IN THE UNITED STATES DISTRICT COURT FOR THE

[ [[1]](#footnote-2) ]

[ [[2]](#footnote-3) ],

 *Plaintiffs*, Case No.: [ [[3]](#footnote-4) ]

 v.

[ [[4]](#footnote-5) ],

John and Jane Does 1-10

 *Defendants.*

## COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF



For the Complaint, Plaintiff **[INSERT YOUR NAME]**, proceeding *pro se* states, all upon information and belief:

INTRODUCTORY STATEMENT

1. By the spring of 2020, the novel coronavirus SARS-CoV-2, which can cause the disease COVID-19, had spread across the globe. Since then, and because of the federal government’s “Operation Warp Speed,” three separate coronavirus vaccines have been developed and approved more swiftly than any other vaccines in our nation’s history. The Food and Drug Administration (“FDA”) issued an Emergency Use Authorization (“EUA”) for the Pfizer-BioNTech COVID-19 Vaccine (“BioNTech Vaccine”) on December 11, 2020.[[5]](#footnote-6) Just one week later, FDA issued a second EUA for the Modern COVID-19 Vaccine (“Moderna Vaccine”).[[6]](#footnote-7) FDA issued its most recent EUA for the Johnson & Johnson COVID-19 Vaccine (“Janssen Vaccine”) on February 27, 2021 (the only EUA for a single shot vaccine).[[7]](#footnote-8)
2. FDA fully approved the Pfizer Comirnaty Vaccine (“Comirnaty Vaccine”) on August 23, 2021. Though both are affiliated with Pfizer, the BioNTech Vaccine and the Comirnaty Vaccines are legally distinguishable.
3. The EUA statute, 21 U.S.C. § 360bbb-3, explicitly states that anyone to whom an EUA product is administered must be informed of the option to accept or to refuse it, as well as alternatives to the product and the risks and benefits of receiving it.
4. The Government Defendant(s) (as defined below) has promulgated [INSERT THE TYPE OF MANDATE, WHETHER CMS, OSHA, FEDERAL CONTRACTOR, ETC. AND INSERT A DESCRIPTION OF THE SAME. THE TYPE OF MANDATE WILL ALSO DETERMINE THE NAME OF THE Government Defendant(s) YOU WILL BE SUING, WHICH WILL THEN HAVE TO BE INSERTED IN THE CAPTION ABOVE WHERE IT INDICATES DEFENDANTS AND IN A PARAGRAPH BELOW UNDER ALLEGATIONS, WHERE IT INDICATES AND DESCRIBES DEFENDANTS. WE HAVE PREPARED A DESCRIPTION OF EACH OF THE MANDATES, WHICH WE WILL PROVIDE TO YOU UPON REQUEST OR WILL BE AVAILABLE IN ANOTHER DOCUMENT LOCATED AT THE WEBPAGE YOU LOCATED THIS DOCUMENT, WHICH YOU CAN INSERT HERE. AS AN EXAMPLE, LANGUAGE MIGHT BE USED FOR THE CMS MANDATE: “On August 18, 2021, Centers for Medicare & Medicaid Services (“CMS”) announced that it would be issuing a regulation that all nursing home staff would have to be vaccinated against COVID-19 as a requirement for LTC facilities participating with the Medicare and Medicaid programs. Subsequently, on September 9, 2021, CMS announced that this requirement would be extended to nearly all Medicare and Medicaid- certified providers and suppliers. The stated reason for these actions were CMS’s aim to support increasing vaccination rates among staff working in all facilities, providers, and certified suppliers that participate in Medicare and Medicaid. On November 5, 2021, CMS published an IFC with comment period (86 FR 61555), entitled “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination,” revising the infection control requirements that most Medicare- and Medicaid-certified providers and suppliers must meet to participate in the Medicare and Medicaid programs. Thus, according to the timetable set forth in the Centers for Medicare & Medicaid Services (Center for Clinical Standards and Quality/Quality Safety, Safety & Oversight Group Memorandum, Ref: QSO-22-07-ALL, from Directors of Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG) to State Survey Agency Directors, dated December 28, 2021 (“QSO-22-07-ALL”, attached hereto as Attachment E) within 60 days from December 28, 2021, 100% of staff of most Medicare- and Medicaid-certified providers and suppliers must (for these providers and suppliers to participate in the Medicare and Medicaid programs) have received the necessary doses to complete a Covid-19 vaccine series (i.e., one dose of a single-dose vaccine or all doses of a multiple-dose vaccine series), or have been granted a qualifying exemption, or identified as having a temporary delay as recommended by the CDC], the “Government Action”.
5. Via the Government Action, and in coordination, cooperation and/or conspiracy with the Government Defendant(s) and the Natural Person Defendants (as defined below), each sharing the common purpose of subjecting the Plaintiff (and others in a similar position) to the same, the Employer Defendant issued and commenced to execute COVID-19 related directives (the “Directives”) which Directives include [INSERT ALL THAT YOUR EMPLOYER IS REQUIRING YOU TO DO REGARDING COVID-19 THAT YOU OBJECT TO. AN EXAMPLE YOU MIGHT USE, BUT ONLY INCLUDE WHAT UNEQUIVOCALLY APPLIES TO YOU, IS THE FOLLOWING: “A) Mandating that Plaintiff inject into his/her body a COVID-19 Vaccine (which is under only an Emergency Use Authorization or for which the legality and enforceability of an Approval has not been sufficiently confirmed), without any regard to and in fact, in direct contravention to the will of, the Plaintiff, without any regard to the fact that Plaintiff has, via previous infection with COVID-19, acquired natural immunity to COVID-19 (via, among other things, the body’s natural production of antibodies effective against COVID-19) which is at least as effective against COVID-19 as vaccine acquired immunity, and in willful and reckless disregard to the fact that the administration of a COVID-19 vaccine to Plaintiff as a person previously infected with COVID-19 might pose a significant threat to the health and the very life of the Plaintiff; B) Mandating that Plaintiff undergo regular testing for COVID-19, at uncompensated (and, in some regards, significant) cost in terms of money, time and/or physical discomfort to Plaintiff, without any regard to and in fact, in direct contravention to the will of, the Plaintiff, and without any regard to the fact that Plaintiff has, via previous infection with COVID-19, acquired natural immunity to COVID-19 (via, among other things, the body’s natural production of antibodies effective against COVID-19) which is at least as effective against COVID-19 as vaccine acquired immunity; C) Mandating that the Plaintiff utilize a mask at all times at uncompensated (and, in some regards, significant) cost in terms of money, time and/or physical discomfort to Plaintiff, without any regard to and in fact, in direct contravention to the will of, the Plaintiff, and without any regard to the fact that Plaintiff has, via previous infection with COVID-19, acquired natural immunity to COVID-19 (via, among other things, the body’s natural production of antibodies effective against COVID-19) which is at least as effective against COVID-19 as vaccine acquired immunity].
6. The Government Action and the Directives are inextricably linked and intertwined, operate in vital support of the other, cannot achieve their common purpose without the other, and thus, constitute one *de facto* project/enterprise, that is, the “Government Action/Directives”.
7. According to the Government Action/Directives, all employees of the Employer Defendant (such as Plaintiff) must have either been fully vaccinated or have received one of a two-dose series by certain dates set by the Government Action/Directives, unless they obtain a religious or medical exemption, both of which are limited in nature and application.
8. Those employees of the Employer Defendant who do not comply with the Government Action/Directives face potential disciplinary action, including termination of employment.
9. Plaintiff has already contracted and fully recovered from COVID-19. As a result, he/she[[8]](#footnote-9) has naturally acquired immunity, confirmed unequivocally by recent SARS-CoV-2 antibody tests. [IN ORDER TO FILE THIS COMPLAINT IN COURT IN ITS PRESENT FORM, YOU MUST HAVE THIS TEST ADMINISTERED UPON YOU AND CONFIRM THAT YOU HAVE NATURALLY ACQUIRED IMMUNITY. IF YOU DO NOT (OR CANNOT), YOU MUST NOT FILE THIS COMPLAINT IN COURT ALLEGING YOU HAVE NATURALLY ACQUIRED IMMUNITY BECAUSE, OTHERWISE, YOU RISK COMMITTING PERJURY. YOU MUST, IN THAT CASE, HAVE A LAWYER REVISE THIS COMPLAINT TO ENSURE THAT YOU DO NOT RUN AFOUL OF PERJURY LAWS.]
10. Plaintiff’s doctor, Dr. [INSERT THE NAME OF YOUR DOCTOR], has advised him/her that it is *medically unnecessary* to undergo a vaccination procedure at this point (which fact also renders the procedure and any attendant risks medically unethical). [IN ORDER TO FILE THIS COMPLAINT IN COURT IN ITS PRESENT FORM, YOU MUST LOCATE A DOCTOR WHO CAN ETHICALLY DETERMINE, AND PROVIDE YOU WITH A LETTER STATING, THAT IT IS “*medically unnecessary* for [INSERT YOUR NAME] to undergo a vaccination procedure at this point”. IF YOU DO NOT (OR CANNOT), YOU MUST NOT FILE THIS COMPLAINT IN COURT WITH THIS PROVISION ALLEGING THAT YOU HAVE BEEN ADVISED BY A DOCTOR THAT “it is *medically unnecessary* to undergo a vaccination procedure at this point” BECAUSE, OTHERWISE, YOU RISK COMMITTING PERJURY. YOU MUST, IN THAT CASE, HAVE A LAWYER REVISE THIS COMPLAINT TO ENSURE THAT YOU DO NOT RUN AFOUL OF PERJURY LAWS.]
11. Yet, if Plaintiff follows his/her doctor’s advice and elects not to take the vaccine, he/she faces adverse disciplinary consequences. In short, the Government Action/Directives is unmistakably coercive and cannot reasonably be considered anything other than an unlawful ““Mandatory COVID-19 Vaccination Directive”.
12. Given Plaintiff’s naturally acquired immunity, Government Defendant(s) (and the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) cannot establish that the Government Action/Directives (forcing Plaintiff either to be vaccinated [IF A COVID TEST IS PART OF THE DIRECTIVE, INSERT “and/or regularly tested for COVID-19” AND IF THERE ARE OTHER REQUIREMENTS OF THE DIRECTIVE, INSERT THEM HERE] or to suffer adverse professional consequences) is necessary to achieve a compelling state interest that overrides the Plaintiff’s fundamental right to bodily integrity and other constitutional rights, and cannot establish that the Government Action/Directives in their present form are narrowly tailored to achieve any compelling purpose and use the least restrictive means to achieve the purpose.
13. Naturally acquired immunity is at least as robust and durable as that attained through the most effective vaccines (some observers estimate that it is much more robust and durable), and it is significantly more protective than some of the inferior vaccines that the Defendants consider acceptable under the Government Action/Directives. Studies further indicate that naturally acquired immunity is significantly longer lasting than that acquired through the best vaccines. As a result, the Government Action/Directives is designed to nullify informed consent and infringes upon Plaintiff’s rights under the Ninth and Fourteenth Amendments to the United States Constitution, including without limitation, his/her rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
14. The modern approach on Equal Protection jurisdiction, pioneered by *Skinner v. Oklahoma,* 316 U.S. 535 (1942) (law permitting the compulsory sterilization of criminals is unconstitutional as it violates a person’s rights given under the Fourteenth Amendment of the Constitution, specifically the Equal Protection Clause, as well as the Due Process Clause), is that a higher level of judicial scrutiny, that is “strict scrutiny” is triggered by purported discrimination that involves “fundamental rights” (such as, in *Skinner*, the right to procreation). The Supreme Court in *Skinner* explains, “We are dealing with legislation that involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race.”… “there is no redemption for the individual whom the law touches. Any experiment which the state conducts is to his irreparable injury. He is forever deprived of a basic liberty”… “We advert to them merely in emphasis of our view that strict scrutiny of the classification which a state makes in a sterilization law is essential, lest unwittingly, or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws”. *Skinner,* 316 U.S. at 541.
15. The Plaintiff maintains that his/her right to bodily integrity, to determine free of any coercion what may nor may not be injected into his/her body (especially when that which is to be injected involves a novel technology that some observers might consider experimental, is known to have caused injury to others, and is known to specifically pose a potential danger to those who have naturally acquired immunity such as Plaintiff) is also a fundamental right. Plaintiff notes that, as was the case in *Skinner*, one cannot be simply unvaccinated, and any potential injuries from a vaccination cannot be undone.
16. Plaintiff maintains that his/her right to bodily integrity is a right so entirely fundamental that it is beyond question, as it is incorporated into the very concept of the fundamental right to self defense and the seminal statement of the American Creed derived from the United States Declaration of Independence: “We hold these truths to be self evident; that all men are created equal; that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness…”. Plaintiff furthermore notes that, in its original form, as drafted by Thomas Jefferson, this read “We hold these truths to be sacred & undeniable; that all men are created equal & independent, that from equal creation they derive rights inherent & unalienable, among which are the preservation of life, & liberty, & the pursuit of happiness”, [[9]](#footnote-10) and thus, there is no other right so central, so fundamental to the very concept of Equal Protection than that of the fundamental right to one’s bodily integrity.
17. Plaintiff is of the view, thus, that strict scrutiny of the classification which a state makes in a matter impacting his/her bodily integrity, such as the Government Action/Directives “is essential, lest unwittingly, or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws”. *See Skinner*, 316 U.S. at 541.
18. Under the Strict Scrutiny Standard, triggered by a government law or regulation impacting a fundamental right, the government must demonstrate that the law or regulation is necessary to achieve a “compelling state interest”. The government must also demonstrate that the law is “narrowly tailored” to achieve the compelling purpose, and uses the “least restrictive means” to achieve the purpose.
19. Unvaccinated individuals such Plaintiff, who have contracted COVID-19 and have antibodies, must not be treated differently than vaccinated individuals, lest it violate the Equal Protection Clause, because the compelling government interest (to stop the spread of COVID) can be met by a more narrowly tailored, less restrictive means to achieve the same purpose (that is, treat natural immunity like vaccination).
20. The Defendants have cooperated, coordinated and conspired, each sharing a common purpose with one another, to deny the Plaintiff his/her rights under the Equal Protection Clause of the 14th Amendment, and thus the Government Defendant(s), the Employer Defendant and the Natural Person Defendants are jointly and severally liable to Plaintiff pursuant to 42 U.S.C. § 1983.
21. In her book, The Miner’s Canary: Enlisting Race, Resisting Power, Transforming Democracy, the recently deceased Harvard Law Professor Lani Guinier and University of Texas Law Professor Gerald Torres “champion reform from below through ‘public policy movements’ - - reforms based on initiatives that are begun by minority groups but move beyond racial issues because they address the needs of other disadvantaged groups” poor white, felons, housewives arrested for traffic offenses, even citizens being taxed to build new prison.”[[10]](#footnote-11) and, Plaintiff would argue, people in his/her position.
22. Thus, it is significant to the instant matter that, in a case dating back to the Civil Rights Era, *Adickes v. S. H. Kress & Co.*, [398 U.S. 144](https://supreme.justia.com/cases/federal/us/398/144/) (1970), the Supreme Court explained under what conditions *both private actors and public actors* might be liable under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment. In that case, a white school teacher had been arrested for vagrancy by police upon leaving a restaurant where she had been refused service when she was in the company of her students, who were black. She filed a complaint under 42 U.S.C. § 1983 alleging that the refusal of service and her arrest was the result of a conspiracy between the restaurant and the police and violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution.
23. In an opinion delivered by Justice Harlan, the Supreme Court explained:

