assessments that we were
10:49:20AM 18 required to do. We obviously did other things along the way;
10:49:24AM 19 we did electronic warfare training, combat systems training.
10:49:27AM 20 We had a very successful refueling at sea, which is a high risk
10:49:31AM 21 evolution. It was our second one of the year.

10:49:35AM 22 And so the focus of, hey, you're not solely focused on
10:49:38AM 23 engineering, but the rest of the ship is still doing stuff in
10:49:41AM 24 operations, which you need to do to train to go into battle
10:49:45AM 25 and/or deploy, the ship was doing that and he was pleased with

10:49:47AM 1 that.

10:49:48AM 2 So in addition to some other recommendations for
10:49:50AM 3 improvement, at the end of that brief, to me and XO, he said,
10:49:54AM 4 "I am going to go back and report that your ship is safe and
10:49:56AM 5 ready to execute the basic phase. There was nothing that
10:50:00AM 6 happened where I needed to intervene or had concerns on your
10:50:04AM 7 ability to command."

10:50:09AM 8 Q. Let me ask you about your appearance here today. How did
10:50:15AM 9 you obtain permission this time to come down and testify?

10:50:21AM 10 A. Yes, sir. So I got back from our underway period on late
10:50:27AM 11 Friday afternoon, didn't get home until Friday night, was
10:50:31AM 12 informed by the legal team that -- of the subpoena desiring my
10:50:35AM 13 presence here.

10:50:37AM 14 I -- first thing Monday morning coming into work, I let my
10:50:41AM 15 chain of command know, "Hey, these are my intentions." Based
10:50:44AM 16 on the discussions with my JAG or whatnot, he said, "Hey,
10:50:47AM 17 because you have a subpoena, this might be permissive TAD." I
10:50:47AM 18 let my supervisor know that I intend to do permissive TAD.

10:50:55AM 19 Q. What is permissive TAD? What does that mean?

10:50:57AM 20 A. So instead of taking leave where I use my entitled leave
10:51:02AM 21 days, it would be, you know, effectively like a no-cost orders
10:51:05AM 22 to come down and execute this legal matter.

10:51:09AM 23 I provided a travel risk assessment and a recommended ROM
10:51:14AM 24 for my return. I let my supervisor know, based on all the
10:51:18AM 25 change in guidance, this COVID risk assessment or travel risk

10:51:23AM 1 assessment is not a requirement, it is discretionary at the
10:51:28AM 2 commander. I presume, obviously, from last month, that he
10:51:31AM 3 wanted to see that, so I gave it. I recommended a three-day
10:51:34AM 4 ROM on my return based on the conditions, and then sent that
10:51:40AM 5 off.

10:51:40AM 6 Over the course of those two days, I got a lot of
10:51:45AM 7 questions or pushback on, you know, why permissive leave? Is
10:51:49AM 8 this required to be funded? Why are you taking leave? Your
10:51:54AM 9 leave is starting -- or your absence from the ship is starting
10:51:58AM 10 to impact readiness. Why are you subpoenaed? When I sent the
10:52:03AM 11 subpoena, it was, your lawyer sent the subpoena, not the judge.
10:52:06AM 12 I don't know if there's a difference to that, I don't know why.
10:52:09AM 13 There was a lot of push back and forth to be able to do that.

10:52:13AM 14 The frustrating part is, you know, after sending all that
10:52:16AM 15 stuff off, to include my, you know, leave chit request, which
10:52:21AM 16 is abnormal, all of our COs only email him, but he wanted to
10:52:25AM 17 see that, what exact location I was staying, the exact fly
10:52:30AM 18 times. So probably, like, after 15 emails of doing all this
10:52:35AM 19 stuff, he finally said, "Leave is approved."

10:52:37AM 20 However, I'm still here today and I don't know what my ROM
10:52:40AM 21 requirements will be upon my return. I will assume, in
10:52:43AM 22 discussion with him, that if he hasn't decided that I will do
10:52:46AM 23 the five-day ROM. By Navy policy, five days is only required
10:52:51AM 24 if you test positive for COVID. I tested prior to executing my
10:52:55AM 25 travel and it was negative, and I will test when I get back as

10:52:59AM 1 well.

10:52:59AM 2 Q. So your commander has not yet given you an answer on what
10:53:04AM 3 your ROM requirement will be when you return from this trip?

10:53:09AM 4 A. Correct. There is no final answer. He said it will be
10:53:12AM 5 five days unless I -- after reviewing my recommendation, which
10:53:15AM 6 he wants to pass along with the medical community to make sure
10:53:19AM 7 it's in line, to go earlier, but he has not deemed the official
10:53:23AM 8 five, three, or zero for ROM days.

10:53:26AM 9 Q. And is it also true, then, that you are unable to tell
10:53:29AM 10 your XO, for example, or other department heads when you'll be
10:53:33AM 11 back because you're waiting on this decision from your
10:53:35AM 12 commander?

10:53:36AM 13 A. That's correct.

10:53:40AM 14 Q. Argument was made a few minutes ago about what happened on
10:53:43AM 15 your last trip, this dispute over when you let your XO know
10:53:49AM 16 that you were traveling out of area. Do you recall that
10:53:52AM 17 argument earlier today?

10:53:54AM 18 A. Yes, sir, I do.

10:53:54AM 19 Q. And you recall discussing that at the last hearing on this
10:53:57AM 20 matter?

10:53:57AM 21 A. I do.

10:53:59AM 22 Q. Let me ask you to just remind the Court, when did you
10:54:03AM 23 first communicate that you were traveling out of area, or
10:54:08AM 24 taking leave out of area, to your crew?

