

VIA EMAIL

February 10, 2022

United States Department of Justice
Office of Privacy and Civil Liberties
Attn: Privacy Analyst, (2Con)
145 N. Street NE, Suite 300
Washington, D.C. 20530
privacy.compliance@usdoj.gov

Re: *Comment on Department of Justice's Notice of Creation of the Creations of "Requests for Exceptions" Records Systems, CPCLC Order No. 01-2022*

To Whom It May Concern:

We write on behalf of our client, Informed Consent Action Network (“ICAN”). In response to President Biden’s authoritarian COVID-19 vaccine mandate for all federal employees,¹ many employees who cherish and prioritize their religious beliefs submitted deeply personal requests for exception and accommodation to the mandate.² Despite the shifting deadlines for implementation for enforcement,³ and the recent injunction on its enforcement,⁴ most of these employees have yet to receive a determination on their accommodation requests.⁵ Adding to the torment of these religious individuals, a vast number of federal agencies (including your own) have, in an outright display of suspicion and contempt for the religious, elected to create a new records system to store the names and personal religious information of any employee who has requested a religious exemption from the federally mandated vaccination requirement.

¹ Exec. Order No. 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees, 86 Fed. Reg. 50,989 (Sept. 9, 2021).

² Rein, Lisa, *et al.*, *Nearing Monday Coronavirus Vaccine Deadline, Thousands of Federal Workers Seek Religious Exemptions to Avoid Shots*, Washington Post (Nov. 7, 2021), https://www.washingtonpost.com/politics/federal-workers-vaccines-exemptions/2021/11/07/761eb9d8-3da3-11ec-8ee9-4f14a26749d1_story.html.

³ *See Feds for Med. Freedom v. Biden*, ___ F. Supp. 3d ___, 2022 U.S. Dist. LEXIS 11145, at *7 (S.D. Tex. Jan. 21, 2022) (noting the original September 9, 2021 deadline was extended until after the new year).

⁴ *Id.* at *21.

⁵ https://www.washingtonpost.com/politics/federal-workers-vaccines-exemptions/2021/11/07/761eb9d8-3da3-11ec-8ee9-4f14a26749d1_story.html.

We write with ICAN’s demand that your agency immediately dismantle this despotic and invasive database. A federal government database that targets and compiles information on those individuals who have deigned to exercise their constitutionally protected right to freely exercise their religion serves no legitimate purpose. Americans and congressional representatives alike are rightfully outraged about this – and for good reason.⁶ No agency has adequately explained the reason why such a database is necessary for processing accommodations, let alone why it is necessary to maintain this data beyond the decision to grant or deny the request. To the extent your agency is attempting to justify this system of records on the basis that it would simplify the processing of requests, as the Supreme Court has noted, “the prime objective of the First Amendment is not efficiency.” *McCullen v. Coakley*, 573 U.S. 464, 495 (2014).

It is also outrageous that many of these notices became effective the day they were published. This further reflects the contempt for religious freedom and a lack of transparency and decency. For the notices that did not become effective immediately, those federal entities chose to issue their notices such that the 30-day period for comment occurred immediately before, after, or during the holiday season, leaving affected federal employees and the public alike without any meaningful ability to be heard on policies affecting the most personal aspects of an individual’s life.⁷

Perhaps worst of all is that virtually all of these notices plainly acknowledge that the deeply private information being compiled can and will be shared with other agencies and branches of government, including for example the Department of Justice, the Department of Treasury, Congressional offices, and, even more broadly, to any

appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations.⁸

⁶ <https://www.washingtontimes.com/news/2022/jan/25/gop-lawmakers-call-biden-end-database-religious-ex/>; <https://www.foxnews.com/politics/biggs-republicans-letter-hhs-religious-liberty>; https://www.scribd.com/document/554794762/1-24-FDA-President-Biden-Letter#fullscreen&from_embed; <https://www.dailysignal.com/2022/01/11/breaking-biden-administration-making-lists-of-religious-vaccine-objectors/>; <https://www.regulations.gov/comment/DOI-OST-2021-0135-0002>.

⁷ See, e.g., <https://www.federalregister.gov/documents/2021/11/29/2021-25871/privacy-act-of-1974-system-of-records> (Securities and Exchange Commission’s November 29, 2021 Notice); <https://www.federalregister.gov/documents/2021/12/01/2021-26090/privacy-act-of-1974-system-of-records> (Department of Human Services’ December 1, 2021 Notice); <https://www.regulations.gov/document/EPA-HQ-OEI-2017-0536-0002> (Environmental Protection Agency’s December 8, 2021 Notice); <https://www.regulations.gov/document/DOD-2021-OS-0128-0001> (Department of Defense’s December 22, 2021 Notice).

⁸ See, e.g., https://www.regulations.gov/document/USDA_FRDOC_0001-2554 (Department of Agriculture’s January 7, 2022 Notice).

This deeply private information being compiled consists of a sweeping set of data far beyond the employee's name and contact information. It includes, for example:

the nature of the sincerely held religious belief, practice, or observance and the need for accommodation, including any appropriate documentation; details of the accommodation request, such as: type of accommodation requested, how the requested accommodation would assist in job performance, any additional information provided by the requestor related to the processing of the request, notes from or summaries of the interactive process.⁹

Undoubtedly, the individuals who submitted requests for religious accommodation had no concept of the possibility that their descriptions and explanations of their most personal thoughts and beliefs could be shared indiscriminately with others both within and outside of their employers. We strongly urge you to not irreparably breach the trust of these individuals who have done nothing more than seek to abide by their faith.

We remind you that one of the federal government's most fundamental obligations is to respect the right of the American People to freely exercise their religious beliefs. As George Washington eloquently stated in his Letter to the Society of Quakers,

The liberty enjoyed by the People of these States, of worshipping Almighty God agreeable to their Consciences, is not only among the choicest of their Blessings, but also of their Rights – While men perform their social Duties faithfully, they do all that Society or the State can with propriety demand or expect; and remain responsible only to their Maker for the Religion or modes of faith which they may prefer or profess.¹⁰

It is difficult to conceive of a greater betrayal of this duty than the creation of a database to target, compile, track, and share information about certain Americans' personal religious beliefs. Even prior to the founding of this country, it was agreed that "the opinions of men are not the object of civil government, nor under its jurisdiction."¹¹

⁹ <https://www.regulations.gov/document/NTSB-2021-0007-0001> (National Transportation Safety Board's November 15, 2021 Notice)

¹⁰ "Letter from George Washington to the Society of Quakers 13 October 1789," *Founders Online*, National Archives, <https://founders.archives.gov/documents/Washington/05-04-02-0188>.

¹¹ "82. A Bill for Establishing Religious Freedom, 18 June 1779," *Founders Online*, National Archives, <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082>.

While it is heartening that Representative Ralph Norman's has introduced a bill seeking to ban such authoritarian databases,¹² it should not be necessary for a law to prohibit the creation of what is so patently an Orwellian and un-American database. Therefore, we demand that you immediately dismantle these databases and publicly announce the steps you have taken to do so.

Very truly yours,



Aaron Siri, Esq.
Elizabeth A. Brehm, Esq.
Catherine Cline, Esq.

¹² [https://norman.house.gov/uploadedfiles/117th-religious-freedom-over -mandates act .pdf](https://norman.house.gov/uploadedfiles/117th-religious-freedom-over- -mandates_act .pdf).