No. 25-202

IN THE

Supreme Court of the United States

ADRIENNE APUZZA,

Petitioner,

v.

NYU LANGONE LONG ISLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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RESPONDENT'S QUESTION PRESENTED

Whether the Court of Appeals applied the correct standard of review when it dismissed Petitioner's disability discrimination and retaliation claims for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Whether the Court of Appeals correctly dismissed Petitioner's disability discrimination claims under the "regarded as" and "record of" theories of liability under the ADA.

Whether the Court of Appeals correctly dismissed Petitioner's retaliation claim for failure to establish a causal connection between her protected activity and adverse employment action.

Whether the Court of Appeals correctly dismissed Petitioner's claim that NYUL-LI subjected her to non-job-related medical examinations and inquiries under the ADA.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, counsel for NYU Langone Long Island hereby states that NYU Langone Long Island has no publicly held parent, affiliate, subsidiary or affiliated entity that owns 10% of more of its stock.

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STATEMENT OF THE CASE

I. Statement of Facts

In August 2021, in the midst of a global pandemic that had already stretched 17 months, New York Governor Andrew Cuomo issued an Executive Order, and the New York State Department of Health issued an Emergency Rule, mandating that New York healthcare workers receive the COVID-19 vaccination. See generally 10 N.Y.C.R.R. § 2.61 ("Emergency Rule").[1] The Emergency Rule, entitled "Prevention of COVID-19 Transmission by Covered Entities," required all covered entities, which included healthcare facilities, like Respondent NYU Langone Long Island ("NYUL-LI"), to "continuously require personnel to be fully vaccinated against COVID-19, absent receipt of an exemption as allowed below." 10 N.Y.C.R.R. § 2.61(c). The sole exemption to the Emergency Rule's COVID-19 vaccine requirement was a medical exemption, which was limited in scope and intended to be temporary in duration. *See* 10 N.Y.C.R.R. § 2.61(d)(1). Employees who did not comply with the vaccine requirement were not permitted to work in covered personnel positions. *See* 10 N.Y.C.R.R. § 2.61(c).

Petitioner Adrienne Apuzza worked for NYUL-LI as a medical technologist from September 1986 through

1. The New York State Department of Health enacted several versions of the Emergency Rule as the COVID-19 pandemic evolved. The Emergency Rule has since been repealed for reasons unrelated to Petitioner's claims. The version of the Emergency Rule effective between August 26, 2021, and November 23, 2021 (included in the Appendix) applied during Petitioner's employment with NYUL-LI.

September 2021. (Am. Compl., page 10, ¶ 86). In late August 2021, immediately following the Executive Order, NYUL-LI announced that all of its healthcare workers would be required to be vaccinated against COVID-19, subject to certain medical exemptions. (Id., page 51, Ex. A-3; 10 N.Y.C.R.R. § 2.61). On August 30, 2021, following the Emergency Rule, NYUL-LI issued "New Guidance on COVID-19 Vaccine Exemptions," explaining that the Emergency Rule only permitted exemption from the mandatory vaccine based on pre-existing medical conditions and requiring that medical exemptions be submitted by September 13, 2021. (Am. Compl., page 53. Ex. A-4). Petitioner did not submit a medical exemption. (Id., page 81, Ex. A-18; page 87, Ex. A-22).

On September 10, 2021, Petitioner learned that Respondent would terminate employees who did not schedule a vaccine appointment by September 22, 2021. (Id. page 11, ¶ 97; page 56, Ex. A-5). On September 17, 2021, Petitioner emailed and mailed a letter to the human resources department with the subject line "RE: employment discrimination & retaliation." (Id., page 11, ¶ 100; page 58, Ex. A-7). In the letter, Petitioner complained that she was being harassed and retaliated against and "being regarded as having a contagious disease without any individualized assessment and continually being asked for [her] medical records and to submit to medical examinations and interventions (accommodations or mitigation measure) without any informed consent." (Id., page 58, Ex. A-7).

