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14 **UNITED STATES DISTRICT COURT OF CALIFORNIA**
15 **EASTERN DISTRICT - SACRAMENTO**

16 Joy Garner, individually and on behalf of The
17 Control Group; Joy Elisse Garner, individually
18 and as parent of J.S. and F.G.; Evan Glasco,
19 individually and as parent of F.G.; Traci Music,
20 individually and as parent of K.M. and J.S.,
21 Michael Harris, individually and as parent of S.H.,
22 Nicole Harris, individually and as parent of S.H.,

23 Petitioners,

24 v.

25 PRESIDENT OF THE UNITED STATES OF
26 AMERICA in his official capacity,

27 Respondent.

28 **Case No.: 2:20-CV-02470-WBS-JDP**

**PETITIONERS' MEMORANDUM IN
OPPOSITION TO MOTION TO DISMISS**

Date: February 22, 2021
Time: 1:30 PM
Courtroom: 5
Judge: William B. Shubb

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27

28

1 **I. INTRODUCTION.**

2 Petitioners' goal is for the judiciary to restore choice to Americans. Petitioners want to
3 return to a better time in America, such as the 1950s, when vaccines were not mandated, engineers
4 and scientists solved the infectious disease problem (mostly with improved living conditions), and
5 Americans' overall health was statistically excellent. The parties should have the same goal: health.
6 This case is an opportunity to learn from new scientific data proving America's health by the
7 numbers today. The unvaccinated are over 1,000% healthier than the vaccinated. This case is the
8 opportunity to return choice to all Americans on their vaccination status, without risking their basic
9 freedoms.

10 Respondent presents literally zero math in support of its defense for the White House,¹
11 which is newsworthy. It is possible Respondent's counsel 'missed the memo' that **the people being**
12 **exposed by real journalists today are actually not those who refuse a vaccine but those who**
13 **refuse to question any vaccine.** Here is an example of an excellent journalist who is #1 in ratings,
14 Mr. Tucker Carlson from Fox News, delivering that memo last week in his classic expose style:



22 <https://nation.foxnews.com/personalities/tucker-carlson/> (February 9, 2021)

23 Mr. Tucker Carlson: "Why are Americans being discouraged from asking simple, straightforward
24 questions about [vaccines]?... They are not conspiracy theories, they're the most basic questions. In
25 a democracy, every citizen has a right to know the answer, but instead we got fluff and
26 propaganda."

27 ¹ In a Fed. R. Civ. P. 12(b)(6) motion, the facts are received as true. But because Respondent
28 improperly ridiculed this case, Petitioners must object. Although this brief would normally not be
the time to argue the merits of Petitioners' case, not addressing them runs the risk of being an assent
to their unfounded attacks.

1 Respondent claims that Petitioners are asking for something radical, but not so. Here is an
2 example of an American legal precedent preventing mandatory vaccination:

3 Pursuant to Minnesota Statutes,

4 **individuals have a fundamental right to refuse** medical treatment, testing, physical
5 or mental examination [and] **vaccination**.

6 Minn. Stat. § 12.39 [emphasis added].²

7 What is radical though are “vaccine passports” currently being championed by overzealous
8 subordinates of the President. And this is just one imminent future if the Court allows the President
9 to continue to neglect his duties as Executive over all national health departments that do more than
10 just “recommend” vaccines (as Respondent notes); the President also actively studies, approves,
11 purchases, promotes, and distributes vaccines while litigating injury cases and funding health
12 departments to enforce vaccine mandates using police powers, and so much more. *See* PRJN2³
13 (Document 4-3 filed 12/29/20). The President is the indispensable party in this case.

14 Case law precedent (as sufficiently pled by Petitioners) proves Federal courts routinely order
15 POTUS and Governors to take action on both small specific matters (i.e., ordering POTUS to issue
16 a specific pay raise)⁴ and big general matters (i.e., enforcing desegregation of schools nationwide
17

18 ² Even though Covid-19 vaccination is currently being coerced, it is technically illegal to
19 mandate Covid-19 vaccination under Federal Law (21 U.S.C. § 360bbb-3) because the vaccine is
20 classified as “emergency use authorization”; the Federal statute states explicitly the patient has “the
21 option to accept or refuse administration of the product” [emphasis added]. Prohibitions on
22 mandatory vaccination are also found in various authorities internationally. *See, e.g.*, Resolution
23 2361 (January 2021). Council of Europe, Parliamentary Assembly Covid-19 vaccines: ethical, legal
and practical considerations. <https://pace.coe.int/en/files/29004/html> (“ensure that citizens are
informed that the vaccination is NOT mandatory and that no one is politically, socially, or otherwise
pressured to get themselves vaccinated, if they do not wish to do so themselves; ensure that no one
is discriminated against for not having been vaccinated, due to possible health risks or not wanting
to be vaccinated”).

24 ³ “A motion under Rule 12(b)(6) can be based only on the complaint itself, documents
25 attached to the complaint, documents that are critical to the complaint and referred to in it, and
information that is subject to proper judicial notice.” *Geinosky v. City of Chi.*, 675 F.3d 743, 745 n.1
(7th Cir. 2012).

26 ⁴ *Nat'l Treasury Emps. Union v. Nixon*, 160 U.S. App. D.C. 321, 492 F.2d 587 (D.C. Cir.
27 1974) (upholding mandamus against the President to require a pay raise), “The discretionary-
28 ministerial distinction concerns the nature of the act or omission under review not the official title
of the defendant. No case holds that an act is discretionary merely because the President is the
actor.”

1 with ongoing judicial supervision; ordering a Governor to use his discretion to clean up dilapidated
2 conditions in prisons with ongoing judicial supervision⁵). In these cases and others, it was wholly
3 unnecessary (and indeed often inappropriate) to join subordinate agencies⁶. It is especially so here,
4 in this cross-jurisdictional case, as the relief requested is not to end vaccination or some radical shift
5 in policy, but rather simply to safeguard the constitutional right of all Americans to choose their
6 own vaccination status. In this, Petitioners present the mainstream position of physicians, scholars,
7 and ethicists today.

