No. 21-300

In the
Supreme Court of the United States

In re JOY GARNER, INDIVIDUALLY AND ON BEHALF OF THE CONTROL GROUP, et al.,
Petitioners.

On Petition for a Writ of Mandamus
to the United States District Court
for the Eastern District of California

Motion for Leave to File *Amicus* Brief
and
BRIEF FOR *AMICUS CURIAE*
INSTITUTE FOR HEALTH RESEARCH
IN SUPPORT OF PETITIONERS

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APPENDIX

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

Institute for Health Research ("*Amicus*") moves the Court for leave to file an *amicus* brief in support of Petitioners' Request for a Writ of Mandamus. As grounds herefor, *Amicus* shows as follows:

In the district court as well as court of appeals, Respondent Joseph Biden, President of the United States, was represented by Philip A. Scarborough, AUSA in the Office of the United States Attorney for the Eastern District of California. On September 13, 2021, I contacted Mr. Scarborough by email as well as letter requesting his permission to file herein an *amicus* brief on behalf of Petitioner Joy Garner. In response, Mr. Scarborough replied that he did not represent the Respondent and that instead Respondent was represented by the Solicitor General regarding this matter.

In response, I called the Solicitor General's office ((202) 514-2203) and learned from that office's phone messaging system that all employees of that office were working remotely, and I was requested to leave a message containing my phone number and email address. I did so several times, yet that office has not responded.

This *amicus* motion is unopposed by the Petitioner Garner.[1] The Solicitor General's Office was afforded 10 days' advance notice and neither objected nor responded.

In support of this motion, *Amicus* asserts that the district court's dismissal of the case failed to recognize the President's direct responsibility for the

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[1] Petitioners have also given written permission to file an *amicus* brief. See *amicus* brief for movant's interest, pursuant to Rule 37.5.

national vaccine program that is crippling the nation. *Amicus* requests that this motion to file the attached *amicus* brief be granted.

No counsel for a party authored this *amicus* submission, and no person other than *Amicus*, its members, or its counsel made a monetary contribution to fund the motion or brief.

Respectfully submitted,

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PUBLIC LAWS

INTEREST OF *AMICUS CURIAE*[1]

The Institute for Health Research is an exempt nongovernmental organization located in the States of New Jersey and Texas, and its Trustee and President is Ralph Fucetola, J.D. This Institute advocates for natural solutions to human health problems, as opposed to the use of vaccines, pharmaceutical drugs and other unnatural interventions. The Institute seeks to help the public to prevent disease and strengthen immunity and health through providing information covering studies, protocols, and information on dietary supplements and other natural products.

Compelled vaccination through governmental force represents the exact scenario that the Institute for Health Research seeks to discourage and prevent, in the interest of the bodily integrity of all individuals. Further, the existence of a "control group" of unvaccinated persons is a national treasure, and indispensible to demonstrating the efficacy of natural solutions vs. vaccines in preventing and mitigating disease.

Finally, as all people everywhere, the Institute has a keen interest in preventing the use of misbranded drugs which could cause genocide.

This *amicus* brief is submitted in support of the Petitioners Joy Garner *et al.*

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[1] It is hereby certified that the parties received notice of the intention to file this brief at least 10 days prior to the filing of it; that Petitioners have extended written permission to file this brief; that no counsel for a party or a party to this case authored this brief in whole or in part; and that no person other than the *amicus curiae*, and its friends, made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

To test both the safety and efficacy of drugs in development requires the existence of a "control" group and an "experimental" group. The former is administered a placebo while the latter is administered the drug being studied. When the test is completed, the difference in the health of participants in both groups is compared to determine the safety and efficacy of the drug.

Petitioners, acting as a control group, filed for declaratory and preliminary injunctive relief in district court, in order to uphold informed refusal in the face of the intention of the President of the United States to mandate administration of vaccines which allegedly prevent individuals from greatly suffering from COVID-19. Finding a lack of standing, the district court dismissed Petitioners' complaint with prejudice. *If* Petitioners appear to have "jumped the gun," however, they were certainly prescient: the President has instituted the very program they sought declaratory judgment against with his pronouncement on September 9, 2021 of a nationwide vaccine mandate, directed at employers, using "gene therapies" that are increasingly being revealed as unsafe and ineffective.[2]

Laying a brief background of the history and legal underpinnings for the COVID-19 vaccines, *Amicus* then compares the COVID-19 vaccine fact sheets with known dangers of the vaccines,[3] which

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[2] "This nation * * * has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln." *Ex parte Milligan*, 71 U.S. 2, 125 (1866).

[3] That is, known even before the CDC-FDA VAERS reporting

tends to the inescapable conclusion that these novel pharmaceutical drugs are misbranded, and may well cause massive deaths in the population.

