

No. 21-15587

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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

Petitioners-Appellants,

v.

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

Respondent-Appellee.

Appeal from the Judgement of the United States District Court
for the Eastern District of California, Case No. 2:20-cv-02470-WBS-JDP
Honorable William B. Shubb, United States District Judge

APPELLANTS' OPENING BRIEF

Gregory J. Glaser (SBN 226706)
4399 Buckboard Drive, Box 423
Copperopolis, CA 95228
Ph. (925) 642-6651
Fx. (209) 729-4557
greg@gregglaser.com

Ray L. Flores II (SBN 233643)
11622 El Camino Real Suite 100
San Diego, CA 92130
Ph. (858) 367-0397
Fx. (888) 336-4037
rayfloreslaw@gmail.com

Counsel for Petitioners

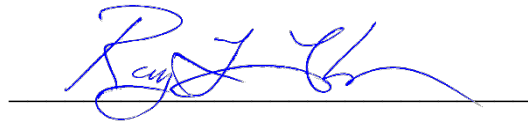
CORPORATE DISCLOSURE STATEMENT

Petitioners submit the following statement of corporate interests and affiliations for the use of the judges of this Court: Petitioners have no corporate interests. Petitioners are not a publicly-held corporation or other publicly-held entity. Petitioners have no stock, so no publicly-held corporation or entity owns any stock in Petitioners.

Respectfully submitted this 8th of July 2021.



Gregory J. Glaser (SBN 226706)
4399 Buckboard Drive, Box 423
Copperopolis, CA 95228
Ph. (925) 642-6651
Fx. (209) 729-4557
greg@gregglaser.com



Ray L. Flores II (SBN 233643)
11622 El Camino Real Suite 100
San Diego, CA 92130
Ph. (858) 367-0397
Fx. (888) 336-4037
rayfloreslaw@gmail.com

Counsel for Petitioners

TABLE OF CONTENTS

	<u>Page #</u>
CORPORATE DISCLOSURE STATEMENT	I
TABLE OF AUTHORITIES	IV
INTRODUCTION	1
JURISDICTIONAL STATEMENT	9
ISSUES PRESENTED	9
STATEMENT OF THE CASE	12
SUMMARY OF ARGUMENT	15
STANDARD OF REVIEW	16
LEGAL ARGUMENT	18
A. The District Court Committed Reversible Error of Law and Fact by Dismissing the Case at Warp Speed Rather Than Acknowledging as True Healthiest Americans’ Most Important Allegations.	18
B. The District Court Committed Reversible Error Of Law And Fact By Failing To Acknowledge As True Healthiest Americans’ Stated Causal Connections Between (a) The Vaccine-Induced Collapse Of The USA By Federally-Managed Mandated Vaccines From Communist China, And (b) The Office Of The President That Federally Manages Mandatory Vaccination Across Multiple Departments.	26
C. It Is Not A Political Question Whether POTUS Should Either (A) Save America From Statistically Certain Death, or (B) Medically Experiment Upon Americans Without Their Consent.	32
D. Healthiest Americans’ Standing Is Indisputable.....	34
E. As Warp Speed Vaccination Is Ongoing, It Is Essential To Protect The Scientific Control Group.....	35

F.	The Extraordinary Nation-Collapsing Circumstances Here Warrant Injunctive Relief With POTUS.....	39
G.	If More Specificity Were Somehow Needed, The District Court Committed Legal Error in Concluding That It Would Have Been Futile to Grant Healthiest Americans Leave to Amend.....	42
1.	Standard of Review.....	42
2.	If More Specificity About the President’s Direct and Complicit Oversight of Vaccine Policies and Mandates Is Needed, Then the District Court Erroneously Concluded That Granting Leave to Amend Would Be Futile.	43
	CONCLUSION	46
	STATEMENT OF RELATED CASES.....	48
	CERTIFICATE OF COMPLIANCE.....	49
	CERTIFICATE OF SERVICE.....	50

TABLE OF AUTHORITIES

Federal Cases

<i>Aguayo v. Richardson</i> , 473 F.2d 1090 (2d Cir. 1973)	21
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	16, 18, 35
<i>Balistreri v. Pacifica Police Dep’t</i> , 901 F.2d 696 (9th Cir.1990)	43
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	16, 18
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954)	22
<i>Coleman v. Schwarzenegger</i> , 922 F. Supp. 2d 882 (E.D. Cal. 2009)	21
<i>Cruzan v Director, Missouri Dept of Health (1990)</i> 497 US 261	20
<i>Erickson v. Pardus</i> , 551 U.S. 89 (2007) (<i>per curiam</i>)	16
<i>Frost & Frost Trucking Co. v. R.R. Com. of Cal.</i> , 271 U.S. 583 (1926)	36
<i>Garner v. United States Dist. Court for the E. Dist. of Cal. (In re Garner)</i> , U.S. App. LEXIS 14284 (9th Cir. May 13, 2021)	9, 14, 48
<i>Gordon v. City of Oakland</i> , 627 F.3d 1092 (9th Cir. 2010)	42
<i>Jewel v. Nat’l Sec. Agency</i> , 673 F.3d 902 (9th Cir. 2011)	16
<i>Johnson v. Buckley</i> , 356 F.3d 1067 (9th Cir. 2004)	43

Juliana v. United States,
 947 F.3d 1159 (9th Cir. 2020).....23

Krainski v. Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.,
 616 F.3d 963 (9th Cir. 2010).....43

Leite v. Crane Co.,
 749 F.3d 1117 (9th Cir. 2014).....16

Levitt v. Yelp! Inc.,
 765 F.3d 1123 (9th Cir. 2014).....16

Lujan v. Nat’l Wildlife Fed.,
 497 U.S. 871 (1990)16

Nat’l Fed’n of Indep. Bus. v. Sebelius,
 567 U.S. 519 (2012)32, 33

Nat’l Treasury Emps. Union v. Nixon,
 160 U.S. App. D.C. 321, 492 F.2d 587 (D.C. Cir. 1974).....21

Renee v. Duncan,
 686 F.3d 1002 (9th Cir. 2012).....16

Roberts v. Corrothers,
 812 F.2d 1173 (9th Cir. 1987).....17

Roman Catholic Diocese v. Cuomo,
 592 U.S. ___, 141 S. Ct. 63, 208 L. Ed. 2d 206 (Nov. 25, 2020)42

Sylvia Landfield Trust v. City of Los Angeles,
 729 F.3d 1189 (9th Cir. 2013).....43

Triplett v. Heckler,
 767 F.2d 210, 1985 U.S. App. LEXIS 21002 (5th Cir.),
 reh’g denied, 774 F.2d 1160 (5th Cir. 1985),
 cert. denied, 474 U.S. 1104, 106 S. Ct. 889, 88 L. Ed. 2d 923 (1986).....17

United States v. Corinthian Colleges,
 655 F.3d 984 (9th Cir. 2011).....42

United States Constitution

First Amendment40
 Fifth Amendment20
 Thirteenth Amendment.....20

Federal Statutes

28 U.S.C.
 § 12919
 § 13319
 § 220122, 23
 § 2201(a).....9
 § 22029

42 U.S.C.
 § 300aa-2644

Federal Rules of Appellate Procedure

Rule 4(a)(1)9

Federal Rules of Civil Procedure

Rule 8(a)(1)16
 Rule 1217, 35
 Rule 12(b).....17, 18, 35
 Rule 12(b)(6)17, 18, 35
 Rule 5617, 35
 Rule 57 Notes of Advisory Committee22

Internet Sources

CDC (2018). *About CDC Funding*. CENTERS FOR DISEASE CONTROL AND PREVENTION,
<https://www.cdc.gov/funding/about-cdc-funding/index.html>45

Congressional Research Service (2021). United States Constitution Annotated, Art. II, Sec. III, *The President As Law Enforcer*.
<https://www.law.cornell.edu/constitution-conan/article-2/section-3/the-president-as-law-enforcer>.....26

Dorman, S. (March 11, 2021). *Trump takes credit for ‘China virus’ vaccine: ‘I hope everyone remembers!’* FOX NEWS.
<https://www.foxnews.com/politics/trump-takes-credit-vaccine>.....32

Folkers, G., Fauci, A. *The Role of US Government Agencies in Vaccine Research And Development*. NAT MED 4, 491–494 (1998).
<https://doi.org/10.1038/nm0598supp-491>44

HHS (2018). *Vaccines: Get Involved*.
<https://www.vaccines.gov/get-involved/get-more-information>44

Malone, K.M., and Hinman, A.R. 2003. Vaccination mandates: The public health imperative and individual rights. *Law in Public Health Practice* (pp. 262–84). New York: OXFORD UNIVERSITY PRESS. Retrieved August 12, 2008, from http://www.cdc.gov/vaccines/imz-managers/guides-pubs/downloads/vacc_mandates_chptr13.pdf.....44

NATIONAL CONFERENCE OF STATE LEGISLATURES (2021). *State Immunization Policy Overview*.
<https://www.ncsl.org/research/health/immunizations-policy-issues-overview.aspx>44

National Strategy for the Covid-19 Response and Pandemic Preparedness.
<https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.....45

Remarks by President Biden on the Administration’s COVID-19 Vaccination Efforts. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/02/remarks-by-president-biden-on-the-administrations-covid-19-vaccination-efforts/>.....45

The White House (March 10, 2021). *President Biden Hosts an Event with the CEOs of Johnson & Johnson and Merck*. Press Conference.
https://youtu.be/UjH4_NOVtWc.....31

Miscellaneous Authorities

Lewis, C.S., *God In The Dock* (1948)38

15 Moore’s Federal Practice - Civil
 § 101.117 (2020)34

Wendy E. Parmet, *Public Health and Constitutional Law: Recognizing the Relationship*, 10 J. HEALTH CARE L. & POL'Y 13 (2007)40

INTRODUCTION

The district court dismissed this scientifically vetted national security case on *standing* grounds by disregarding the most important allegations in the verified complaint that did establish *standing*. The district court erred by acting as if the scientifically vetted pleadings were untrue, as if Federal courts had no power to protect scientific control groups necessary to resolve emergencies.