8 Respondent's counsel disingenuously attempts to mislead the Court to presume the Court is
9 impotent to protect Americans from mandatory vaccination as a form of human experimentation.
10 The same impotence argument failed repeatedly in our 20th & 21st Century jurisprudence, including
11 especially *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954), where southern racists attempted to
12 argue that Federal courts should deem themselves impotent to prevent mandatory segregation
13 because the problem was so widespread across departments and jurisdictions. The argument of
14 segregationists was easily discredited in 1954 by our Supreme Court, and it remains so today (and
15 the Department of Justice knows this). Also shocking is that Respondent's counsel actually cites a
16 slavery era argument in his brief (that the Thirteenth Amendment has no private right of action). If
17 this were a race case, Americans would be puzzled that Respondent's counsel is asking the Court to
18 rely upon reversed and discredited legal theories from the slavery-era.

19 Rule number one in a motion to dismiss is that pleadings are accepted as true. However,
20 Respondent's counsel bizarrely attempts to misdirect the Court to agree with labeling this
21 scientific/constitutional case as "conspiracy theory"⁷ and completely ignore the cited indisputable

22 ⁵ *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 1003 (E.D. Cal. 2009) (granting
23 plaintiffs' request for ongoing Federal court monitoring and active intervention to stop
24 discrimination, because scientific risk assessment supported Orders to Show Cause and follow-up
orders to remedy prison population-wide deterioration of health due to unmitigated constitutional
violations).

25 ⁶ *Welsch v. Likins*, 550 F.2d 1122, 1130-31 (8th Cir. 1977) (finding it unnecessary to name
26 the Governor and legislature in a case granting preliminary injunction for constitutional violations
by state hospital, "The Governor and the members of the Legislature could have been made parties
27 to the suit, and the question of whether they should have been joined is governed by Fed. R. Civ. P.
19(a)... The absence of the Governor and the Legislature as parties of record does not appear to us
to create any problem...").

28 ⁷ This Court should not indulge Respondent's counsel for his imagined suggestion of a

1 authorities in the pleadings. His motion appears rushed and exhibits a cursory review of the
2 Verified Petition. Perhaps he expects the Court to do the same.

3 Indeed, Petitioners' counsel come to this Court with scientific acumen and coherent, and if it
4 is not too bold, winning legal argument. This is not a case alleging conspiracy, but rather raises
5 serious questions that should be asked, considered by all, particularly, the President.

6 We did however anticipate that the Respondent's counsel might try one of Pharma's tricks
7 and engage in personal attacks in order to deflect from the damning evidence of The Control Group
8 survey. The extraordinary weight of the authoritative documents for judicial notice focus the case
9 with an authoritative record, to set a context for the government's cognitive dissonance on the
10 subject of vaccination (i.e., saying "safe" and "unsafe" simultaneously).

11 It is indeed a critical error to underestimate the scientific credibility of this case (where
12 every fact and allegation has a scientific reference and an accompanying qualified expert), and to
13 criticize these patriotic American Petitioners for using words correctly rather than 'politically
14 correct'. While it may not be politically correct to refer to vaccines manufactured in Communist
15 China as "Communist Chinese vaccines", it is still the reality for our national security. Political
16 correctness is not required in court, nor is it truly honest.

17 Respondent's brief states that, "Plaintiffs fail to explain why they have sued the President at
18 all, rather than state or local officials who do enforce vaccination requirements. And they do not

19 _____
20 "military overthrow" (his words, not Petitioners') that he apparently divined from an historical
21 reference Petitioners made to Alexander Hamilton helping to structure our Constitution giving the
22 President ultimate enforcement power of law as Commander in Chief. Does Respondent's counsel
23 even realize the CDC itself has a military administration, and that Covid-19 vaccination is
24 jurisdictionally stewarded by the military today? It is quite appropriate to recognize the President's
25 role as Commander in Chief over the nation's infectious disease program. Why would Respondent's
26 counsel misquote Petitioners to blindly project his paranoid guesses at their intentions? Why would
27 he engage in false *ad hominin* attacks against these peaceful and civil US military families?
28 Respondent counsel's shameful attempt to hoist his own paranoia and tactical mistakes (i.e.,
ignoring math, pursuing blind personal character assumptions) upon this Court should not be
indulged. All of Petitioners' Requests for Judicial Notice contain authoritative citations for the
matters that Respondent's counsel deems "conspiracy theory", such as "incorporating
nanotechnology" (Respondent's brief, Document 28-1, marked Page 8 of 24). *See, e.g.,* Petitioners'
authoritative evidence at PRJN2, section 31B6c ("Nanocarrier based delivery systems provide a
suitable route of administration of vaccine molecules and enhance cellular uptake." Rashmirekha P,
et al., *Nanoparticle Vaccines Against Infectious Diseases*. FRONT IMMUNOL 9: 2224 (2018).
PMCID: PMC6180194 PMID: 30337923.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6180194/>).

1 explain how, exactly, the President can lawfully interfere in the enforcement of validly enacted state
2 and local vaccine requirements." *See* Document 28-1, marked Page 7 of 24.

3 Respondent's counsel misses the entire point of this lawsuit. Federal Agencies serve the
4 President, and they do not just "recommend" vaccines (as Respondent notes), they also actively
5 fund health departments to enforce vaccine mandates using police powers, and more — these
6 relationships are well pled in the Verified Petition and documented in Petitioners' Requests for
7 Judicial Notice. Moreover, Respondent's counsel misses the big thing: coercing American Citizens
8 (through discrimination) into serving as subjects in medical experiments is not a "lawful" or "valid"
9 action of any branch of government, whether state or federal. Opposing counsel's premise that the
10 President cannot "lawfully" interfere with unconstitutional discrimination, which is systemic,
11 Nationwide, and causing the imminent collapse of this Nation through destruction of the health of
12 its people, is without foundation. Further, this Court is empowered, independent of the Executive, to
13 "interfere" with such unconstitutional actions.