Finally, a nationwide vaccination mandate has never been imposed in this country, and it raises serious and troubling constitutional problems. Implementing such a mandate involves the matter of the practice of medicine inside the States of our American Union, which is a power the federal government does *not* possess. "Within state limits, [these vaccine mandates] can have no constitutional operation." *United States v. DeWitt*, 76 U.S. 41, 45 (1870). Such a vaccine program trounces the constitutional right to "bodily integrity" under the Fourth and Fourteenth Amendments. Attempts by the executive branch to *indirectly* mandate vaccination via mandates on employers are imminently threatened, and they ought to be nipped in the bud via the Writ of *Mandamus* sought.

ARGUMENT[4]

I.
Foundation for Federal COVID Response

An epidemic is defined as "[t]he occurrence in a community or region of cases of an illness, specific health-related behavior, or other health-related events clearly in excess of normal expectancy. The community or region and the period in which the cases occur must be specified precisely."[5] A pandemic

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system was overwhelmed in 2021 by massive reports of severe adverse reactions.

[4] Internet links referenced in footnotes herein were last visited on September 27, 2021.

[5] See https://www.oxfordreference.com/view/10.1093 /acref/9780 199976720.001.0001/acref-9780199976720-e637?rskey=jUQy

is defined as "an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people."[6]

In May 2011, the World Health Assembly adopted measures to prepare for pandemics, primarily by the organized and coordinated development of vaccines to be shared worldwide.[7] On October 18, 2019, at The Pierre hotel in New York City, Event 201, a global pandemic "exercise," was conducted.[8] This "planning" for a coronavirus pandemic happened just two months before events in Wuhan, China, garnered worldwide attention. On December 31, 2019, "WHO's Country Office in the People's Republic of China picked up a media statement by the Wuhan Municipal Health Commission from their website on cases of 'viral pneumonia' in Wuhan."[9] By January 25, 2020, the "WHO Regional Director for Europe issued a public statement outlining the importance of being ready at the local and national levels for detecting cases, testing samples and clinical management."

In response, on January 31, 2020, President Trump issued a "Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus," which interdicted international travel from China into the United States. *Proclamation 9984*, 85 Fed.Reg. 6709 (February 5, 2020). As events developed, President Trump issued a "Proclamation

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[6] See https://www.ncbi.nlm.nih.gov/pmc/articles/PMC 3127276/

[7] See https://apps.who.int/gb/pip/pdf_files/pandemic-influenza-preparedness-en.pdf

[8] See https://www.centerforhealthsecurity.org/event 201/about

[9] See WHO Timeline of COVID events at https://www.who.int/news/item/29-06-2020-covidtimeline

on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak" on March 13, 2020. *Proclamation 9994*, 85 Fed. Reg. 15338 (March 18, 2020).

In 2006, Congress adopted Pub. L. 109-148, 119 Stat. 2680, a provision of which included the Public Readiness and Emergency Preparedness Act, 119 Stat. at 2818 (codified at 42 U.S.C. §247d-6d). This law specifically sets forth the powers of the Secretary of the Department of Health and Human Services (HHS) to authorize novel vaccines and treatments for use in pandemics, and to provide legal immunity for their administration.

Section 360bbb-3(b)(1)(C) of 21 U.S.C. authorizes the Secretary of HHS to declare an emergency when he determines:

> ...that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents.

After such a declaration, the Secretary may grant "emergency use authorizations" for vaccines that have not been approved by the FDA. When these vaccines are actually administered, their manufacturers and a wide-variety of other "covered persons" are granted immunity from suit. A suit seeking damages for injuries arising from "wilful misconduct" by "covered persons" may only be brought under specified conditions (42 U.S.C. §247d-6d).

HHS Secretary Alex Azar apparently issued proclamations of a COVID pandemic emergency on January 31, April 21, July 23, and October 2 of 2020, and January 7, 2021. Secretary Xavier Becerra issued another on April 15, 2021. Although 21 U.S.C. §360bbb-3(b)(4) requires such declarations to be published in the Federal Register, none were. However, the Secretaries issued numerous declarations granting emergency use authorizations for various medical items as well as declarations granting immunity from lawsuits to various parties and companies involved in the federal COVID response, which *were* published as required.[10]

Two effective and safe *treatments* for COVID-19 have been subject to revocations of emergency use authorization. See 85 Fed. Reg. 56231 (September 11, 2020) (revoking emergency use for hydroxychloroquine sulfate); and 86 Fed. Reg. 37158 (July 14, 2021) (revoking emergency use for the extremely effective and safe drug named ivermectin).

As explained below, the misuse of these federal laws has and will lead to the abridgment of constitutional rights.