*A. CONSPIRACIES BETWEEN PUBLIC OFFICIALS AND*

*PRIVATE PERSONS -- GOVERNING PRINCIPLES*

*The terms of § 1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a right secured by the "Constitution and laws" of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." This second element requires that the plaintiff show that the defendant acted "under color of law."* [[Footnote 4](https://supreme.justia.com/cases/federal/us/398/144/#F4)]

As noted earlier, we read both counts of petitioner's complaint to allege discrimination based on race in violation of petitioner's equal protection rights. [[Footnote 5](https://supreme.justia.com/cases/federal/us/398/144/#F5)] Few principles of law are more firmly stitched into our constitutional fabric than the proposition that a State must not discriminate against a person because of his race or the race of his companions, or in any way act to compel or encourage racial segregation. [[Footnote 6](https://supreme.justia.com/cases/federal/us/398/144/#F6)] *Although this is a lawsuit against a private party, not the State or one of its officials, our cases make clear that petitioner will have made out a violation of her Fourteenth Amendment rights and will be entitled to relief under § 1983 if she can prove* that a Kress employee, in the course of employment, and a Hattiesburg policeman *somehow reached an understanding* to deny Miss Adickes service in the Kress store, or to cause her subsequent arrest because she was a white person in the company of Negroes.

*The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful;* Monroe v. Pape, [365 U. S. 167](https://supreme.justia.com/cases/federal/us/365/167/case.html) (1961); see United States v. Classic, [313 U. S. 299](https://supreme.justia.com/cases/federal/us/313/299/case.html), [313 U. S. 326](https://supreme.justia.com/cases/federal/us/313/299/case.html#326) (1941); Screws v. United States, [325 U. S. 91](https://supreme.justia.com/cases/federal/us/325/91/case.html), [325 U. S. 107](https://supreme.justia.com/cases/federal/us/325/91/case.html#107)-111 (1945); Williams v. United States, [341 U. S. 97](https://supreme.justia.com/cases/federal/us/341/97/case.html), [341 U. S. 99](https://supreme.justia.com/cases/federal/us/341/97/case.html#99)-100 (1951). *Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983.*

*"Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,"*

United States v. Price, [383 U. S. 787](https://supreme.justia.com/cases/federal/us/383/787/case.html), [383 U. S. 794](https://supreme.justia.com/cases/federal/us/383/787/case.html#794) (1966). [[Footnote 7](https://supreme.justia.com/cases/federal/us/398/144/#F7)]

 *Adickes v. S. H. Kress & Co.*,  398 U.S. 150-152.

B. STATE ACTION -- 14TH AMENDMENT VIOLATION

*For petitioner to recover under the substantive count of her complaint, she must show a deprivation of a right guaranteed to her by the Equal Protection Clause of the Fourteenth Amendment. Since the "action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States," Shelley v. Kramer,*[*334 U. S. 1*](https://supreme.justia.com/cases/federal/us/334/1/case.html)*,*[*334 U. S. 13*](https://supreme.justia.com/cases/federal/us/334/1/case.html#13)*(1948), we must decide, for purposes of this case, the following "state action" issue: is there sufficient state action to prove a violation of petitioner's Fourteenth Amendment rights if she shows that Kress refused her service because of a state-enforced custom compelling segregation of the races in Hattiesburg restaurants?*

In analyzing this problem, it is useful to state two polar propositions, each of which is easily identified and resolved. On the one hand, the Fourteenth Amendment plainly prohibits a State itself from discriminating because of race. On the other hand, § 1 of the Fourteenth Amendment does not forbid a private party, not acting against a backdrop of state compulsion or involvement, to discriminate on the basis of race in his personal affairs as an expression of his own personal predilections. As was said in Shelley v. Kraemer, supra, § 1 of "[t]hat Amendment erects no shield against merely private conduct, however discriminatory or wrongful." 334 U.S. at [334 U. S. 13](https://supreme.justia.com/cases/federal/us/334/1/case.html#13).

At what point between these two extremes a State's involvement in the refusal becomes sufficient to make the private refusal to serve a violation of the Fourteenth Amendment is far from clear under our case law. *If a State had a law requiring a private person to refuse service because of race, it is clear beyond dispute that the law would violate the Fourteenth Amendment, and could be declared invalid and enjoined from enforcement. Nor can a State enforce such a law requiring discrimination through either convictions of proprietors who refuse to discriminate,* or trespass prosecutions of patrons who, after being denied service pursuant to such a law, refuse to honor a request to leave the premises. [[Footnote 40](https://supreme.justia.com/cases/federal/us/398/144/#F40)]

The question most relevant for this case, however, is a slightly different one. *It is whether the decision of an owner of a restaurant to discriminate on the basis of race under the compulsion of state law offends the Fourteenth Amendment.* Although this Court has not explicitly decided the Fourteenth Amendment state action issue implicit in this question, underlying the Court's decisions in the sit-in cases is the notion that *a State is responsible for the discriminatory act of a private party when the State, by its law, has compelled the act. As the Court said in Peterson v. City of Greenville,*[373 U. S. 244](https://supreme.justia.com/cases/federal/us/373/244/case.html)*,*[373 U. S. 248](https://supreme.justia.com/cases/federal/us/373/244/case.html#248)*(1963):*

*"When the State has commanded a particular result, it has saved to itself the power to determine that result, and thereby, 'to a significant extent' has 'become involved' in it."*

Moreover, there is much support in lower court opinions for the conclusion that *discriminatory acts by private parties done under the compulsion of state law offend the Fourteenth Amendment.* In Baldwin v. Morgan, supra, the Fifth Circuit held that

*"[t]he very act of posting and maintaining separate [waiting room] facilities when done by the [railroad] Terminal as commanded by these state orders is action by the state."*

The Court then went on to say:

"As we have pointed out above, the State may not use race or color as the basis for distinction. *It may not do so by direct action or through the medium of others who are under State compulsion to do so.*"

Id. at 755-756 (emphasis added). We think the same principle governs here.

*For state action purposes, it makes no difference, of course, whether the racially discriminatory act by the private party is compelled by a statutory provision or by a custom having the force of law -- in either case, it is the State that has commanded the result by its law. Without deciding whether less substantial involvement of a State might satisfy the state action requirement of the Fourteenth Amendment, we conclude that petitioner would show an abridgment of her equal protection right if she proves that Kress refused her service because of a state-enforced custom of segregating the races in public restaurants.* [Emphasis Added]

 *Adickes v. S. H. Kress & Co.*,  398 U.S. 169-171

1. That the Employer Defendant and the Natural Person Defendants are “jointly engaged with” the Government Defendant(s) “in the prohibited action” is clear from the facts set forth above and [THE FOLLOWING BOLDED LANGUAGE IS ONLY APPLICABLE TO THE CMS MANDATES. IF THE GOVERNMENT ACTION/DIRECTIVES/MANDATE WHICH YOU ARE SUBJECT TO ARE DIFFERENT, YOU WILL REQUIRE DIFFERENT PROOF OF YOUR COMPANY’S WORKING TOGETHER WITH THE GOVERNMENT THAT RISES TO THE LEVEL OF COORDINATION, CONSPIRACY, ETC., OR AT LEAST WOULD DEMONSTRATE IT “is a willful participant in joint activity with the State or its agents,” TO GET YOU VACCINATED AGAINST YOUR WILL. YOU KNOW YOUR EMPLOYER AND THEIR ACTIVITIES BEST, AND, USING THE ITALICIZED LANGUAGE FROM *Adickes v. S. H. Kress & Co.*,  398 U.S. 169-171 SET FORTH IN THE ABOVE PARAGRAPH AS A GUIDE, YOU MUST LAY OUT THE FACTS THAT PROVE YOUR CASE, USING CONCRETE EXAMPLES FROM YOUR EXPERIENCE. IF THE CMS MANDATE APPLIES TO YOU, AND ONLY IF IT APPLIES TO YOU, MAY YOU USE THE FOLLOWING LANGUAGE. HOWEVER, EVEN IF SUCH IS THE CASE, YOU MUST DEVELOP THIS SECTION FURTHER, USING CONCRETE EXAMPLES FROM YOUR EXPERIENCE. THIS IS YOUR OPPORTUNITY TO TELL A FEDERAL JUDGE WHAT HAS BEEN DONE TO YOU, AND ONLY YOU CAN ENSURE THAT THIS PART, WHICH IS VERY IMPORTANT, IS DONE CORRECTLY, BECAUSE ONLY YOU ARE LIVING YOUR EXPERIENCE, DAY TO DAY.], moreover, by the Centers for Medicare & Medicaid Services (Center for Clinical Standards and Quality/Quality Safety, Safety & Oversight Group Memorandum, Ref: QSO-22-07-ALL, from Directors of Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG) to State Survey Agency Directors, dated December 28, 2021 (“QSO-22-07-ALL”, attached hereto as Attachment E).
2. QSO-22-07-ALL specifies how each State Agency Director at the Government Defendant(s) is to work with entities in Employer Defendant’s position, over a period of 30 to 90 days, to ensure that 100% of those in Plaintiff’s position are vaccinated in accordance with the Government Action. In general, as long as the Employer Defendant and the Natural Person Defendants show steady efforts to comply with the Government Defendant(s)’s denial of the Plaintiff’s rights under the Equal Protection Clause of the Fourteenth Amendment, they will suffer no penalties. Thus, the Government Defendant(s) readily admits to its active involvement in the very operations of the Employer Defendant’s business, via direct contact with and influence over, the Natural Person Defendants charged with executing such operations, to ensure that the Government Action/Directives are realized to their perfection (the ultimate vaccination of 100% of the employees of the Employer Defendant, other than those with a valid exception). Moreover, the Employer Defendant and the Natural Person Defendants are incentivized to coordinate, cooperate, and conspire with the Government Defendant(s) (and do so) to ensure that the Government Action/Directives are realized to their perfection (the ultimate vaccination of 100% of the employees of the Employer Defendant, other than those with a valid exception). The Employer Defendant and the Natural Person Defendants are literally paid by the Government Defendant(s) to do so, and they accept that payment in exchange for their thus rendered services to the Government Defendant(s).
3. That the Employer Defendant (and, thus, the remaining Defendants) are the willful participants in a joint activity is also suggested by the fact that, as pointed out several times during the January 7, 2022 oral arguments on the Government Action at the United States Supreme Court, there was no opposition to the Government Action submitted to the Court by anybody in the position of the Employer Defendant. They did not oppose the Government Action, because they approved of the Government Action.
4. The reason they might have approved (and conspired) are manifold, but one reason might be that the Employer Defendant and the Natural Person Defendants’ economic and related interests, via for example, common shareholders, interlocking directorates and common sources of financing, are closely aligned with the large pharmaceutical companies who stand to benefit from the consumption of vaccines. Natural Person Defendants, of course, might consider future employment opportunities with large pharmaceutical companies and the Government Defendant(s). Interactions among all Defendants stemming from the real-world application of “Regulatory Capture” theory to the pharmaceutical/medical industry in which all Defendants operate must also be considered.
5. Even beyond its constitutional defects, Defendants’ unlawful Government Action/Directives are irreconcilable with and frustrate the objectives of the statute governing administration of medical products authorized for emergency use only. Accordingly, the Government Action/Directives violate the EUA statute and must be enjoined.
6. In a highly publicized opinion recently made public, the U.S. Department of Justice’s Office of Legal Counsel (“OLC”) argues that public and private entities can lawfully mandate that their employees receive one of the EUA vaccines.[[11]](#footnote-12) Nevertheless, Congress never assigned any role to OLC to administer the EUA statute. The OLC Opinion, as explained in detail in Count III below, is also deeply flawed on multiple additional legal grounds.
7. Regardless of whether Pfizer recently received full FDA approval for the Comirnaty Vaccine, the remaining vaccines “approved” for use by Defendants have not. As Pfizer itself acknowledges, the Comirnaty Vaccine is not widely available in the United States. Moreover, despite Pfizer’s attempts to create equivalence between its BioNTech and Comirnaty Vaccines, the two are legally distinguishable. Thus, even after the Comirnaty Vaccine’s approval, the Government Action/Directives still essentially force individuals, including Plaintiff and those similarly situated, to take one of the EUA vaccines.
8. In sum, the Government Action/Directives violate *both* the constitutional *and* federal statutory rights of Plaintiff and those similarly situated because it undermines their bodily integrity and autonomy and conditions their employment on their willingness to take a medically unnecessary vaccine. Forcing Plaintiff and others to take this vaccine will provide no discernible, let alone compelling, benefit either to Plaintiff or to the Defendants. Although obtaining the vaccine could raise Plaintiff’s antibody levels even higher, her levels are already high enough to be equivalent to or better than most vaccinated people, so any augmented benefit would be negligible and above and beyond that required of, and attainable by, most vaccinated people. Plaintiff invokes this Court’s Article III and inherent powers to insulate him/her from this pressure and to vindicate his/her constitutional and statutory rights.