14 Respondent fails to acknowledge the following, which are established as facts for purposes
15 of a motion to dismiss, and which remain unrefuted:

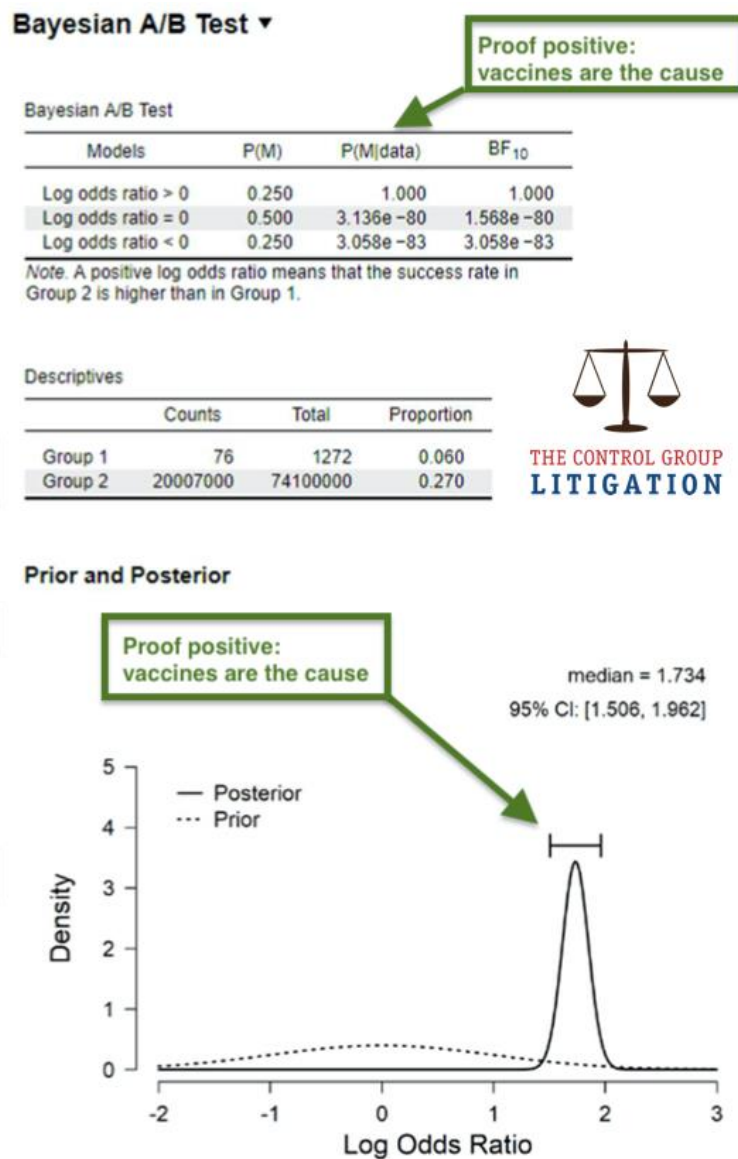
- 16 1. Catastrophic Public Health & National Security Emergency: POTUS must step in and
17 take action to prevent the imminent collapse of the Nation.
- 18 2. Vaccines are causing it.
- 19 3. Vaccines are all experimental. This means they cannot "lawfully" be mandated, nor can
20 other rights lawfully be denied any Citizen solely due to their refusal to serve as a subject
21 in the medical experiment.

22 *See, also*, Petitioners' Verified Petition, Four Judicially Noticeable Facts (Document 21, marked
23 Page 13 of 74, par. 24).

24 As described in detail herein, the Verified Petition carefully pleads around any political
25 questions. As confirmed in 15 Moore's Federal Practice - Civil § 101.117 (2020), "the courts have
26 invoked the political question doctrine primarily in cases involving housekeeping matters", with
27 examples provided such as regulation of political parties, the electoral process, and declaration of
28 war. The political question doctrine is not a bar to a lawsuit for infringement of an American

1 Citizen’s civil and constitutional rights, even when national security interests are involved.

2 This case must be allowed to go forward. At this early stage, before discovery and before the
 3 presentation of evidence, let it suffice to categorize this as a math-centered case in a court of equity,
 4 so it is ultimately necessary to avoid distractions and simply address the evidence for our national
 5 security, beginning for example with this scientific proof of causation from one of the
 6 uncontradicted experts identified in the Verified Petition, *see* Document 21, marked Page 6 of 74,
 7 par. 7:



27 *Expert declaration of statistician Jan-Willem van den Bergh showing proof of causation with two*
 28 *independent statistical methods: (1) Frequency and (2) Bayesian. This is an offer of proof, as*
evidence Petitioners intend to present at trial if afforded their due process opportunity.

1 Petitioners must impress upon this Court that this case has already been scientifically vetted
2 and validated by multiple top PhD and MD experts in vaccine risk. It is the most authoritative
3 presentation of evidence ever filed in a court of law on the issue of vaccine risk. This fact has been
4 confirmed in the press in January 2021. We do not wish to inundate the Court prior to trial, but we
5 have 100+ additional PhD and MD experts we can call as witnesses if needed, and 100+ more boxes
6 of authoritative scientific evidence we could present if needed. This case was carefully pre-designed
7 to produce an airtight and authoritative scientific record to protect our Nation’s people who choose
8 to decline vaccination.

9 **II. LEGAL ARGUMENT.**

10 **A. Petitioners’ Facts Are Received As True For The Motion To Dismiss.**

11 “In passing on a motion to dismiss for failure to state a claim, the allegations of the
12 complaint should be construed favorably to the pleader. *Scheuer v. Rhodes*, 416 U.S. 232 (1974),
13 later app., *Krause v. Rhodes*, 570 F.2d 563 (6th Cir. 1977), cert. denied, 435 U.S. 924 (1978).
14 Further, the allegations of the complaint must be taken as true, *Jenkins v. McKeithen*, 395 U.S. 411,
15 421-422 (1969). Because of the liberal pleading standard prescribed by F.R.C.P. Rule 8(a),
16 dismissal for failure to state a claim is viewed with disfavor, and is rarely granted.” *Sosa v.*
17 *Coleman*, 646 F.2d 991, 993 (5th Cir. 1981); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
18 570 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (a claim is sufficient to withstand a
19 motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure when, accepting as
20 true the facts alleged in the complaint but not any legal conclusions, the claim has “facial
21 plausibility,” that is, it allows the court “to draw the reasonable inference that the defendant is liable
22 for the misconduct alleged.”); *Kehr Packages v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3rd Cir. 1991)
23 (“[U]nder Rule 12(b)(6) the defendant has the burden of showing no claim has been stated.”).