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[10] See 85 Fed. Reg. 15198 (March 17, 2020); 85 Fed. Reg. 17335 (March 27, 2020); 85 Fed. Reg. 17335-36 (March 27, 2020); 85 Fed. Reg. 18250 (April 1, 2020); 85 Fed. Reg. 34638 (June 5, 2020); 85 Fed. Reg. 35100 (June 8, 2020); 85 Fed. Reg. 42407 (July 14, 2020); 85 Fed. Reg. 52136 (August 24, 2020); 85 Fed. Reg. 62739 (October 5, 2020); 85 Fed. Reg. 74346 (November 20, 2020); 85 Fed. Reg. 79190 (December 9, 2020); 86 Fed. Reg. 5200 (January 19, 2021); 86 Fed. Reg. 9516 (February 16, 2021); 86 Fed. Reg. 10290 (February 19, 2021); 86 Fed. Reg. 10588 (February 22, 2021); 86 Fed. Reg. 17162 (April 1, 2021); 86 Fed. Reg. 21749 (April 23, 2021); and 86 Fed. Reg. 39040 (July 23, 2021).

II.
State and Federal Litigation Regarding COVID Mandates

State and local governments were quick to follow President Trump's lead in response to COVID-19. Around the country, many of these governments imposed "Stay at Home" orders, which prevented the assembly of small and large groups;[11] closed churches, restaurants, bars and all types of businesses; and only allowed those activities that were deemed "essential."

One of the first closures challenged was the result of the City of Louisville, Ky. ordering a ban on church services in violation of Kentucky's guarantees of the right to worship and assemble peaceably. One church, On Fire Christian Center, defied that order and sued the city and its mayor. An injunction against the city and enforcement of its closure order was granted. *See On Fire Christian Ctr. v. Fischer*, 453 F. Supp. 3d 901 (W.D. Ky. 2020).

In Wisconsin, officials of the Dept. of Health Services ordered "everyone to stay home," and that order "clos[ed] all 'non-essential' businesses, prohibit[ed] private gatherings of any number of people who are not part of a single household, and [forbade] all 'non-essential' travel." *Wisconsin Legislature v. Palm*, 391 Wis. 2d 497, 942 N.W.2d 900 (2020). Sensing the exercise of undelegated legislative power, the Wisconsin Legislature instituted suit in the Wisconsin Supreme Court against the Department officials, and one argument

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[11] See WHO Document EB130/17, "Global mass gatherings: implications and opportunities for global health security": https://apps.who.int/gb/ebwha/pdf _files /EB130/B130_17-en.pdf

made therein was the Department's failure to comply with Wisconsin's administrative procedures act. In May 2020, the Wisconsin Supreme Court held that the order of the Department was void because it hadn't been promulgated as required by that State's administrative procedures act.

Perhaps one of the most important controversies regarding COVID-19 and the executive response to it occurred in Michigan. The governor of that State, based on Michigan's Emergency Powers of the Governor Act of 1945, and its Emergency Management Act of 1976, issued Executive Order 2020-04 that declared an emergency and imposed burdensome restrictions. Later orders continued the "state of emergency" as well as the oppressive restrictions. Opponents of the Governor's lockdown instituted suit in federal court, which resulted in that district court certifying several state issues to the Michigan Supreme Court. In October, 2020, the Michigan Supreme Court addressed those issues adversely to the Governor in *Midwest Inst. of Health, PLLC v. Governor of Mich. (In re Certified Questions from the United States Dist. Court)*, 506 Mich. 332, 958 N.W.2d 1 (2020).

Regarding the issue of whether the Governor was exercising undelegated legislative power,[12] the Michigan Supreme Court noted that "it is one thing if a statute confers a great degree of discretion, *i.e.,* power, over a narrow subject; it is quite another if that power can be brought to bear on something as 'immense' as an entire economy." It found that the

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[12] See also *Schaezlein v. Cabaniss*, 135 Cal. 466, 67 P. 755 (1902); *State v. Marana Plantations*, 75 Ariz. 111, 115, 252 P.2d 87 (1953); and *Boreali v. Axelrod*, 517 N.E.2d 1350, 1353-56 (N.Y. 1987).

Governor was unconstitutionally exercising legislative power by her orders.

Litigation regarding these issues has spilled over into the federal courts. The Centers for Disease Control devised a moratorium on tenant evictions, but it was held unconstitutional in *Tiger Lily, LLC v. United States Dept. of Housing and Urban Development*, 992 F.3d 518 (6th Cir. 2021). The D.C. Circuit held similarly in *Ala. Ass'n of Realtors v. U. S. Dept. of Health and Human Services*, No. 20-cv-3377 (DLF), 2021 U.S. Dist. LEXIS 85568 (D.D.C. May 5, 2021), which this Court upheld. See *Ala. Ass'n of Realtors v. United States Dept. of Health and Human Services*, No. 21A23, 2021 U.S. LEXIS 3679 (Aug. 26, 2021). As Justice Gorsuch has recently observed regarding these types of restrictions, "even in a pandemic, the Constitution cannot be put away and forgotten." *Roman Catholic Diocese v. Cuomo*, 592 U. S. ____, 141 S. Ct. 63 (2020).