Petitioners (“Healthiest Americans”) are in the fully unvaccinated scientific control group, statistically the healthiest citizens by >1,000%. Staggering! *See* Science Graphs at 3-ER-304-305. America’s confirmed national data show more than half of vaccinated citizens are disabled and dying prematurely (i.e., heart disease, cancer, autoimmune disorders). *See* National Data Charts at 3-ER-326-336. Control groups prove causation, and routinely change our entire perspective of pharmaceutical side effects. This case advocates for the control group’s right to exist and not go extinct.

The era of vaccines as ‘sacred cow’ is ending this decade – a telling sign, as recently admitted by Dr. Anthony Fauci live on CSPAN, is that about 40% of government scientists have declined the Covid vaccine. Natural immunity is our foundation and future that most Americans are scientifically predicted to choose as new control group evidence *continues* to come to light.

Helping our country heal, Healthiest Americans are learning that America's dependence upon vaccines is teaching us valuable lessons about this relationship with biotech. Our Nation has never faced an infectious disease threat anywhere near as threatening as the current *vaccine-caused* mass disability pandemic. *See* Historical Data Charts and Judicial Notice at 3-ER-338-349 and 4-ER-603-605.

In 2021, the government administers more than 100 vaccines on an American during his lifetime. Increasing vaccine injury rates prove the trajectory that America's collapse to chronic illness is mathematically imminent unless we learn. *See* Garner Declaration at 3-ER-286-349. The government acknowledges that zero unvaccinated control group studies have ever been published by the government. *See* Judicial Notice at 4-ER-552-555.

In this regard, since 1963, the national vaccine program is the President's human medical experiment. POTUS vigorously develops, approves, purchases, promotes, and administers mandatory vaccines while federally funding US parties to enforce nationwide vaccine mandates (and now vaccine identification) as a condition to societal participation.



VACCINES ARE DANGEROUS

The CDC Recommended Vaccine Schedule Is Experimental

"[S]tudies designed to examine the long-term effects of the cumulative number of vaccines or other aspects of the immunization schedule have not been conducted."

"[The IOM] found a paucity of information, scientific or otherwise, that addressed the risk of adverse events in association with the complete recommended immunization schedule..."

The National Academy of Sciences (2013). The Childhood Immunization Schedule and Safety: Stakeholder Concerns, Scientific Evidence, and Future Studies. Washington, DC: The National Academies Press. doi: 10.17226/13563.

The Article II and III branches should be eager for the opportunity, and must not shirk the responsibility, to review scientific evidence to save America. There is no better time for this action to be taken. There is no better case. There is no better reason. The unvaccinated hold the key to health, America's greatest future yet.

The fully unvaccinated control group is thriving mentally and physically at >94% complete health for life, but these citizens are less than 0.3% of our population and shrinking (only about 830,000 remain unexposed). *See Garner*

Declaration at 3-ER-286-349. The President's warp speed vaccination and tracking program imminently threatens the control group's *right to exist* in America. Thus, the district court denied the scientific method.

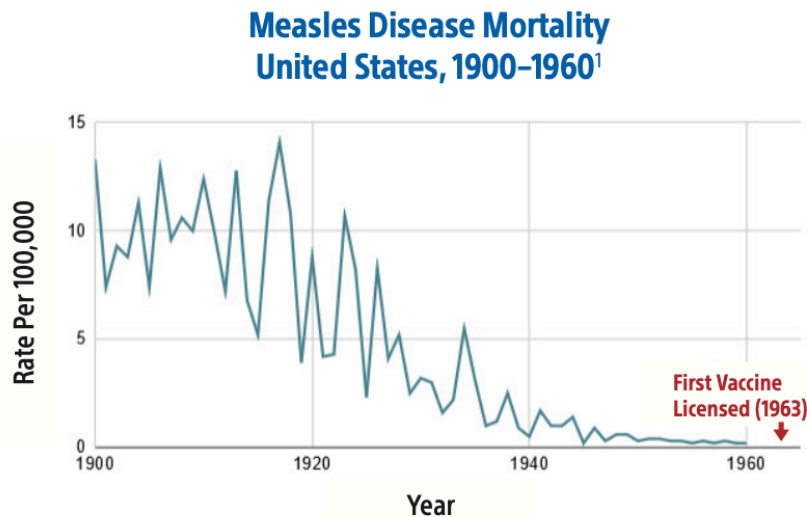
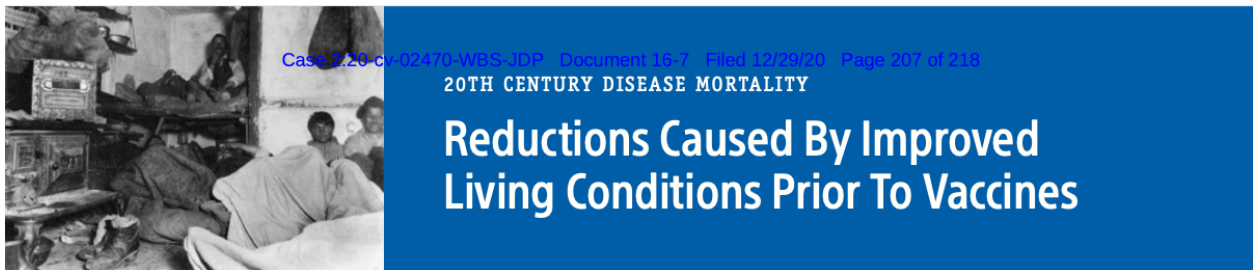
Healthiest Americans cannot be forced to participate in the President's medical experiment -- Healthiest Americans' right to exist unmolested is clear and indisputable.

It is irrational for a court to ignore the "vaccine passport" plans now being implemented throughout the Nation. POTUS is massively increasing these electronic "track n' trace" programs through his "public private partnerships" with our nation's largest corporations and schools, who now openly declare their intention to refuse an education, employment, food, services, public transportation, and more to anyone who has not been injected with gene altering Covid-19 vaccines. The people are saying only an irrational court would fail to recognize POTUS is forcing a dystopian agenda upon nonconsenting Americans. How much longer can the Article III Judiciary stay silent?

To prevent imminent destruction of control group evidence (i.e., to preserve the unvaccinated from molestation), there is no other adequate means to relief other than a federal court order immediately protecting the control group from mandatory vaccination. Myriad Federal and local government actors have different laws and rules mandating and coercing the President's 60-year medical

experiment. Most of us have suffered more than enough. America needs a national informed consent exemption (NICE), as Healthiest Americans politely request. See Proposed Order at 3-ER-350-355.

Government data prove sanitation and healthy lifestyle, not vaccines, protect all Americans.



SOURCES:

1. Grove, R., D., Hetzel, A., M., (1968). Vital statistics rates in the United States, 1940-1960, pp 559 - 603, Washington, D.C.: U.S. Department of Health, Education, and Welfare, Public Health Service, National Center for Health Statistics, 1968. 2. "The first measles vaccines were licensed in 1963." Centers for Disease Control and Prevention. Epidemiology and Prevention of Vaccine-Preventable Diseases. Hamborsky J, Kroger A, Wolfe S, eds. 13th ed. Washington D.C. Public Health Foundation, 2015.



THE CONTROL GROUP
LITIGATION

1

Exhibit F

Let us reason together. Government data (like the above graph) proves vaccines falsely took the credit for protecting America. 3-ER-338

In summary, coercing American citizens (through discrimination and loss of other fundamental rights) into serving as subjects in medical experiments is not a

‘lawful’ or ‘valid’ action of any branch of government, whether state or federal. The President’s premise that he cannot ‘lawfully’ interfere with unconstitutional discrimination, which is systemic, nationwide, and causing the imminent collapse of this Nation through destruction of the health of its people, is without foundation. Further, the Article III Judiciary is empowered, independent of Article II, to ‘interfere’ with such unconstitutional actions.

