

EXH. F



U.S. Department of Justice

United States Marshals Service

Office of the Director

Washington, DC 20530-0001

May 10, 2021

The Honorable Roberto A. Lange
Chief Judge
United States District Court
District of South Dakota
225 South Pierre Street, Room 413
Pierre, South Dakota 57501

Dear Chief Judge Lange:

Thank you for your letter dated May 4, 2021, regarding the vaccination status of Deputy U.S. Marshals (DUSM) serving in the District of South Dakota.

The U.S. Marshals Service (USMS) shares the Court's concerns regarding COVID-19 and has been steadfast in its efforts to comply with The Centers for Disease Control and Prevention (CDC) guidance to mitigate the risks associated with transmission of the virus, to include mask wearing, maintaining social distance, donning needed personal protective equipment, and diligent hand hygiene. We recognize that these practices are essential to ensuring that public spaces such as our courthouses and courtrooms remain both accessible and safe.

The USMS takes seriously its court security responsibilities and places the highest priority on maintaining the safety and security of those involved in the judicial process. It should be noted, however, the Marshals Service is currently at a critical DUSM staffing level of 69% across the agency. The District of South Dakota's DUSM staffing level is even lower at only 65%. This severe staffing shortage contributes to the limited number of trials and hearings which can be supported simultaneously, as well as the staffing for any pre- or post-trial appearances requiring the provision of court security by DUSM personnel. Any widespread court orders or other restrictions which would impose additional limitations on the number of DUSMs available to provide court security and other vital responsibilities further degrades our nationwide ability to support the judiciary and may negatively impact the ability of courts to conduct their business when such security is required.

The USMS agrees that the safest courtroom would be one where *everyone* is vaccinated, but we believe the likelihood of that occurring is improbable for the foreseeable future. This belief is supported by the current statistics regarding the vaccination rate of the United States public at large, and the absence of any known authority to mandate vaccinations of Americans. Other than controlling the timing of matters on the court's docket, we know of no legal authority to require vaccinations of detainees, U.S. Attorneys, defendants, jurors, defense counsel, witnesses, DUSMs, CSOs, guards, other federal agents, or other participants in order to participate in criminal or civil matters.

The COVID-19 pandemic has posed substantial challenges to the USMS in its role to help protect the fundamental Constitutional guarantees of criminal defendants while continuing to manage the press of the court's business resulting from a crowded or delayed docket. We are determined to perform our role to assist the courts in protecting the rights of a criminal defendant to have access to counsel, to a speedy trial, to confront his/her accuser, as well as to testify in person before a jury.

We are continuing to operate under security protocols established based upon CDC guidance, and we have presumed that individuals will be permitted to appear in person with the requirement that they comply with CDC and health authority requirements to mitigate the transmission of the virus. Similarly, DUSMs will take all necessary precautions to mitigate their risk of contracting the virus and to control the risk they pose to others in the courthouse, to include members of the public and other federal employees, by complying with CDC guidelines, to include the continued wearing of face masks, ensuring social distance while still being mindful of their security mission when assigned to a courtroom proceeding, wearing any other personal protective equipment as needed, and practicing diligent hand hygiene. We have also taken steps to encourage and/or offer vaccinations to detainees in our custody. Based on reports from detention facilities, less than 15% of detainees have been confirmed as vaccinated.

While the Marshals Service strongly encourages our DUSMs and all other employees to be vaccinated, we are not mandating it. This is consistent with other federal employers, as we are not aware of any other federal (or State) department or agency currently requiring its employees to take the COVID-19 vaccine. This is also consistent with the guidance provided by the Administrative Office of the U.S. Courts ("the AO"), which recommends that employees be *encouraged* to receive the vaccine, but that vaccinations *not be mandated or required* as a basis for excluding employees from the workplace. The AO has also stated that "any adverse action for violating a vaccination mandate, directive or policy is implicitly an unauthorized and impermissible mandate."

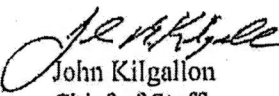
At present, approximately 52% of our Deputy U.S. Marshals nationwide are fully vaccinated. In the District of South Dakota approximately 44% of our Deputy U.S. Marshals are fully vaccinated. We are hopeful these numbers will continue to rise, consistent with the numbers of the United States public at large. However, some employees or detainees may elect not to take the vaccine for a variety of already expressed reasons to include, without limitation, fears of currently unknown side effects of the vaccine, long-term adverse effects of the vaccine, incomplete scientific information and evaluation regarding the vaccine's efficacy related to evolving variant strains, pregnancy (present and future) related fears, religious or other

objections to taking this and other vaccines, and concerns that the vaccine could negatively affect existing health conditions or disabilities. Some believe that the vaccine is not necessary for them due to their age or other environmental conditions, and some may have other rational or irrational beliefs regarding the vaccine.

Additionally, the USMS is not requiring that our employees divulge their vaccination status to their management, and we are not inclined to direct our personnel to provide this information to the court or any other third party. Nonetheless, we intend to continue to support the judiciary and perform our court security responsibilities with the professionalism and diligence that we have always demonstrated. This will include having our DUSMs abide by current CDC protocols when operating in the courtroom, as noted above.

The USMS values its partnership with the judiciary in assuring the safety of the courthouse and of every courtroom. We look forward to assisting the court achieve its goal of efficiently and legally increasing court trials, hearings, and other matters in the current environment.

Sincerely,


John Kilgallon
Chief of Staff

cc: The Honorable Daniel Mosteller
United States Marshal
District of South Dakota