III.
Authority to Regulate the Practice of Medicine

Via 21 U.S.C. §360bbb-3(b)(1)(C), the Secretary of HHS is authorized to declare a "public health emergency [] that affects * * * national security or the health and security of United States citizens living abroad, and that involves * * * a disease * * * that may be attributable to" biological agents. Once such a determination is made by the Secretary, he may authorize the manufacture and distribution of vaccines that have not been otherwise approved by the FDA for the purpose of "preventing such a disease." When a vaccine has been authorized for such "emergency use," recipients of such vaccines, as mandated via subsection (d), must be informed as follows:

> (I) that the Secretary has authorized the emergency use of the product;
> (II) of the significant known and potential **benefits** and **risks** of such use, and of the extent to which such benefits and risks are unknown; and
> (III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.[13] [emphasis added]

When an "emergency use authorization" (EUA) for a vaccine is in effect, 42 U.S.C. §247(d)-6(d) permits other declarations that grant immunity to specified parties ("covered persons") who are involved in the administration of the vaccine. Based on these two statutes, the federal government has instituted a nationwide vaccine program designed to purportedly prevent or mitigate the infection known as COVID-19. It has funded the development of several vaccines, and established a gigantic network of local facilities in all of the States of the Union where citizens and others receive these injections.

Despite this, the federal government is *without* constitutional authority to regulate the practice of medicine within the various States of the United States. See *Linder v. United States*, 268 U.S. 5, 18 (1925) ("Obviously, direct control of medical practice in the states is beyond the power of the federal government"); *Lambert v. Yellowley*, 272 U.S. 581,

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[13] These provisions obviously mandate informed consent for vaccine recipients. See *In re Cincinnati Radiation Litig.*, 874 F. Supp. 796, 816–18 (S.D. Ohio 1995).

598 (1926)("It is important also to bear in mind that 'direct control of medical practice in the States is beyond the power of the Federal Government.' * * * Congress, therefore, cannot directly restrict the professional judgment of the physician or interfere with its free exercise in the treatment of disease. Whatever power exists in that respect belongs to the states exclusively."); *Du Vall v. Board of Medical Examiners*, 49 Ariz. 329, 335, 66 P.2d 1026 (1937)("the states have not delegated to the United States the power to * * * regulate the practice of medicine"); *Young v. United States*, 315 U.S. 257 (1942); *Ghadiali v. Delaware State Medical Society*, 48 F.Supp. 789 (D. Del. 1943)(practice of medicine is a State concern); *United States v. Evers*, 453 F.Supp. 1141, 1150 (M.D.Ala. 1978); *Metrolina Fam. Prac. Group v. Sullivan*, 767 F. Supp. 1314, 1321 (W.D.N.C. 1989); *Conant v. Walters*, 309 F.3d 629, 639 (9th Cir. 2002); and *Oregon v. Ashcroft*, 368 F.3d 1118, 1124 (9th Cir. 2004).

Most states have existing laws generally defining the practice of medicine as encompassing the treatment or cure of a disease. For example, Ala. Code § 34-24-50 defines the practice of medicine to include "diagnos[ing], treat[ing], correct[ing], advis[ing] or prescrib[ing] for any human disease, * * * by any means or instrumentality." See a similar definition in Arizona Rev. Stat. § 32-1401(22).

In California, it encompasses "any system or mode of treating the sick or afflicted in this state," or relates to a person who "diagnoses, treats, operates for, or prescribes for any ailment, * * * disease, disfigurement, disorder, injury, or other physical or mental condition of any person". California Business & Professions Code § 2052. See also definitions in Colo. Rev. Stat. § 12-240-107; Georgia Code § 43-34-

21; Idaho Code § 54-1803; Burns Ind. Code Ann. § 25-22.5-1-1.1, and Kansas Code §65-2869(b).

In Michigan via MCLS § 333.17001(j), the "'[p]ractice of medicine' means the diagnosis, treatment, prevention, cure, or relieving of a human disease." For Montana, MCA §37-3-102 (13) declares that this practice means "the diagnosis, treatment, or correction of or the attempt to * * * diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities." See also Nev. Rev. Stat. Ann. § 630.020; N.C. Gen. Stat. § 90-1.1(5)(b); 59 Okl. St. § 492(C)(3); Oregon Rev. Stat.§ 677.085(4); and R.I. Gen. Laws § 5-37-1 (15).