10:54:12AM 25 A. To my crew or to my XO?

10:54:15AM 1 Q. To your crew.

10:54:16AM 2 A. Okay.

10:54:16AM 3 Q. Well, to your XO, if there's a difference.

10:54:19AM 4 A. Okay. So some of that confusion comes into play based on
10:54:23AM 5 the preceding Thursday, where I had to report in to my
10:54:26AM 6 supervisor because I did not get the vaccine when I went to
10:54:32AM 7 Navy Medical Center Portsmouth, and I reported back to my
10:54:36AM 8 commodore. It was also around the time that the injunction was
10:54:36AM 9 placed.

10:54:38AM 10 I asked then that, you know, "Hey, it's been a very
10:54:41AM 11 emotional, stressful time, I do need to take leave the
10:54:43AM 12 following week. I would like, you know, a day or two to spend
10:54:45AM 13 time with the family." He said, "Of course. You know, policy,
10:54:50AM 14 send me an email, we'll work on it from there." And at that
10:54:52AM 15 time I was going to take local leave the following week to
10:54:56AM 16 spend time with my family. There's -- that was conveyed.

10:54:59AM 17 Over the weekend is when I, you know, had the
10:55:02AM 18 correspondence with the legal team that said, "Hey, there's a
10:55:05AM 19 hearing. Are you in port, and are you available to come?" I
10:55:09AM 20 said, "I am in port, I could conceivably come. I need to
10:55:13AM 21 figure this out with my family," which my wife was supportive
10:55:16AM 22 of, and so we decided that, hey, let's do this.

10:55:19AM 23 So that Monday morning I made the preparations to, you
10:55:25AM 24 know, come down here for that hearing, submitted my request in
10:55:30AM 25 NSIPS. At the department head meeting that I had that

10:55:32AM 1 afternoon, which is -- we normally do on Monday afternoon, we
10:55:36AM 2 generally have an hour, hour and a half department head
10:55:39AM 3 meeting. I had six department heads, and my executive officer
10:55:42AM 4 and command master chief usually attend those. We talk about
10:55:46AM 5 various things, each department provides updates, talk about
10:55:49AM 6 the ship, what's coming up next, taskers that need to go out or
10:55:53AM 7 whatnot.

10:55:56AM 8 So over that hour-, hour-and-a-half-long meeting, I did
10:55:56AM 9 mention that, "Hey, for my leave this week, I will be out of
10:55:59AM 10 area, I will not be available, get the CO leave message ready,"
10:56:03AM 11 and then I continued on with, you know, multiple other things.
10:56:05AM 12 I cannot attest, because I did not specifically look at my
10:56:08AM 13 executive officer or specifically tasked him, I just said it
10:56:12AM 14 openly, passing in the group in that hour-and-a-half-long
10:56:13AM 15 conversation.

10:56:13AM 16 It is true that I did not make it a point to talk about
10:56:17AM 17 Tampa or the legal case. I did not want to, and frankly I
10:56:21AM 18 think that's, you know, contrary to good order and discipline,
10:56:24AM 19 because I don't want my subordinates to be privy to the
10:56:27AM 20 personal legal cases I'm involved that would also detract from
10:56:31AM 21 their mission, or what's my boss involved in, what's going to
10:56:34AM 22 happen to him. So I did feel that was necessary to protect
10:56:37AM 23 them from that, that does not mean that I didn't say I was
10:56:41AM 24 going out of the area.

10:56:42AM 25 The next morning -- or the next day, you know, at some

10:56:46AM 1 point the XO came in when we were having updates, and I pulled
10:56:50AM 2 him in and shut the door and I told my XO, "Hey, when you go in
10:56:55AM 3 and look at my leave chit, you're going to see that it's in
10:56:58AM 4 Tampa, Florida. I am going to go handle legal matters. I
10:57:02AM 5 don't want to share this with the rest of the crew, I don't
10:57:04AM 6 want that to be a distraction, but you need to know that." He
10:57:07AM 7 acknowledged. His declaration does say that he didn't know
10:57:12AM 8 about out of area going to Tampa for the purpose of that case;
10:57:12AM 9 that is true for Tuesday. Whether or not he heard me say out
10:57:14AM 10 of area or not on Monday, I don't know the relevance of that.
10:57:17AM 11 It's not misleading in my opinion.

10:57:20AM 12 But the point that I would make also to the Court and
10:57:22AM 13 others is there is no negative feeling that I have towards my
10:57:27AM 14 XO. I do not have a loss of trust with my XO. He's a very
10:57:31AM 15 good naval officer and he should be the one to relieve me next
10:57:35AM 16 when it comes time. We have a fleet-up policy where the XO
10:57:35AM 17 relieves the CO when their time comes.

10:57:40AM 18 If you were to bring him in or make a declaration and/or
10:57:43AM 19 make a statement to the Court, he would attest to the integrity
10:57:46AM 20 or the character or the success of our ship, I have no doubt
10:57:50AM 21 about that. I do think it was some undue influence on him or
10:57:53AM 22 partial information given to him to make that declaration that
10:57:57AM 23 doesn't have the full scope of the details, and I don't fault
10:58:01AM 24 him for that. He is a good officer.

10:58:04AM 25 Q. You mentioned a CO's leave message. Can you explain what

10:58:09AM 1 that is?