Therefore, Healthiest Americans seek an order to:

1. Set aside the dismissal because the district court had *no* discretion to ignore the most important allegations in the verified petition confirming jurisdiction and dire emergency;
2. Grant Healthiest Americans’ request for judicial notice (incorporated by reference into the First Amended Verified Petition) that the national vaccine program is experimental because the government acknowledges its failure to compare vaccinated to unvaccinated persons; and
3. Instruct the district court to grant declaratory relief that vaccination is experimental and unavoidably unsafe, such that Americans have the absolute right to avoid involuntary service as subjects in the President’s experiment.

JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction under the Constitution for the United States of America, and under 28 U.S.C. §§ 1331, 1343(a)(3), 2201(a) and 2202 to grant the requested relief. This Ninth Circuit Court has appellate jurisdiction under 28 U.S.C. § 1291 to reverse the district court's 2/23/21 dismissal of the case with prejudice (1-ER-2-11), and to grant judicial notice at any time.

Healthiest Americans filed a timely notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure on April 1, 2021. *See* Notice of Appeal at 2-ER-13-15.

Healthiest Americans also concurrently submitted a petition for writ of mandamus, which this Court of Appeals denied in *Garner v. United States Dist. Court for the E. Dist. of Cal. (In re Garner)*, No. 21-70925, 2021 U.S. App. LEXIS 14284 (9th Cir. May 13, 2021).

ISSUES PRESENTED

The following issues are presented on this appeal:

1. POTUS vigorously manages mandated vaccines (sourced from Communist China) as a matter of national security. New scientific evidence proves 60-80% of vaccinated Americans are being decimated by debilitating chronic illnesses (i.e., cancer, autoimmune diseases), but only 2-6% of unvaccinated Americans have any medical conditions whatsoever. The vaccine-induced collapse

of our Nation is imminent on the current mathematical trajectory. Did the district court commit reversible error of law and fact by summarily dismissing this national security case (under the guise of lack of standing) rather than acknowledging as true Healthiest Americans' most important allegations?

2. Did the district court commit reversible error of law and fact by failing to acknowledge as true (required in a motion to dismiss) Healthiest Americans' 100+ causal connections alleged between (i) the imminent collapse of the USA by mandated vaccines sourced from Communist China, and (ii) the Office of the President that manages the following across multiple *federal* departments:

- a) Designing and producing federally vaccines that are mandated;
- b) Classifying and approving federally vaccines that are mandated;
- c) Producing federally the required vaccine information statement on vaccines that are mandated;
- d) Engaging federally in conflicts of interest regarding vaccines that are mandated;
- e) Purchasing federally vaccines that are mandated;
- f) Importing federally from Communist China vaccines that are mandated;
- g) Promoting federally vaccines that are mandated, and promoting federally the policy of mandates;

- h) Distributing federally vaccines that are mandated, to target and exterminate a control group of unvaccinated Americans;
- i) Biased tracking federally of vaccine injuries from mandated vaccines in order to make false and misleading safety claims to justify mandates;
- j) Designing federally a vaccine injury tracking system intended to fail and then falsely reporting federally vaccine injuries from mandated vaccines;
- k) Studying federally uptake of mandated vaccines;
- l) Failing federally to report to Congress on vaccine safety;
- m) Litigating federally vaccine injury cases from mandated vaccines;
- n) Concealing federally that the primary cause of the national health crisis is mandated vaccines;
- o) Setting regulations federally for interstate infectious disease control regarding mandated vaccines;
- p) Funding federally health departments to enforce vaccine mandates across the nation; and
- q) Enforcing vaccine mandates on federal properties and for federally funded activities.

3. District courts routinely save America from self-destruction (i.e., declaring ‘separate is not equal’ across State and local jurisdictions; ordering Governors to reverse unconstitutional conditions decimating a population’s health).

Did the district court fail to acknowledge its authority to rule on this constitutional matter?

STATEMENT OF THE CASE

Healthiest Americans duly served the White House and Department of Justice with approximately 5,000 pages of pre-litigation scientific materials in Autumn 2020. Receipt was confirmed the same month, but Healthiest Americans received zero substantive response after waiting patiently three months.

Accordingly, the district court case was commenced, as Healthiest Americans filed the Verified Petition seeking declaratory relief (declare an emergency) and a preliminary injunction (to uphold informed refusal and thereby safeguard the scientific method).

Incorporated by reference² with the Verified Petition, Healthiest Americans concurrently filed their Requests for Judicial Notice proving the national health crisis is caused by dangerous vaccines sourced primarily from Communist China, and that the control group of unvaccinated Americans (necessary to the scientific method) is threatened with imminent extinction. *See* VP/FAVP ¶ 24; 2-ER-194.

² The First Amended Verified Petition (“FAVP”) incorporates by reference the Requests for Judicial Notice (“PRJN”), including for example FAVP ¶ 64 “incorporated Requests for Judicial Notice.” *See* FAVP at 2-ER-217. The FAVP refers 16 times to the PRJNs.

Healthiest Americans also incorporated by reference³ their Motion for Preliminary Injunction. Supported by highly qualified experts, the motion makes the case for the scientific method (comparing vaccinated to unvaccinated). Healthiest Americans' evidence plainly proved that the unvaccinated are the healthiest people in the Nation by exponential amounts (specifically, the unvaccinated are >1,000% (more than ten times!) healthier than the vaccinated). *See* Science Graphs at 3-ER-304-305.

Our Nation has never faced an infectious disease threat anywhere near as devastating or threatening as our Nation's current *vaccine-caused* disability pandemic. This is confirmed in Healthiest Americans' requests for judicial notice.

On January 29, 2021, POTUS filed a request for continuance of the above-referenced motions, claiming POTUS needed more time to file a motion to dismiss. Healthiest Americans opposed the motion by highlighting the transparent reality that POTUS' counsel was wishfully hoping the district court would take the easy road to 'lump all three motions together' and then simply dismiss the action outright rather than actually review and thoughtfully rule upon the plainly incriminating requests for judicial notice.

³ The FAVP incorporates by reference the Motion for Preliminary Injunction, including for example FAVP ¶ 4, note 1 ("See Petitioner Joy Garner's Declaration ('Garner Declaration') In Support of Motion for Preliminary Injunction"). *See* FAVP at 2-ER-186. The FAVP refers 11 times to the Motion for Preliminary Injunction.

At the hearing on such motion, the court set an accelerated briefing schedule over Healthiest Americans' express objections. *See* Status Conference Hearing Transcript (Feb. 1, 2021), 2-ER-70, lines 4-7; 2-ER-24, line 14 through 2-ER-25, line 5.

On February 10, 2021, POTUS filed his motion to dismiss the action on the grounds of lack of standing, yet admitting: "A facial motion to dismiss, such as this one, assumes the truth of the well-pled facts in the complaint." *See* Respondent's Motion to Dismiss (Feb. 10, 2021), 2-ER-167, lines 18-20.

A hearing was held on George Washington's Birthday (February 22, 2021) in the district court on the three motions. The Transcript of the hearing shows that the district court judge did not acknowledge or respect Healthiest Americans' extraordinary evidence showing that vaccines are causing the collapse of the United States, but rather summarily discharged the case from the docket based on a 'standing' argument unsupported by the record. *See* Hearing Transcript at 2-ER-28-47.

Healthiest Americans promptly filed with this Court a petition for writ of mandamus to overturn the dismissal. The petition for writ of mandamus was declined without substantive comment in *Garner v. United States Dist. Court for the E. Dist. of Cal. (In re Garner)*, No. 21-70925, 2021 U.S. App. LEXIS 14284 (9th Cir. May 13, 2021).

SUMMARY OF ARGUMENT

The dismissal must be reversed. The district court had *no* discretion to ignore the most important allegations in the Verified Petition confirming jurisdiction: POTUS vigorously develops, approves, purchases, promotes, and distributes mandatory vaccines from Communist China while federally funding US parties to enforce nationwide vaccine mandates. The allegations in the Verified Petition, when taken as true (as must be here) fully support the required nexus, and therefore standing, to sue the President.⁴

There is just no nice way to put this case, nor any rational reason to ‘tone it down’. Healthiest Americans plainly alleged in the Verified Petition that the collapse of our Nation is *mathematically imminent* due to current vaccine injury trajectories. This fact was entirely ignored by the district court, as if it had never been pled. Likewise, the district court simply ignored the allegations that POTUS is the only indispensable defendant who federally develops, manages, finances, and promotes mandatory vaccination across the country, and *so much more*.

⁴ Here are representative citations from the FAVP that establish standing, justiciability, and the fact the President is the proper Respondent for the requested National Security relief: 2-ER-192-193, 197-203, 206-208, 210-213, 216-218, 220-222, ¶¶ 18-20, 22, 32-35, 40, 42, 47, 49, 51-53, 56, 61-66, 74, and 78. The Verified Petition is more than sufficient to prove standing. But on top of that, there is also evidence expressly incorporated by reference into the Verified Petition (i.e., requests for judicial notice) providing over 100 points of direct causal connection between POTUS and the systemic constitutional rights violations requiring national security relief.

If the imminent destruction of our Nation caused by mandatory vaccination is not sufficient for a court to see the need for judicial intervention, then nothing will suffice.