In § 36-4-9 of the S.D. Codified Laws, it's defined as including "recommend[ing], prescrib[ing] or direct[ing] for the use of any person any drug, medicine, apparatus, or other agency for the cure, relief or palliation of any ailment or disease." In § 63-6-204(a)(1) of the Tenn. Code Ann., it's defined as "treat[ing] or profess[ing] to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity." See also §18.71.011, Revised Code of Washington.

"[E]very State has a sphere of action where the authority of the national government may not intrude. Within that domain the State is as if the union were not." *Farrington v. Tennessee*, 95 U.S. 679, 685 (1877). Nowhere in America can the federal government invade the States, authorize the practice of medicine therein, and then "shanghai" any State's medical system for its purposes. *Printz v. United States*, 521 U.S. 898, 908 (1997). Moreover, it cannot grant itself immunity from suit for acting unconstitutionally. *Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 531 (1885).

IV.
COVID Vaccines are Misbranded Drugs

Presently, there are three separate COVID-19 EUA vaccines being administered to Americans: Pfizer-BioNTech; Janssen, and Moderna. Since these vaccines/drugs are only authorized for emergency use, the manufacturers are required to disclose through fact sheets the benefits and risks of each.[14]

Fact sheets published by Pfizer, Inc.,[15] dated May 10, 2021;[16] by Janssen Biotech Inc., dated April 23, 2021;[17] and by Moderna, Inc., dated March 26, 2021;[18] all provided mandated statements of "benefits and risks" which included identical statements regarding the risk of severe allergic reaction:

> WHAT ARE THE RISKS OF THE [Moderna, Pfizer, or Janssen] COVID-19 VACCINE?
>
> There is a remote chance that the ... COVID-19 Vaccine could cause a severe allergic reaction. A severe allergic reaction would

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[14] On August 23, 2021, the FDA approved a first COVID-19 vaccine, "Comirnaty," but this vaccine is not presently on the market, and it is "legally distinct" from the Pfizer-BioNTech COVID-19 vaccine, see https://www.fda.gov/media/151710/download and https://www.fda.gov/media/150386/download

[15] See *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163 (2d Cir. 2009); and *Showers v. Pfizer, Inc. (In re Pfizer Inc. Sec. Litig.)*, 819 F.3d 642 (2d Cir. 2016).

[16] See https://dhhr.wv.gov/COVID-19/Documents/EUA%20270 34.167_FS%20for%20Recipients%20and%20Caregivers_Final_5.10.2021.pdf

[17] See: https://omh.ny.gov/omhweb/o-lov-covid19-vaccine /janssen-cv-19-fact-sheet.pdf

[18] See:https://healthycommunitymhc.org/wp-content/uploads /2021/05/eua-fact-sheet-recipients.pdf

> usually occur within a few minutes to one hour after getting a dose of the ... COVID-19 Vaccine. For this reason, your vaccination provider may ask you to stay at the place where you received your vaccine for monitoring after vaccination. Signs of a severe allergic reaction can include:
>
> • Difficulty breathing
> • Swelling of your face and throat
> • A fast heartbeat
> • A bad rash all over your body
> • Dizziness and weakness

Pfizer's fact sheet reported further side effects as follows:

> Side effects that have been reported with the Pfizer-BioNTech COVID-19 Vaccine include:
>
> • severe allergic reactions
> • non-severe allergic reactions such as rash, itching, hives, or swelling of the face
> • injection site pain
> • tiredness
> • headache
> • muscle pain
> • chills
> • joint pain
> • fever
> • injection site swelling
> • injection site redness
> • nausea
> • feeling unwell
> • swollen lymph nodes (lymphadenopathy)
> • diarrhea
> • vomiting

> • arm pain
>
> These may not be all the possible side effects of the Pfizer-BioNTech COVID-19 Vaccine. Serious and unexpected side effects may occur. Pfizer-BioNTech COVID-19 Vaccine is still being studied in clinical trials.

Janssen's fact sheet reported further side effects as follows:

> Side effects that have been reported with the Janssen COVID-19 Vaccine include:
>
> • Injection site reactions: pain, redness of the skin and swelling.
> • General side effects: headache, feeling very tired, muscle aches, nausea, and fever.
> ...
>
> Blood clots involving blood vessels in the brain, abdomen, and legs along with low levels of platelets (blood cells that help your body stop bleeding), have occurred in some people who have received the Janssen COVID-19 Vaccine. In people who developed these blood clots and low levels of platelets, symptoms began approximately one to two-weeks following vaccination. Most people who developed these blood clots and low levels of platelets were females ages 18 through 49 years. The chance of having this occur is remote. You should seek medical attention right away if you have any of the following symptoms after receiving Janssen COVID-19 Vaccine:

- Shortness of breath,
- Chest pain,
- Leg swelling,
- Persistent abdominal pain,
- Severe or persistent headaches or blurred vision,
- Easy bruising or tiny blood spots under the skin beyond the site of the injection.