On September 23, 2021, Respondent issued Petitioner a final written warning for her failure to schedule her first vaccine by September 22, 2021, as required by the

COVID-19 vaccination policy. (Id., page 13, ¶ 112; page 69, Ex. A-11). The final written warning further provided that Petitioner was required to receive her first dose of the vaccine by September 27, 2021, and that failure to comply would result in termination of employment. (Id., page 69, Ex. A-11).

On September 24, 2021, the human resources department notified Petitioner that her complaints of discrimination and retaliation related to Respondent's COVID-19 policy were unsubstantiated and that Respondent's actions related to its enforcement of its COVID-19 policy were reasonable acts "which ha[ve] been implemented to keep our patients, employees and community safe." (Id., page 13, ¶ 114; page 73, Ex. A-13). Because Petitioner failed to receive a first dose of the COVID-19 vaccine by the September 27, 2021 deadline and because she did not apply for, nor did she have, an approved medical exemption, Respondent had no choice but to terminate Petitioner's employment on September 30, 2021. (Id., page 81, Ex. A-18).

II. Procedural History

On December 9, 2022, Petitioner filed a lawsuit in the United States District Court for the Eastern District of New York against Respondent, alleging that it had discriminated against her and retaliated against her in violation of the Americans with Disabilities Act ("ADA") when it allegedly "regarded her" as disabled and had a "record of" her being disabled by applying the New York State-mandated COVID-19 vaccine requirement to her and all other employees. Petitioner also alleged that Respondent had violated the ADA by allegedly requiring non-job-related medical examinations and treatments.

Respondent moved to dismiss Petitioner's claims under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The District Court dismissed all of Petitioner's claims, finding that she had failed to plausibly allege: (1) a qualifying disability under the "record of" and "regarded as" prongs of the ADA; (2) causation to support a claim of retaliation because Respondent's vaccine mandate requiring termination of noncompliant employees was already in place before Petitioner's opposition to the policy; and (3) that Respondent's COVID-19 policies were unlawful medical examinations or inquiries.

On February 9, 2024, Petitioner filed a motion to vacate the District Court's decision, asking the Court to vacate the order "to correct its mistakes of fact and law upon which the judgment is based" and because the judge "failed to apply the relevant legal pleading standard to this case." The District Court denied Petitioner's motion to vacate on the grounds that she did not demonstrate that the Court overlooked any legal or factual issue that would have altered its decision, she did not demonstrate that the Court acted in a manner inconsistent with due process of law, and she did not show extraordinary circumstances justifying relief or that the judgment may work an extreme and undue hardship.

On appeal, Petitioner challenged the District Court's Order granting Respondent's motion to dismiss. Petitioner argued that the District Court "reached incorrect legal conclusions because the Judge refused to be ruled by guiding principles set out by Congress regarding the mandate to prioritize analysis of employer's compliance" and that the District Court "completely failed to adjudicate her claim of discrimination based upon non-

job-related qualification standards, invasion of medical privacy, non-job-related tests, treatments and inquiries, and retaliation." On March 11, 2025, the Second Circuit Court of Appeals issued a summary order affirming the District Court's Order dismissing Petitioner's disability and retaliation claims for failure to state a claim for relief under Fed. R. Civ. P. 12(b)(6). Specifically, the appellate court found that all of Petitioner's claims were foreclosed by the Court's published, precedential decision in *Sharikov v. Philips Medical Sys. MR, Inc.*, 103 F.4th 159 (2d Cir. 2024), where the Court of Appeals affirmed the lower court's dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6) of substantively identical disability discrimination and retaliation claims as those raised by Petitioner.

The Second Circuit held that a plaintiff challenging an employer's COVID-19 policy cannot make out a *prima facie* claim of disability discrimination under the ADA under the "regarded as" or "record of" theories of liability where the employer requires *all* employees to be vaccinated. Under those circumstances, an employee is not singled out because of any perception of an impairment as compared to others. Likewise, a record of an employee not being vaccinated does not imply that the employee has a history of an impairment when compared to most people in the general population.