10:58:11AM 2 A. A CO's leave message is generally something that you send
10:58:16AM 3 out the day before a CO goes on leave, it generally lets the
10:58:20AM 4 chain of command and the other commands out there know that the
10:58:24AM 5 CO is not going to be available generally due to, you know,
10:58:29AM 6 being on leave out of area. If I were to go on leave and be
10:58:33AM 7 local, I wouldn't need to send that message, because if
10:58:36AM 8 something came up and I needed to cancel my leave, I would just
10:58:39AM 9 drive into the ship. Obviously I can't do that when I am out
10:58:43AM 10 of the area.

10:58:45AM 11 Q. So would there be any reason to issue a CO's leave message
10:58:48AM 12 if you were to be in the area and available?

10:58:51AM 13 A. No, sir, there's no requirement to do that.

10:58:54AM 14 Q. And you testified a moment ago that you directed that a
10:58:58AM 15 CO's leave message be prepared at the Monday briefing with your
10:59:03AM 16 department heads, correct?

10:59:03AM 17 A. I did.

10:59:04AM 18 Q. Was a CO's leave message prepared?

10:59:08AM 19 A. There was. It was routed to me the next morning, maybe
10:59:12AM 20 around lunchtime or so, I initialed it and it went out sometime
10:59:15AM 21 after lunch that day.

10:59:16AM 22 Q. And can you think of any reason why a CO's leave message
10:59:20AM 23 would have been issued if you hadn't asked for one to be issued
10:59:24AM 24 in that briefing?

10:59:29AM 25 A. I think generally me or the XO would have that done. So

10:59:32AM 1 if it had not already been done, when I talked to my XO the
10:59:35AM 2 next morning, he would have made sure, "Hey, are we tracking
10:59:39AM 3 this message? It needs to go out today," so he's my back-up as
10:59:40AM 4 the second in command. But, no, otherwise for them to be able
10:59:44AM 5 to release that, they would have to know that I'm going out of
10:59:47AM 6 area.

10:59:51AM 7 MR. GANNAM: No further questions, Your Honor.

10:59:53AM 8 THE COURT: All right. Thank you, sir.

10:59:54AM 9 Ms. Powell, have you cross-examination for this
10:59:58AM 10 witness?

10:59:58AM 11 MS. POWELL: I do.

11:00:00AM 12 THE COURT: You're recognized for that purpose.

11:00:10AM 13 CROSS-EXAMINATION

11:00:10AM 14 BY MS. POWELL:

11:01:11AM 15 Q. Commander, you testified the ship was underway in just the
11:01:14AM 16 past few weeks, correct?

11:01:16AM 17 A. Yes.

11:01:17AM 18 Q. And when was that approximately? Do you recall the dates?

11:01:22AM 19 A. I think it was the 22nd of February, and we returned this
11:01:25AM 20 past Friday on the 4th of March. I believe those are the
11:01:30AM 21 dates. Roughly about 11 or 12 days.

11:01:33AM 22 Q. So that was the first underway period since the issuance
11:01:36AM 23 of the injunction in this case?

11:01:42AM 24 A. Yes, I think so.

11:01:45AM 25 Q. Sorry, I didn't mean to make that complicated. I think

11:01:48AM 1 that's adequate in the record.

11:01:49AM 2 And the purpose of the underway was to complete the
11:01:51AM 3 certification, correct?

11:01:53AM 4 A. Not complete the certification, but there are
11:01:55AM 5 certifications we get before the entire certification. So next
11:01:59AM 6 week we'll actually close out our last portion of the
11:02:02AM 7 engineering certifications. But we are doing a training in
11:02:05AM 8 certification of Events 3 and 4, which have certain milestones,
11:02:08AM 9 in those were certifications for evolutions -- engineering
11:02:12AM 10 evolutions, certification for engineering drills, and
11:02:15AM 11 certification for fighting and main space fire drill for the
11:02:19AM 12 ship.

11:02:20AM 13 Q. You have read two -- or have you read the two previous
11:02:26AM 14 declarations that Captain Brandon submitted in this matter?

11:02:31AM 15 A. The last time I read any of the declarations provided by
11:02:33AM 16 him, I think was the court hearing last time. I vaguely
11:02:37AM 17 remember the first one, I do not remember the second one.

11:02:40AM 18 Q. Okay. Do you recall him discussing a loss of trust and
11:02:43AM 19 confidence in you?

11:02:46AM 20 A. If that was in the declaration, then yes.

11:02:50AM 21 Q. Do you recall him stating that he was already mitigating
11:02:54AM 22 the risk of having you in command of the ship at sea?

11:02:58AM 23 A. I'd have to read that again.

11:02:59AM 24 Q. By placing extra supervision onboard?

11:03:03AM 25 A. Okay.

11:03:05AM 1 Q. Normally the Navy can trust commanders to command their
11:03:08AM 2 open ships, right? They're expected to operate with a certain
11:03:11AM 3 amount of independence?
11:03:13AM 4 A. Should, yes.
11:03:15AM 5 Q. But on your recent underway, Captain Aldridge was onboard,
11:03:19AM 6 correct?
11:03:19AM 7 A. That is correct. He was the deputy commodore that I was
11:03:22AM 8 referring to earlier that did come underway with us, yes.
11:03:24AM 9 Q. He is senior in rank to you?
11:03:26AM 10 A. Yes, ma'am.
11:03:27AM 11 Q. And senior in position as well?
11:03:29AM 12 A. Yes, ma'am.
11:03:31AM 13 Q. And he was on the ship for the entire underway period?
11:03:34AM 14 A. That is correct.
11:03:37AM 15 Q. You previously mentioned that -- or I'm sorry. You as the
11:03:42AM 16 commanding officer need to stay current on Navy policy and
11:03:46AM 17 regulations in general, correct?
11:03:50AM 18 A. To stay current on policy? I mean, yes, every time a
11:03:54AM 19 policy comes out, you know, we're supposed to read it and make
11:03:57AM 20 sure we understand it, yes.
11:03:58AM 21 Q. Sure.
11:04:00AM 22 So you know what the Navy regulations are?
11:04:04AM 23 A. As a general statement, yes.
11:04:08AM 24 Q. Are you familiar with the concept of a senior officer
11:04:15AM 25 present? Is that a phrase you have heard before?