## GENERAL ALLEGATIONS

PARTIES

1. Plaintiff **[INSERT YOUR NAME]** is a **[INSERT YOUR POSITION AT DEFENDANT]** at Employer Defendant. Plaintiff resides in **[INSERT YOUR CITY OR TOWN, AND STATE OF RESIDENCE],** and works in **[INSERT THE CITY, TOWN AND STATE WHERE YOU WORK, AS THIS IS WHERE THE ACTS COMPLAINED OF ARE OCCURRING, AND THIS WILL BE THE BASIS FOR DETERMINING THE FEDERAL DISTRICT COURT YOU CAN SUE IT]** which is located in the **[INSERT THE NAME OF THE FEDERAL DISTRICT COURT YOU ARE SUING IN, WHICH YOU WILL ALSO INDICATE IN THE CAPTION ON THE FIRST PAGE. YOU MUST WORK IN THE DISTRICT THAT PERTAINS TO THAT COURT TO FILE THIS COMPLAINT IN THAT COURT, OR FIND AND ANNOUNCE IN THIS COMPLAINT ANOTHER REASON TO ESTABLISH YOUR RIGHT TO SUE IN THAT COURT]**.
2. Government Defendant(s) **[INSERT NAME OF AGENCY RESPONSIBLE FOR THE GOVERNMENT ACTION/MANDATE]** is **[INSERT OFFICIAL DESCRIPTION OF THE AGENCY]** located at **[INSERT PRIMARY ADDRESS OF THE AGENCY]. [IF THERE IS MORE THAN ONE AGENCY, OR HEAD OF AGENCY, ADD THEM ALL IN A SEPARATE PARAGRAPH ALONG THE SAME LINES AS THIS PARAGRAPH AS “Government Defendant(s) #1”, “Government Defendant(s) # 2”, ETC., AND REFER TO THEM AS “Government Defendant(s)” EACH MANDATE WILL HAVE DIFFERENT GOVERNMENT DEFENDANTS, AS EXPLAINED ELSEWHERE IN THIS DOCUMENT, BUT AS AN EXAMPLE, IN THE CASE OF THE CMS MANDATE, the Government Defendants would be: Xavier Becerra, Secretary, U.S. Department of Health and Human Services; United States Department of Health and Human Services; Chiquita Brooks-Lasure; Centers for Medicare and Medicaid Services].**
3. Employer Defendant **[INSERT NAME OF YOUR EMPLOYER WHO IS OBLIGATING YOU UNDER THE GOVERNMENT ACTION/MANDATE/DIRECTIVES]** is **[INSERT A DESCRIPTION OF WHAT THE Employer Defendant IS, FOR EXAMPLE “a public research institution” or “a manufacturer of automobiles” ]** located at **[INSERT PRIMARY ADDRESS OF YOUR EMPLOYER].**
4. Natural Person Defendant **[INSERT NAME OF YOUR SUPERVISORS, HUMAN RESOURCES PERSON, OR ANYONE ELSE AT YOUR EMPLOYER WHO IS OBLIGATING YOU PURSUANT TO THE GOVERNMENT ACTION/MANDATE/DIRECTIVES]** is **[INSERT HIS/HER POSITION AT Employer Defendant]** of Employer Defendant. He **[OR SHE]** is sued in his **[OR HER]** official capacity. **[IF THERE IS MORE THAN ONE NATURAL PERSON WHO YOU PLAN ON SUING, ADD THEM ALL IN A SEPARATE PARAGRAPH ALONG THE SAME LINES AS THIS PARAGRAPH AS “NATURAL PERSON DEFENDANT #1”, “NATURAL PERSON DEFENDANT # 2”, ETC., AND REFER TO THEM AS “NATURAL PERSON DEFENDANTS”].**
5. John and Jane Does 1-10 are as-yet-unidentified Defendants involved in setting the policy embodied in the Government Action/Directives.

STATUTORY AND NONSTATUTORY JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, and 42 U.S.C. §§ 1983 and 1988, as well as under nonstatutory equitable jurisdiction. That is because the claims here arise under the Constitution and statutes of the United States and because Plaintiff seeks prospective redress against persons acting under color of law (state actors in their official capacity, and private actors working in conspiracy with them), to end the deprivation of his/her rights, privileges, and immunities secured by the Constitution and federal law.
2. Venue for this action properly lies in this judicial district pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

**STATEMENT OF FACTS**

**I. THE GOVERNMENT ACTION/DIRECTIVES**

1. Government Defendant(s) has promulgated **[INSERT THE TYPE OF MANDATE, WHETHER CMS, OSHA, FEDERAL CONTRACTOR, ETC - WE HAVE A DESCRIPTION OF THE MAJOR MANDATES AND WILL PROVIDE THEM TO YOU UPON YOUR REQUEST OR IN A SEPARATE DOCUMENT AT THE PLACE ON OUR WEB PAGE YOU RECEIVED THIS DOCUMENT FROM, FOR YOUR INSERTION HERE. THE MANDATE APPLICABLE TO YOU WILL ALSO DETERMINE WHO THE Government Defendant(s) WILL BE, WHICH YOU WILL ENTER AT THE PROPER PLACE IN THE CAPTION ON THE FRONT PAGE, AND IN PARAGRAPH 2, GENERAL ALLEGATIONS, PARTIES, ABOVE. AS AN EXAMPLE, THE FOLLOWING LANGUAGE MIGHT BE USED FOR THE CMS MANDATE: “On August 18, 2021, Centers for Medicare & Medicaid Services (“CMS”) announced that it would be issuing a regulation that all nursing home staff would have to be vaccinated against COVID-19 as a requirement for LTC facilities participating with the Medicare and Medicaid programs. Subsequently, on September 9, 2021, CMS announced that this requirement would be extended to nearly all Medicare and Medicaid- certified providers and suppliers. The stated reason for these actions were CMS’s aim to support increasing vaccination rates among staff working in all facilities, providers, and certified suppliers that participate in Medicare and Medicaid. On November 5, 2021, CMS published an IFC with comment period (86 FR 61555), entitled “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination,” revising the infection control requirements that most Medicare- and Medicaid-certified providers and suppliers must meet to participate in the Medicare and Medicaid programs. Thus, according to the timetable set forth in the Centers for Medicare & Medicaid Services (Center for Clinical Standards and Quality/Quality Safety, Safety & Oversight Group Memorandum, Ref: QSO-22-07-ALL, from Directors of Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG) to State Survey Agency Directors, dated December 28, 2021 (“QSO-22-07-ALL”, attached hereto as Attachment E) within 60 days from December 28, 2021, 100% of staff of most Medicare- and Medicaid-certified providers and suppliers must (for these providers and suppliers to participate in the Medicare and Medicaid programs) have received the necessary doses to complete a Covid-19 vaccine series (i.e., one dose of a single-dose vaccine or all doses of a multiple-dose vaccine series), or have been granted a qualifying exemption, or identified as having a temporary delay as recommended by the CDC]]**, the “Government Action”.
2. Via the Government Action, and in coordination, cooperation and/or conspiracy with the Government Defendant(s) and the Natural Person Defendants, each sharing the common purpose of subjecting the Plaintiff (and others in a similar position) to the same, the Employer Defendant issued and commenced to execute COVID-19 related directives (the “Directives”) which Directives include **[INSERT ALL THAT YOUR EMPLOYER IS REQUIRING YOU TO DO REGARDING COVID-19 THAT YOU OBJECT TO. AN EXAMPLE YOU MIGHT USE, BUT ONLY INCLUDE WHAT UNEQUIVOCALLY APPLIES TO YOU, IS THE FOLLOWING: “A) Mandating that Plaintiff inject into his/her body a COVID-19 Vaccine (which is under only an Emergency Use Authorization or for which the legality and enforceability of an Approval has not been sufficiently confirmed), without any regard to and in fact, in direct contravention to the will of, the Plaintiff, without any regard to the fact that Plaintiff has, via previous infection with COVID-19, acquired natural immunity to COVID-19 (via, among other things, the body’s natural production of antibodies effective against COVID-19) which is at least as effective against COVID-19 as vaccine acquired immunity, and in willful and reckless disregard to the fact that the administration of a COVID-19 vaccine to Plaintiff as a person previously infected with COVID-19 might pose a significant threat to the health and the very life of the Plaintiff; B) Mandating that Plaintiff undergo regular testing for COVID-19, at uncompensated (and, in some regards, significant) cost in terms of money, time and/or physical discomfort to Plaintiff, without any regard to and in fact, in direct contravention to the will of, the Plaintiff, and without any regard to the fact that Plaintiff has, via previous infection with COVID-19, acquired natural immunity to COVID-19 (via, among other things, the body’s natural production of antibodies effective against COVID-19) which is at least as effective against COVID-19 as vaccine acquired immunity; C) Mandating that the Plaintiff utilize a mask at all times at uncompensated (and, in some regards, significant) cost in terms of money, time and/or physical discomfort to Plaintiff, without any regard to and in fact, in direct contravention to the will of, the Plaintiff, and without any regard to the fact that Plaintiff has, via previous infection with COVID-19, acquired natural immunity to COVID-19 (via, among other things, the body’s natural production of antibodies effective against COVID-19) which is at least as effective against COVID-19 as vaccine acquired immunity]**.
3. The Government Action and the Directives are inextricably linked and intertwined, operate in vital support of the other, cannot achieve their common purpose without the other, and thus, constitute one *de facto* project/enterprise, that is, the “Government Action/Directives”.
4. As a result of the Government Action/Directives, the Plaintiff has or will be negatively impacted in his/her body and/or economy as follows: **[INSERT HOW YOU WILL BE DAMAGED BY THE WHAT THE DEFENDANTS ARE OBLIGATING YOU AND YOURS TO DO REGARDING THE VACCINES – NOT MERELY THE THREAT TO YOU PHYSICALLY, ETC., BUT THE THREAT TO YOU ECONOMICALLY, SOCIALLY, ETC. PUT IN EVERYTHING THAT YOU FEEL YOU WILL BE HURT BY THE DEFENDANTS OBLIGATION TO TAKE THE VACCINE. FEEL FREE TO HAVE THIS PORTION GO ON FOR SEVERAL PAGES, SINCE THIS IS YOUR CHANCE TO TELL THE COURT EXACTLY HOW YOU ARE BEING HURT BY THE DEFENDANTS AND WHY – THIS IS A VERY IMPORTANT PART OF YOUR COMPLAINT.]**