These may not be all the possible side effects of the Janssen COVID-19 Vaccine. Serious and unexpected effects may occur. The Janssen COVID-19 Vaccine is still being studied in clinical trials.

Moderna's fact sheet reported further side effects as follows:

Side effects that have been reported in a clinical trial with the Moderna COVID-19 Vaccine include:

• Injection site reactions: pain, tenderness and swelling of the lymph nodes in the same arm of the injection, swelling (hardness), and redness
• General side effects: fatigue, headache, muscle pain, joint pain, chills, nausea and vomiting, and fever

Side effects that have been reported during post-authorization use of the Moderna COVID-19 Vaccine include:

• Severe allergic reactions

> These may not be all the possible side effects of the Moderna COVID-19 Vaccine. Serious and unexpected side effects may occur. The Moderna COVID-19 Vaccine is still being studied in clinical trials.

The federal laws regulating the manufacture, sale and distribution of vaccines are predicated on the constitutional power of Congress to regulate interstate commerce (21 U.S.C. § 331). Further, the crime of "misbranding" is the subject of 21 U.S.C. § 352(j), and it provides that a drug is misbranded "[i]f it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof."

On October 22, 2020, the FDA's Vaccines and Related Biological Products Advisory Committee conducted a meeting for various attendees to discuss sundry matters related to the COVID-19 pandemic. During this meeting, a slide presentation was given wherein the following "risks" of the contemplated vaccines were indicated:

> Guillain-Barré syndrome
> Acute disseminated encephalomyelitis
> Transverse myelitis
> Encephalitis/myelitis/encephalomyelitis/
> meningoencephalitis/meningitis/
> encepholapathy
> Convulsions/seizures
> Stroke
> Narcolepsy and cataplexy
> Anaphylaxis
> Acute myocardial infarction
> Myocarditis/pericarditis
> Autoimmune disease

Deaths
Pregnancy and birth outcomes
Other acute demyelinating diseases
Non-anaphylactic allergic reactions
Thrombocytopenia
Disseminated intravascular coagulation
Venous thromboembolism
Arthritis and arthralgia/joint pain
Kawasaki disease
Multisystem Inflammatory Syndrome in Children
Vaccine enhanced disease [19]

Clearly, the above noted risks involved in the vaccination of large numbers of people were contemplated and expected months before the three vaccine manufacturers published their fact sheets.

The Director of the National Vaccine Program (in HHS) is directed by 42 U.S.C. § 300aa-2(a)(7) and § 300aa-3 to set up a plan to "monitor[] ... adverse effects of vaccines and immunization activities." That responsibility has been carried out through the Vaccine Adverse Events Reporting System (VAERS), co-managed by the CDC and the FDA since 1990.

In 2011, Harvard Pilgrim Health Care, Inc. conducted a study of the VAERS reporting system for the Agency for Healthcare Research and Quality (HHS), and concluded that "fewer than 1% of vaccine adverse events are reported."[20]

Despite the severe limitation of a low reporting rate for adverse events, VAERS still supplies early warning of crippling side effects and deaths from COVID-19 vaccines, especially when compared to the

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[19] See p. 17 of https://www.fda.gov/media/143557 /download

[20] See p. 6 of https://digital.ahrq.gov/sites/default/files/docs/publication/r18hs017045-lazarus-final-report-2011.pdf

relative safety of all other vaccines reported upon heretofore. For example, 66 percent of *all* deaths ever reported in proximity to vaccination for over 31 years in the State and U.S. Territories alone have followed injection with the three COVID-19 EUA vaccines (7,920 deaths out of a total of 12,080 ever reported).[21] This two-thirds of all deaths reported occurred in just the last nine months, and only represents reports processed and released to the public by the CDC through September 17, 2021.[22]

Similarly, 44 percent of all *permanent* disabilities ever reported (over 31 years) followed COVID-19 vaccines. (8,958 out of a total of 20,514). Spontaneous abortion (miscarriage) reported after COVID-19 vaccination comprises 61 percent of all such abortions ever reported (1,815 out of 1,599). The next highest reported abortion rate following vaccination is for HPV (Gardisil), at 16 percent of all such abortions reported, representing a period of 15 years' administration. None of the COVID-19 vaccine fact sheets to date reflect this high risk of fetal death or miscarriage.

The prediction of the FDA, see *supra*, of three heart-related events to follow COVID-19 vaccination — myocarditis, pericarditis, and acute myocardial infarction — is borne out by a search of VAERS limited to those symptoms. Ninety-one percent of all such heart-related events are reported following

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[21] VAERS figures were generated by querying the dataset made available to the public at https://wonder.cdc.gov/vaers.html. Deaths, permanent disability, and spontaneous abortion were searched and filtered by vaccine type, for all reporting years, covering the U.S. and territories.