11:04:17AM 1 A. Senior officer present? I think so. Like SOPA, Senior
11:04:22AM 2 Officer Present Afloat.

11:04:22AM 3 Q. Yes.

11:04:23AM 4 A. Is that what you're referring to?

11:04:25AM 5 Q. Yes.

11:04:26AM 6 A. Okay.

11:04:27AM 7 Q. And what does that mean in your words?

11:04:30AM 8 A. So, for example, my commodore is the commander of our
11:04:37AM 9 destroyer squadron, and we have four ships out of Norfolk based
11:04:42AM 10 in that squadron, two other ships in Florida that are under his
11:04:45AM 11 operational control, if not administrative.

11:04:47AM 12 So if he, for example, were to embark on our ship, we
11:04:52AM 13 would have a pennant for him as a Senior Officer Present Afloat
11:04:56AM 14 when we're pulled into port on the pier. Right? The senior,
11:04:59AM 15 you know, ship on that pier would deem the pier
11:05:02AM 16 responsibilities, watch-standing requirements, et cetera. And
11:05:05AM 17 if you're underway and embarked with other ships, the
11:05:08AM 18 commanding control would generally go with the senior officer
11:05:12AM 19 present.

11:05:12AM 20 Q. Okay. So they have responsibilities as senior officer
11:05:17AM 21 present?

11:05:17AM 22 A. So if -- I don't want to misconstrue that. If they are in
11:05:23AM 23 command, yes.

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

11:05:26AM 25 A. So you can have riders that are on your ship that are

11:05:29AM 1 senior officers to you but they're not in command.

11:05:32AM 2 Q. Understood.

11:05:32AM 3 In that situation, are you aware that the senior officer
11:05:35AM 4 is required to assume command if in his or her judgment the
11:05:41AM 5 exercise of authority is otherwise necessary?

11:05:47AM 6 A. I think so.

11:05:47AM 7 Q. Okay.

11:05:48AM 8 A. So I will tell you, when I was told that the deputy was
11:05:51AM 9 coming to get underway, it was not disclosed to me the
11:05:54AM 10 purposes. In fact, I just got an email that said, "Please
11:05:57AM 11 confirm that you know that the deputy commodore and my
11:05:59AM 12 engineering senior chief petty officer are getting underway
11:06:04AM 13 next week."

11:06:04AM 14 "Roger, sir. I understand they're coming to get underway
11:06:06AM 15 with us."

11:06:07AM 16 I have no problem with people coming to get underway. I
11:06:08AM 17 did ask the deputy, when he came aboard my ship that day, "Hey,
11:06:11AM 18 is your purpose here to relieve me?" and he said, "No."

11:06:13AM 19 "What is your purpose here?" and he did say that he was
11:06:16AM 20 here to observe me and make sure the ship was safe for
11:06:19AM 21 operations. I understand that my commodore wants to have that
11:06:22AM 22 backup.

11:06:24AM 23 Q. Understood.

11:06:24AM 24 A. Yes.

11:06:24AM 25 Q. So you would agree with the statement that in that

11:06:26AM 1 position he could intervene if there was reason to do so in his
11:06:29AM 2 judgment and it was necessary?

11:06:31AM 3 A. Sure.

11:06:32AM 4 Q. And you understood that was why he was there?

11:06:35AM 5 A. Yes.

11:06:46AM 6 Q. At your last hearing, you testified that you informed your
11:06:50AM 7 XO and department heads at a meeting on Monday the 9th that you
11:06:54AM 8 were leaving the area. And that is your testimony again today?

11:06:59AM 9 A. In that meeting, that hour and a half meeting that we had,
11:07:03AM 10 I did make that as a passing statement, that for my leave I'll
11:07:06AM 11 be out of area and unavailable, get the CO leave message ready.
11:07:12AM 12 I did not look at my XO and specifically task him. I did not
11:07:15AM 13 have an individual conversation with my XO. It was general
11:07:17AM 14 words I put out to him.

11:07:19AM 15 Q. Well, is it -- well, I don't want you to speculate.

11:07:21AM 16 You have read the declaration that your XO signed as well,
11:07:25AM 17 correct?

11:07:25AM 18 A. Yes. I remember reading it the day of that it was brought
11:07:29AM 19 in.

11:07:30AM 20 Q. Right. And he says he was not told you were leaving the
11:07:33AM 21 area at that meeting?

11:07:35AM 22 A. If you could bring the declaration, I would rather read it
11:07:37AM 23 with you so I make sure that I don't misunderstand.

11:07:41AM 24 Q. Sure.

11:07:41AM 25 MS. POWELL: I think I've got the redacted version

11:07:44AM 1 with me. Is that okay?

11:07:46AM 2 MR. STAVER: Sure.

11:08:18AM 3 MS. POWELL: May I approach?

11:08:19AM 4 THE COURT: You may.

11:08:23AM 5 MS. POWELL: Would you like a copy?