As to the retaliation claim, the Second Circuit held that Petitioner failed to plausibly plead a causal connection between her protected activity and a material adverse action. Rather than show that she was terminated because of her protected activity, the allegations in the Amended Complaint made clear that she was terminated because

she failed to comply with the hospital-wide vaccine policy. The policy applied to *all* employees regardless of whether they engaged in protected activity. As such, Petitioner failed to plausibly plead a connection between her invocations of the ADA and her termination.

Finally, the Second Circuit held that Petitioner's failure to plead that she was "regarded as" disabled or subject to a "record of" a disability as defined by the ADA was fatal to her claim that Respondent violated her medical privacy rights by subjecting her to impermissible disability-related medical inquiries and examinations.

REASONS FOR DENYING REVIEW

Review of a writ of certiorari is not a matter of right, but of judicial discretion. Petitioner has identified no compelling reasons for this Court to grant her Petition—because there are none. The Second Circuit Court of Appeals applied the correct standard of review to Petitioner's disability discrimination and retaliation claims. Therefore, its decision is not a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. (S. Ct. R. 10). The Second Circuit's decision also is not in conflict with the decisions of any federal courts on the issues presented. (S. Ct. R. 10). Petitioner's claim that her Petition involves a matter of great public importance is unsupported. The Petition is rooted in conjecture, conspiracy theories, and criticisms of the judicial system. The Second Circuit Court of Appeals properly dismissed Petitioner's disability discrimination and retaliation claims for failure to state a claim for which relief can be granted pursuant to well-established and non-conflicting principles of law.

I. The Standard Of Review Petitioner Advocates For Is Incorrect and Unsupported Under Well-Established Law

Petitioner first claims that the lower court imposed a higher pleading standard upon her than for a party represented by an attorney. (Petition at 10, 20). That claim is not supported by the record. In its order, the Second Circuit acknowledged the less stringent standard of review that it applied to Petitioner's claims as a non-represented party—"Because Apuzza proceeds without counsel, we construe her submissions liberally, reading such submissions to raise the strongest arguments they suggest." (Petition App.3a) (citation and quotation marks omitted)). Petitioner provides no evidence that the lower court did not construe her allegations more liberally.

Petitioner also argues that the lower court "invent[ed] new legal concepts" by applying a "plausibility" standard for Respondent's 12(b)(6) motion to dismiss. (Petition at 12-13, 19). The proper standard, according to Petitioner, would have been for the Court to first review Respondent's response to the Amended Complaint for any legally cognizable defenses under the ADA before reviewing the allegations contained in her Amended Complaint. (Id. at 13-14). Petitioner's preference is not the standard.

As this Court has made clear, to avoid dismissal under 12(b)(6), a *plaintiff* must plead sufficient facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "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." *Id.*

> Asking for plausible grounds does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct]. The need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects Rule 8(a)(2)'s threshold requirement that the "plain statement" possess enough heft to "sho[w] that the pleader is entitled to relief.

Twombly, 550 U.S. at 545.

Additionally, the law is clear that the "direct threat" and "individualized assessment" defenses to an ADA claim that Petitioner contends Respondent should have been required to prove *first* are affirmative defenses and are only considered *after* a plaintiff has pled a plausible claim. "Whether any of th[e] three prongs [in the disability definition] is satisfied is a threshold inquiry that determines whether Plaintiff falls under the scope of the ADA at all, and necessarily antecedent to other questions or analyses" including "the inquiry of whether an individualized assessment was conducted to determine whether Plaintiff posed a direct threat." *Librandi v. Alexion Pharmaceuticals*, No. 3:22-cv-1126, 2023 WL 3993741, *10 (D. Conn. June 14, 2023) (citing *Linne v. Alameda Health Sys.*, No. 22-cv-04981, 2023 WL 3168587, *1 (N.D. Cal. Apr. 28, 2023); *see also Sharikov v. Philips Med. Sys. MR, Inc.*, 659 F. Supp. 3d 264, 291 (N.D.N.Y. 2023) (plaintiff's reliance on "individualized assessment" language from 29 C.F.R. § 1630.2(r) misplaced because provision was not relevant in light of fact that she had not plausibly alleged she was covered by statute). Petitioner's

claim that affirmative defenses should be considered prior to determining whether a plaintiff has pled a plausible claim for relief is unsupported.