STANDARD OF REVIEW

Standing and justiciability are questions of law, which this Ninth Circuit Court reviews de novo. *Jewel v. Nat'l Sec. Agency*, 673 F.3d 902, 907 (9th Cir. 2011); *Renee v. Duncan*, 686 F.3d 1002, 1010 (9th Cir. 2012). “To invoke a federal court’s subject-matter jurisdiction, a plaintiff needs to provide only ‘a short and plain statement of the grounds for the court's jurisdiction.’” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (*quoting* Fed. R. Civ. P. 8(a)(1)). “Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction.” *Id.*⁵

⁵ Though a plaintiff “must allege ‘factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,’” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (*quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), “[s]pecific facts are not necessary; the statement need only ‘give the defendant fair notice of what the ... claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (*per curiam*) (*quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (emphasis added). “General factual allegations of injury resulting from the defendant's conduct may suffice, as [federal courts] ‘presum[e] that general allegations embrace those specific facts that are necessary to support the claim.’” *Jewel*, 673 F.3d at 907 (*quoting Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 889 (1990)) (emphasis added). Dismissal is appropriate only “where it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief....

If a district court questions the validity or credibility of any allegations, then it converts a motion to dismiss into a motion for summary judgment. *See* USCS Fed Rules Civ. Proc. 12 annotated:

[The] District Court erred in not following procedures of Rule 12(b) with respect to conversion of Rule 12(b)(6) motion into Rule 56 motion for summary judgment, because it considered material outside pleadings in deciding defendant's motion; accordingly, although parties have waived any objection to court's manner of proceeding by failing to raise question on appeal or below, Court of Appeals must scrutinize record to determine whether it raises genuine issue of material fact regarding limitation bar. *Triplett v. Heckler*, 767 F.2d 210, 1985 U.S. App. LEXIS 21002 (5th Cir.), reh'g denied, 774 F.2d 1160 (5th Cir. 1985), cert. denied, 474 U.S. 1104, 106 S. Ct. 889, 88 L. Ed. 2d 923, 1986 U.S. LEXIS 1244 (1986).

Here, if the district court wished to question the *validity* of any of the factual allegations, Healthiest Americans were entitled to proper due process with an opportunity to respond accordingly. At a minimum, Healthiest Americans would have been entitled to a hearing and order on their Request for Judicial Notice proving the factual allegations are in fact, *true*.

This standard, often cited in Rule 12(b)(6) motions, ... is equally applicable in motions challenging subject matter jurisdiction when such jurisdiction may be contingent upon factual matters in dispute." *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).

LEGAL ARGUMENT

A. The District Court Committed Reversible Error of Law and Fact by Dismissing the Case at Warp Speed Rather Than Acknowledging as True Healthiest Americans' Most Important Allegations.

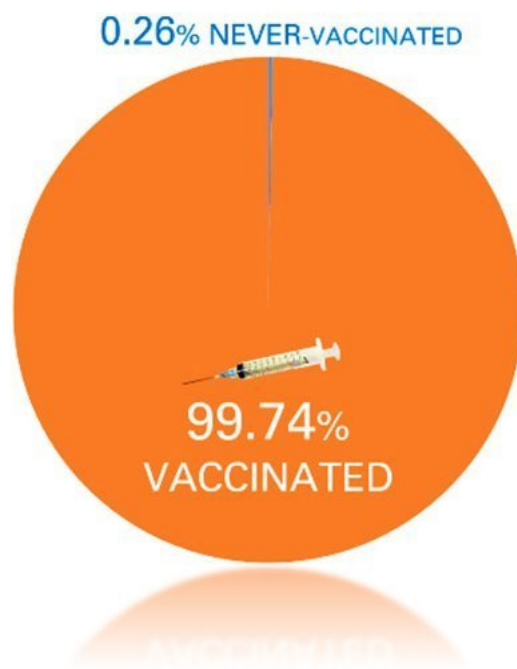
By law, the district court had *no* discretion to ignore the most important allegations in the verified petition establishing jurisdiction and the dire national security emergency.⁶

The district court acted as if the pleadings were untrue. The math shows the majority (>60%) of people who are injected with vaccines are seriously injured by them, and this Nation's people are being *decimated* by them. It is impossible the district court *accidentally* overlooked such staggering claims. Regardless of the reason for overlooking/ignoring the factual allegations, this is an incorrect method of disposing of a complaint on a Rule 12(b) motion.

Although the district court summarily claimed it took all allegations as true and in Healthiest Americans' favor (*see* Order at 1-ER-6, lines 24-26), the transparent reality is that the judge ruled instead upon a *perception* of the case outside the pleadings. For example, the district court's reference to First Am.

⁶ *Bell Atlantic Corp. v. Twombly*, 550 U.S. at 570, and *Ashcroft v. Iqbal*, 556 U.S. at 678 (a claim is sufficient to withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure when, accepting as true the facts alleged in the complaint but not any legal conclusions, the claim has “facial plausibility,” that is, it allows the court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.”)

Compl. at ¶ 52(a) was misquoted out of context. The actual context stated the President *is* “vigorously involved” in government mandates that *only* the President



The percentage of vax-free Americans is almost too small to show on a chart.

can remedy nationwide to save America. *See* FAVP ¶52, 2-ER-212-213.

The unvaccinated control group is more than ten times healthier than the vaccinated! While *most* (>60%) vaccinated people are suffering and dying prematurely, nearly all unvaccinated people (<6%) are perfectly healthy. This is staggering evidence indeed. The unvaccinated control group is necessary to the scientific method and is on the immediate precipice of extinction.

Healthiest Americans cannot be forced to participate in the President’s medical experiment -- Healthiest Americans’ right to exist unmolested is clear and

indisputable. See e.g., *Cruzan v Director, Missouri Dept of Health* (1990) 497 US 261, 279, “It cannot be disputed that the Due Process Clause protects an interest in life as well as an interest in refusing [] medical treatment.”

All of the necessary constitutional rights are stated in the Verified Petition (especially Fifth Amendment bodily integrity), and Healthiest Americans’ Opposition to the Motion to Dismiss. The Thirteenth Amendment brings unique focus to the case, as it forbids any form of involuntary servitude (including involuntary human medical experiments). The Thirteenth Amendment is also the only constitutional provision that specifically identifies any method of enforcing the protections codified by the Nuremberg Code within the USA. If we cannot be protected from involuntary service as subjects in federally 'approved' human medical experiments under the Thirteenth Amendment, then what does the Thirteenth Amendment mean exactly?

Healthiest Americans’ Requests for Judicial Notice establish conclusively that vaccines meet the dictionary definition of “experimental”, because the government acknowledges it has literally zero control group numbers to justify the vaccine program. Specifically, the government acknowledges it has never studied or considered vaccinated versus unvaccinated numbers. See, e.g., Judicial Notice at 4-ER-553-555. Even the government-designed vaccine injury accounting system (VAERS) has a 99% failure rate. See, e.g., Judicial Notice at 4-ER-555-557. There

should be no amount of FDA blessings that can be sufficient to force a court to ignore the dictionary definition of “experimental”.

Case law precedent (as sufficiently pled by Healthiest Americans) proves federal courts routinely order POTUS and Governors to take action on both small specific matters (i.e., ordering POTUS to issue a specific pay raise)⁷ and big general matters (i.e., enforcing desegregation of schools nationwide with ongoing judicial supervision; ordering a Governor to use his discretion to clean up dilapidated conditions in prisons with ongoing judicial supervision)⁸.

⁷ *Nat'l Treasury Emps. Union v. Nixon*, 160 U.S. App. D.C. 321, 492 F.2d 587 (D.C. Cir. 1974) (upholding mandamus against the President to require a pay raise), “The discretionary-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.”

⁸ *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 1003 (E.D. Cal. 2009) (granting plaintiffs’ request for ongoing federal court monitoring and active intervention to stop 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). Federal courts are supposed to actively intervene (even over lengthy periods of time if needed) to safeguard constitutional rights. *See also Aguayo v. Richardson*, 473 F.2d 1090 (2d Cir. 1973) (granting mandamus to welfare parents and children, such that the penalty of an otherwise mandatory health and safety program was temporarily stayed; emphasizing the utility of ‘controlled experiment’ science, implicitly criticizing one-size-fits-all health and safety policy). Healthiest Americans refer the Court to their extensive legal argument and authorities cited in the MPA for Preliminary Injunction, especially section III.1.B.1.b (“Now That the Evidence Is Indisputable, It Is An Abuse of Discretion to Forego Saving Our Nation.”) and III.1.B.1.d (“Mandamus Against An Executive Is The Proper Function of the Court.”) 2-ER-256-284.

As with *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (first declaring nationwide ‘separate is not equal’, then in the years afterwards fashioning injunctive relief), declaratory relief is the *first* thing the district court should have ruled upon, because well fashioned declaratory relief can “create the remedy” and “terminate the controversy.”⁹ Respectfully, the district court’s erroneous reasoning is that declaratory relief cannot issue without injunctive because the district court must be powerless to stop States from mandating human medical experimentation:

“Even if the court granted the declaratory or injunctive relief sought by plaintiffs, it would not invalidate the provisions of California law -- or similar provisions in other states’ laws -- which allegedly require students to be vaccinated in order to attend school. (See First Am. Compl. at ¶¶ 40(h), 41(h).)