11:08:27AM 6 THE COURT: No, that's fine.

11:08:38AM 7 Q. (By Ms. Powell) Paragraph 3, the third sentence.

11:08:49AM 8 A. "Monday" -- do you want me to read that?

11:08:51AM 9 Q. Sure.

11:08:51AM 10 A. "Monday, February 7th, 2022, Plaintiff Navy Commander did
11:08:55AM 11 not tell me he was going -- leaving the local area on leave."

11:09:01AM 12 Q. So at the very least, your XO does not recall the
11:09:03AM 13 statement that you made at that meeting?

11:09:05AM 14 A. I don't know if he means that I did not look at him one on
11:09:09AM 15 one and have a conversation, "Hey, XO, I'm going out of area on
11:09:12AM 16 leave." As I previously stated, I said it in the meeting in
11:09:15AM 17 the group. I don't know, if you were to ask him, "Hey, what
11:09:18AM 18 else did your commanding officer say at that meeting?" if he
11:09:21AM 19 would also be able to attest to all of those things. I don't
11:09:25AM 20 know. But whether or not he heard specifically that I was
11:09:28AM 21 going out of area on leave or not, I do not fault him for
11:09:31AM 22 remembering everything, nor am I going to, you know, say that,
11:09:35AM 23 you know, he is out of line. I said it to a group. This reads
11:09:39AM 24 as if I had a conversation with him, and I did not have a
11:09:44AM 25 conversation specifically with him. I said it to a group.

11:09:48AM 1 Q. Well, it doesn't say a conversation specifically with him.
11:09:50AM 2 It says he did not tell me he was leaving the local area on
11:09:54AM 3 leave in a group or otherwise, correct?

11:09:56AM 4 A. I agree that he did not tell me he was leaving the local
11:09:59AM 5 area to be there.

11:10:02AM 6 Q. Okay. And yet paragraph 4 goes on to say that he spoke
11:10:04AM 7 with the other department heads about that meeting as well,
11:10:06AM 8 correct?

11:10:08AM 9 A. Paragraph 4. Okay. Are you asking me to read that,
11:10:16AM 10 ma'am?

11:10:17AM 11 Q. I'll read it. The second sentence begins -- well, no,
11:10:20AM 12 I'll read all of it; how's that.

11:10:22AM 13 "I asked today" -- so the day this was signed. "I asked
11:10:26AM 14 all the department heads who are other officers supervising
11:10:31AM 15 personnel responsible for different functions on the ship when
11:10:33AM 16 they became aware that Plaintiff Navy Commander was leaving the
11:10:37AM 17 local area on leave. The combat systems officer became aware
11:10:40AM 18 that Plaintiff was leaving the local area on midday Tuesday,
11:10:43AM 19 February 8th, 2022, when Plaintiff Navy Commander asked him for
11:10:47AM 20 a COVID mitigation worksheet. No other department heads were
11:10:50AM 21 aware that Plaintiff was leaving the local area before midday
11:10:53AM 22 on Tuesday."

11:10:57AM 23 Now, is that -- that suggests that he believes that none
11:11:04AM 24 of the other department heads remembered this conversation you
11:11:07AM 25 supposedly had with them.

11:11:09AM 1 MR. GANNAM: Your Honor, I object to the requirement
11:11:11AM 2 for speculation. On its face, there's no possible way that the
11:11:16AM 3 commander could know what happened in this conversation that
11:11:20AM 4 apparently occurred the day that he was testifying. We further
11:11:23AM 5 object to the admissibility of anything in paragraph 4 as
11:11:29AM 6 hearsay or on top of hearsay.

11:11:32AM 7 We have no objection to the government asking the
11:11:33AM 8 commander questions about this or if he agrees to any of these
11:11:37AM 9 statements or knows about them, but we object to the
11:11:39AM 10 admissibility as the truth of anything in paragraph 4.

11:11:43AM 11 MS. POWELL: Rules of evidence are somewhat relaxed
11:11:45AM 12 at these preliminary proceedings. I certainly acknowledge this
11:11:48AM 13 is hearsay, Your Honor, and I'm interested in what the
11:11:51AM 14 commander's explanation is at this point.

11:11:53AM 15 THE COURT: Overruled. Go ahead, Ms. Powell.

11:11:56AM 16 Q. (By Ms. Powell) Does it change your testimony that
11:12:06AM 17 apparently the other department heads also don't remember that
11:12:08AM 18 conversation the way you do?

11:12:10AM 19 A. No, it doesn't.

11:12:10AM 20 Q. Do you think they're mistaken as well?

11:12:13AM 21 A. I don't know.

11:12:14AM 22 Q. Do you think your XO is lying about the conversation he
11:12:18AM 23 had?

11:12:18AM 24 A. I do not think my XO is a liar. I do not know if he heard
11:12:22AM 25 it when I said it on Monday. The point of me talking to him

11:12:25AM 1 about Tampa is correct; it did not occur until Tuesday. I did
11:12:31AM 2 not tell any of my department heads where I was going or what I
11:12:35AM 3 was doing. It is my job to protect them from that and
11:12:39AM 4 establish good order and discipline on my ship. I do not think
11:12:42AM 5 it a good practice to share my personal legal matters to my
11:12:45AM 6 ship that impact my ability to carry on my service or conduct
11:12:50AM 7 my ability to command. That, in and of itself, is contrary to
11:12:54AM 8 good order and discipline and it would be a distraction. All
11:12:57AM 9 they needed to know was that I was going out of area.