"Plausibility" is the governing standard of reviewing a plaintiff's claim against dismissal under Fed. R. Civ. P. 12(b)(6). Applying this standard, the Second Circuit properly upheld the dismissal of Petitioner's Amended Complaint because she failed to nudge her claims across the line from conceivable to plausible. *Twombly*, 550 U.S. at 570.

II. The Decision Below Does Not Even Arguably Conflict With A Decision Of Any Other Court On The Issues Presented.

Petitioner does not identify a single case in support of her argument that the lower court erred in dismissing her claims. Instead, she contends that this Court has a duty to act because the Second Circuit chose not to publish a precedential order, which creates "different and contradictory rules of decision." (Petition at 16). Petitioner misunderstands the Second Court's discretion, pursuant to the circuit court's rule, to issue a summary order. The rule provides: "When a decision in a case is unanimous and each panel judge believes that no jurisprudential purpose is served by an opinion (i.e., a ruling having precedential effect), the panel may rule by summary order." L.R. 32.1. The purpose and effect of a summary order are aptly described in the Comment to the Local Rule:

> Summary orders are issued in cases in which a precedential opinion would serve no jurisprudential purpose because the

> result is dictated by pre-existing precedent . . . . Summary orders are therefore often abbreviated, and may omit material required to convey a complete, accurate understanding of the disposition and/or the principles of law upon which it rests . . . . Denying summary orders precedential effect does not mean that the court considers itself free to rule differently in similar cases. Non-precedential summary orders are used to avoid the risk that abbreviated explanations in summary orders might result in distortions of case law. Resolving some cases by summary order allows the court to devote more time to opinions whose publication will be jurisprudentially valuable.

Comment to Local Rule 32.1.

While the summary nature of the Second Circuit's order may have omitted material that would have conveyed a more complete understanding of the principles of law upon which its decision rested, it was not improper, and the Court correctly exercised its discretion to issue a summary order in light of the precedential value of its decision nine months earlier in *Sharikov v. Philips Medical Sys. MR, Inc.*, 103 F.4th 159 (2d Cir. 2024).

A. There Is No Conflict Among Courts That Petitioner's Amended Complaint Failed To Plausibly Allege A Qualifying Disability Under the "Regarded As" and "Record Of" Prongs of the ADA.

Critically, Petitioner identifies no conflict between the Second Circuit's decision and any other decision because

no conflicts exist. Every federal court to have considered similar challenges to employers' COVID-19 vaccination requirements as a basis for an ADA claim under the "regarded as" and "record of" theories of liability have unanimously dismissed plaintiffs' claims pursuant 12(b)(6). *See, e.g.*, *Braccia v. Northwell Health Sys.*, No. 24-cv-2665, 2025 WL 2610704 (2d Cir. Sept. 10, 2025) (dismissing plaintiff's "regarded as" claim because employer's vaccine mandate applied equally to all employees and could not have been interpreted as singling out plaintiff) (citing *Apuzza v. NYU Langone Long Island*, No. 24-cv-493, 2025 WL 763425, at *2 (2d Cir. Mar. 11, 2025); *Johnson v. Mount Sinai Hosp. Grp., Inc.*, No. 22-cv-2936, 2023 WL 2163774, at *1 (E.D.N.Y. Feb. 22, 2023) (dismissing "regarded as" and "record of" claims where plaintiff "alleges that she was 'regarded ... as disabled with a contagious disease' and regarded 'as impaired in [her] immune system and impaired in [her] respiratory system,' regarded as 'having COVID-19 or being prone to getting infected ... because she is not vaccinated,' as well as 'perceived' as having a contagious disease."); *Shklyar v. Carboline Co.*, 616 F. Supp. 3d 920, 926 (E.D. Mo. 2022) (dismissing "regarded as" and "record of" claims where "Plaintiff alleges defendant "began regarding [her] as having the disability of a contagious disease and . . . as being substantially limited with an impaired immune system and an impaired respiratory system."); *Chancey v. BASF Corp.*, No. 3:22-CV-34, 2022 WL 18438375, at *3 (S.D. Tex. Dec. 29, 2022) (dismissing "regarded as" claim where plaintiff alleged that defendant regarded him "as having a disability of an impaired immune system and impaired respiratory system, and began responding to the plaintiff as if he had a contagious disease.");