See Order at 1-ER-10, lines 10-15.¹⁰

⁹ 28 U.S.C. § 2201 (“Creation of Remedy”) states, “any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” See also Fed. R. Civ. P. 57 Notes of Advisory Committee (“A declaratory judgment is appropriate when it will ‘terminate the controversy’ giving rise to the proceeding.”).

¹⁰ In its Order, the district court also appears to have unwittingly mocked the very idea of informed consent for Americans when it criticized the request for relief to “establish a national informed consent system whereby ‘vaccines shall not be administered unless the patient has reviewed the actual numerical increased risks of disease, disability, and death associated with exposure to vaccines’ in the short and long term.” 1-ER-10, lines 2-6.

In other words, the district court found that, *in advance of* the creation of any remedy (via a declaration of rights) Healthiest Americans must be denied any opportunity to *create a remedy*, on grounds that *enforcement* of remedy (injunctive relief) is not available *in advance of* the creation of that remedy via declaratory relief. This is circular and backwards logic. To claim that one must *already* have their remedy in hand *before* seeking the "creation of a remedy" through declaratory relief, is to claim that 28 U.S.C. § 2201 ("Creation of Remedy") does not exist at all.

Another example of clear and simple error is the district court's statement, "how such an order would compensate plaintiffs for their past injuries." *See* District Court Order at 1-ER-10, lines 7-8. Healthiest Americans never made a request for compensatory damages.

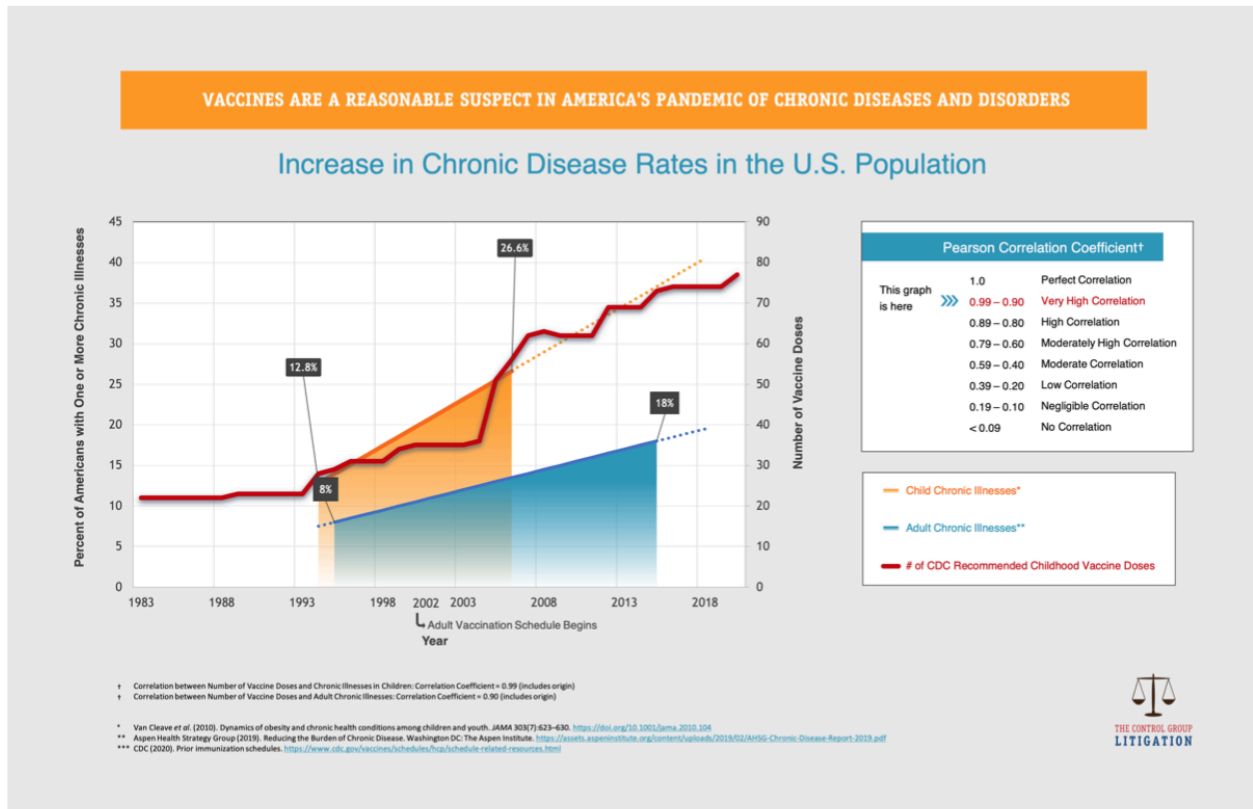
At the hearing on George Washington's Birthday, there was also a discussion of the case *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020), which must be understood in context, because the instant Control Group case is pled differently and much more narrowly, *namely*, with a single possible culprit alleged (the President's medical experiment) rather than *Juliana's* wide variety of possible causes that may or may not be responsible for a wide variety of harms and that may or may not be (and indeed were not) attributable to the President.

The *Juliana* plaintiffs asked for *decades* of unlimited and vague judicial supervision over “climate change.” By contrast, Healthiest Americans in this case ask for limited, short-term, and specific relief, namely a single court order upholding the well-defined law and ethic of informed refusal for all Americans regarding the President’s human medical experiment.

Healthiest Americans lay this plea to Federal Courts to remember well and remember now the maxim of law that shapes our courts of equity through the ages:

ubi jus ibi remedium
“where there is a right, there is a remedy”

Healthiest Americans respectfully request the remedy now, before it is too late to save America. See, e.g., National Data Graph at 3-ER-327 evidencing “very high correlation” (matching .90 to .99 on a scale of 0 to 1) between vaccines and chronic illness:



2

Exhibit E

The government’s VAERS system for tracking vaccine injury has a 99% underreporting rate, and has currently tallied over 5,000 Covid vaccine deaths in a matter of 5 months, which is evidence the government’s gene altering Covid vaccine can easily be killing up to 100,000 Americans per month, especially as long-term vaccine harm manifests over time. Meanwhile, undersigned counsel finds zero reported Covid virus deaths or even hospitalizations among entirely unvaccinated Americans. History is watching. There is no rational way to ignore this unprecedented culling of vaccinated Americans.

Goodness gracious, Covid-19 vaccinated people are even becoming magnetic for all to see on YouTube. This is what the people are talking about at dinner tables. The experimental mad science nature of vaccination has become so undeniable, it is now easier to defend DDT for nature's mosquitoes than vaccines for nature's infections.

B. The District Court Committed Reversible Error Of Law And Fact By Failing To Acknowledge As True Healthiest Americans' Stated Causal Connections Between (a) The Vaccine-Induced Collapse Of The USA By Federally-Managed Mandated Vaccines From Communist China, And (b) The Office Of The President That Federally Manages Mandatory Vaccination Across Multiple Departments.

The national vaccine program is the President's human medical experiment.

All of the States are entwined with, and do execute, the vaccine policies of POTUS. The law recognizes that POTUS can be sued for actions of subordinates that POTUS knows, or reasonably should know, cause subordinates to violate rights. See, e.g., Congressional Research Service (2021). United States Constitution Annotated, Art. II, Sec. III, *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 any duty is cast by law upon the President, it may be exercised by him through the head of the appropriate department, whose acts, if performed within the law, thus become the President's acts. The President, in the exercise of his executive power under the Constitution, ‘speaks and acts through the heads of the several departments in relation to

subjects which appertain to their 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 presumptively his acts.” [citations omitted].

Applied to this case, see especially the following excerpts from Healthiest Americans’ pleadings that established standing:

- 2-ER-212-213, ¶¶ 52-53 [FAVP], “Subordinate Executive Agencies are vigorously involved in vaccine licensing, recommendation, promotion, and product sales.... The President is the Chief Executive of the Subordinate Executive Agencies that are vigorously involved in the Predicament. State and their local health agencies adapt and require federally approved public health policies (‘Policy’) to be mandated (hereinafter ‘Govt. Mandates’). Govt. Mandates are the final expression of federally approved public health policies which together contribute to the Pandemic.”
- 2-ER-216, ¶ 61 [FAVP], “Only Respondent as President of the United States of America and Commander in Chief of the Armed Forces (and this Court in respect of him) has the authority to protect Petitioners from the myriad and ever-shifting initiatives to vaccinate every individual in America as much as possible, which initiatives have stoked hatred and vilification of unvaccinated Americans. *See* [4-ER-495-605] [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.”
- 2-ER-218, ¶ 65 [FAVP], “As further evidence of the concrete and particularized injuries-in-fact that are both actual and imminent in this case, Petitioners have experienced aspects of the Predicament in the emergence of Covid-19 from China. As communist-style dictates continue to be employed throughout portions of the world, the United States has not remained unaffected. Mandatory vaccination is already being publicly supported by certain authorities within and without the United States of America even though a Covid-19 vaccine has not even progressed through minimal safety and efficacy testing.