11:12:58AM 10 The tasker to get a CO leave message did come out of that
11:13:02AM 11 conversation. Whether or not they remember this or the other
11:13:05AM 12 things that I said that day over the context or the course of
11:13:09AM 13 all the meetings and stuff that we have, I don't know. You
11:13:11AM 14 would have to call each one of them up here and state that. If
11:13:14AM 15 there's a question as to my integrity, you would have to call
11:13:17AM 16 them up here and say that, and I have no problem with that.

11:13:22AM 17 Q. Commander, you previously expressed a concern that the
11:13:22AM 18 declaration might have been the result of undue influence. Do
11:13:25AM 19 you have any specific reason to believe that there was undue
11:13:29AM 20 influence on your executive officer?

11:13:33AM 21 A. I don't think it is appropriate for my case here to speak
11:13:37AM 22 on the religious freedoms as associated with this case and the
11:13:42AM 23 vaccine mandate, is appropriate to go under me to my
11:13:47AM 24 subordinates and speak to my integrity or, you know, misleading
11:13:50AM 25 of information, as it's saying here, specifically as in terms

11:13:53AM 1 to when I was going out of leave and what they know or didn't
11:13:57AM 2 know.

11:13:57AM 3 Q. Do you have any reason to think that someone asked him to
11:13:59AM 4 lie or mislead?

11:14:02AM 5 A. I don't think my XO is lying.

11:14:06AM 6 Q. Or you speculated that there might have been undue
11:14:09AM 7 influence. I'm just asking whether you have any -- anyone told
11:14:11AM 8 you that was the case or if you have other specific evidence of
11:14:15AM 9 it.

11:14:15AM 10 A. I think the act of going to my XO to provide a declaration
11:14:20AM 11 on one particular subject matter that is in question and
11:14:24AM 12 doesn't provide a recourse for what else you knew or the full
11:14:28AM 13 context of that is -- in my opinion, that is undue command
11:14:32AM 14 influence. If you wanted him to provide a full statement on
11:14:35AM 15 everything that he knew, or my integrity, or character, or the
11:14:37AM 16 good order and discipline on my ship, that's not provided here.
11:14:41AM 17 It's one specific question that they went after.

11:14:44AM 18 Q. Correct.

11:14:45AM 19 A. I don't think he had the full context of this either.

11:14:50AM 20 Q. Okay.

11:14:50AM 21 A. Does that answer your question, ma'am?

11:14:52AM 22 Q. Yes, I think it does.

11:14:53AM 23 Prior to the last hearing, you did -- you testified that
11:15:04AM 24 you did eventually submit the travel risk assessment that's
11:15:08AM 25 required, correct?

11:15:09AM 1 A. Ma'am, are you referring to this week or the last one?

11:15:12AM 2 Q. The last one.

11:15:12AM 3 A. The last one, yes. The commodore had called me, because

11:15:16AM 4 he saw the leave message. I can't remember if it was late on

11:15:21AM 5 the ship and I was still there, you know, working through

11:15:23AM 6 things, somewhere around 5 or 6 o'clock, he called and had that

11:15:27AM 7 conversation, yes, ma'am.

11:15:28AM 8 Q. So it was submitted after he confronted you about it?

11:15:30AM 9 A. I submitted it after having the conversation, walking

11:15:33AM 10 through the worksheet with him on it, yes.

11:15:36AM 11 Q. This particular county you were traveling to was

11:15:40AM 12 considered a high risk COVID area at the time, correct?

11:15:43AM 13 A. I believe so, but I don't know --

11:15:44AM 14 Q. It is currently, correct?

11:15:46AM 15 A. Yes. Yes, ma'am.

11:15:48AM 16 Q. And I think at the last hearing, and please correct me if

11:15:52AM 17 I'm wrong, I think you conceded that you probably should have

11:15:54AM 18 done the risk mitigation plan sooner?

11:15:57AM 19 A. Yes, I conceded that I probably should have said to him on

11:16:01AM 20 Monday --

11:16:01AM 21 Q. Because it needed his approval?

11:16:06AM 22 A. Yes. The COVID travel risk assessment in and of itself is

11:16:10AM 23 not directive. It's not required by Navy policy, it's at

11:16:14AM 24 commander's discretion. My point in speaking to the commodore,

11:16:18AM 25 is like, "Yes, sir, I realize me being unvaccinated and high

11:16:21AM 1 risk, I should have provided to you more time to make that
11:16:24AM 2 determination." To say that I didn't meet a requirement, I
11:16:27AM 3 don't know if I agree with that or where that's written that
11:16:30AM 4 that is required, unless my commodore said, "I want to see that
11:16:36AM 5 so I can make a determination for your ROM." Yes.

11:16:38AM 6 Q. The policy applicable to sailors aboard your ship requires
11:16:41AM 7 it to be done prior to requesting leave, correct?

11:16:44AM 8 A. If they are going out-of-area leave, yes, ma'am.

11:17:00AM 9 Q. For this hearing, you submitted your leave request and
11:17:03AM 10 travel mitigation plan ahead of time, correct, before taking
11:17:07AM 11 leave?

11:17:07AM 12 A. Yes, ma'am.

11:17:08AM 13 Q. And in that you proposed a three-day restriction of
11:17:12AM 14 movement?

11:17:13AM 15 A. I did.

11:17:13AM 16 Q. Despite the fact this county is a high risk area and
11:17:17AM 17 you're attending indoor gatherings?