B. There Is No Conflict Among Courts That Petitioner's Amended Complaint Failed to Plausibly Establish a Causal Connection Between Her Opposition to the Vaccine Mandate and Her Termination.

Similarly, federal courts have resoundingly rejected ADA retaliation claims that Petitioner raises because of their failure to plausibly establish a causal connection between the plaintiffs' protected activity and termination for failure to follow the employers' vaccine mandate. *See, e.g.*, *Speaks v. Health Sys. Mgmt., Inc.*, No. 5:22-cv-00077, 2022 WL 3448649, at *6 (W.D.N.C. August 17, 2022) ("[I] t is clear that the policy—which was undisputedly the grounds for Speaks' termination when she chose to remain unvaccinated—was enacted before Speaks spoke up in opposition to the vaccination requirement. Therefore, it is not reasonable to infer that there was a causal connection between her criticism of the policy and her termination."); *Kosiba v. Catholic Health Sys. of Long Island, Inc.*, No. 21-CV-06416, 2022 U.S. Dist. LEXIS 209772, *22 (E.D.N.Y. Nov. 18, 2022), appeal docketed, No. 23-6 (2d Cir. Jan. 4, 2023) (dismissing retaliation claim because plaintiff failed to establish requisite 'but-for' causation when adverse actions of which plaintiff complained (i.e., temperature checks, testing, etc.) were instituted before plaintiff objected to these protocols); *Shklyar*, 616 F. Supp. 3d at *927 ("Given that the adverse action taken against Shklyar was taken pursuant to policies that were implemented before Shklyar engaged in her alleged protected activity, it is not reasonable to infer that there was a causal connection between the two events.").

C. There Is No Conflict Among Courts That Petitioner's Amended Complaint Failed To Plausibly Allege That Respondent's COVID-19 Policies Were Unlawful Medical Examinations.

Lastly, every federal court to consider Petitioner's argument that Respondent's COVID-19-related requirements (e.g., taking vital statistics, implementing questionnaires, masking, and testing) violate the ADA also have uniformly concluded that these are not "medical examinations" or "medical inquiries" under the ADA, and, therefore, do not require a showing that they are job-related or consistent with business necessity. *See, e.g.*, *Sharikov*, 659 F. Supp. at 280 ("Plaintiff has not alleged facts plausibly suggesting that a vaccine attestation, an inquiry regarding whether he had contact with any infectious people, COVID-19 testing, and daily temperature screenings are inquiries or medical examinations that 'would reveal disabilities.'"); *Friend v. AstraZeneca Pharms. LP*, No. SAG-22-03308, 2023 WL 3390820, at *5 (D. Md. May 11, 2023) ("AstraZeneca's inquiry about vaccination status, however, did not constitute a medical examination or an inquiry about a disability or disabling condition."); *Jorgenson v. Conduent Transport Sol'ns, Inc.*, No. SAG-22-01648, 2023 WL 1472022, at *5 (D. Md. Feb 2, 2023) (dismissing plaintiff's ADA claim because defendant's COVID-19 vaccine "attestation requirement did not constitute a medical examination or an inquiry about a disability"); *Chancey*, 2022 WL 18438375 at *4 (plaintiff's claims that his employer required him to submit to weekly COVID-19 testing, imposed distance requirements, and masking did not constitute disability-related inquiries or medical examinations); *Covel v. Cmty. Physicians of N. Port, P.A.*, No. 23-10853, 2024 WL 1923256, at *4 (11th

Cir. May 1, 2024) (upholding lower court's dismissal of plaintiff's ADA claim related to masking requirement and finding that "requiring an employee . . . to wear a mask is neither a medical examination nor an inquiry related to a non-existent disability.").

Petitioner identifies no conflict for this Court to resolve because none exists. Federal courts have routinely and consistently dismissed the identical claims for which Petitioner challenges the lower court's dismissal. Her Petition should be denied for this additional reason.

III. Petitioner's Public Policy Arguments Do Not Warrant Review Of Her Claims.

Petitioner raises purported public health policy arguments throughout her Petition. These arguments are irrelevant to the legal analysis of the questions before the Court. For instance, Petitioner's belief that COVID-19 vaccines are not bona fide vaccines and are experimental medical treatments has no impact on the lower court's conclusions regarding her claims. (Petition at 21). Her opinion that the only way for a medical intervention to lawfully be imposed on an individual is through a petition of a public health officer similarly has no impact on the legal analysis that is before this Court. (Petition at 28). Petitioner's beliefs, conjecture, and conspiracy theories about the pandemic, public health, and the judicial system do not justify review of the lower court's dismissal of her disability discrimination and retaliation claims.

CONCLUSION

The Second Circuit Court of Appeals properly evaluated the district court's dismissal of Petitioner's disability and retaliation claims and correctly concluded that Respondent was entitled to judgment in its favor. The Second Circuit's extensive analysis in *Sharikov v. Philips Medical Systems MR, Inc.*, 103 F.4th 159 (2d Cir. 2024), involving nearly identical disability and retaliation claims as Petitioner under nearly identical factual circumstances—which even she admits (Petitioner Br. at 17-18)—dictated that Petitioner's claims must be dismissed for failure to state a claim for which relief could be granted. Every other court to consider the issues presented under nearly identical circumstances has similarly dismissed disability discrimination claims challenging employers' lawful COVID-19 policies. For these reasons, this Court should deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

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September 18, 2025

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APPENDIX — RELEVANT PROVISIONS INVOLVED. 1a

APPENDIX — RELEVANT PROVISIONS INVOLVED

10 N.Y.C.R.R. § 2.61 Prevention of COVID-19 transmission by covered entities (effective Aug. 21, 2021 – Nov. 23, 2021)

(a) Definitions.

(1) *Covered entities* for the purposes of this section, shall include:

> (i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

. . . .

(2) *Personnel*, for the purposes of this section, shall mean all persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.

. . . .

(c) Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, with the first dose for current personnel received by September 27, 2021

for general hospitals and nursing homes, and by October 7, 2021 for all other covered entities absent receipt of an exemption as allowed below. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

(d) Exemptions. Personnel shall be exempt from the COVID-19 vaccination requirements set forth in subdivision (c) of this section as follows:

(1) Medical exemption. If any licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the health of member of a covered entity's personnel, based upon a pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be inapplicable only until such immunization is found no longer to be detrimental to such personnel member's health. The nature and duration of the medical exemption must be stated in the personnel employment medical record, or other appropriate record, and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services), and any reasonable accommodation may be granted and must likewise be documented in such record. Covered entities shall document medical exemptions in personnel records or other appropriate records in accordance with applicable privacy laws by: (i) September 27, 2021 for general hospitals and nursing homes; and (ii) October 7, 2021 for all other covered

entities. For all covered entities, documentation must occur continuously, as needed, following the initial dates for compliance specified herein, including documentation of any reasonable accommodation therefor.