[22] The processing of received reports is a black box as far as the public is concerned, but many observers have pointed out that it appears that VAERS is likely 4-5 months behind in releasing those reports to the public.

these deadly vaccines (3,467 out of 3,813 ever reported). The FDA has published revised Moderna and Pfizer-BioNTech fact sheets to include myocarditis and pericarditis in the "side effects that have been reported,"[23] but *not* to include strokes or blood clots. And yet 89 percent of all stroke and blood clot-related events have also been reported as following the COVID-19 vaccines (10,230 out of 11,507 ever reported). The Janssen fact sheet now reflects blood clot risks and Gullain Barré Syndrome, but not heart risks.[24]

It is clear that the fact sheets authored by the COVID-19 manufacturers still conceal significant risks from the public, risks which were known in advance of distribution, and are increasingly manifest now. This constitutes "misbranding" in violation of 21 U.S.C. § 352. See *Kordel v. United States*, 335 U.S. 345 (1948).

V.
The Constitutional Right to Bodily Integrity

When smallpox was deemed an epidemic at the start of the twentieth century, this Court in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), determined under the facts of that case that Massachusetts could mandate vaccinations.[25] It must be noted that *Jacobson* is of the genre of *Plessy v. Ferguson*, 163 U.S. 537 (1896)(upheld state segregation laws); *Buck v. Bell*, 274 U.S. 200 (1927) (upheld involuntary

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[23] See, *e.g.* https://www.fda.gov/media/144414/download (published September 22, 2021).

[24] See https://www.fda.gov/media/146305/download (published August 27, 2021).

[25] There is a sordid history of human experimentation in our country. See, *e.g.,* https://en.wikipedia.org/wiki/Unethical_human_experimentation_in_the_United_States

sterilization); and *Korematsu v. United States*, 323 U.S. 214 (1944) (upheld removal of Japanese Americans from their homes during World War II). Moreover, *Jacobson* does not authorize the federal government to mandate vaccinations in the jurisdictions of the States. Instead, the Court was clear that such power was not surrendered by the State to the federal government. *Jacobson*, at 25.

Since *Jacobson*, this Court and others have recognized the constitutional right to "bodily integrity," which constitutes a limit to the authority to compel citizens to be vaccinated. See *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (invasive medical procedure of sterilization performed without the consent of the patient, "forever deprived [the individual] of a basic liberty"); *Rochin v. California*, 342 U.S. 165 (1952)(forced stomach pumping of an arrested person to obtain evidence of illegal drug possession violated the Due Process Clause); *Winston v. Lee*, 470 U.S. 753, 755 (1985); *Washington v. Harper*, 494 U.S. 210, 221-222 (1990) ("respondent possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs"); *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 278 (1990)("competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment"); *Albright v. Oliver*, 510 U.S. 266, 272 (1994)("[t]he protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity."); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) ("the 'liberty' protected by the Due Process Clause [of the Fourteenth Amendment] includes the right[] . . . to bodily integrity"); *Missouri v. McNeely*, 569 U.S. 141, 148 (2013)("any compelled intrusion into the human body implicates significant, constitutionally

protected privacy interests"); *Frances-Colon v. Ramirez*, 107 F.3d 62, 63 (1st Cir. 1997)(substantive due process interest in "bodily integrity" or "adequate medical care" can support a personal injury claim under § 1983 "against the provider of a governmental service"); *Phillips v. County of Allegheny*, 515 F. 3d 224, 235 (3d Cir. 2008)("individuals have a constitutional liberty interest in personal bodily integrity"); *Shillingford v. Holmes*, 634 F.2d 263, 265 (5th Cir. 1981)("the right to be free of state-occasioned damage to a person's bodily integrity is protected by the fourteenth amendment guarantee of due process"); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994)(right to be free of state-occasioned damage to a person's bodily integrity is protected by U.S. Const. amend. XIV's guarantee of due process); *Guertin v. Michigan*, 912 F.3d 907 (6th Cir. 2019)("invasion of one's body 'is an indignity, an assault, and a trespass' prohibited at common law"); *Rogers v. City of Little Rock*, 152 F.3d 790, 797 (8th Cir. 1998) (rape by police officer of woman stopped for traffic violation violated her Due Process right to intimate bodily integrity); *Plumeau v. Sch. Dist. # 40*, 130 F.3d 432, 438 (9th Cir. 1997) (janitor whose touching of elementary school children constituted criminal sexual abuse also violated the children's Due Process right to bodily integrity); *Hovater v. Robinson*, 1 F.3d 1063, 1068 (10th Cir. 1993)("inmate has a constitutional right to be secure in her bodily integrity"); *Jurasek v. Utah State Hosp.*, 158 F.3d 506, 510 (10th Cir. 1998)("an individual has a liberty interest in 'avoiding the unwanted administration of antipsychotic drugs'"); *Fortner v. Thomas*, 983 F.2d 1024, 1029-30 (11th Cir. 1993) (inmates "retain certain fundamental rights of privacy," including a "constitutional right to bodily privacy"); *Canterbury v. Spence*, 150 U.S. App. D.C. 263, 464 F.2d 772, 780