11:17:19AM 18 A. I did. In consult with my IDC, my independent duty
11:17:23AM 19 corpsman, and the Navy policy for executing a ROM is not
11:17:29AM 20 specific to the community level of transmission. It actually
11:17:32AM 21 says the ROM is required if you are COVID-positive. One, I am
11:17:36AM 22 not COVID-positive and I tested negative, and, two, the ROM is
11:17:40AM 23 at the discretion of the commander based on all the facts. You
11:17:44AM 24 can implement mitigations and not do a ROM, such as no ROM is
11:17:48AM 25 required after the return of your travel, wear an N95 mask. If

11:17:52AM 1 you develop symptoms, get a test, et cetera. We decided three
11:17:56AM 2 days --

11:17:56AM 3 Q. So --

11:17:56AM 4 A. -- because -- if I can continue. My IDC, based on the CDC
11:18:02AM 5 guidance that, you know, symptoms -- if you were to be exposed,
11:18:05AM 6 symptoms generally develop within 48 to 72 hours following
11:18:08AM 7 that. So if I did this travel, based on the interactions that
11:18:12AM 8 I had with people, and I returned to Norfolk, after 48 to
11:18:16AM 9 72 hours, if you don't have any symptoms, that would be a
11:18:19AM 10 sufficient ROM and you could come back and we could do the test
11:18:22AM 11 and clear.

11:18:23AM 12 Q. But the CDC guidance applicable to unvaccinated travelers
11:18:26AM 13 specifically recommends a five-day quarantine, correct?

11:18:31AM 14 A. I don't know if that's what the CDC says. I know what the
11:18:34AM 15 CDC puts out before the Navy can execute, and the Navy has to
11:18:38AM 16 evaluate that and apply it to the Navy based on, you know,
11:18:41AM 17 operational guidance, ships, buildings, et cetera.

11:18:43AM 18 Q. The guidance you provided to your own sailors provides for
11:18:46AM 19 a five-day quarantine, does it not?

11:18:49AM 20 A. That guidance was written in May of 2021, and the policy
11:18:54AM 21 for COVID and the CDC has changed multiple times over since
11:18:58AM 22 May of 2021. It was actually signed by my predecessor. I
11:19:02AM 23 would say that it's somewhat out-of-date. But, yes, we did
11:19:05AM 24 that five a-day ROM also based on medical guidelines then, and
11:19:10AM 25 I can't remember what the five days was for, but that --

11:19:14AM 1 Q. But it still does apply to the sailors under your command?

11:19:17AM 2 A. It does.

11:19:17AM 3 Q. And it is consistent with the current CDC guidance for
11:19:19AM 4 travel of unvaccinated persons, correct?

11:19:21AM 5 A. I can't attest to that. I'd have to read what the CDC
11:19:25AM 6 says for travel of unvaccinated sailors.

11:19:28AM 7 Q. But in any event, you thought you were entitled to special
11:19:29AM 8 treatment that your crew was not?

11:19:33AM 9 A. No. Why is it special treatment?

11:19:35AM 10 Q. Because your crew would be required to undergo a five-day
11:19:40AM 11 quarantine?

11:19:40AM 12 A. No. I can change and establish that based on the travel
11:19:42AM 13 risk assessments that I got. Most of my crew doesn't get a ROM
11:19:44AM 14 at all because most of the crew is vaccinated.

11:19:47AM 15 Q. Correct.

11:19:48AM 16 But if they were not, the current policy would provide for
11:19:51AM 17 a five-day quarantine, would it not?

11:19:53AM 18 A. It's at my discretion for their ROM.

11:19:58AM 19 Q. Okay.

11:19:59AM 20 A. For my crew. The whole travel risk assessment is based on
11:20:04AM 21 commander's evaluation whether the travel is at risk or not.

11:20:09AM 22 The only requirement is if I had someone who tested positive
11:20:13AM 23 for COVID, they would be mandated a five-day ROM. I think the

11:20:17AM 24 Navy policy also says that for foreign travel, so if somebody
11:20:20AM 25 traveled overseas, whether it's for vacation or to go see

11:20:23AM 1 family living somewhere, they would also be mandated a five-day
11:20:26AM 2 ROM.

11:20:26AM 3 Q. You testified briefly, and I'm honestly not entirely sure
11:20:31AM 4 I understand the ins and outs here, that you had requested for
11:20:35AM 5 temporary duty status for this hearing.

11:20:38AM 6 A. Mm-hmm.

11:20:39AM 7 Q. If that were the case, you would not be taking leave,
11:20:43AM 8 right? If that would were the case, you would be getting paid
11:20:46AM 9 by the Navy to pursue your private lawsuit against the Navy?

11:20:49AM 10 A. That's a negative. No, ma'am.

11:20:52AM 11 Q. Why?

11:20:52AM 12 A. Because the joint travel regulations do allow permissive
11:20:57AM 13 TAD. There are provisions for funded government travel and
11:21:01AM 14 there are provisions that say that this is not government
11:21:03AM 15 funded travel. At no point -- and the commodore asked me that
11:21:07AM 16 multiple times if I was asking for funded travel. I very
11:21:10AM 17 clearly said, at least three times, I am not asking for funded
11:21:13AM 18 travel.

11:21:13AM 19 Q. You are asking to not to take leave.

11:21:15AM 20 A. Yes. Because there are provisions that allow you to do
11:21:19AM 21 something under the obligation of duties that are allowed by
11:21:22AM 22 Navy policy or DoD policy that you don't have to take leave
11:21:26AM 23 for.

11:21:26AM 24 Q. And if you were not taking leave, you'd be receiving your
11:21:29AM 25 regular salary for pursuing your private lawsuit against the

11:21:32AM 1 Navy.