24 Respondent's counsel appears to be unaware and almost incapable of not only believing the
25 science presented, but the fact that he must accept it as true for the purposes of the motion.

26 Further, the scientific facts are more than simply plausible, they are unrefuted (other than
27 some random name-calling), and irrefutable.

1 **B. This Court Has Both The Authority And Duty To Grant The Specific Cross-**
2 **Jurisdictional Relief Requested.**

3 **1. The President Is The Correct Party Named As Respondent And The Only Party**
4 **Who Can Provide The Relief Requested Through His Executive Office.**

5 In these cases, it is wholly unnecessary (and indeed often inappropriate) to join subordinate
6 agencies, and especially so in this cross-jurisdictional case where the relief requested is not to end
7 vaccination or some radical shift in policy, but rather simply to safeguard the Constitutional right of
8 all Americans to choose their own vaccination status. *See, e.g., Welsh v. Lkins*, 550 F.2d at 1130-
9 31 (finding it unnecessary to name the Governor and legislature in a case granting preliminary
10 injunction for constitutional violations by state hospital, “The Governor and the members of the
11 Legislature could have been made parties to the suit, and the question of whether they should have
12 been joined is governed by Fed. R. Civ. P. 19(a)... The absence of the Governor and the
13 Legislature as parties of record does not appear to us to create any problem...”).

14 Here, the President can adequately represent the interests of the United States and its
15 subordinates. As the Verified Petition states, “Petitioners request no statutory relief or regulatory
16 relief whatsoever, and indeed to even attempt to petition for same would fruitlessly splinter the case
17 and make the requested relief impossible, as conflicting court orders could be issued in differing
18 jurisdictions among a patchwork of ever-evolving statutes, rules, and regulations that both
19 perpetuate and conceal the National Health Pandemic. The root, branches, leaves, and fruit of this
20 case are entirely constitutional.” *See* Document 21, marked Pages 30 to 31 of 74, par. 51.

21 *See also*, Congressional Research Service (2021). United States Constitution Annotated, Art.
22 II, Sec. III, The President As Law Enforcer. [https://www.law.cornell.edu/constitution-conan/article-](https://www.law.cornell.edu/constitution-conan/article-2/section-3/the-president-as-law-enforcer)
23 [2/section-3/the-president-as-law-enforcer](https://www.law.cornell.edu/constitution-conan/article-2/section-3/the-president-as-law-enforcer) (“The general rule, as stated by the Court, is that when
24 any duty is cast by law upon the President, it may be exercised by him through the head of the
25 appropriate department, whose acts, if performed within the law, thus become the President’s acts.
26 The President, in the exercise of his executive power under the Constitution, ‘speaks and acts
27 through the heads of the several departments in relation to subjects which appertain to their
28 respective duties.’ The heads of the departments are his authorized assistants in the performance of
his executive duties, and their official acts, promulgated in the regular course of business, are

1 presumptively his acts.” [citations omitted].)

2 In this case, Petitioners present the mainstream position of physicians, scholars, and ethicists
3 today. The President is well equipped to answer the petition. It would be highly inappropriate,
4 futile, and impossible to join countless subordinates and departments across unknown jurisdictions.

5 **2. The Verified Petition Describes Respondent’s Multiple Specific Constitutional**
6 **Violations Requiring Judicial Redress Across Jurisdictions.**

7 Every one of Petitioners’ causes of action is properly pled with particularized facts,
8 including for example pursuant to applicable Federal Jury Instructions:

- 9 1. the plaintiff was engaged in a constitutionally protected activity;
10 2. the defendant’s actions against the plaintiff would chill a person of ordinary
11 3. the plaintiff’s protected activity was a substantial or motivating factor in the
defendant’s conduct.

12 *See, e.g.*, Federal Jury Instructions 9.11.

13 The Verified Petition specifically identifies Respondent’s multiple and specific violations of
14 Petitioners’ constitutional rights requiring judicial redress across jurisdictions, such as:

15 There exists an actual and justiciable controversy between Petitioners and
16 Respondent requiring resolution by this Court. Petitioners have no other adequate
17 remedy at law. Only Respondent as President of the United States of America and
18 Commander in Chief of the Armed Forces (and this Court in respect of him) has the
19 authority to protect Petitioners from the myriad and ever-shifting initiatives to
20 vaccinate every individual in America as much as possible, which initiatives have
stoked hatred and vilification of unvaccinated Americans. See PRJN2. By promoting
and supporting mass vaccination programs, including but not limited to the annual
influenza vaccine program, and Covid-19 vaccination, Respondent has emboldened
Subordinate Executive Agencies to exacerbate the Predicament.

21 *See* Document 21, marked Page 35 of 74, pars. 60-61.

22 Once observed, the four judicially noticeable facts are so plain, and the mathematical
23 trajectories of America’s chronic illnesses are so clear, that in the context of Article
24 II, § 1, this amounts to a breach of contract with Petitioners and the American
People, and rises to the level of reckless dissolution of the Republic, to fail to make
an appropriate plan of action to end the National Health Pandemic.

25 *See* Document 21, marked Page 50 of 74, par. 98.

26 Petitioners are engaged in Constitutionally protected activity as set forth herein, and
27 are subject to discrimination as a result. Respondent’s Oversight (in the omissions
28 sense of the word) to remedy the Predicament and issue the Suspension has chilled
persons of ordinary firmness from continuing to engage in Constitutionally protected
activity.

1 See Document 21, marked Pages 51 to 52 of 74, par. 107.

2 Respondent is not the sole cause of the Vilification, nor the sole cause of the threats
3 of mandatory vaccination, but rather Respondent has the responsibility to
4 acknowledge that America has been segregated and to take some appropriate action
in Respondent's reasonable discretion to either desegregate or justify the continued
infringement upon Petitioners' 5th Amendment and other rights.