II. BACKGROUND PERTAINING TO THE CORONAVIRUS PANDEMIC AND COVID-19 VACCINES

1. The novel coronavirus SARS-CoV-2, which can cause the disease COVID-19, is a contagious virus spread mainly from person-to-person, including through the air.
2. It is well settled that the coronavirus presents a significant risk primarily to individuals aged 70 or older and those with comorbidities such as obesity and diabetes. Bhattacharya and Kulldorff Joint Decl.[[12]](#footnote-13) ¶¶ 10-14 (“Joint Decl.”, Attachment A). *See* Smiriti Mallapaty, *The Coronavirus Is Most Deadly If You Are Older and Male*, NATURE (Aug. 28, 2020) (individuals under 50 face a negligible threat of a severe medical outcome from a coronavirus infection, akin to the types of risk that most people take in everyday life, such as driving a car).
3. In fact, a meta-analysis published by the WHO concluded that the survival rate for COVID-19 patients under 70 years of age was 99.95%. Joint Decl. ¶ 12.
4. CDC estimates that the survival rate for young adults between 20 and 49 is 99.95%, and for people ages 50-64 is 99.4%. Joint Decl. ¶ 12.
5. A seroprevalence study of COVID-19 in Geneva, Switzerland, reached a similar conclusion, estimating a survival rate of approximately 99.4% for patients between 50 and 64 years old, and 99.95% for patients between 20 and 49. Joint Decl. ¶ 13.
6. FDA has approved three vaccines pursuant to the federal EUA statute, 21 U.S.C. § 360bbb-3. FDA issued an EUA for the BioNTech Vaccine on December 11, 2020.
* Just one week later, FDA issued an EUA for the Moderna Vaccine.
* FDA issued its most recent EUA, for the Janssen Vaccine, on February 27, 2021.
* The Comirnaty Vaccine received full FDA approval on August 23, 2021.
* In a footnote to its “Fact Sheet for Health Care Providers,” FDA states that Comirnaty “has the same formulation as the EUA-authorized vaccine and the products can be used interchangeably to provide the vaccination series without presenting any safety or effectiveness concerns. The products are *legally distinct* with certain differences that do not impact safety or effectiveness.” (emphasis added). FDA, “Fact Sheet for Health Care Providers Administering Vaccine (Vaccination Providers),” (Aug. 23, 2021) (Attachment C) (relating to both the BioNTech Vaccine and Comirnaty Vaccine).
* The Comirnaty Vaccine is not widely available due to limited supply, as Pfizer also notes that “there is not sufficient approved vaccine [the Comirnaty] available for distribution to this population in its entirety at the time of the reissuance of this EUA.” (Attachment C). See also FDA, FDA Approves First COVID-19 Vaccine, (Aug. 23, 2021), available at https://www.fda.gov/news-events/press-announcements/fda-approves-first- covid-19-vaccine (last visited Aug. 25, 2021).
1. The EUA status of the vaccines that are available at present in the United States means that FDA has not yet fully approved them but permits their conditional use nonetheless due to exigent circumstances.
2. The standard for EUA review and approval is lower than that required for full FDA approval.
3. Typically, vaccine development includes six stages: (1) exploratory; (2) preclinical (animal testing); (3) clinical (human trials); (4) regulatory review and approval; (5) manufacturing; and (6) quality control. *See* CDC, *Vaccine Testing and the Approval Process* (May 1, 2014), *available at* https://bit.ly/3rGkG2s (last visited August 26, 2021).
4. The third phase typically takes place over years, because it can take that long for a new vaccine’s side effects to manifest. *Id.*
5. The third phase must be followed by a period of regulatory review and approval, during which data and outcomes are peer-reviewed and evaluated by FDA. *Id.*
6. Finally, to achieve full approval, the manufacturer must demonstrate that it can produce the vaccine under conditions that assure adequate quality control.
7. FDA must then determine, based on “substantial evidence,” that the medical product is effective and that the benefits outweigh its risks when used according to the product’s approved labeling. *See* CDC, *Understanding the Regulatory Terminology of Potential Preventions and Treatments for COVID-19* (Oct. 22, 2020), *available at* bit.ly/3x4vN6s (last visited August 26, 2021).
8. In contrast to this rigorous, six-step approval process that includes long-term data review, FDA grants EUAs in emergencies to “facilitate the availability and use of medical countermeasures, including vaccines, during public health emergencies, such as the current COVID-19 pandemic.” FDA, Emergency Use Authorization for Vaccines Explained (Nov. 20, 2020), available at bit.ly/3x8wImn (last visited August 26, 2021).
9. EUAs allow FDA to make a product available to the public based on the best available data, without waiting for all the evidence needed for FDA approval or clearance. *See id.* 28.
10. The EUA statute states that individuals to whom the product is administered must be informed: (1) that the Secretary has authorized emergency use of the product; (2) of the significant known and potential benefits and risks of such use, and the extent to which such benefits and risks are unknown; and (3) 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. 21 U.S.C. § 360bbb-3(e)(1)(A)(ii).
11. Studies of immunizations outside of clinical-trial settings began in December 2020, following the first EUA for a COVID vaccine.
12. None of the precise EUA vaccines approved for use in the United States has been tested in clinical trials for its safety and efficacy on individuals who have recovered from COVID-19. Indeed, trials conducted so far have *specifically excluded* survivors of previous COVID-19 infections*.* Noorchashm Decl.[[13]](#footnote-14) ¶ 28. (*“*Noorchashm Decl.”, Attachment B).
13. Recent research indicates that vaccination presents a heightened risk of adverse side effects—including serious ones—to those who have previously contracted and recovered from COVID-19. Noorchashm Decl. ¶¶ 21-26; Joint Decl. ¶ 28.
14. The heightened risk of adverse effects results from “preexisting immunity to SARS- Cov-2 [that] may trigger unexpectedly intense, albeit relatively rare, inflammatory and thrombotic reactions in previously immunized and predisposed individuals.” Angeli *et al*., *SARS-CoV-2 Vaccines: Lights and Shadows*, 88 EUR. J. INTERNAL MED. 1, 8 (2021).
15. Naturally acquired immunity developed after recovery from COVID-19 provides broad protection against severe disease from subsequent SARS-CoV-2 infection. Joint Decl. ¶¶ 15-24.
16. Multiple extensive, peer-reviewed studies comparing naturally acquired and vaccine-acquired immunity have concluded overwhelmingly that the former provides equivalent or greater protection against severe infection than immunity generated by mRNA vaccines (BioNTech and Moderna). Joint Decl. ¶¶ 18-23.
17. These studies confirm the efficacy of natural immunity against reinfection with COVID-19 and show that almost all reinfections are less severe than first-time infections and almost never require hospitalization. Joint Decl. ¶ 18-24.
18. A study from Israel released mere days ago found that vaccinated individuals had 13.1 times greater risk of testing positive, 27 times greater risk of symptomatic disease, and around 8.1 times greater risk of hospitalization than unvaccinated individuals with naturally acquired immunity. Joint Decl. ¶ 20.
19. The authors concluded that the “study demonstrated that natural immunity confers longer lasting and stronger protection against infection, symptomatic disease and hospitalization caused by the Delta variant of SARS-CoV-2, compared to the BNT162b2 [BioNTech’s research name] two-dose vaccine-induced immunity.” Joint Decl. ¶ 20.
20. Recent Israeli data found that those who had received the BioNTech Vaccine were 6.72 times *more likely* to suffer a subsequent infection than those with natural immunity. David Rosenberg, *Natural Infection vs Vaccination: Which Gives More Protection*? ISRAELNATIONALNEWS.COM (Jul. 13, 2021), *available at* https://www.israelnationalnews.com/ News/News.aspx/309762 (last visited Aug. 26, 2021).
21. Israeli data also indicates that the protection BioNTech grants against infection is short-lived compared to natural immunity and degrades significantly faster. In fact, as of July 2021, vaccine recipients from January 2021 exhibited only 16% effectiveness against infection and 16% protection against symptomatic infection, increasing linearly until reaching a level of 75% for those vaccinated in April. *See* Nathan Jeffay, *Israeli, UK Data Offer Mixed Signals on Vaccine’s Potency Against Delta Strain*, THE TIMES OF ISRAEL (July 22, 2021), *available at* bit.ly/3xg3uCg (last visited Aug. 26, 2021).
22. Those who received a second dose of the BioNTech Vaccine between January and April of this year were determined to have 39% protection against infection and 41% protection against symptomatic infection. The large number of breakthrough infections likely was the result of waning vaccine protection in the face of the Delta variant’s spread. *See* Carl Zimmer, *Israeli Data Suggests Possible Waning in Effectiveness of Pfizer Vaccine*, THE NEW YORK TIMES (July 23, 2021); Kristen Monaco, *Pfizer Vax Efficacy Dips at 6 Months*, MEDPAGE TODAY (July 29, 2021), *available at* https://bit.ly/2VheBxw (last visited Aug. 26, 2021).
23. A CDC/IDSA clinician call on July 29, 2021, summarized the current state of the knowledge regarding the comparative efficacy of natural and vaccine immunity. The presentation reviewed three studies that directly compared the efficacy of prior infection versus mRNA vaccine treatment and concluded “the protective effect of prior infection was similar to 2 doses of a COVID-19 vaccine.”
24. Given that there is currently *more* data on the durability of naturally acquired immunity than there is for vaccine immunity, researchers rely on the expected durability of naturally acquired immunity to predict that of vaccine immunity. Joint Decl. ¶ 23.
25. Indeed, naturally and vaccine-acquired immunity utilize the same basic immunological mechanism—stimulating the immune system to generate an antibody response. Joint Decl. ¶ 16.
26. The level of antibodies in the blood of those who have natural immunity was initially the benchmark in clinical trials for determining the efficacy of vaccines. Joint Decl. ¶ 16. 45.
27. Studies have demonstrated prolonged immunity with respect to memory T and B cells, bone marrow plasma cells, spike-specific neutralizing antibodies, and IgG+ memory B cells following a COVID-19 infection. Joint Decl. ¶ 17; Dr. Harvey Risch, Yale School of Medicine, interview (“Risch interview”), *Laura Ingraham Discusses How Medical Experts Are Increasing Vaccine Hesitancy* (July 26, 2021), *available at* https://bit.ly/3zOL6Sx (last visited July 27, 2021).
28. T-cells last “quite a while,” but B-cells migrate to the bone marrow and last even longer. Risch interview.
29. New variants of COVID-19 resulting from the virus’s mutation do not escape the natural immunity developed by prior infection from the original strain of the virus. Joint Decl. ¶¶ 29-33.
30. In fact, vaccine immunity only targets the spike-protein of the original Wuhan variant, whereas natural immunity recognizes the full complement of SARS-CoV-2 proteins and thus provides protection against a greater array of variants. Noorchashm Decl. ¶ 17.
31. While the CDC and the media have touted a study from Kentucky as proof that those with naturally acquired immunity should get vaccinated, that conclusion is unwarranted. As Drs. Bhattacharya and Kulldorff explain, although individuals with naturally acquired immunity who received a vaccine showed increased antibody levels, “[t]his does not mean that the vaccine increases protection against symptomatic disease, hospitalizations or deaths.” Joint Decl. ¶ 37.
32. Similarly, Dr. Noorchashm explains that this study did not actually compare the appropriate groups. Instead of comparing individuals who had naturally-acquired immunity only to those who were only vaccinated, the study compared those with naturally-acquired immunity only to those who had naturally-acquired immunity *and* received the vaccine. Furthermore, the study “did not address or attempt to quantify the magnitude of risk and adverse effects in its comparison groups.” Noorchashm Decl. ¶¶ 29-31.
33. In short, contrary to the claims of the CDC and the media, this study did *not* establish a valid reason to vaccinate individuals with naturally-acquired immunity. *See* Joint Decl. ¶ 37; Noorchashm Decl. ¶¶ 29-31.
34. The Janssen Vaccine provides immunity protection of somewhere between 66% and 85%, far below that conferred by natural immunity. Joint Decl. ¶ 16; Noorchashm Decl. ¶ 15.
35. The Chinese Sinovac Vaccine has been approved by WHO, which itself determined that this vaccine prevented *symptomatic* disease in just 51% of those who received it. *See WHO Validates Sinovac COVID-19 Vaccine for Emergency Use and Issues Interim Policy Recommendations*, WHO.INT (June 1, 2021), *available at* bit.ly/3yitIW7 (last visited Aug. 26, 2021).
36. Other clinical studies have found that the Sinovac Vaccine offers even lower levels of protection against infection. For instance, a study of Brazilian healthcare workers determined a mere 50.39% efficacy in preventing infection. *See* Elizabeth de Faria et al., *Performance of Vaccination with Coronavac[[14]](#footnote-15)in a Cohort of Healthcare Workers (HCW)—Preliminary Report*, MEDRXIV (Apr. 15, 2021), *available at* https://www.medrxiv.org/content/10.1101/ 2021.04.12.21255308v1 (last visited Aug. 26, 2021).
37. Real-world evidence also suggests that the Sinovac Vaccine provides only minimal protection against the Delta variant. See Alexander Smith, China on ‘High Alert’ as Variant of Covid-19 Spreads to 5 Provinces, NBCNEWS.COM (July 30, 2021), available at nbcnews.to/2VcK3NB (last visited Aug. 27, 2021); Chao Deng, As Delta Variant Spreads, China Lacks Data on Its Covid-19 Vaccines, WALL ST. J. (July 9, 2021), available at on.wsj.com/3rMjlXW (last visited Aug. 27, 2021); Matt D.T. Hitchings, et al., Effectiveness of CoronaVac in the Setting of High SARS-Cov-2 P.1 Variant Transmission in Brazil: A Test- Negative Case-Control Study, THE LANCET (July 25, 2021), available at bit.ly/3C6F41J (last visited Aug. 26, 2021).
38. The Sinopharm Vaccine also is from China and is WHO-approved. Although its reported level of efficacy against symptomatic infection has been reported as reasonably high (78%), real-world experience has generated severe doubts about the accuracy of that estimate. Because of the Sinopharm Vaccine’s poor performance, several countries have stopped using it. *See* Yaroslav Trofimov & Summer Said, Bahrain, *Facing a Covid Surge, Starts Giving Pfizer Boosters to Recipients of Chinese Vaccine*, WALL ST. J. (June 2, 2021), *available at* on.wsj.com/3ljM0lX (last visited Aug. 26, 2021).
39. The COVISHIELD vaccine, manufactured by the Serum Institute of India and South Korea’s SK Bioscience Co., Ltd., is also WHO-approved and thus recognized as adequate to satisfy MSU’s Policy. The WHO itself reported a mere 70.42% efficacy against *symptomatic* COVID-19 infection, which fell to 62.10% in individuals who received two standard doses. *See Recommendation on Emergency Use Listing on COVISHIELD Submitted by SIIPL*, WHO (Feb. 26, 2021), *available at* bit.ly/3rNjnPo (last visited Aug. 26, 2021); *Recommendation for an Emergency Use Listing of AZD1222 Submitted by AstraZeneca AB and Manufactured by SK Bioscience Co. Ltd*., WHO (Feb. 23, 2021), *available at* bit.ly/3yiQD3s (last visited Aug. 26, 2021). These vaccines have not been approved by the FDA for use in the United States.
40. Early data also suggests that naturally acquired immunity may provide greater protection against both the Delta and Gamma variants than that achieved through vaccination. A recent analysis of an outbreak among a small group of mine workers in French Guiana found that 60% of fully vaccinated miners suffered breakthrough infections compared to *zero* among those with natural immunity. Nicolas Vignier, et al., *Breakthrough Infections of SARS-CoV-2 Gamma Variant in Fully Vaccinate Gold Miners, French Guiana, 2021*, 27(10) EMERG. INFECT. DIS. (Oct. 2021), *available at* https://wwwnc.cdc.gov/eid/article/27/10/21-1427\_article (last visited Aug. 26, 2021).
41. In this vein, the CDC recently reported that “new scientific data” indicated that vaccinated people who experienced breakthrough infections carried similar viral loads to the unvaccinated (but not naturally immune), leading the CDC to infer that vaccinated people transmit the virus at concerning levels. *See CDC Reversal on Indoor Masking Prompts Experts to Ask, “Where’s the Data?”*, WASHINGTON POST (July 28, 2021), *available at* wapo.st/2THpmIQ (last visited Aug. 26, 2021). For example, 74% of cases in a Cape Cod outbreak occurred in vaccinatedindividuals, again demonstrating that the vaccines are inferior to natural immunity when it comes to preventing infection. *See* Molly Walker, *CDC Alarmed: 74% of Cases in Cape Cod Cluster Were Among the Vaxxed*, MEDPAGE TODAY (July 30, 2021), *available at* bit.ly/2V6X3UP (last visited Aug. 26, 2021).
42. Many experts believe that the solution to “breakthrough” cases (individuals who become infected after vaccination or a prior infection) is treating patients with a therapeutic intervention—not mandating vaccines for everyone, which will not solve the disease problem for the reasons discussed above. The availability and effectiveness of therapeutics thus bear on the validity of state actors’ (such as MSU) claims that a vaccine mandate is necessary to protect the public health. *See* Risch interview.
43. **[THE FOLLOWING PARAGRAPH MAY ONLY BE INSERTED IF YOUR WORK DOES NOT INVOLVE THE CARE OF HIGH-RISK INDIVIDUALS, AND IF IT DOES INVOLVE THE CARE OF HIGH-RISK INDIVIDUALS, YOU MUST DELETE THIS PARAGRAPH] As Drs. Bhattacharya and Kulldorff have explained, there is no legitimate public-health rationale to require proof of vaccination to participate in activities that do not involve care for high-risk individuals:**

Since the successful vaccination campaign already protects the vulnerable population, the unvaccinated — especially recovered COVID patients – pose a vanishingly small threat to the vaccinated. They are protected by an effective vaccine that dramatically reduces the likelihood of hospitalization or death after infections to near zero and natural immunity, which provides benefits that are at least as strong[.] At the same time, the requirement for ... proof of vaccine undermines trust in public health because of its coercive nature. While vaccines are an excellent tool for protecting the vulnerable, COVID does not justify ignoring principles of good public health practice.

 Joint Decl. ¶¶ 50-51.

III. COVID-19 VACCINES CAN CAUSE SIDE EFFECTS, INCLUDING SEVERE ADVERSE REACTIONS

1. Though the COVID-19 vaccines appear to be relatively safe at a population level, like all medical interventions, they carry a risk of side effects. Those side effects include common, temporary reactions such as pain and swelling at the vaccination site, fatigue, headache, muscle pain, fever, and nausea. More rarely, they can cause serious side effects that result in hospitalization or death. Joint Decl. ¶¶ 25-26.
2. The vaccines could cause other side effects that remain unknown at this time due to their relatively recent development. Joint Decl.¶¶ 26-27.
3. Put differently, as a matter of simple logic, one cannot be certain about the long- term effects of a vaccine that has not been in existence for the long term and thus cannot have been studied over a span of years. For that reason, “[a]ctive investigation to check for safety problems is still ongoing.” Joint Decl. ¶ 26.

IV. PLAINTIFF HAS ROBUST NATURALLY ACQUIRED IMMUNITY TO COVID-19

1. Plaintiff **[INSERT YOUR NAME]** is **[INSERT A DESCRIPTION OF YOUR POSITION (INCLUDING, WITHOUT LIMITATION, A DESCRIPTION OF YOUR DUTIES AND RESPONSIBILITIES) AT EMPLOYER DEFENDANT, HOW LONG YOU HAVE BEEN THERE, AND ANY OTHER RELEVANT DETAILS REGARDING YOUR EMPLOYMENT]** at Employer Defendant.
2. Plaintiff has robust naturally acquired immunity to COVID-19, as demonstrated by the fact that: **[INSERT A DESCRIPTION OF HOW YOU CAN PROVE YOU HAVE NATURALLY ACQUIRED IMMUNITY (I.E, INSERT DATES THAT YOU HAD COVID AND/OR THAT YOU RECOVERED FROM COVID, PROOF YOU HAD COVID - FOR EXAMPLE, A DESCRIPTION OF YOUR SYMPTOMS, DATES OF ANTIBODY - TESTS WHICH YOU MUST INCLUDE AS AN ATTACHMENT HERETO, AND REFER TO AS (Attachment D)].**
3. **[YOU MUST TAKE THIS TEST IN ORDER TO INCLUDE THIS PARAGRAPH, AND IN ORDER TO USE THIS COMPLAINT IN ITS PRESENT FORM. IF YOU DO NOT, YOU CANNOT INCLUDE THIS PARAGRAPH IN THE COMPLAINT WITHOUT COMMITTING PERJURY, AND THIS COMPLAINT WILL NOT BE EFFECTIVE IN ITS PRESENT FORM, AS IT IS BASED ON HAVING NATURAL IMMUNITY, AND SO YOU MUST HIRE AN ATTORNEY TO REVISE THIS COMPLAINT TO SEEK OTHER POTENTIAL ARGUMENTS] His/her recent semi-quantitative antibodies screening test established that his/her level of immune protection remains high and his/her spike antibody level is highly likely to be above the minimum necessary to provide adequate protection against re- infection from the SARS-CoV-2 virus.**
4. Thus, as is the case with someone in a similar position, undergoing a full vaccination course would be medically unnecessary, create a risk of harm to him/her, and provide insignificant or no benefit either to the Plaintiff or their community. Noorchashm Decl. ¶ 12.
5. Dr. Noorchashm explains that substantial scientific literature demonstrates that, while the COVID-19 vaccines carry the possibility of side effects, as do all medical procedures, the risk of harm is greater to those who have recovered from the disease. Noorchashm Decl. ¶¶12 -28.
6. Accordingly, as is the case with someone in a similar position, mandating that Plaintiff receive a COVID-19 vaccine violates the rules of medical ethics. Noorchashm Decl. ¶¶ 8-35.
7. Plaintiff has real, substantial, and legitimate concerns about taking a COVID-19 vaccine in light of his/her natural immunity and the potential for short- and long-term side effects and potential adverse reactions from the vaccines themselves. Norris Decl. ¶ 15-17.
8. There are other employees of Employer Defendant who are similarly situated, e.g., they previously contracted COVID-19, they have naturally acquired immunity, and they have real, substantial, and legitimate concerns about taking the COVID-19 vaccine in light of their naturally acquired immunity and the potential for short- and long-term side effects and potential adverse reactions from the vaccines themselves.

CLAIMS FOR RELIEF

COUNT I: DEPRIVATION OF RIGHTS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

1. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully set forth herein.
2. Plaintiff either must receive a COVID-19 vaccine or face disciplinary action, including loss of employment. Accordingly, Plaintiff’s personal autonomy is being infringed upon.
3. By threatening adverse professional and personal consequences, the Government Action/Directives not only directly and palpably harm Plaintiff’s bodily autonomy and dignity, but it forces him/her to endure the stress and anxiety of choosing between her employment—upon which his/her family relies—and his/her health.
4. The risk-avoidance benefits that the Government Action/Directives provide, compared to the restrictions and intrusive options offered to Plaintiff, are disproportionate.
5. Similarly, given that naturally acquired immunity confers equal or greater protection than that provided by the vaccines, the Government Action/Directives is not merely arbitrary and irrational (which it clearly is) but violates the Equal Protection Clause under the Fourteenth Amendment to the Constitution.
6. There is no indication that the Government Action/Directives are tailored to account for its impact on those who have acquired natural immunity.
7. Given Plaintiff’s naturally acquired immunity, Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)), cannot establish a compelling governmental interest in overriding the personal autonomy and constitutional rights of Plaintiff by, via their combined and coordinated efforts, in conspiracy with one another and with the shared purpose of, forcing Plaintiff either to be vaccinated **[IF A COVID TEST IS PART OF THE DIRECTIVE, INSERT “and/or regularly tested for COVID-19” AND IF THERE ARE OTHER REQUIREMENTS OF THE DIRECTIVE, INSERT THEM HERE]** or to suffer adverse professional consequences.
8. Naturally acquired immunity is at least as robust and durable as that attained through the most effective vaccines, and it is significantly more protective than some of the inferior vaccines that Defendant(s), including, without limitation, Employer Defendant, accept. Studies further indicate that naturally acquired immunity is significantly longer lasting than that acquired through the best vaccines. As a result, the Government Action/Directives are designed to nullify informed consent and infringe upon Plaintiff’s rights, under the Ninth and Fourteenth Amendments to the United States Constitution.
9. The modern approach on Equal Protection jurisdiction, pioneered by *Skinner v. Oklahoma,* 316 U.S. 535 (1942) (law permitting the compulsory sterilization of criminals is unconstitutional as it violates a person’s rights given under the Fourteenth Amendment of the Constitution, specifically the Equal Protection Clause, as well as the Due Process Clause), is that a higher level of judicial scrutiny, that is “strict scrutiny” is triggered by purported discrimination that involves “fundamental rights” (such as, in *Skinner*, the right to procreation). The Supreme Court in *Skinner* explains, “We are dealing with legislation that involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race.”… “there is no redemption for the individual whom the law touches. Any experiment which the state conducts is to his irreparable injury. He is forever deprived of a basic liberty”… “We advert to them merely in emphasis of our view that strict scrutiny of the classification which a state makes in a sterilization law is essential, lest unwittingly, or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws”. *Skinner,* 316 U.S. at 541.
10. The Plaintiff maintains that his/her right to bodily integrity, to determine free of any coercion what may nor may not be injected into his/her body (especially when that which is to be injected involves a novel technology that some observers might consider experimental, is known to have caused injury to others, and is known to specifically pose a potential danger to those who have naturally acquired immunity such as Plaintiff) is also a fundamental right. Plaintiff notes that, as was the case in *Skinner*, one cannot be simply unvaccinated, and any potential injuries from a vaccination cannot be undone.
11. Plaintiff maintains that his/her right to bodily integrity is a right so entirely fundamental that it is beyond question, as it is incorporated into the very concept of the fundamental right to self defense and the seminal statement of the American Creed derived from the United States Declaration of Independence: “We hold these truths to be self evident; that all men are created equal; that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness…”. Plaintiff furthermore notes that, in its original form, as drafted by Thomas Jefferson, this read “We hold these truths to be sacred & undeniable; that all men are created equal & independent, that from equal creation they derive rights inherent & unalienable, among which are the preservation of life, & liberty, & the pursuit of happiness”, [[15]](#footnote-16) and thus, there is no other right so central, so fundamental to the very concept of Equal Protection than that of the fundamental right to one’s bodily integrity.
12. Plaintiff is of the view, thus, that strict scrutiny of the classification which a state makes in a matter impacting his/her bodily integrity, such as the Government Action/Directives “is essential, lest unwittingly, or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws”. *See Skinner*, 316 U.S. at 541.
13. Under the Strict Scrutiny Standard, triggered by a government law or regulation impacting a fundamental right, the government must demonstrate that the law or regulation is necessary to achieve a “compelling state interest”. The government must also demonstrate that the law is “narrowly tailored” to achieve the compelling purpose, and uses the “least restrictive means” to achieve the purpose.
14. Unvaccinated individuals such Plaintiff, who have contracted COVID-19 and have antibodies, must not be treated differently than vaccinated individuals, lest it violate the Equal Protection Clause, because the compelling government interest (to stop the spread of COVID) can be met by a more narrowly tailored, less restrictive means to achieve the same purpose (that is, treat natural immunity like vaccination).
15. The Defendants have cooperated, coordinated and conspired, each sharing a common purpose with one another, to deny the Plaintiff his/her rights under the Equal Protection Clause of the 14th Amendment, and thus the Government Defendant(s), the Employer Defendant and the Natural Person Defendants are jointly and severally liable to Plaintiff pursuant to 42 U.S.C. § 1983.
16. In their book, *The Miner’s Canary: Enlisting Race, Resisting Power, Transforming Democracy*, the recently deceased Harvard Law Professor Lani Guinier and University of Texas Law Professor Gerald Torres “champion reform from below through ‘public policy movements’ - - reforms based on initiatives that are begun by minority groups but move beyond racial issues because they address the needs of other disadvantaged groups” poor white, felons, housewives arrested for traffic offenses, even citizens being taxed to build new prison.”[[16]](#footnote-17) and, Plaintiff would argue, people in his/her position.
17. Thus, it is significant to the instant matter that, in a case dating back to the Civil Rights Era, *Adickes v. S. H. Kress & Co.*, [398 U.S. 144](https://supreme.justia.com/cases/federal/us/398/144/) (1970), the Supreme Court explained under what conditions both private actors and public actors might be liable under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment. In that case, a white school teacher had been arrested for vagrancy by police upon leaving a restaurant where she had been refused service when she was in the company of her students, who were black. She filed a complaint under 42 U.S.C. § 1983 alleging that the refusal of service and her arrest was the result of a conspiracy between the restaurant and the police and violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution
18. In an opinion delivered by Justice Harlan, the Supreme Court explained:

*A. CONSPIRACIES BETWEEN PUBLIC OFFICIALS AND*

*PRIVATE PERSONS -- GOVERNING PRINCIPLES*

*The terms of § 1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a right secured by the "Constitution and laws" of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." This second element requires that the plaintiff show that the defendant acted "under color of law."* [[Footnote 4](https://supreme.justia.com/cases/federal/us/398/144/#F4)]

As noted earlier, we read both counts of petitioner's complaint to allege discrimination based on race in violation of petitioner's equal protection rights. [[Footnote 5](https://supreme.justia.com/cases/federal/us/398/144/#F5)] Few principles of law are more firmly stitched into our constitutional fabric than the proposition that a State must not discriminate against a person because of his race or the race of his companions, or in any way act to compel or encourage racial segregation. [[Footnote 6](https://supreme.justia.com/cases/federal/us/398/144/#F6)] *Although this is a lawsuit against a private party, not the State or one of its officials, our cases make clear that petitioner will have made out a violation of her Fourteenth Amendment rights and will be entitled to relief under § 1983 if she can prove* that a Kress employee, in the course of employment, and a Hattiesburg policeman *somehow reached an understanding* to deny Miss Adickes service in the Kress store, or to cause her subsequent arrest because she was a white person in the company of Negroes.

*The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful;* Monroe v. Pape, [365 U. S. 167](https://supreme.justia.com/cases/federal/us/365/167/case.html) (1961); see United States v. Classic, [313 U. S. 299](https://supreme.justia.com/cases/federal/us/313/299/case.html), [313 U. S. 326](https://supreme.justia.com/cases/federal/us/313/299/case.html#326) (1941); Screws v. United States, [325 U. S. 91](https://supreme.justia.com/cases/federal/us/325/91/case.html), [325 U. S. 107](https://supreme.justia.com/cases/federal/us/325/91/case.html#107)-111 (1945); Williams v. United States, [341 U. S. 97](https://supreme.justia.com/cases/federal/us/341/97/case.html), [341 U. S. 99](https://supreme.justia.com/cases/federal/us/341/97/case.html#99)-100 (1951). *Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983.*

*"Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,"*

United States v. Price, [383 U. S. 787](https://supreme.justia.com/cases/federal/us/383/787/case.html), [383 U. S. 794](https://supreme.justia.com/cases/federal/us/383/787/case.html#794) (1966). [[Footnote 7](https://supreme.justia.com/cases/federal/us/398/144/#F7)]

 *Adickes v. S. H. Kress & Co.*,  398 U.S. 150-152.

B. STATE ACTION -- 14TH AMENDMENT VIOLATION

*For petitioner to recover under the substantive count of her complaint, she must show a deprivation of a right guaranteed to her by the Equal Protection Clause of the Fourteenth Amendment. Since the "action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States," Shelley v. Kramer,*[*334 U. S. 1*](https://supreme.justia.com/cases/federal/us/334/1/case.html)*,*[*334 U. S. 13*](https://supreme.justia.com/cases/federal/us/334/1/case.html#13)*(1948), we must decide, for purposes of this case, the following "state action" issue: is there sufficient state action to prove a violation of petitioner's Fourteenth Amendment rights if she shows that Kress refused her service because of a state-enforced custom compelling segregation of the races in Hattiesburg restaurants?*

In analyzing this problem, it is useful to state two polar propositions, each of which is easily identified and resolved. On the one hand, the Fourteenth Amendment plainly prohibits a State itself from discriminating because of race. On the other hand, § 1 of the Fourteenth Amendment does not forbid a private party, not acting against a backdrop of state compulsion or involvement, to discriminate on the basis of race in his personal affairs as an expression of his own personal predilections. As was said in Shelley v. Kraemer, supra, § 1 of "[t]hat Amendment erects no shield against merely private conduct, however discriminatory or wrongful." 334 U.S. at [334 U. S. 13](https://supreme.justia.com/cases/federal/us/334/1/case.html#13).

At what point between these two extremes a State's involvement in the refusal becomes sufficient to make the private refusal to serve a violation of the Fourteenth Amendment is far from clear under our case law. *If a State had a law requiring a private person to refuse service because of race, it is clear beyond dispute that the law would violate the Fourteenth Amendment, and could be declared invalid and enjoined from enforcement. Nor can a State enforce such a law requiring discrimination through either convictions of proprietors who refuse to discriminate,* or trespass prosecutions of patrons who, after being denied service pursuant to such a law, refuse to honor a request to leave the premises. [[Footnote 40](https://supreme.justia.com/cases/federal/us/398/144/#F40)]

The question most relevant for this case, however, is a slightly different one. *It is whether the decision of an owner of a restaurant to discriminate on the basis of race under the compulsion of state law offends the Fourteenth Amendment.* Although this Court has not explicitly decided the Fourteenth Amendment state action issue implicit in this question, underlying the Court's decisions in the sit-in cases is the notion that *a State is responsible for the discriminatory act of a private party when the State, by its law, has compelled the act. As the Court said in Peterson v. City of Greenville,*[373 U. S. 244](https://supreme.justia.com/cases/federal/us/373/244/case.html)*,*[373 U. S. 248](https://supreme.justia.com/cases/federal/us/373/244/case.html#248)*(1963):*

*"When the State has commanded a particular result, it has saved to itself the power to determine that result, and thereby, 'to a significant extent' has 'become involved' in it."*

Moreover, there is much support in lower court opinions for the conclusion that *discriminatory acts by private parties done under the compulsion of state law offend the Fourteenth Amendment.* In Baldwin v. Morgan, supra, the Fifth Circuit held that

*"[t]he very act of posting and maintaining separate [waiting room] facilities when done by the [railroad] Terminal as commanded by these state orders is action by the state."*

The Court then went on to say:

"As we have pointed out above, the State may not use race or color as the basis for distinction. *It may not do so by direct action or through the medium of others who are under State compulsion to do so.*"

Id. at 755-756 (emphasis added). We think the same principle governs here.

*For state action purposes, it makes no difference, of course, whether the racially discriminatory act by the private party is compelled by a statutory provision or by a custom having the force of law -- in either case, it is the State that has commanded the result by its law. Without deciding whether less substantial involvement of a State might satisfy the state action requirement of the Fourteenth Amendment, we conclude that petitioner would show an abridgment of her equal protection right if she proves that Kress refused her service because of a state-enforced custom of segregating the races in public restaurants.*

 *Adickes v. S. H. Kress & Co.*,  398 U.S. 169-171.

1. That the Employer Defendant and the Natural Person Defendants are “jointly engaged with” the Government Defendant(s) “in the prohibited action” is clear from the facts set forth above and **[THE FOLLOWING BOLDED LANGUAGE IS ONLY APPLICABLE TO THE CMS MANDATES. IF THE GOVERNMENT ACTION/DIRECTIVES/MANDATE WHICH YOU ARE SUBJECT TO ARE DIFFERENT, YOU WILL REQUIRE DIFFERENT PROOF OF YOUR COMPANY’S WORKING TOGETHER WITH THE GOVERNMENT THAT RISES TO THE LEVEL OF COORDINATION, CONSPIRACY, ETC., OR AT LEAST WOULD DEMONSTRATE IT “is a willful participant in joint activity with the State or its agents,” TO GET YOU VACCINATED AGAINST YOUR WILL. YOU KNOW YOUR EMPLOYER AND THEIR ACTIVITIES BEST, AND, USING THE ITALICIZED LANGUAGE FROM *Adickes v. S. H. Kress & Co.*,  398 U.S. 169-171 SET FORTH IN THE ABOVE PARAGRAPH AS A GUIDE, YOU MUST LAY OUT THE FACTS THAT PROVE YOUR CASE, USING CONCRETE EXAMPLES FROM YOUR EXPERIENCE. IF THE CMS MANDATE APPLIES TO YOU, AND ONLY IF IT APPLIES TO YOU, MAY YOU USE THE FOLLOWING LANGUAGE. HOWEVER, EVEN IF SUCH IS THE CASE, YOU MUST DEVELOP THIS SECTION FURTHER, USING CONCRETE EXAMPLES FROM YOUR EXPERIENCE. THIS IS YOUR OPPORTUNITY TO TELL A FEDERAL JUDGE WHAT HAS BEEN DONE TO YOU, AND ONLY YOU CAN ENSURE THAT THIS PART, WHICH IS VERY IMPORTANT, IS DONE CORRECTLY, BECAUSE ONLY YOU ARE LIVING YOUR EXPERIENCE, DAY TO DAY.], moreover, by the Centers for Medicare & Medicaid Services (Center for Clinical Standards and Quality/Quality Safety, Safety & Oversight Group Memorandum, Ref: QSO-22-07-ALL, from Directors of Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG) to State Survey Agency Directors, dated December 28, 2021 (“QSO-22-07-ALL”, attached hereto as Attachment E).**
2. **QSO-22-07-ALL specifies how each State Agency Director at the Government Defendant(s) is to work with entities in Employer Defendant’s position, over a period of 30 to 90 days, to ensure that 100% of those in Plaintiff’s position are vaccinated in accordance with the Government Action. In general, as long as the Employer Defendant and the Natural Person Defendants show steady efforts to comply with the Government Defendant(s)’s denial of the Plaintiff’s rights under the Equal Protection Clause of the Fourteenth Amendment, they will suffer no penalties. Thus, the Government Defendant(s) readily admits to its active involvement in the very operations of the Employer Defendant’s business, via direct contact with and influence over, the Natural Person Defendants charged with executing such operations, to ensure that the Government Action/Directives are realized to their perfection (the ultimate vaccination of 100% of the employees of the Employer Defendant, other than those with a valid exception). Moreover, the Employer Defendant and the Natural Person Defendants are incentivized to coordinate, cooperate, and conspire with the Government Defendant(s) (and do so) to ensure that the Government Action/Directives are realized to their perfection (the ultimate vaccination of 100% of the employees of the Employer Defendant, other than those with a valid exception). The Employer Defendant and the Natural Person Defendants are literally paid by the Government Defendant(s) to do so, and they accept that payment in exchange for their thus rendered services to the Government Defendant(s).**
3. **That the Employer Defendant (and, thus, the remaining Defendants) are the willful participants in a joint activity is also suggested by the fact that, as pointed out several times during the January 7, 2022 oral arguments on the Government Action at the United States Supreme Court, there was no opposition to the Government Action submitted to the Court by anybody in the position of the Employer Defendant. They did not oppose the Government Action, because they approved of the Government Action.**
4. The reason they might have approved (and conspired) are manifold, but one reason might be that the Employer Defendant and the Natural Person Defendants’ economic and related interests, via for example, common shareholders, interlocking directorates and common sources of financing, are closely aligned with the large pharmaceutical companies who stand to benefit from the consumption of vaccines. Natural Person Defendants, of course, might consider future employment opportunities with large pharmaceutical companies and the Government Defendant(s). Interactions among all Defendants stemming from the real-world application of “Regulatory Capture” theory to the pharmaceutical/medical industry in which all Defendants operate must also be considered.

COUNT II: VIOLATION OF THE RIGHT TO REFUSE UNWANTED AND MEDICALLY UNNECESSARY CARE

1. Plaintiff realleges and incorporates by reference the foregoing allegations as if fully set forth herein.
2. The Government Action/Directives require Plaintiff to take a vaccine without his/her consent **[YOU CANNOT INCLUDE THE FOLLOWING LANGUAGE IN BOLD AND CANNOT FILE THIS COMPLAINT IN ITS PRESENT FORM, UNLESS THIS IS TRUE, AND IF YOU DO, WITHOUT THIS BEING TRUE, YOU RISK COMMITTING PERJURY] —and against the expert medical advice of his/her doctor**—thereby depriving him/her of her ability to refuse unwanted medical care.
3. The Supreme Court has recognized that the Ninth and Fourteenth Amendments protect an individual’s right to privacy. A “forcible injection ... into a nonconsenting person’s body represents a substantial interference with that person’s liberty[.]” *Washington v. Harper*, 494 U.S. 210, 229 (1990). The common law baseline is also a relevant touchstone out of which grew the relevant constitutional law*. See, e.g., Cruzan v. Dir., Mo. Dep’t of Public Health*, 497 U.S. 261, 278 (1990) (“‘At common law, even the touching of one person by another without consent and without legal justification was a battery’”). *See* W. Keeton, D. Dobbs, R. Keeton, & D. Owen, PROSSER AND KEETON ON LAW OF TORTS § 9, pp. 39-42 (5th ed. 1984).); *Schloendorff v. Society of N.Y. Hosp.*, 211 N.Y. 125, 129-130, 105 N.E. 92, 93 (1914) (Cardozo, J.) (“Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits an assault, for which he is liable in damages.”).
4. Subsequent Supreme Court decisions have made explicit that the Constitution protects a person’s right to “refus[e] unwanted medical care.” *Cruzan*, 497 U.S. at 278; *King v. Rubenstein*, 825 F.3d 206, 222 (4th Cir. 2016) (recognizing same).
5. This right is “so rooted in our history, tradition, and practice as to require special protection under the Fourteenth Amendment.” *Washington v. Glucksberg,* 521 U.S. 702, 722 n.17 (1997).
6. The Court has explained that the right to refuse medical care derives from the “well-established, traditional rights to bodily integrity and freedom from unwanted touching.” *Vacco v. Quill*, 521 U.S. 793, 807 (1997).
7. Coercing employees to receive a vaccine (whether approved under merely under an Emergency Use Authorization or fully approved by the FDA) for a virus that presents a near-zero risk of illness or death to them and which they are exceedingly unlikely to pass on to others because those employees already possess natural immunity to the virus, violates the liberty, equality and privacy interests that the Ninth and Fourteenth Amendments protect.
8. “Government actions that burden the exercise of those fundamental rights or liberty interests [life, liberty, property] are subject to strict scrutiny, and will be upheld only when they are narrowly tailored to a compelling governmental interest.” *Does v. Munoz*, 507 F.3d 961, 964 (2007).
9. Defendants cannot show that they have a compelling interest in coercing Plaintiff or others similarly situated into taking a COVID-19 vaccine, because the Defendants have no compelling interest in treating employees with natural immunity, such as Plaintiff, any differently from employees who obtained immunity from a vaccine.
10. Substantial research establishes that a COVID-19 infection creates immunity to the virus at least as robust, durable, and long-lasting as that achieved through vaccination. Noorchashm Decl. ¶¶ 14-17; Joint Decl. at ¶¶ 15-24); Nabin K. Shrestha, et al., *Necessity of COVID-19 Vaccination In Previously Infected Individuals*, MEDRXIV (June 5th, 2021), *available at* https://bit.ly/2TFBGcA (last visited Aug. 26, 2021); *see also* Yair Goldberg, et al., *Protection of Previous SARS-Cov-2 Infection Is Similar to That of BNT162b2 Vaccine Protection: A Three- Month Nationwide Experience from Israel*, MEDRXIV (Apr. 20, 2021), *available at* https://bit.ly/3zMV2fb (last visited Aug. 26, 2021); Michael Smerconish, *Should Covid Survivors and the Vaccinated Be Treated the Same?*: CNN Interview with Jay Bhattacharya, Professor of Medicine at Stanford University (June 12, 2021), *available at* https://cnn.it/2WDurDn (last visited Aug. 26, 2021); Marty Makary, *The Power of Natural Immunity*, WALL STREET JOURNAL (June 8, 2021), *available at* https://on.wsj.com/3yeu1Rx (last visited Aug. 26, 2021).
11. In recognition of the highly protective character of natural immunity, the European Union has recognized “a record of previous infection” as a substitute for any vaccine passport requirements. Noorchashm Decl. ¶ 38. Even France’s controversial new restrictive mandate on the ability to participate in daily life focuses on a person’s immunity rather than their vaccine status—treating natural immunity and vaccine immunity equally. *See, e.g.*, Clea Callcutt, *France Forced to Soften Rules After Coronavirus Green Pass Backlash*, POLITICO (July 20, 2021), *available at* https://politi.co/3f9AZzS (last visited Aug. 26, 2021).
12. Similarly, the United States requires everyone, including its citizens, to provide proof of a negative COVID-19 test before returning to the country from abroad. Yet, documentation of recovery suffices as a substitute, although proof of vaccination does not. See Requirement of Proof of Negative COVID-19 Test or Recovery from COVID-19 for All Air Passengers Arriving in the United States, CDC (July 6, 2021), available at https://bit.ly/3yfcJDM (last visited Aug. 26, 2021).
13. Recent data from Israel suggests that individuals who receive the BioNTech Vaccine can pass the virus onto others a mere few months after receiving it, casting doubt on any claim that the vaccine prevents spread of the virus, or at least any claim that it does so to a greater extent than natural immunity.
14. **There is no question that Plaintiff possesses natural immunity, given his/her recent antibodies screening tests and as confirmed by his/her doctor. [YOU CANNOT INCLUDE THIS BOLDED LANGUAGE IF THIS IS NOT THE CASE. IN FACT, YOU CANNOT USE THIS COMPLAINT IN ITS PRESENT FORM IF THAT SET FORTH IN THE BOLDED LANGUAGE IS NOT THE CASE, BUT MUST HAVE A LAWYER REVISE THE COMPLAINT TO ENSURE IT MEETS YOUR OBJECTIVES AND DOES NOT RUN AFOUL OF LAWS PENALIZING PERJURY.]**
15. Given Plaintiff’s naturally acquired immunity, Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) cannot establish that the Government Action/Directives (forcing Plaintiff either to be vaccinated **[IF A COVID TEST IS PART OF THE DIRECTIVE, INSERT “and/or regularly tested for COVID-19” AND IF THERE ARE OTHER REQUIREMENTS OF THE DIRECTIVE, INSERT THEM HERE]** or to suffer adverse professional consequences) is necessary to achieve a compelling state interest that overrides the Plaintiff’s fundamental right to bodily integrity and other constitutional rights, and cannot establish that the Government Action/Directives in their present form are narrowly tailored to achieve any compelling purpose and use the least restrictive means to achieve the purpose.
16. Any interest that the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) may have in promoting immunity via the Government Action/Directives does not extend to those employees who already have natural immunity—particularly those who can demonstrate such immunity through antibody screenings.
17. This provides evidence that the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) is trying to exert control over individuals’ personal health decisions via the Government Action/Directives, rather than attempting to promote a legitimate public health aim.
18. Any assertion by the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) that the vaccines are highly effective in preventing hospitalizations, severe disease and death from the delta variant of COVID-19 is also unavailing to an argument that the Government Action/Directives are truly directed towards protecting others, or are narrowly tailored to a compelling governmental interest, since natural immunity also prevents hospitalizations, severe disease and death.
19. Thus, the Government Action/Directives of the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) infringe on Plaintiff’s bodily autonomy with no public health justification.
20. If vaccinated people can also transmit the disease, as it has become manifest, that only further undercuts any public health rationale for a vaccine mandate. It certainly drives home the arbitrary, nonsensical nature of the position of the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) that robust, naturally acquired immunity should not be recognized, while more limited immunity acquired through vaccination should be.
21. By the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) failing to tailor the Government Action/Directives to only those employees who lack immunity, the Government Action/Directives force employees like Plaintiff (and those similarly situated), who have naturally acquired immunity, to choose between their health, their personal autonomy and their careers.
22. Plaintiff has suffered and will continue to suffer damage from the Government Defendant(s)’s (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) conduct. There is no adequate remedy at law, as there are no damages that could compensate Plaintiff for the deprivation of her constitutional rights. He/she will suffer irreparable harm unless this Court enjoins the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) from enforcing their Government Action/Directives against employees with natural immunity.
23. Plaintiff is entitled to a judgment declaring that the Government Action/Directives violate his/her constitutional rights to refuse medical treatment as well as his/her rights pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and an injunction restraining the Government Defendant(s)’s (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) enforcement of the Government Action/Directives.

COUNT III: VIOLATION OF THE EUA STATUTE

1. The Government Action/Directives require Plaintiff and others similarly situated to receive a vaccine in order to continue working for Employer Defendant without regard to their natural immunity or the advice of their doctors.
2. The Government Action/Directives thus coerce Plaintiff and others like him/her into getting vaccines that FDA approved only for emergency use (since the only vaccine to have received a final approval, the Cominarty Vaccine, is not readily available in the United States).
3. The EUA statute mandates informed and voluntary consent. *See John Doe No. 1 v. Rumsfeld*, No. Civ. A. 03-707(EGS), 2005 WL 1124589, \*1 (D.D.C. Apr. 6, 2005) (allowing use of anthrax vaccine pursuant to EUA “on a *voluntary* basis”). *See also* 21 U.S.C. § 360bbb- 3(e)(1)(A)(ii).
4. It expressly states that recipients of products approved for use under it be informed of the “option to accept or refuse administration,” of the “significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown.” *Id.*
5. Since the Government Action/Directives coerce Plaintiff by making enjoyment of his/her constitutionally and statutorily protected consent rights contingent upon receiving an experimental vaccine, it cannot be reconciled with the letter or spirit of the EUA statute. *See* 21 U.S.C. § 360bbb-3.
6. The conflict between the Government Action/Directives and the EUA statute is particularly stark given that the statute’s informed consent language requires that recipients be given the “option to refuse” the EUA product. That is at odds with the Government Action/Directives established by the Government Defendant(s) and the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), effectively forcing Plaintiff to sustain significant injury to her career if she determines to stand on the rights afforded her under the EUA statute and does not want to take the vaccine.
7. Put differently, the Government Action/Directives of the Government Defendant(s) and the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), frustrates the objectives of the EUA process.

A. The OLC Opinion Cannot Save the Government Action/Directives

1. Defendants may be expected to point to the fact that OLC made a memorandum available to the public on July 27, 2021 (dated July 6, 2021) opining that the EUA status of a medical product does not preclude vaccine mandates that might be imposed by either the public or private sectors. *See* “Memorandum Opinion for the Deputy Counsel to the President,” *Whether Section 564 of the Food, Drug, and Cosmetic Act Prohibits Entities from Requiring the Use of a Vaccine Subject to an Emergency Use Authorization* (July 6, 2021) (OLC Op.) at 7-13, *available at* https://www.justice.gov/olc/file/1415446/download (last visited Aug.1, 2021).
2. Of course, the separation of powers dictates that this Court is not bound by the OLC Opinion—an advisory opinion written *by* the Executive Branch *for* the Executive Branch. *See Citizens for Responsibility & Ethics in Wash. v. Office of Admin.*, 249 F.R.D. 1 (D.C. Cir. 2008) (“OLC opinions are not binding on the courts[; though] they are binding on the executive branch until withdrawn by the Attorney General or overruled by the courts[.]”). (cleaned up)
3. The OLC Opinion is also premised on faulty reasoning. While recognizing that EUA products have “not yet been generally approved as safe and effective,” and that recipients must be given “the option to accept or refuse administration of the product,” the Opinion nevertheless maintains that the EUA vaccines can be mandated. OLC Op. at 3-4, 7.
4. According to OLC, the requirement that recipients be “informed” of their right to refuse the product does not mean that an administrator is precluded from mandating the vaccine. All that an administrator must do, in OLC’s view, is tell the recipient they have the *option* to refuse the vaccine. *Id.* at 7-13. That facile interpretation sidesteps the fact that the Government Action/Directives employment consequences effectively coerce or at least unconstitutionally leverage the Employer Defendant community into taking the vaccine, rendering meaningless both the constitutional and statutory rights of informed consent. This approach should not past muster in this Court.
5. Recognizing the illogic of the Opinion and its inability to square its construction with the text of the EUA statute, OLC admits that its “reading ... does not fully explain why Congress created a scheme in which potential users of the product would be informed that they have ‘the option to accept or refuse’ the product.” *Id.* at 10. This understatement would be droll but for the serious rights at stake. In truth, Congress called for potential vaccine recipients to be informed precisely so that they could decide whether to refuse to receive an EUA product. OLC’s obtuse reading of the statute blinks reality.
6. In other words, nothing in the OLC Opinion addresses the fact that if it were taken as a blanket authorization for any public or private actor to impose vaccine mandates, a vital portion of the EUA statute’s text would be rendered superfluous. *See, e.g., TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’ ”).
7. Yet, OLC turns around and claims that Congress would have explicitly stated if it intended to prohibit mandates for EUA products. *Id.* at 8-9. But Congress *did* say so. The plain language states that the recipient of an EUA vaccine must be informed “of the option to accept or refuse the product.” 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III). Especially when read against the backdrop of what the Constitution requires *and* against the common law rules from which the constitutional protections for informed consent arose, Congress’s intent to protect informed consent is pellucid. And Congress “is understood to legislate against a background of common-law ... principles,” *Astoria Fed. Sav. & Loan Assn. v. Solimino*, 501 U.S. 104, 108 (1991).
8. The EUA statute’s prohibition on mandating EUA products is reinforced by a corresponding provision that allows the President, in writing, to waive the option of those in the U.S. military to accept or refuse an EUA product if national security so requires, 10 U.S.C. § 1107a(a)(1). That provision would be redundant if consent could be circumvented merely by telling a vaccine recipient that he/she is free to refuse the vaccine but nonetheless must suffer various adverse employment consequences.
9. In fact, any sensible reading of that provision clarifies the view of Congress regarding the meaning of the EUA statute: “ 10 U.S.C. § 1107a. Emergency Use Products (a) WAIVER BY THE PRESIDENT.-(1) In the case of the administration of a product authorized for emergency use under section 564[[17]](#footnote-18) of the Federal Food, Drug, and Cosmetic Act to members of the armed forces, the condition described in section 564(e)1(ii)(III) of such Act and required under paragraph 1(A) or 2(A) of such section 564(e), *designed to ensure that individuals are informed of an option to accept or refuse administration of a product*, may be waived only by the President only if the President determines, in writing, that complying with such requirement is not in the interests of national security.” (Emphasis added).
10. To circumvent the statutory text about the military waiver, OLC spins out a tortured argument under which the President’s waiver would merely deprive military members of their rights to *know* that they can refuse the EUA product—rather than waiving their rights to actually refuse the product. OLC Op. at 14-15.
11. Unsurprisingly, OLC’s strained reading runs counter to the Department of Defense’s understanding of this statutory provision. As the OLC Opinion acknowledges, “DOD informs us that it has understood section 1107a to mean that DOD may not require service members to take an EUA product that is subject to the condition regarding the option to refuse, unless the President exercises the waiver authority contained in section 1107a.” *Id.* at 16 (citing DOD Instruction 6200.02, § E3.4 (Feb. 27, 2008)).
12. OLC even acknowledges that its opinion is belied by the congressional conference report, which also contemplated that 10 U.S.C. § 1107a(a)(1) “would authorize the President to waive *the right of service members to refuse administration of a product* if the President determines, in writing, that affording service members the right to refuse a product is not feasible[.]” *Id.* (quoting H.R. Rep. No. 108-354, at 782 (2003) (Conf. Rep.)).
13. Unlike OLC, this Court must not ignore the plain statutory prohibition on mandating EUA products. Though released to much fanfare in the media, the Court should discount the severely flawed OLC Opinion in its entirety, affording it no weight in this litigation.

B. The FDA’s Approval of the Comirnaty Vaccine Does Not Save the Government Action/Directives from Constituting A Violation of the EUA Statute

1. The other defense that we anticipate Defendants mounting is premised on the recent FDA approval of the Comirnaty Vaccine.
2. That the Comirnaty Vaccine has received full FDA approval does not foreclose the argument presented in this Count that the Government Action/Directives constitutes a violation of the EUA Statute, since this approval does not extend to the BioNTech Vaccine, which is actually available. Indeed, even Pfizer acknowledges that the two vaccines are “legally distinct.” (Attachment C).
3. The claim that the two vaccines are interchangeable comes from a Guidance document, which does not carry force of law. *See Christensen v. Harris County*, 529 U.S. 576, 587-88 (2000) (“Interpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant *Chevron-*style deference.”); *Appalachian Power v. EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000) (guidance documents that agencies treat as *de facto* law are void because they did not run the notice-and-comment gauntlet) (setting aside an agency guidance document in its entirety); *see also Maple Drive Farms Ltd. v. Vilsack*, 781 F.3d 837, 857 (6th Cir. 2015) (instructing USDA to carefully consider on remand whether its approach to the term “prior- converted wetlands” ran afoul of *Appalachian Power*).
4. The FDA cannot convert a legally distinct product under emergency use authorization only that is available (the BioNTech vaccine) into a fully approved vaccine (Comirnaty) that is not yet widely available. The FDA, via a mere guidance document, is improperly trying to establish equivalence between what are two legally distinct vaccines. That is improper as a general matter of administrative law. It is yet more improper since it is a transparent maneuver conducted to override federal statutory rights to informed medical consent.
5. Defendants cannot be permitted to rely on mere FDA-issued guidance documents, especially not where doing so would vitiate clear statutory rights.
6. Moreover, specifically referring to the Comirnaty Vaccine, Pfizer has admitted that there “is not sufficient approved vaccine available for distribution to this population in its entirety at the time of the reissuance of this EUA.” (Attachment C).
7. The Comirnaty Vaccine, being the only FDA-approved vaccine, is not widely available, and certainly is not available to all members of the population, per the manufacturer’s own admission, and thus the Government Action/Directives, by forcing the Plaintiff to take a vaccine others than the Comirnaty Vaccine violates the EUA Statute.

C. The Nuremburg Code, and Related Sources of Law

1. Just as Congress prohibited the federal government from mandating EUA products, and thus the Government Action/Directives violate the EUA Statute, the Government Action/Directives violate the 1947 Nuremberg Code, a multilateral agreement between the United States, USSR, France, and the United Kingdom, governing human experimentation and inspired, of course, by events that took place during the Holocaust. The Nuremberg Code expressly states that “[t]he voluntary consent of the human subject is *absolutely essential*” and prohibits experimental treatments on anyone using “force, fraud, deceit, duress, overreaching, or other ulterior forms of constraint or coercion.” United States Holocaust Museum, *Nuremburg Code*, https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/doctors-trial/nuremberg-code (last visited Aug. 26, 2021) (emphasis added).
2. Title 45 of the Code of Federal Regulations part 46 is to similar effect, as is the Helsinki Declaration and the International Covenant on Civil and Political Rights adopted by the United Nations, to which the United States is a party. *See* International Covenant on Civil and Political Rights, pt III, art. 7, *available at* https://www.ohchr.org/en/ professionalinterest/pages/ccpr.aspx (last visited Aug. 26, 2021); World Medical Association, *WMA Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects*, *available at* https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/ (last visited Aug. 26, 2021).
3. Defendants’ Government Action/Directives are invalid pursuant to Article VI, Clause 2 of the United States Constitution, and must be enjoined and set aside.

ADDITIONAL LEGAL CLAIMS

1. Plaintiff has suffered and will continue to suffer damage from the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) conduct. There is no adequate remedy at law, as there are no damages that could compensate Plaintiff for the deprivation of his/her constitutional and statutory rights. He/she will suffer irreparable harm unless this Court enjoins the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) from enforcing their Government Action/Directives.
2. 42 U.S.C. § 1983 provides a civil right of action for deprivations of constitutional protections taken under color of law.
3. Plaintiff (and those similarly situated) is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 because he/she is being deprived of “rights, privileges, or immunities secured by the Constitution and laws.” Section 1983 thus supports both Plaintiff’s constitutional and statutory causes of action against the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) because Section 1983 protects rights “secured by the Constitution *and* laws.” 42 U.S.C. § 1983 (emphasis added).
4. In sum, Plaintiff is entitled to a judgment declaring that the Government Action/Directives violate the EUA Statute and an injunction restraining the Government Defendant(s)’s (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) enforcement of the Government Action/Directives.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court find the Government Defendant(s) and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), jointly and severally liable for having committed the violations alleged and described above, and issue in response the following:

A. A declaratory judgment that the Government Action/Directives established by the Government Defendant(s) and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), infringe upon Plaintiff’s constitutional right to Equal Protection under the law guaranteed by the Fourteenth Amendment of the United States Constitution,

B. A declaratory judgment that the Government Action/Directives established by the Government Defendant(s) and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), infringe upon Plaintiff’s constitutionally protected right to protect his/her bodily integrity and autonomy and to refuse unnecessary medical treatment.

C. A declaratory judgment that Government Action/Directives established by the Government Defendant(s) and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), violate the federal EUA Statute and Plaintiff’s rights under the same.

D. Temporary, preliminary and permanent injunctive relief restraining and enjoining the Government Defendant(s) and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), their agents, servants, employees, attorneys, and all persons in active concert or participation with them (*see* Fed. R. Civ. P. 65(d)(2)), and each of them, from enforcing coercive or otherwise pressuring policies or conditions similar to those in the Government Action/Directives that act to compel or try to exert leverage on Plaintiff (and other similarly situated persons) with natural immunity to get a COVID-19 vaccine.

E. Make a finding that Plaintiff’s constitutional rights were violated by the the Government Defendant(s) and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s), and award relief or damages accordingly.

F. Enter declaratory relief as requested above.

G. Enjoin the Government Defendant(s) (and, thus, the Employer Defendant and Natural Persons Defendants operating in coordination, cooperation and/or conspiracy, each sharing a common purpose, with the Government Defendant(s)) from mandating experimental vaccines.

H. Award damages and attorneys fees pursuant to 42 USC §1983 and 1988.

I. Declare that coercion and/or mandating an experimental injection constitutes a violation of customary international standards, and federal common law.

J. Grant such other and further relief as the Court deems just and proper in the circumstances.

JURY DEMAND

Plaintiff herein demands a trial by jury of any triable issues in the present matter.

Date: [Insert Date]

Respectfully submitted,

**[INSERT YOUR NAME AND ADDRESS AND SIGN, BEFORE A NOTARY]**

PLAINTIFF, proceeding *Pro Se*

1. **INSERT THE NAME OF THE DISTRICT COURT YOU ARE SUING IN.** [↑](#footnote-ref-2)
2. **INSERT YOUR NAME(S).** [↑](#footnote-ref-3)
3. **LEAVE THIS BLANK UNTIL YOU FILE WITH THE COURT, AND WHEN THE COURT PROVIDES YOU A CASE NUMBER, INSERT THAT HERE.** [↑](#footnote-ref-4)
4. **INSERT NAME OF PERSON AND/OR ENTITIES YOU ARE SUING. THIS WILL DEPEND ON A) THE GOVERNMENT MANDATE WHICH IMPACTS YOU (TO DETERMINE WHO WILL BE KNOWN IN THIS DOCUMENT AS THE “Government Defendant(s)”), B) YOUR EMPLOYER (WHO WILL BE KNOWN IN THIS DOCUMENT AS THE “EMPLOYER DEFENDANT”), AND C) THE PEOPLE AT YOUR EMPLOYER WHO ARE ASSISTING YOUR EMPLOYER CARRY OUT ITS ACTS AGAINST YOU, THE “NATURAL PERSON DEFENDANTS”). FOR EXAMPLE, IF THE GOVERNMENT MANDATE THAT IMPACTS YOU IS THE CMS MANDATE, THE FOLLOWING WOULD BE THE Government Defendant(s): “Xavier Becerra, Secretary, U.S. Department of Health and Human Services; United States Department of Health and Human Services; Chiquita Brooks-Lasure; Centers for Medicare and Medicaid Services”.** [↑](#footnote-ref-5)
5. *Pfizer-BioNTech Vaccine FAQ*, FDA, bit.ly/3i4Yb4e (last visited August 26, 2021). [↑](#footnote-ref-6)
6. *Moderna, About Our Vaccine*, bit.ly/2Vl4lUF (last visited August 26, 2021). [↑](#footnote-ref-7)
7. *EUA for Third COVID-19 Vaccine*, FDA, bit.ly/3xc4ebk (last visited August 26, 2021). [↑](#footnote-ref-8)
8. The document includes several places where you may, if you so desire, insert your preferred pronoun. [↑](#footnote-ref-9)
9. American Sphinx, The Character of Thomas Jefferson, Joseph J. Ellis, Vintage Books, 1998, p. 10. [↑](#footnote-ref-10)
10. Books in Brief: ‘The Miner’s Canary’, Allen D. Boyer, *The New York Times*, April 21, 2002 (Last retrieved January 10, 2022). [↑](#footnote-ref-11)
11. Evan Perez & Tierney Sneed, Federal Law Doesn’t Prohibit COVID-19 Vaccine Requirements, Justice Department Says, CNN (July 26, 2021), available at https://cnn.it/3iWxH42, last visited (August 26, 2021). [↑](#footnote-ref-12)
12. Taken from a separate litigation involving persons with no connection to Plaintiff, but with similar scientific concerns deemed relevant to the instant litigation, and made under oath by these individuals, Stanford University Professor of Medicine Jay Bhattacharya and Harvard Professor Martin Kulldorff. [↑](#footnote-ref-13)
13. Taken from a separate litigation involving persons with no connection to Plaintiff, but with similar scientific concerns deemed relevant to the instant litigation, and made under oath by this individual, a Doctor Noorchashm. [↑](#footnote-ref-14)
14. Sinovac and Coronavac are the same. *See* WHO, *Who Validates Sinovac COVID-19 Vaccine For Emergency Use,* (June 1, 2021), *available at* https://www.who.int/news/item/01-06-2021- who-validates-sinovac-covid-19-vaccine-for-emergency-use-and-issues-interim-policy- recommendations (last visited Aug. 26, 2021). [↑](#footnote-ref-15)
15. American Sphinx, The Character of Thomas Jefferson, Joseph J. Ellis, Vintage Books, 1998, p. 10. [↑](#footnote-ref-16)
16. Books in Brief: ‘The Miner’s Canary’, Allen D. Boyer, *The New York Times*, April 21, 2002 (Last retrieved January 10, 2022). [↑](#footnote-ref-17)
17. Note that Section 564 of the Federal Food, Drug, and Cosmetic Act is classified to section 360bbb-3 of Title 21, Food and Drugs. [↑](#footnote-ref-18)