(D.C. Cir. 1972)(it is "fundamental in American jurisprudence, that the individual may control what shall be done with his own body"); *Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach*, 445 F.3d 470, 480 (D.C. Cir. 2006) ("A right of control over one's body has deep roots in the common law."); *State v. Presidential Women's Ctr.*, 937 So. 2d 114, 116 (Fla. 2006)("The doctrine of informed consent is well recognized, has a long history, and is grounded in the common law and based in the concepts of bodily integrity and patient autonomy."); *Minnesota v. Brown*, 932 N.W.2d 283 (Minn. 2019) ("forcing appellant * * * to undergo an anoscopy against his will and under sedation in the presence of nonmedical personnel is a serious invasion of Brown's dignitary interests in personal privacy and bodily integrity").

The instant petition poses the question of whether the President can compel a national vaccine program that punishes Americans for exercising the constitutional right to "bodily integrity." Clearly, the Constitution does not authorize such action. Furthermore, many seem to believe that such a program is the condition precedent to genocide in violation of 18 U.S.C. § 1091.[26]

VI.
Application of Principles to this Case

As outlined *supra*, applicable legal principles demonstrate that neither the President nor any federal agency may implement a nationwide vaccine program and compel Americans who object thereto to

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[26] If the remaining 99 percent of VAERS *under*-reported deaths are figured in, these vaccines have likely killed nearly 800,000 Americans in just nine months.

receive a vaccine (which is really a "gene therapy"). It is certain that Petitioner Garner and others who fall within this unvaccinated class and instituted their lawsuit to prevent being compelled to be vaccinated, whether that force is applied directly or indirectly through the use of mandates levied against employers, for example, is unconstitutional and illegal.

The order of the district court dismissing the Petitioners' complaint may be fairly summarized as follows:

> The President and his subordinate agencies are in no way responsible for vaccine programs in America, and they have nothing to do with vaccine mandates. Therefore, the Plaintiff has no "standing" to sue the Executive Branch over the physical destruction of the American people via these vaccine programs, regardless of the truth of the Plaintiff's allegations (and evidence) pointing to the fact that these vaccine programs are swiftly bringing about the end of this Republic, which with mathematical certainty will end within this decade.

If there were any shred of support for the Respondent's fallacious argument (which there was not), any pretense of validity has been obliterated now that President Biden himself has announced his plans to force all *private* employers (with 100 or more employees) to mandate these new vaccines for their employees nationwide, and to fully discriminate against any who refuse.[27]

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[27] See www.cnbc.com/2021/09/09/biden-to-detail-new-six-pronged-plan-to-increase-us-covid-vaccination-rates-fight-

None of the factual allegations or supporting evidence in the original complaint was refuted in any way. All those assertions were true and scientifically irrefutable (indeed, the government has never completed a fully unvaccinated control group study to counter Petitioners' evidence; and Petitioners' evidence is corroborated by every other fully unvaccinated control group study ever completed).

Petitioners' requests for judicial notice of evidence they have acquired contradicting official claims about vaccination safety alone should have been sufficient to grant the relief sought in this case.

In short, the people continue to be used as guinea pigs in the President's human medical experiment. Meanwhile, The Control Group has already proven, mathematically, how dangerous vaccines really are, and it is in the interest of justice that they be allowed to amend their complaint and conduct their suit for declaratory relief.

CONCLUSION

The Petition for Writ of *Mandamus* should be granted.

Respectfully submitted,

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virus.html

APPENDIX

CONSTITUTIONAL PROVISIONS

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment, Sec. 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES (pertinent portions)

18 U.S.C. § 1091 Genocide

(a) **Basic Offense**.
Whoever, whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such-

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

(6) transfers by force children of the group to another group;

shall be punished as provided in subsection (b).

(b) **Punishment for Basic Offense**.
The punishment for an offense under subsection (a) is-

(1) in the case of an offense under subsection (a)(1), where death results, by death or imprisonment for life and a fine of not more than $1,000,000, or both; and

(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

...

(f) **Nonapplicability of Certain Limitations**.
Notwithstanding section 3282, in the case of an offense under this section, an indictment may be

found, or information instituted, at any time without limitation.

21 U.S.C. § 352(j)

A drug or device shall be deemed to be misbranded-

(j) **Health-endangering when used as prescribed**
If it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.