5 See Document 21, marked Page 55 of 74, par. 117.

6 By Oversight in the omission sense of the word, Respondent has not prevented the
7 Vilification, infliction of threats and coercion of mandatory vaccination upon
8 Petitioners, which has placed Petitioners in a position of an actual, particularized
9 danger threatening national security. Respondent has actively supported Subordinate
Executive Agencies and myriad others contributing to the Predicament in spite of
their deliberate indifference to known and obvious dangers, thereby creating and
exposing Petitioners to dangers, the intensity of which Petitioners may not have
otherwise faced.

10
11 See Document 21, marked Page 56 of 74, pars. 120-121.

12 Federal Agencies serve the President, and they do not just "recommend" vaccines (as
13 Respondent notes), they also actively fund health departments to enforce vaccine mandates using
14 police powers. These relationships are well documented in Petitioners' Requests for Judicial Notice.

15 The Petition carefully pleads around any political questions.⁸ As confirmed in 15 Moore's
16 Federal Practice - Civil § 101.117 (2020), "the courts have invoked the political question doctrine
17 primarily in cases involving housekeeping matters", with examples provided such as regulation of
18 political parties, the electoral process, and declaration of war.

19 _____
20 ⁸ The Verified Petition (Document 21 filed 1/25/21) states at paragraphs 56 and 93:
21 "Petitioners do not seek justiciability over any political questions reserved to the President, but
22 rather Petitioners assert justiciability with respect to the Court's fundamental power under Article
23 III of the Constitution for the United States of America, to act as an intermediary between the
24 President of the United States of America and the people of the United States of America, on the
25 specific issues of declaratory and injunctive relief requested in this case due to the imminent
26 national security emergency. There is no matter more important to ensure the survival of the
27 country as important as the future of the health of the population. Respondent (and this Court in
28 respect of him) has the power and duty to recognize this fact and protect the nation.... The manner
in which Respondent takes action on such judicially noticeable facts would involve his reasonable
executive discretion, but the imperative of recognizing the judicially noticeable facts and taking
some appropriate action reasonably engineered to prevent the collapse of this Nation and prevent
further harm to its people, is neither discretionary nor political. The tool of the Executive Order has
been utilized historically to accomplish nationwide relief against countless State and local laws
oppressing individuals across jurisdictions - - for example, when President Abraham Lincoln freed
slaves by Executive Order, blacks were not a protected class. When President Dwight Eisenhower
used the tool of the Executive Order to desegregate schools (with the cooperation of the Federal
Courts), he upheld civil rights by preempting oppressive State and local laws across the country."

1 The political question doctrine is not a bar to a lawsuit for infringement of an American
2 Citizen’s civil and constitutional rights,⁹ even when national security interests are involved.¹⁰

3 But even if this Court did entertain such an argument, none of the political question
4 elements are present here:

5 *Respondent*: “[1] a textually demonstrable constitutional commitment of the issue to
a coordinate political department”

6 *Petitioners*: There is no political department with sole constitutional authority over
mandatory vaccination or human experimentation

7 *Respondent*: “[2] a lack of judicially discoverable and manageable standards for
8 resolving it”

9 *Petitioners*: The doctrine of informed consent is well established judicial precedent
that can be enforced.

10 *Respondent*: “[3] the impossibility of deciding without an initial policy determination
of a kind clearly for nonjudicial discretion”

11 *Petitioners*: The policy is already known and established: the right and ethic of
informed consent. No discretion is required for enforcement.

12
13 ⁹ See, e.g., *Nat’l Treasury Emps. Union v. Nixon*, 492 F.2d at 603–06 (claim that President
14 had constitutional duty to grant pay adjustments mandated by Federal Pay Comparability Act to
15 federal government employees did not present political question); *American Fed’n of Gov’t
16 Employees v. Phillips*, 358 F. Supp. 60, 67–68 (D.D.C. 1973) (action by unions representing
17 government employees to enjoin dismantling of federal Office of Economic Opportunity did not
18 present political question); *Baker v. Carr*, 369 U.S. 186, 228 (1962) (nonjusticiability of claims
19 based on Guaranty Clause has no bearing on justiciability of claim based on Equal Protection
20 Clause of Fourteenth Amendment); *Mountain Timber Co. v. Washington*, 243 U.S. 219, 234–235
21 (1917) (due process and equal protection challenges to workers’ compensation law were reviewed
22 on merits after Guaranty Clause claim was denied judicial review); *Immigration and Naturalization
23 Serv. v. Chadha*, 462 U.S. 919, 940–943 (1983) (presence of constitutional issues with significant
24 political overtones does not automatically invoke political question doctrine); *Elrod v. Burns*, 427
25 U.S. 347, 351–53 (1976) (political question doctrine did not preclude judicial review of claim that
26 discharge of deputy sheriffs from state government employment solely for reasons of party
affiliation violated First and Fourteenth Amendments); *Zivotofsky v. Clinton*, 566 U.S. 189, 194–
201 (2012) (determining constitutionality of statute may require resolution of questions about
constitutional authority of one of three branches of government, but that does not mean judicial
consideration is barred by political question doctrine; political question doctrine did not bar review
of claim that United States citizen born in Jerusalem was entitled to have “Israel” recorded on his
passport as his birthplace); *Franklin v. Massachusetts*, 505 U.S. 788, 802 (1992) (noting that district
court’s grant of injunctive relief against President was “extraordinary” and should have “raised
judicial eyebrows,” but leaving open question whether President might be subject to injunction
requiring performance of purely ministerial duty, because plaintiff’s injury could be redressed by
declaratory relief against Secretary of Commerce); *Zweibon v. Mitchell*, 516 F.2d 594, 615–627
(D.C. Cir. 1975) (Fourth Amendment and statutory challenges to FBI wiretap of domestic political
organization did not present political question); *Frontiero v. Richardson*, 411 U.S. 677, 682–691
(1973) (equal protection challenge to statutes discriminating against women in granting military
benefits was reviewed on merits).

27 ¹⁰ *Ralls Corp. v. Comm. on Foreign Inv. in U.S.*, 758 F.3d 296, 313–314 (D.C. Cir. 2014)
28 (procedural due process challenge to presidential order prohibiting transaction on ground it posed
threat to national security was not barred by political question doctrine).

1 *Respondent*: “[4] the impossibility of a court’s undertaking independent
2 resolution without expressing lack of the respect due coordinate branches of
3 government”

4 *Petitioners*: Enforcement of the American Citizen’s constitutional rights shows the
5 utmost respect and proper alignment for all branches of government.

6 *Respondent*: “[5] an unusual need for unquestioning adherence to a political decision
7 already made”

8 *Petitioners*: There is no political decision to be made. This is a legal decision to
9 uphold the legal right of informed consent.

10 *Respondent*: “[6] the potentiality of embarrassment from multifarious
11 pronouncements by various departments on one question.”

12 *Petitioners*: Saving America from destruction by mandatory vaccines is the best way
13 to avoid “embarrassment” to all departments. Bringing departments in line with
14 informed consent law is the right thing to do for all concerned.¹¹ Notably, legal
15 scholars also maintain that a grant of declaratory relief is less likely to risk even a
16 potential confrontation between various departments. At a minimum here, this Court
17 can grant the declaratory relief that it is *unlawful* to discriminate against Americans
18 based upon their refusal to serve as subjects in “unavoidably unsafe” medical
19 experiments, whether or not the Court issues any other relief requested.

20 *See* Respondent’s brief, Document 28-1, marked Page 18 of 24, lines 21-28.

21 Respondent’s citation to *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020) must be
22 understood in context, because the instant Control Group case is pled differently and much more
23 narrowly with a single possible culprit alleged rather than Juliana’s wide variety of possible causes
24 that may or may not be responsible for a wide variety of harms and that may or may not (and indeed
25 were not) be attributable to the President.

26 The *Juliana* plaintiffs asked for *decades* of unlimited and vague judicial supervision over
27 “climate change.” By contrast, the Petitioners in this case ask for limited, short-term, and specific
28 relief, namely a single court order upholding the well-defined law and ethic of informed consent for
all Americans. Federal Courts routinely marshal scientific reports (i.e., environmental clean-up) to
expeditiously monitor a litigation remedy. Petitioners’ request for a confirmatory nationwide
survey is neither novel nor difficult. *See* Petitioners’ Brief for Preliminary Injunction, Document
16-1 filed 12/29/20, marked Pages 17 through 20 of 29, on the utility of litigation surveys.

Indeed, POTUS and Governors have declared public health emergencies for misuse of drugs

¹¹ The job of this Court is to enforce rights, not to protect a narrative. Opposing counsel suggests it's better if the Court perpetuates the lie that vaccines are "safe", denying the public the judicially-noticeable fact that “vaccines are *unavoidably unsafe*”.

1 on exponentially less widespread matters, such as the national emergency declared because
2 “**2 million people** had an opioid use disorder.” *About the Pandemic*, U.S. DEPARTMENT OF HEALTH
3 AND HUMAN SERVICES, <https://www.hhs.gov/opioids/about-the-epidemic/index.html>.¹² Now
4 **compare the 200 million** Americans currently suffering a chronic illness due to vaccines.

5 It is the President’s job to declare an emergency when an immediate threat exists, even if
6 that immediate threat is decades old. *See, e.g.*, “[T]he President invoked his authority under the
7 National Emergencies Act (“NEA”), Pub. L. 94-412, 90 Stat. 1255 (1976) (codified as amended at
8 50 U.S.C. §§ 1601-51), and declared that ‘a national emergency exists at the southern border of the
9 United States.’ *See* Proclamation No. 9844, 84 Fed. Reg. 4,949 (Feb. 15, 2019) (“Proclamation No.
10 9844”).” *California v. Trump*, 407 F. Supp. 3d 869, 879 (N.D. Cal. 2019).

11 **3. Petitioners Have Standing, And A Favorable Decision Would Redress Their**
12 **Injuries.**

13 The adult Petitioners do not allege their own personal vaccination status because it is neither
14 necessary to the relief requested nor appropriate to the allegations. The adults are asserting their
15 parental/guardian rights, and moreover the lawsuit is to protect themselves as well as *all* Americans
16 *regardless of* vaccination status (i.e., the partially vaccinated also have informed consent in
17 vaccination and often participate in studies on that basis).¹³

18 **4. Petitioners Maintain Private Rights of Action Under The Constitution.**

19 This is a Court of equity with a duty to enforce every one of the Bill of Rights. Even a quick
20

21 ¹² *City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-01362, 2020 U.S. Dist.
22 LEXIS 142674, at *18 n.4 (S.D. W. Va. Aug. 10, 2020) (“on October 26, 2017, President Trump
23 directed the Secretary of Health and Human Services to declare the opioid crisis a Public Health
Emergency. *See* Combatting the National Drug Demand and Opioid Crisis, 82 Fed. Reg. 50305
(Oct. 26, 2017)).”

24 ¹³ Indeed, standing is confirmed when “At least one plaintiff must have standing to seek each
25 form of relief requested, and that party bears the burden of establishing the elements of standing
26 with the manner and degree of evidence required at the successive stages of the litigation.” *City &*
27 *Cty. of San Francisco v. U.S. Dept. of Homeland Security*, 944 F.3d 773, 786-87 (9th Cir. 2019)
28 (internal quotation marks and citations omitted). “At this very preliminary stage, plaintiffs may rely
on the allegations in their Complaint and whatever other evidence they submitted in support of their
preliminary-injunction motion to meet their burden.” *Id.* at 787. Petitioners here seek a pause on
vaccine mandates, to allow for an expeditious nationwide survey. This is significantly less involved
than many other successful injunction cases where Federal Courts maintained an active monitoring
role over constitutional violations across jurisdictions, such as *Brown v. Board*.

1 search of the annotated law books reveal judicial precedents in support of private right of action for
2 these Causes of Action¹⁴ which are challenged by Respondent and are rebutted by Petitioners as
3 pled:

- 4 a. **Oath of Office and Perpetuity Principle.** *Juliana v. United States*, 947 F.3d at 1178-79
5 (“In taking the Presidential Oath, the Executive must vow to ‘preserve, protect and
6 defend the Constitution for the United States,’ U.S. Const. art. II, § 1, cl. 8, and the Take
7 Care Clause obliges the President to ‘take Care that the Laws be faithfully executed,’
8 U.S. Const. art. II, § 3. Likewise, though generally not separately enforceable, Article
9 IV, Section 4 provides that the ‘United States shall guarantee to every State in this Union
10 a Republican Form of Government, and shall protect each of them against Invasion; and
11 . . . against domestic Violence.’ U.S. Const. art. IV, § 4; see also *New York v. United*
12 *States*, 505 U.S. 144, 184- 85, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992) The
13 perpetuity principle is not an environmental right at all, and it does not task the courts
14 with determining the optimal level of environmental regulation; rather, it prohibits only
15 the willful dissolution of the Republic.”)
- 16 b. **Thirteenth Amendment.** *Memphis v. Greene*, 451 U.S. 100, 120 (1981) upholding a
17 private right of action under the Thirteenth Amendment (“the Thirteenth Amendment ‘is
18 not a mere prohibition of State laws establishing or upholding slavery, but an absolute
19 declaration that slavery or involuntary servitude shall not exist in any part of the United
20 States.’”). In *Memphis*, a boundary had been placed between a white and black
21 neighborhood. The Supreme Court stated this segregation (denial of rights *by a private*
22 *citizen*) was banned by the Thirteenth Amendment.

23
24 ¹⁴ With regard to Petitioners’ claims citing the Ninth and Tenth Amendments, Petitioners pled
25 those explicitly as natural/absolute rights claims for this court of equity. In other words, the
26 Constitutional Amendment is not the “right” per se, but rather it is the lens through which the court
27 of equity upholds the absolute/natural right of the individual “to remain peacefully natural.” *See,*
28 *e.g., United States v. Choate*, 576 F.2d 165, 181 (9th Cir. 1978) (“Rights under the Ninth
Amendment are only those “so basic and fundamental and so deep-rooted in our society” to be truly
“essential rights,” and which nevertheless, cannot find direct support elsewhere in the
Constitution.”) To the extent that such an interpretation requires a change in law or clarification of
rights, it is so pled.

1 It is actually shocking that Respondent claims that there is no private right of action under
2 the Thirteenth Amendment. Such a radical legal position has been discredited since the slavery era,
3 so it is puzzling to hear the DOJ assert it.¹⁵

4 Congress is a creature of *the Constitution*, not the other way around. Constitutional rights are
5 enforceable *whether or not* Congress has bothered to acknowledge the existence of them, or
6 somehow located specific new ways to "enforce", those rights.

7 Respondent's citation to *Turner v. Hubbard*, 2012 WL 3133617, at *2 n.1 (E.D. Cal. July
8 31, 2012) is misplaced. In *Turner*, a *prisoner* had been found guilty of crimes (an explicit Thirteenth
9 Amendment exception for involuntary servitude); the court cited *Nattah v. Bush*, 770 F. Supp. 2d
10 193, 204 (D.D.C. 2011), wherein it was stated "recovery" (*damages*) were not available
11 under *that* private action- during "war time" (as against the government) and in particular, damages
12 were not available in that instance, where the plaintiff had signed an employment contract
13 to *serve* in that particular war.

14 **5. Declaratory & Injunctive Relief Are Proper Checks & Balances In This Case.**

15 A declaratory judgment does not by itself order any action by a party, or imply damages or
16 an injunction, although it may be accompanied by one or more other remedies. Injunctive relief is
17 available when there is no other remedy at law, and irreparable harm will result if relief is not
18 granted.

19 Here, the right the Petitioners seek to protect through injunctive relief, is their right to *avoid*
20 *serving as subjects in medical experiments* - experiments in which the researchers are wearing
21 blindfolds by categorically *refusing* to apply the single most fundamental scientific method, which
22

23 ¹⁵ For a long time after it was passed, both citizens and members of the Supreme Court thought
24 that the Thirteenth Amendment did not apply to acts of racial discrimination committed *by private*
25 *citizens*, (this is what was actually meant by "right of private action") since these were social
26 choices and did not reinstitute slavery. According to this theory, Congress did not have the power to
27 act (pass laws) as *against private parties* who practiced discrimination. However, the fact Congress
28 had not previously granted such a *specific* right, *did not preclude the Judicial branch from*
intervening to protect the citizens' rights. Now it appears this historical view has led to the
erroneously twisted conclusion *private citizens* whose Thirteenth Amendment rights are being
violated *by government*, are somehow prohibited from challenging these violations through judicial
redress. In any case, The Petitioners here do not seek to sue *private citizens* for Thirteenth
Amendment violations.

1 is absolutely required in order to *observe the results* of this ongoing mass experiment, i.e., observe a
2 numerical *accounting* of its actual *effects* on public health. Without this accounting of the results on
3 public health, this ongoing mass experimentation has no value in the "advancement medical
4 knowledge" which could further any public health objectives, which is the *only* claim the
5 government has ever made to justify this ongoing experiment.

6 This is an action for Declaratory and Injunctive relief, which in plain terms would simply
7 say, 'No. You cannot coerce anyone, (by discrimination/denial of rights) into serving as a subject in
8 any medical experiment in the United States of America, *because it is repugnant to the Constitution*
9 *to do so.*'

10 Federal courts are supposed to actively intervene (even over lengthy periods of time if
11 needed) to safeguard constitutional rights. *See, e.g., Coleman v. Schwarzenegger*, 922 F. Supp. 2d
12 882, 1003 (E.D. Cal. 2009) (granting plaintiffs' request for ongoing Federal court monitoring and
13 active intervention to stop discrimination, because scientific risk assessment supported Orders to
14 Show Cause and follow-up orders to remedy prison population-wide deterioration of health due to
15 unmitigated constitutional violations).¹⁶ *See also, Aguayo v. Richardson*, 473 F.2d 1090 (2d Cir.
16 1973) (granting mandamus to welfare parents and children, such that the sanction of an otherwise
17 mandatory health and safety program was temporarily stayed). Note in particular how the *Aguayo*
18 court recognized the presumptive utility of the health & safety program, and yet still granted
19 mandamus to the families (effectively opting them out of the public health & safety program) on the
20 grounds that the balance of hardships weighed in their favor as a minority group. Coincidentally,
21 the appellate court even mentioned the utility of 'controlled experiment' science, implicitly
22 criticizing one-size-fits-all health and safety policy.”