11:21:32AM 2 A. Yes. And in conversation with my JAG, you can do
11:21:35AM 3 permissive TAD when you are a witness -- when you are
11:21:39AM 4 subpoenaed to witness in court. We have permissive travel all
11:21:42AM 5 the time for, you know, local TAD stuff, for example, for
11:21:45AM 6 schools. You have permissive TAD -- and I'm speaking no-cost
11:21:49AM 7 options here -- for house hunting, for example. Somebody has
11:21:54AM 8 orders to go somewhere else, they can take no-cost orders to go
11:21:57AM 9 out and, you know, pursue a future home, where they're going to
11:22:01AM 10 live if they are moving out of the area. And I did not request
11:22:05AM 11 funded travel. I said my intentions are to do permissive TAD
11:22:09AM 12 because I thought there was that provision for me.

11:22:11AM 13 Q. And typically when your TAD -- is that what you called
11:22:14AM 14 that?

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

11:22:15AM 16 Q. Okay.

11:22:16AM 17 A. -- or temporary duty, TAD, TDY.

11:22:19AM 18 Q. You're in some sort of official status when you're on
11:22:21AM 19 that, correct? Sort of acting in an official capacity?

11:22:26AM 20 A. I guess you can say that.

11:22:28AM 21 Q. And this is a personal legal matter; no?

11:22:30AM 22 A. So when you do house hunting, you are not acting in an
11:22:34AM 23 official capacity, you are executing duties that the Navy or
11:22:37AM 24 government allows you to do for that purpose.

11:22:39AM 25 Q. Right. But if you're searching for a house in a new

11:22:42AM 1 location, it's typically one that the Navy has ordered you to
11:22:45AM 2 go to.

11:22:45AM 3 A. For house hunting leave, yes. You have to have orders
11:22:49AM 4 outside of the area to be able to travel there and execute
11:22:51AM 5 that.

11:22:52AM 6 Q. Got it.

11:23:00AM 7 MS. POWELL: Can I have just a moment?

11:23:02AM 8 THE COURT: You may.

11:23:13AM 9 (Off-the-record discussion between Ms. Powell and
11:23:16AM 10 Commander Osterhues.)

11:23:19AM 11 MS. POWELL: That's all I have, Your Honor.

11:23:20AM 12 THE COURT: All right. Thank you, Ms. Powell.

11:23:23AM 13 Mr. Gannam, if you have redirect for this witness,
11:23:27AM 14 you are recognized for that purpose.

11:23:30AM 15 MR. GANNAM: Thank you, Your Honor.

11:23:32AM 16 May it please the Court.

11:23:33AM 17 REDIRECT EXAMINATION

11:23:33AM 18 BY MR. GANNAM:

11:23:34AM 19 Q. Did you or the government file the motion that led to the
11:23:38AM 20 hearing here today?

11:23:40AM 21 A. I'm sorry, can you say that again?

11:23:41AM 22 Q. Did you file the motion seeking the stay of the Court's
11:23:45AM 23 order that led to the hearing today?

11:23:47AM 24 A. No, sir.

11:23:47AM 25 Q. Is it your understanding that the defendants, the U.S.

11:23:50AM 1 government, filed that motion?

11:23:53AM 2 A. I'm not -- can you say that again?

11:23:55AM 3 Q. Is it your understanding that the defendants in this

11:23:58AM 4 case --

11:23:58AM 5 THE COURT: I think we can take notice of who filed

11:24:00AM 6 the motion, Mr. Gannam.

11:24:04AM 7 Q. (By Mr. Gannam) At least you didn't ask for the motion to

11:24:07AM 8 be filed that led to you being here?

11:24:09AM 9 A. No, sir, I did not.

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

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

11:24:19AM 12 A. I did.

11:24:19AM 13 Q. And was it approved?

11:24:21AM 14 A. It was approved Tuesday evening, yes, sir. After multiple

11:24:28AM 15 RFIs, which is request for information, of the type of travel

11:24:32AM 16 and the type of leave, what am I doing on leave, where am I

11:24:36AM 17 staying, my travel risk, whether it's going to be funded or

11:24:40AM 18 not, there are multiple RFIs after requesting that, yes, sir.

11:24:44AM 19 Q. When you submitted your recommendation for the ROM

11:24:48AM 20 requirement when you returned from this hearing, did you demand

11:24:54AM 21 that it only be three days, or merely recommend that?

11:24:59AM 22 A. It was a recommendation, sir.

11:25:01AM 23 Q. And will you comply with whatever ROM requirement is

11:25:04AM 24 imposed by your commander whenever that's done?

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

11:25:07AM 1 Q. And is that any different from how a sailor under your
11:25:11AM 2 command would be treated when submitting a recommended ROM
11:25:15AM 3 requirement for travelling out of area?

11:25:17AM 4 A. No, it is not.

11:25:20AM 5 Q. When the deputy commodore came on board your ship to
11:25:25AM 6 travel with you on your last exercise, at any point did he
11:25:30AM 7 assume command of your ship?

11:25:31AM 8 A. No, sir, he did not.

11:25:37AM 9 MR. GANNAM: I've no further questions, Your Honor.

11:25:38AM 10 THE COURT: All right. Thank you very much. In that
11:25:40AM 11 case, Navy Commander, if you'll remember to let us detach that
11:25:43AM 12 microphone, you may step down, and you're excused with our
11:25:47AM 13 thanks.

11:25:48AM 14 THE WITNESS: Thank you.

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