Petitioners state this allegation not to target any particular State or local rule within the greater Predicament, but rather to evidence the Predicament includes the actual and imminent nature of the national security threats of a mandatory Covid-19 vaccination in response to the Chinese virus. Respondent has not abated these threats, but rather Respondent has emboldened them by actively promoting Covid-19 vaccination without providing the Suspension of vaccine mandates or similar order to safeguard the Nation from the loss of critical scientific evidence.”

- 2-ER-221, ¶ 75 [FAVP], “There has never been an infectious disease that has debilitated, injured, or threatened this Nation’s actual survival to the extent these immune system disorders currently do. *See* [4-ER-495-605] [PRJN2]. If this trajectory is not altered, in short order, there will be very few productive Americans left to pay the taxes required to support any branch of government. Pharma, and the governmental bodies that protect, cultivate, and expand its powers, have now outgrown the host. If these health injuries continue to devour the American people at the present rates, this Nation will collapse. Pharma can no longer be permitted to dictate public health policy.”

Healthiest Americans proved and explained the central role of POTUS in nationwide mandatory vaccination:

1. Designing and producing federally vaccines that are mandated

- FAVP, 2-ER-194-195, ¶¶ 24-25; FAVP, 2-ER-213, ¶ 53; PRJN2, 4-ER-508, line 12 through 4-ER-544, line 2; PRJN2, 4-ER-582, lines 3-11; PRJN2, 4-ER-584, lines 23-27; PRJN2, 4-ER-587, lines 19-27; PRJN2, 4-ER-591, line 8 through 4-ER-592, line 3.

2. Classifying and approving federally vaccines that are mandated

- FAVP, 2-ER-212-213, ¶¶ 52-53; FAVP, 2-ER-225, ¶ 81; PRJN2, 4-ER-592, line 4, through 4-ER-593, line 6.

3. Producing federally the required vaccine information statement on vaccines that are mandated

- FAVP, 2-ER-212-213, ¶¶ 52-53.

4. Engaging federally in conflicts of interest regarding vaccines that are mandated

- FAVP, 2-ER-190, ¶ 14, n.7; FAVP, 2-ER-218-219, ¶ 67; PRJN2, 4-ER-562, line 17 through 4-ER-564, line 22.

5. Purchasing federally vaccines that are mandated

- FAVP, 2-ER-212-213, ¶¶ 52-53; PRJN2, 4-ER-564, lines 17-22.

6. Importing federally from Communist China vaccines that are mandated

- FAVP, 2-ER-198, ¶ 35; PRJN3, 4-ER-615, lines 20-21; PRJN3, 4-ER-622, lines 2-3; PRJN3, 4-ER-628, lines 12-13; PRJN3, 4-ER-633, lines 3-5; PRJN3, 4-ER-634, lines 3-4; PRJN3, 4-ER-650 lines 20-22.

7. Promoting federally vaccines that are mandated, and promoting federally the policy of mandates

- FAVP, 2-ER-195, ¶ 27; FAVP, 2-ER-212-213, ¶¶ 52-53; FAVP, 2-ER-218-219, ¶ 67; PRJN2, 4-ER-564, lines 17-22; PRJN2, 4-ER-566, line 21 through 4-ER-567, line 7; PRJN2, 4-ER-568, line 14 through 4-ER-569, line 23.

8. Distributing federally vaccines that are mandated, to target and exterminate a control group of unvaccinated Americans

- FAVP, 2-ER-212-213, ¶¶ 52-53; PRJN2, 4-ER-566, line 21 through 4-ER-577, line 7; PRJN2, 4-ER-569, line 24 through 4-ER-570, line 5.

9. Biased tracking federally of vaccine injuries from mandated vaccines in order to make false and misleading safety claims to justify mandates

- FAVP, 2-ER-186, 220, 226-227, ¶¶ 4, 71, 84; PRJN1, 3-ER-395-493 (representing approximately 100 pages devoted to the nationwide crisis of immune-system injuries, proving the United States government funds and publishes studies of chronic illness to conceal vaccine injury as the number one cause of chronic illness); PRJN2, 4-ER-589, line 7 through 4-ER-590, line 10; PRJN2, 4-ER-593, line 16 through 4-ER-594, line 2.

10. Designing federally a vaccine injury tracking system intended to fail and then falsely reporting federally vaccine injuries from mandated vaccines

- FAVP, 2-ER-187-188, 190-191, 220, 227, ¶¶ 9-11, 15, 73, 85; PRJN2, 4-ER-553, line 18 through 4-ER-557, line 20.

11. Studying federally uptake of mandated vaccines

- FAVP, 2-ER-186, 212-213, ¶¶ 4, 52-53; PRJN2, 4-ER-574, lines 7-19; PRJN2, 4-ER-594, line 3 through 4-ER-595, line 11.

12. Failing federally to report to Congress on vaccine safety

- FAVP, 2-ER-212-213, ¶ 52B; PRJN2, 4-ER-593, lines 7-15.

13. Litigating federally vaccine injury cases from mandated vaccines

- FAVP, 2-ER-197-198, ¶¶ 32-34.

14. Concealing federally that the primary cause of the national health crisis is mandated vaccines

- FAVP, 2-ER-187, ¶ 8.

15. Setting regulations federally for interstate infectious disease control regarding mandated vaccines

- FAVP, 2-ER-212-213, ¶¶ 52-53.

16. Funding federally health departments to enforce vaccine mandates across the Nation

- FAVP, 2-ER-210, 212-213, 232, 242, ¶¶ 49B, 52-53, 102, 147; PRJN2, 4-ER-576, lines 1-9.

17. Enforcing vaccine mandates on Federal properties and for Federally funded activities

- FAVP, 2-ER-199-208, 210-213, ¶¶ 40-42, 49, 52-53; PRJN1, 3-ER-405, lines 8-10; PRJN2, 4-ER-570, lines 8-18.

Only the President is well equipped to answer the Verified Petition. It would be highly inappropriate, futile, and impossible to join countless subordinates and departments across unknown jurisdictions.

The district court was correct on this one point, that POTUS is not the "sole" cause of the predicament. Indeed. POTUS has hired, incentivized, and deployed *an army* to implement and enforce his vaccine agenda *nationwide* in order to assure that all Americans are injected with *all* of the President's "approved" vaccines.

If an executive hires and pays 1,000,000 gunmen, gives them all guns and bullets, and then points to "we the people" *while* directing the 1,000,000 gunmen to shoot as many of us as possible, do "we the people" have a cause of action against that Executive, or must we chase down the 1,000,000 hired killers and only name *them* as defendants? By recommending an impossibility (namely 1,000,000 defendants, thousands of jurisdictions), the district court was really saying there is no remedy for the wrong destroying our Nation.

This Court can also take judicial notice that on March 10, 2021, Joe Biden took credit yet again for the Operation Warp Speed Vaccine development and supply via the US military. The White House (March 10, 2021). *President Biden Hosts an Event with the CEOs of Johnson & Johnson and Merck*. Press Conference. https://youtu.be/UjH4_NOVtWc.

The same day, President Trump responded in writing that the vaccine depended specifically on the President. Dorman, S. (March 11, 2021). *Trump takes credit for 'China virus' vaccine: 'I hope everyone remembers!'* FOX NEWS. <https://www.foxnews.com/politics/trump-takes-credit-vaccine>.



DONALD J. TRUMP

- March 10, 2021 -

Statement by Donald J. Trump, 45th President of the United States of America

I hope everyone remembers when they're getting the COVID-19 (often referred to as the China Virus) Vaccine, that if I wasn't President, you wouldn't be getting that beautiful "shot" for 5 years, at best, and probably wouldn't be getting it at all. I hope everyone remembers!

America's best shot to end the health crisis in our Republic is indeed to remember vaccination and begin "getting it", the message, because if we wait another 5-years it will probably be too late.

C. It Is Not A Political Question Whether POTUS Should Either (A) Save America From Statistically Certain Death, or (B) Medically Experiment Upon Americans Without Their Consent.

Nowhere in the Constitution is any branch of government granted the power to use biological alteration drugs to experiment upon Americans without their consent. *See, e.g., Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)

(finding Congress exceeded its enumerated powers with Obamacare and violated principles of federalism by the specific way it mandated health insurance upon otherwise free Americans):

The dissent's exposition of the wonderful things the Federal Government has achieved through exercise of its assigned powers... is quite beside the point....The issue here is whether the Federal Government can impose the Individual Mandate through the Commerce Clause....The dissent treats the Constitution as though it is an enumeration of those problems that the Federal Government can address--among which, it finds, is "the Nation's course in the economic and social welfare realm," *ibid.*, and more specifically "the problem of the uninsured," *ante*, at 595, 183 L. Ed. 2d, at 503. The Constitution is not that. It enumerates not federally soluble *problems*, but federally available *powers*. The Federal Government can address whatever problems it wants but can bring to their solution only those powers that the Constitution confers, among which is the power to regulate commerce. None of our cases say anything else. Article I contains no whatever-it-takes-to-solve-a-national-problem power.

Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. at 659-60.

Here, the FAVP carefully pleads around any political questions. (*see especially* FAVP, 2-ER-213, 229, ¶¶ 56, 93)

Petitioners do not seek justiciability over any political questions reserved to the President, but rather Petitioners assert justiciability with respect to the Court's fundamental power under Article III of the Constitution for the United States of America, to act as an intermediary between the President of the United States of America and the people of the United States of America, on the specific issues of declaratory and injunctive relief requested in this case due to the imminent national security emergency. There is no matter more important to ensure the survival of the country as important as the future of

the health of the population. Respondent (and this Court in 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.

As confirmed in 15 Moore's Federal Practice - Civil § 101.117 (2020), “the courts have invoked the political question doctrine primarily in cases involving housekeeping matters,” with examples provided such as regulation of political parties, the electoral process, and declaration of war. None of these apply here.

D. Healthiest Americans’ Standing Is Indisputable.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ [] A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. [] The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has

acted unlawfully.... Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (citation omitted).

If a district court questions the validity or credibility of any allegations, then it converts a motion to dismiss into a motion for summary judgment. *See* USCS Fed. Rules Civ. Proc. 12 annotated: “[The] District Court erred in not following procedures of Rule 12(b) with respect to conversion of Rule 12(b)(6) motion into Rule 56 motion for summary judgment, because it considered material outside pleadings in deciding defendant’s motion...”

Here, if the district court wished to question the *validity* of any of the factual allegations, Healthiest Americans were entitled to proper due process with an opportunity to respond accordingly. At a minimum, Healthiest Americans would have been entitled to a hearing and order on their Request for Judicial Notice proving the factual allegations are in fact, *true*.

E. As Warp Speed Vaccination Is Ongoing, It Is Essential To Protect The Scientific Control Group.

Healthiest Americans devote multiple paragraphs of the Verified Petition to the irreparable harm and imminence of their injuries. The Verified Petition specifies each Petitioner’s injuries with particularity (e.g., even including details of specific denial of education solely on the basis of vaccination status, and a specific

instance of a child protective services visit solely on the basis of vaccination status). Moreover, the requests for Judicial Notice (i.e., PRJN2) show the persistent and pervasive hunting down of the unvaccinated across the United States, in excruciating detail.

The Verified Petition emphasizes that the Petitioners are under constant threat of mandatory vaccination, which is a form of coercion. It is duress. It is an unconstitutional condition. It is well established that the government may not coerce with its left hand the very thing its right hand is disallowed. *See, e.g., Frost & Frost Trucking Co. v. R.R. Com. of Cal.*, 271 U.S. 583, 593-94 (1926) (striking down state action conditioning use of state highways by a private trucker upon the trucker's assumption of the status and burdens of a common carrier), finding “[T]he power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.”

During segregation in the 1950s, governors forcing “separate but equal” policies upon the people were not able to avoid mandamus on the grounds that the discrimination problem was so pervasive and widespread that the governors could

not possibly be tasked with understanding what to do about it. There exists no adequate legal remedy if the control group population is undermined to threatened extinction, because proper science cannot be performed in the future if the legal right of informed refusal is withheld in the present. It is this Court's job to protect such legal right.

Warp speed mandatory vaccination for Covid-19 is already present throughout the United States. State and local governments are hastily implementing vaccine plans. Same for employers. Millions of Americans such as Petitioners are praying that the Article III Judiciary will uphold their Constitutional rights. This case has been the benefactor of many such prayers, especially given the impossible-to-ignore 'mark of the beast' implications (i.e., as vaccination is imminently tethered to the technology to buy and sell). Even secularists agree that big pharma is marking humans like cattle, which at least 'looks bad'.

Our Judiciary is called to weigh in on this imminent threat to the control group. If unabated by court order, irreparable harm to control group numbers will continue to occur. The unvaccinated will rapidly dwindle and further scientific study and survey cannot take place. Entire regions of the United States are under threat of becoming unavailable for scientific inquiry as self-proclaimed do-gooders think they can do whatever they wish to unvaccinated families. In the words of Christian author C.S. Lewis, "Of all tyrannies, a tyranny sincerely exercised for the

good of its victim may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies.” Lewis, C.S., *God In The Dock* (1948).

As stated more fully in the Verified Petition, control group science is the last hope for the preservation of our Nation, to illustrate that vaccines are the cause of the National Health Pandemic. This unvaccinated <1% of the population must remain free from discrimination and coercion in the areas of livelihood, travel, education as well as all other areas of their lives. Healthiest Americans’ extensive scientific body of evidence is sufficient probative evidence of the threatened, imminent injury. Healthiest Americans’ expert declarations also demonstrate, in detail, the irreparable harm. Forcing vaccines on pure unvaccinated children is like burning every heirloom seed and praying that corporate labs got it right.

Petitioners present substantial evidence that the unvaccinated are neither harming others nor shedding diseases (i.e., the unvaccinated do not transmit infections at a higher rate than the vaccinated do, but rather the rate is lower after taking into account transmitted infections that are not targeted by the vaccine in question). For every single vaccine on the CDC schedule, the overall risk of vaccination is exponentially greater than the zero to approximately zero overall risk of remaining unvaccinated in America today. *See* FAVP at 2-ER-278, lines 1-3; further supported by Petitioners’ mathematically detailed 441-page report (filed

Feb. 28, 2021). Healthiest Americans' evidence and experts confirm the unvaccinated have shown remarkable resilience to infectious disease.

And yet shunning the unvaccinated is currently at a fever pitch. Destruction of the control group has never been more threatened.

F. The Extraordinary Nation-Collapsing Circumstances Here Warrant Injunctive Relief With POTUS.

Government documents prove the trajectories -- the rate of children with chronic illnesses doubles every 12 years. The last numbers collected were from approximately 2017, and they showed no signs this trajectory has been altered. *See, e.g.*, 2-ER-280 citing Dr. Hulstedt Declaration in support of Preliminary Injunction.

The destruction of our population's health is imminent, demonstrating that we're almost out of time to salvage this Nation.

If Petitioners' Pilot Survey is correct, and the mathematics prove it is, then our very Nation hangs in the balance of whether we recognize and preserve control group evidence. Moreover, the requested relief is a win-win. Upholding informed refusal is already a tenet of law and ethics that government must support. The harm that POTUS would suffer is non-existent. SCOTUS intervention would benefit POTUS by way of fulfilling the duty to preserve the Union and faithfully execute the law of the land.

In the Verified Petition, Healthiest Americans cite Wendy E. Parmet, *Public Health and Constitutional Law: Recognizing the Relationship*, 10 J. HEALTH CARE L. & POL'Y 13 (2007). In this important paper we read great summaries of case law showing that tallying up actual numbers of injured people is essential to legal rulings on the (un)constitutionality of public health actions:

Epidemiology, however, also plays an important role in constitutional law, especially in many doctrines and cases, some of which were discussed above, in which the state's purported attempt to protect public health is relevant to the determination of the constitutionality of state action. Indeed, in such cases epidemiology and its sister sciences, such as biostatistics, are absolutely critical to understanding both what courts are doing and the constitutionality of particular state actions.... Under the prevailing First Amendment commercial speech doctrine, the constitutionality of the state's regulations depended upon the state being able to show, first, that it was advancing a substantial state interest, second, that the regulations directly advanced such an interest, and third, that the regulations were no more extensive or burdensome than was necessary. As previously discussed, the Court has consistently accepted that public health is a valid and even important state function. But how could the Court know that the regulation of tobacco marketing to minors was in fact related to protecting public health? Moreover, how could the Court know whether the regulations protected public health, either directly or at all, and in a manner no more extensive than is necessary to achieve the state goal? *To answer each of these questions, the Court had to review and assess epidemiological evidence.*

Wendy E. Parmet, *Public Health and Constitutional Law: Recognizing the Relationship*, 10 J. HEALTH CARE L. & POL'Y at 20 [emphasis added].

No governmental agency has ever provided epidemiological evidence to support vaccine safety claims. The only evidence relevant to answering this particular question is a *numerical accounting* of the health outcomes between exposed and unexposed. Nothing short of this can answer the question: Are vaccines producing more good than harm to public health? A million experts claiming safety without numbers cannot stand before one expert with numbers. History has shown us, for example, the abused power of deference to authority via bloodletting as the misguided standard of care, tobacco science falsely claiming to be good for health, Vioxx as bought and paid for by Pharma, DDT causing birth defects in exchange for mosquito control, and many recalled vaccines. Deference to authority without numbers is unscientific. Control group science is scientific.

There is just no way to spin the "public health" argument to make it appear vaccines are "worth the risks" once the numbers have been examined. The fact that our agencies have refused to keep any pretense of an accurate accounting of these numbers, does not alter the fact they have now been counted by Healthiest Americans. The government's refusal to keep an accurate accounting of vaccine risks is not evidence of "safety". Bringing the public's risk of chronic illnesses >60% only makes >60% of the public far more vulnerable to complications and even death from infectious agents, even those agents that are generally considered innocuous in healthy people.