23
24 ¹⁶ Burden shifting is also a recognized pre-trial function of trial courts. *See, e.g., McDonnell*
25 *Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973) (after plaintiff makes a prima facie showing of
26 discrimination, the burden shifts to the defendant to show a lawful reason for defendant's conduct);
27 *United States v. Hand*, No. CV 15-96-H-CCL, 2017 U.S. Dist. LEXIS 6657, at *5 (D. Mont. Jan.
28 18, 2017) (granting summary judgment for plaintiff because after plaintiff presented a numerical
accounting with his pre-trial motion, the court held, “This evidence is sufficient to meet Plaintiff's
burden of proof and to shift the burden to Defendant to establish some genuine material fact that
must be tried. Defendant's response to the order to show cause fails to raise any genuine issue of
material fact requiring trial.”).

1 Petitioners refer the Court to their extensive legal argument and authorities cited in the MPA
2 for Preliminary Injunction, especially section III.1.B.1.b (“Now That the Evidence Is Indisputable,
3 It Is An Abuse of Discretion to Forego Saving Our Nation.”) and d (“Mandamus Against An
4 Executive Is The Proper Function of the Court.”).

5 **C. Petitioners’ Case is Scientifically Focused On The Evidence Currently Before the**
6 **Court.**

7 Petitioners’ Verified Petition states:

8 The most obvious culprit in our Nation’s current non-infectious pandemic of immune
9 mediated chronic diseases, disabilities, and related deaths, is exposure to immune-
10 system altering vaccines. See Petitioners’ Request for Judicial Notice, Appendices
11 One and Two, and the Supporting Declarations of Petitioners’ Experts.

11 See Document 21, marked Page 6 of 74, par. 7.

12 With top experts and proven 99%+ confidence in our survey data, this case is designed to
13 help write history for the good of our Nation. Opposing counsel is free to cavalierly assume the
14 great size of our tree makes it more likely to fall, but opposing counsel would be ignoring the
15 established legal precedents above (and in Petitioners’ injunction brief) showing that Federal Courts
16 do indeed grant nationwide injunctive relief in the face of emergencies crossing State lines. Federal
17 Courts have always stood for and are here to help save America.

18 Petitioners’ requests for judicial notice already prove **the government admits it has never**
19 **completed a study of vaccinated versus unvaccinated persons.** By itself, this justifies the
20 requested relief in the Verified Petition.

21 **D. Petitioners’ Case Is Constitutionally Focused Rather Than Politically Correct.**

22 The scientific method requires true controls in product safety inquiry. In order for the
23 surveying of unvaccinated individuals to be conducted scientifically and without fear of retribution,
24 an unvaccinated control group must remain intact and remain free from discrimination and coercion
25 with respect to their military service, education, livelihood, and religious freedom.

26 Separate is not equal. This Court must protect Petitioners from further discrimination and
27 threats, and to request the Court protect individuals as potential candidates for scientific control
28 group surveys and studies. This end can be achieved by the Court simply issuing a preservation of

1 evidence order that upholds the right and ethic of informed consent/refusal, by prohibiting
2 discrimination on the basis of vaccination status.

3 **E. Respectfully Restated Objection To Rush Due Date For Opposition Brief.**

4 On February 1, 2021, Petitioners' counsel cited the Federal Rules of Civil Procedure to
5 object to this Court's rush briefing schedule that afforded Petitioners five calendar days to file this
6 opposition brief to Respondent's motion to dismiss this national security case on a national holiday
7 in violation of the FRCP simply because Respondent's counsel didn't calendar his motion on time.
8 At the same time, Respondent was given extra time to oppose the Preliminary Injunction motion.
9 Petitioners respectfully restate their objections here so it is clear for the record, as a matter of
10 procedural due process.¹⁷ Petitioners' reiterate this Court should take time and opportunity to
11 consider the scientific evidence presented by Petitioners as pled, to save America.

12 **III. CONCLUSION.**

13 This case is quite simple and straightforward actually: informed consent for all Americans.

14 The era of vaccines as a 'sacred cow' is ending. The Article II and III branches should be
15 eager for the opportunity, and must not shirk the responsibility, to review scientific evidence to save
16 America.

17 Respondent is treating Petitioners as adversaries as a reflex action, instead of realizing that
18 the Verified Petition actually recognizes an opportunity -- the authority of the President to help
19 control the current chronic illness pandemic by truly understanding the health emergency we're
20 facing because of overmedicating. Respondent's counsel did not demonstrate he understood the
21 complexity of the Verified Petition, and did not see that Petitioners are just asking the Court to
22

23 _____
24 ¹⁷ If the Court is inclined to dismiss, Petitioners would request leave to amend. Rule 15 advises
25 leave to amend shall be freely given when justice so requires. Fed. R. Civ. P. 15(a)(2). "This policy
26 is to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,
27 1051 (9th Cir. 2003) (internal quotation marks and citation omitted). In the absence of any apparent
28 or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant,
repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the
opposing party by virtue of allowance of the amendment, futility of the amendment, etc. – the leave
sought should, as the rules require, be freely given. *Foman v. Davis*, 371 U.S. 178, 182 (1962).
Dismissal without leave to amend is not appropriate unless it is clear the complaint cannot be saved
by amendment to allege a viable claim.

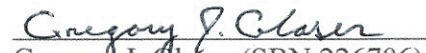
1 order the President to use his authority to establish a federal safety barrier between the American
2 public and overzealous mandators.

3 To do science, we must preserve a group of individuals in their pure unmolested natural
4 state.

5 Like desegregation, this request requires POTUS's intervention because myriad government
6 actors have different laws and rules coercing vaccination. It is time to return to informed consent.

7 Dated: February 15, 2021

8
9 Respectfully submitted

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