The police power is not a rubber stamp. This is confirmed in recent United States Supreme Court jurisprudence. For example, *Roman Catholic Diocese v. Cuomo*, 592 U.S. ___, 141 S. Ct. 63, 208 L. Ed. 2d 206, 211 (Nov. 25, 2020) (granting injunction against Governor Cuomo’s public health restrictions on religious services because the restrictions were not actually serving public health in a manner consistent with the Constitution; and especially Justice Gorsuch concurring, “Why have some mistaken this Court’s modest decision in *Jacobson* for a towering authority that overshadows the Constitution during a pandemic? In the end, I can only surmise that much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack. Things never go well when we do.”) *Id.* at 214.

G. If More Specificity Were Somehow Needed, The District Court Committed Legal Error in Concluding That It Would Have Been Futile to Grant Healthiest Americans Leave to Amend.

1. Standard of Review.

“The trial court’s denial of leave to amend a complaint is reviewed for an abuse of discretion,” *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011), “but whether the denial rests on an accurate view of law is reviewed de novo.” *Gordon v. City of Oakland*, 627 F.3d 1092, 1094–95 (9th Cir. 2010). “The

standard for granting leave to amend is generous.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir.1990) (noting that leave to amend should be granted when a court can “conceive of facts” that would render the plaintiff’s claim viable). “Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment.” *Krainski v. Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.*, 616 F.3d 963, 972 (9th Cir. 2010).

2. If More Specificity About the President’s Direct and Complicit Oversight of Vaccine Policies and Mandates Is Needed, Then the District Court Erroneously Concluded That Granting Leave to Amend Would Be Futile.

“The court considers five factors in assessing the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint.” *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).¹¹

Although the complaint has been amended once in this case, it was amended before POTUS filed the motion to dismiss. Indeed, counsel for POTUS failed to

¹¹ Futility alone has been recognized by this Court as a reasonable ground for dismissal with prejudice, but only after the district court has afforded the plaintiff ample opportunity to state its claims. *See, e.g., Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189, 1196 (9th Cir. 2013) (affirming the district court’s denial of leave to amend for futility where the plaintiff had been permitted to amend its complaint twice before, and its proposed third amended complaint still failed to state any claims).

engage in any meet and confer process on the dismissal motion. Healthiest Americans maintain it is unnecessary to add still more specificity to the pleadings (including PRJNs), but if prompted would add information like the following:

- “Federal funds pay for approximately 95% of all publicly funded vaccinations... most states depend primarily on federal resources to purchase vaccines.” NATIONAL CONFERENCE OF STATE LEGISLATURES (2021). *State Immunization Policy Overview*. <https://www.ncsl.org/research/health/immunizations-policy-issues-overview.aspx>.
- Summary list of different federal departments managing vaccines across the Nation, including for example: Department of Defense, Department of Veterans Affairs, FDA, CDC, NIH, etc. HHS (2018). *Vaccines: Get Involved*. <https://www.vaccines.gov/get-involved/get-more-information>. See also Folkers, G., Fauci, A. *The Role of US Government Agencies in Vaccine Research And Development*. NAT MED 4, 491–494 (1998). <https://doi.org/10.1038/nm0598supp-491>.
- “[T]he CDC produce vaccine information materials for mandatory distribution by providers to patients or parents before administration of VICP-covered vaccines (42 U.S.C. § 300aa-26)... Since 1962, the federal government has supported childhood vaccination programs through a grant program administered by the CDC.... The ACIP recommendations are often considered by states as they determine which vaccinations to mandate for school attendance.... No constitutional right exists to either a religious or philosophic exemption to these requirements.” Malone, K.M., and Hinman, A.R. 2003. Vaccination mandates: The public health imperative and individual rights. *Law in Public Health Practice* (pp. 262–84). New York: OXFORD UNIVERSITY PRESS. Retrieved August 12, 2008, from http://www.cdc.gov/vaccines/imz-managers/guides-pubs/downloads/vacc_mandates_chptr13.pdf.
- “As I’ve always said, this was a wartime effort, and every action has been on the table, including putting together breakthrough approaches.... Here’s what all this means: We’re now on track to have enough vaccine supply for every adult in America by the end of

May.... And today, I'm using the full authority of the federal government. I'm directing every state to do the same. My challenge to all states, territories, and the District of Columbia is this: We want every educator, school staff member, childcare worker to receive at least one shot by the end of the month of March." Biden, J. (March 2, 2021). *Remarks by President Biden on the Administration's COVID-19 Vaccination Efforts*. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/02/remarks-by-president-biden-on-the-administrations-covid-19-vaccination-efforts/>.

- “Finally, through prioritizing diverse and inclusive representation in clinical research and strengthening enforcement of antidiscrimination requirements, the federal government will increase access to effective COVID-19 care and treatment.... The United States will provide federal support to current state and local vaccination planning, understand and respond to the current vaccine supply gap, address and fill vaccination workforce requirements at the state and local level, and overcome challenges with vaccination prioritization, distribution, and administration planning.” Biden, J. (2021). *National Strategy for the Covid-19 Response and Pandemic Preparedness*. <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.
- “These financial assistance mechanisms help involve and engage public health stakeholders, including state and local governments, in fulfilling CDC’s mission. Grants and cooperative agreements provide the means to transfer federal monies, resources, technical assistance, and / or expertise to these stakeholders in exchange for their contributions or to ensure their alignment with federal goals and objectives.... Cooperative agreements are used when CDC has substantial involvement in the activities being funded...” CDC (2018). *About CDC Funding*. CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/funding/about-cdc-funding/index.html>.

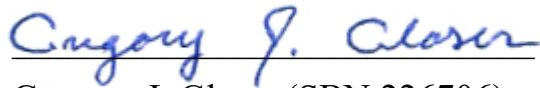
CONCLUSION

Our Nation is being decimated by Federally managed mandatory vaccination from Communist China. Only POTUS (or this Court acting in respect of him) can order the National Security relief necessary to save America.

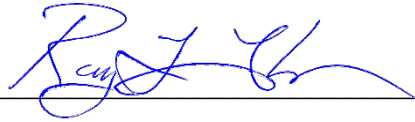
To do science, we must preserve a group of individuals in their pure natural state. Like desegregation, this case requires POTUS because myriad government actors have different laws and rules coercing vaccination. We need a national informed consent exemption (NICE), as Healthiest Americans requested.

To the extent Healthiest Americans' request for declaratory relief was considered at all, it was dismissed by devices of (1) the district court entirely ignoring all of Healthiest Americans' key factual allegations which establish nexus and therefore standing, i.e., literally pretending the allegations had not been made, (2) the fallacy that federal courts are powerless to prevent constitutional violations, so long as those violations have at their origin a direct connection to the Executive, and (3) the district court's erroneous conclusion that, before the court may hear an action for declaratory relief, the plaintiffs must already qualify for the injunctive enforcement of a remedy that has yet to be created through a declaration of rights, i.e., declaratory relief, which would determine whether injunctive relief is required, and if so, what type of injunction would be appropriate.

Respectfully submitted this 8th of July 2021.



Gregory J. Glaser (SBN 226706)
4399 Buckboard Drive, Box 423
Copperopolis, CA 95228
Ph. (925) 642-6651
Fx. (209) 729-4557
greg@gregglaser.com



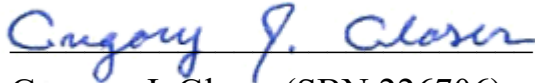
Ray L. Flores II (SBN 233643)
11622 El Camino Real Suite 100
San Diego, CA 92130
Ph. (858) 367-0397
Fx. (888) 336-4037
rayfloreslaw@gmail.com

Counsel for Petitioners

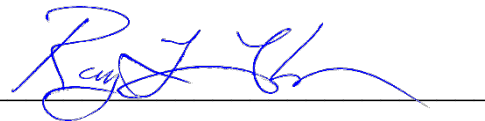
STATEMENT OF RELATED CASES

In April 2021, Petitioners submitted to this Court a petition for writ of mandamus, which this Court denied. *See Garner v. United States Dist. Court for the E. Dist. of Cal. (In re Garner)*, No. 21-70925, 2021 U.S. App. LEXIS 14284 (9th Cir. May 13, 2021).

Respectfully submitted this 8th of July 2021.



Gregory J. Glaser (SBN 226706)
4399 Buckboard Drive, Box 423
Copperopolis, CA 95228
Ph. (925) 642-6651
Fx. (209) 729-4557
greg@gregglaser.com



Ray L. Flores II (SBN 233643)
11622 El Camino Real Suite 100
San Diego, CA 92130
Ph. (858) 367-0397
Fx. (888) 336-4037
rayfloreslaw@gmail.com

Counsel for Petitioners

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains words, excluding the items exempted

by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - it is a joint brief submitted by separately represented parties;
 - a party or parties are filing a single brief in response to multiple briefs; or
 - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated .
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form15instructions.pdf>

9th Cir. Case Number(s)

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Description of Document(s) (*required for all documents*):

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov