No. _____

IN THE

Supreme Court of the United States

In re AMERICA'S FRONTLINE DOCTORS, *et al.*,

Petitioners,

ON PETITION FOR WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PETITION FOR WRIT OF MANDAMUS

GREGORY J. GLASER
California State Bar No. 226706
4399 Buckboard Drive, #423
Copperopolis, CA 95228
Telephone: (925) 642-6651
Facsimile: (209) 729-4557
greg@gregglaser.com

COUNSEL OF RECORD for Petitioners

QUESTIONS PRESENTED

The following questions are presented on this petition for writ of mandamus:

1. It is undisputed that every FDA fact sheet for a Covid-19 vaccine states the same disclaimer, "It is your choice to receive or not receive the [Pfizer-BioNTech, Moderna, Janssen] COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." This precise language is required by Federal statute because Covid-19 vaccines are *not* FDA approved but rather are Emergency Use Authorization (EUA) only. The same precise statutory language also applies for all Covid-19 tests and face coverings – they too are EUA and so pursuant to Federal statute if an individual declines these EUA products, it cannot change the individual's standard medical care. And yet, as the Petitioner Immune Students in this case respectfully decline these EUA products, Respondent College Parties openly threaten to disenroll them and remove their standard healthcare offered through Student Health Services. Therefore, Respondent College Parties are openly lying to students (and therefore violating Federal Law) to promote College Parties' highly suspect 'separate but equal' campus segregation policies. Students with natural immunity are treated like second class citizens (weekly swabs up the nose, daily masks on the face, and more).

Did the District Court commit an abuse of discretion by neglecting to enforce Federal law re EUA?

2. Petitioners ("Doctors & Immune Students") applied for a narrow TRO upon an undeniable scientific consensus in America, as confirmed by the Respondent UC's own doctor Joseph A. Ladapo, MD, PhD, associate professor with UCLA School of Medicine, whose supporting declaration *for Petitioners in this case* states, "The indisputable scientific facts are that natural immunity exists and is not arbitrarily limited to 90-days, and current COVID-19 vaccines are a medical intervention that carry both known and unknown risks of injury". Did the District Court commit an extreme departure from law by asserting informed refusal of a genetic vaccine is *not* a fundamental right requiring strict scrutiny?

PARTIES TO THE PROCEEDINGS

Petitioners (plaintiffs in the district court, and mandamus petitioners in the court of appeals) are AMERICA'S FRONTLINE DOCTORS; Carly Powell; and Deborah Choi.

Respondent is the United States District Court for the Central District of California. Respondents also include KIM A. WILCOX, in his official capacity as CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA RIVERSIDE; HOWARD GILLMAN, in his official capacity as

CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA IRVINE; THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a Corporation; MICHAEL V. DRAKE, in his official capacity as President of the UNIVERSITY OF CALIFORNIA.

CORPORATE DISCLOSURE STATEMENT

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

Dated: August 16, 2021

GREGORY J. GLASER

GREGORY J. GLASER

Attorney for Petitioners

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PETITION FOR WRIT OF MANDAMUS

Petitioners ("Doctors & Immune Students") respectfully petition for a writ of mandamus to the United States District Court for the Central District of California. In the alternative, Doctors & Immune Students respectfully request that the Court treat this petition as one for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, or as a petition for a common law writ of certiorari to review the district court's decision on the request for temporary restraining order.

OPINIONS BELOW

The opinion of the district court denying the application for temporary restraining order is reported as *America's Frontline Doctors v. Wilcox*, No. EDCV 21-1243 JGB (KKx), 2021 U.S. Dist. LEXIS 144477 (C.D. Cal. July 30, 2021). The opinion of the court of appeals denying the petition for writ of mandamus is reported as *In re Frontline*, No. 21-71209, 2021 U.S. App. LEXIS 23885 (9th Cir. Aug. 11, 2021).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651. In the alternative, the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The order of the court of appeals was entered on August 11, 2021.

STATEMENT

Plaintiff Doctors & Immune Students filed this case immediately after Defendant College Parties flip-flopped on the UC's proposed vaccination policies (i.e., whether to mandate Covid-19 vaccines *before* or *after* FDA-approval), and then they finally settled on July 15, 2021 with their written policy to mandate Covid-19 vaccines upon all UC students *before* any FDA-approval. This policy flip-flop by College Parties had the effect of baiting UC students all summerlong, including baiting Plaintiffs, into a false sense of

security with regard to their informed consent, and disrupting their doctor-patient relationships. See Appendix C, 1-ER-126-131 (student plaintiff declarations in support).[1]

Defendant College Parties' arbitrary deadline for compliance has arrived (August 3 in the case of Defendant UC Irvine), and is already hindering students such as Plaintiffs from scheduling classes, fulfilling living arrangements, paying debts, and securing their livelihoods for both present and future. *Id*. The day after filing suit, Plaintiff Doctors & Immune Students filed their ex parte application for temporary restraining order and order to show cause why a preliminary injunction should not be granted. See, Appendix C, 1-ER-57-87 (MPA for TRO).

For the TRO Application, the most relevant sections of College Parties' 7/15 Mandate are:

> *[FAQ #9] I was recently diagnosed with COVID-19, and/or I had an antibody test that shows that I have natural immunity. Does this support a Medical Exemption?*

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[1] Compare interim Policy at https://universityofcalifornia.edu/sites/default/files/review-draft-sars-cov-2-vaccination-program-participation-policy-04212021.pdf ("Enforcement of the mandate will be delayed until full FDA licensure (approval) and widespread availability of at least one vaccine.") to final Policy at https://policy.ucop.edu/doc/5000695/SARS-Cov-2 ("The deadline for initial implementation of the Program, which is two (2) weeks before the first day of instruction at any University campus or school for the Fall 2021.")

> You may be eligible for a temporary Medical Exemption (and, therefore, a temporary Exception), for up to 90 days after your diagnosis and certain treatments. According to the US Food and Drug Administration, however, "a positive result from an antibody test does not mean you have a specific amount of immunity or protection from SARS-CoV-2 infection … Currently authorized SARS-CoV-2 antibody tests are not validated to evaluate specific immunity or protection from SARS-CoV-2 infection." For this reason, individuals who have been diagnosed with COVID-19 or had an antibody test are not permanently exempt from vaccination.
> …
> Those Covered Individuals who fail to Participate by being Vaccinated or requesting an Exception or Deferral on or before the Implementation Date will be barred from Physical Presence at University Facilities and Programs, and may experience consequences as a result of non-Participation, up to and including dismissal from educational programs or employment.

Defendant College Parties opposed the TRO application in writing. See, Appendix C, 1-ER-33-50 (Opposition MPA). Without a hearing, on July 30, the District Court denied the TRO application via minute order. See, Appendix B, as the District Court stated:

> Strict scrutiny is not applicable here… Plaintiffs make no showing that the interest at issue here (bodily autonomy or informed consent) is fundamental under the Constitution so as to require greater scrutiny. Thus, the Court applies rational basis.

Petitioner Doctors & Immune Students promptly filed with the 9th Circuit a petition for writ of mandamus to grant the application for TRO.

The petition for writ of mandamus was declined without substantive comment. See, Appendix A.

REASONS FOR GRANTING THE PETITION

A writ of mandamus is warranted when a party establishes that (1) the "right to issuance of the writ is 'clear and indisputable,'" (2) the party has "no other adequate means to attain the relief" sought, and (3) "the writ is appropriate under the circumstances." *Cheney* v. *United States Dist. Court*, 542 U.S. 367, 380-381 (2004) (citation omitted). Indeed, mandamus is reserved for "exceptional circumstances amounting to a judicial 'usurpation of power.' " *Id.* at 380 (citation omitted).[2]

Those are the circumstances here, as government entities across the United States are mandating these genetic injections into free people, and our Article III judiciary has yet to protect the people.

The specific issue in this case is a flip-flopped Covid-19 vaccine

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[2] "[B]ecause mandamus 'is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue'.... 'These hurdles, however demanding, are not insuperable.' *[]* They simply reserve the writ "for really extraordinary causes." *[]* (quoting *Ex parte Fahey*, 332 U.S. 258, 259-60, 67 S. Ct. 1558, 91 L. Ed. 2041 (1947)). And in extraordinary cases, mandamus petitions 'serve as useful 'safety valve[s]' for promptly correcting serious errors.' *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111, 130 S. Ct. 599, 175 L. Ed. 2d 458 (2009) (alteration in original)." *In re Gee*, 941 F.3d 153, 157-58 (5th Cir. 2019).

mandate rushed upon healthy students by Respondent College Parties, immediately jeopardizing public safety this August 2021 because it violates the EUA and ignores students' natural immunity respected by their doctors.

Natural immunity is as fundamental as air and water - every person on the planet is currently exercising natural immunity every minute of the day to billions of foreign pathogens. Informed consent is also fundamental – every American's health requires daily exercise of the fundamental right of informed consent/refusal to thousands of licensed drugs, vaccines, gene therapies, etc.

With one stone, the District Court erroneously felled these two foundational principles in medicine and law: natural immunity and informed consent. See, Appendix B (District Court Order). A writ of mandate is necessary to reverse the District Court's extreme departure from American jurisprudence.

Federal courts have found that *even prisoners* have a fundamental right to informed consent prior to injections. So too and more, informed consent is a fundamental right for free citizens. Here, Doctors & Immune Students presented compelling and well cited declarations from top MD and PhD experts (including even Respondent UC's own Joseph A. Ladapo, MD, PhD, associate professor with UCLA School of Medicine provided a

declaration *for Petitioners*) that natural immunity to Covid-19 *protects* public safety every day and is not arbitrarily limited to 90-days as claimed by the Respondent. See, Appendix C, ER-88-125 (expert declarations in support of TRO).

By contrast, Respondent College Parties' declarations in opposition were completely devoid of scientific citations (save for 2 solitary and irrelevant references re Covid-19 symptoms). See, Appendix C, ER-19-31 (expert declarations in opposition to TRO). The tone of the declarations was general speculation and nonspecific fear. Given that Respondent's experts were unable to provide any scientific data rebutting natural immunity, the job apparently fell to Defendants' lawyer who provided a declaration with string citations. See, Appendix C, ER-13-18. And even then, only two citations[3] offered by Defendants' lawyer even attempted to claim that natural immunity is not worth preserving. Likewise, nowhere in Respondent College Parties' opposition papers is there any scientific justification cited for Respondents' arbitrary 90-day natural immunity guess. It comes from thin air.

The District Court clearly abused its discretion by deferring to conjectures in Respondents' papers, as the District Court cited the

[3] See, Appendix C, 1-ER-17-18 (Kuwahara Decl., paras. 26-27).

conjectures explicitly:

> 'the duration of protection of prior infection is unknown'… '[v]accination appears to further boost antibody levels in those with past infection and might improve the durability and breadth of protection'… 'While there is no recommended minimum interval between infection and vaccination, current evidence suggests that the risk of SARS-CoV-2 reinfection is low in the months after initial infection but may increase with time due to waning immunity'… a recent study suggests that the immunity of individuals who previously had COVID-19 may not be as effective against the surging Delta variant.
> See, Appendix B (District Court Order).

Fundamental rights cannot be eradicated upon conjectures like "unknown", "might", "suggests", "may", and "may not". In short, Respondents do not have the evidence to back up their vaccine mandate. And this was exactly the point of the scientific consensus declarations submitted by Petitioner Doctors & Immune Students.

Thus, the District Court clearly abused its discretion by deferring to conjectures in Respondent College Parties' papers rather than the indisputable fact that natural immunity protects lives every day, and is not arbitrarily limited to 90-days as claimed by Respondent College Parties.

Procedurally, the order denying TRO is immediately appealable where the judge determined that prior case law precluded the requested relief. *Religious Tech. Ctr. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989). A TRO denial is also appealable if it "effectively decide[s] the merits of the

case," *Graham v. Teledyne-Continental Motors*, 805 F.2d 1386, 1388 (9th Cir. 1987) (order denying a TRO appealable where application for permanent relief would be futile and, absent an injunction, controversy would become moot).[4]

Here, it would be futile (and a waste of judicial resources) for Petitioners to proceed with their follow-up request for preliminary injunction because the District Court has *already ordered* that it will continue to apply the (wrong) standard of rational basis review, and the District Court will rule for Defendants. See, Appendix B (District Court Order), "At issue is whether the Policy is rationally related to this compelling state interest. The Policy easily meets this test.... The Court finds that there is clearly a rational basis for Defendants to institute the Policy requiring vaccination, including for individuals who previously had COVID-19." [emphasis added]

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[4] See also, *Miller v. Lehman*, 736 F.2d 1268, 1269 (9th Cir. 1984) (per curiam) (immediate appeal allowed where "denial of all relief was implied in the trial judge's denial of a temporary restraining order."); *N. Stevedoring & Handling Corp. v. International Longshoremen's & Warehousemen's Union*, 685 F.2d 344, 347 (9th Cir. 1982) ("The terminology used to characterize the order does not control whether appeal is permissible under § 1292."); *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 804 (9th Cir. 2010).

FACTUAL BASIS FOR PETITION

A. Emergency Use Authorization Precedent Favors Petitioner Doctors & Immune Students.

Presently all Covid-19 vaccines are authorized for emergency use only. And the Federal law governing such authorization, 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III), grants the patient explicitly "the option to accept or refuse administration of the [EUA] product".

Petitioner Doctors & Immune Students presented the District Court with compelling grounds for granting the TRO: every FDA fact sheet for a Covid-19 vaccine states the same disclaimer, "It is your choice to receive or not receive the [Pfizer-BioNTech, Moderna, Janssen] COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care."[5] And yet, as the UC students in this case decline the vaccine, Respondent College Parties are now threatening to disenroll them and remove their standard healthcare offered through Student Health Services. Therefore, Respondent College Parties are openly violating Federal Law (in a field preempted by Federal law)[6] in their zeal to rush a vaccine mandate.

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[5] https://www.fda.gov/media/144414/download

[6] https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities#preemption

The District Court failed to acknowledge that Respondent College Parties are now lying to Petitioner Immune Students, which is a violation of federal law.

Notably, the District Court's 7/30 Order does confirm that Petitioner UC students are harmed by the mandate,

> Covered Individuals who do not comply with the Policy by presenting proof of vaccination or requesting an applicable exception or deferral "will be barred from Physical Presence at University Facilities and Programs, and may experience consequences as a result of non-Participation, up to and including dismissal from educational programs or employment." (Id. at 12-13.)
> See, Appendix B (District Court Order).

Courts in similar circumstances have ruled for plaintiffs. For example, in *Doe #1 v. Rumsfeld*, 2005 U.S. Dist. LEXIS 5573 (D.D.C. Apr. 6, 2005), the military mandated an anthrax vaccine, but the court rejected attempts to enforce the mandate through solitary confinement and dishonorable discharge, stating these were unlawful consequences of a soldier's refusal of the EUA anthrax vaccine.

Logically, if an American soldier can decline an EUA vaccine, so too an American citizen. Indeed, the EUA law preventing mandates is so explicit and clear that undersigned counsel found only this *one* precedent case cited above (*Doe #1 v. Rumsfeld*) regarding even an attempt to

mandate an EUA vaccine, and the court held that the vaccine could *not* be mandated, even to Americans in the military.

Moreover, it is undisputed that Covid-19 tests and face coverings are also EUA only.[7] Thus, they too cannot be mandated in such a way that Petitioner Immune Students will lose their standard health coverage if they decline to use the EUA product.

The FDA acknowledges, "In an emergency, it is critical that the conditions that are part of the EUA … be strictly followed, and that no additional conditions be imposed."
https://www.fda.gov/media/97321/download.

This was also confirmed in August 2020 at a CDC published meeting of the official Advisory Committee on Immunization Practices,[8] where Executive Secretary Dr, Amanda Cohn, stated on the record (@1:14:40): **"I just wanted to add that, just wanted to remind everybody, that under an Emergency Use Authorization, an EUA,**

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[7] https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#covid19euas (list of Covid-19 product EUAs)
https://www.fda.gov/media/137121/download (face covering EUA)
https://www.fda.gov/media/136598/download (PCR test EUA)

[8] https://www.cdc.gov/vaccines/videos/low-res/acipaug2020/COVID-19Supply-NextSteps_3_LowRes.mp4

vaccines are not allowed to be mandatory. So, early in this vaccination phase, individuals will have to be consented and they won't be able to be mandated."

Indeed, the FDA did not issue an Emergency Dispensing Order[9] to even attempt to circumvent EUA requirements.

A thorough analysis of this EUA subject matter applied to Covid-19 vaccines is described in a recent letter to the FDA,[10] dated August 4, 2021:

> Long settled legal precedent establishes that it is not legal to coerce an individual to accept an unlicensed, and hence experimental, medical product. An individual must voluntarily agree, free from any undue influence, to accept same. This principle was first codified long-ago by American jurists. 8 It was then incorporated into the United States Code, the Code of Federal Regulations, and guidance from federal health agencies. See e.g., 21 U.S.C. § 360bbb-0a (Even for patients with a life-threatening condition, an unlicensed medical product cannot be coerced, rather Congress required obtaining the patient's "written informed consent.") 42 U.S.C. § 9501 (Same for mental health patients); 9 45 C.F.R. § 46.116 (For an unlicensed medical product, the "Basic elements of informed consent" include that "participation is voluntary," "refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled" and that consent be obtained without "coercion or undue influence."); 10 FDA Information Sheet: Informed Consent ("Coercion occurs when an overt threat of harm [such as expulsion from school or employment] is

[9] https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-dispensing-orders

[10] https://www.icandecide.org/wp-content/uploads/2021/08/Letter-in-Response-to-DOJ-Slip-Opinion-Released-on-July-26-2021.pdf

intentionally presented by one person to another in order to obtain compliance.")11

...

Section 564 was enacted after the United States experienced September 11, 2001, and subsequent acts of terror, including envelopes with anthrax being sent through the United States Postal Service.12 To create a legal route to distribute an unlicensed and therefore, experimental, medical product in the event of bioterrorism, or a similar emergency, and create a narrow exception to allow mandates of such a product to members of the military, Congress passed Section 564 (permitting an EUA) and 10 U.S.C. § 1107a ("Section 1107a") (permitting the President to waive "the option to accept or refuse" requirement in Section 564 for members of the military under limited circumstances of national security). i. Congress' Intent When Passing Section 564 There is no indication that Congress, in passing Section 564 and Section 1107a, intended to deviate from the long-standing principle and entrenched state, federal, and international principle that unlicensed medical products generally cannot be anything but completely voluntary. That this principle was carried forward when Congress included the words "the right to accept or refuse" in Section 564 is reinforced by the legislative discussions surrounding the passing of Section 564.

...

That Congress intended "the option to accept or refuse" as a prohibition on mandating an unlicensed medical product comes into sharp focus by the fact that Congress specifically carved out only one exception for when an individual would not have "the option to accept or refuse administration of the product." Congress permitted required use of an EUA product when the President of the United States finds that providing an individual in the military with the option to accept or refuse the product would not be in the interests of national security....Thus, Congress so highly valued the right to individual choice that it allowed only a threat to national security to trump that right, and even then, only with regard to military personnel.

Indeed, under federal preemption doctrine, states and municipalities may not mandate EUA products:[11]

> FDA believes that the terms and conditions of an EUA issued under section 564 preempt state or local law, both legislative requirements and common-law duties, that impose different or additional requirements on the medical product for which the EUA was issued in the context of the emergency declared under section 564 … In an emergency, it is critical that the conditions that are part of the EUA or an order or waiver issued pursuant to section 564A — those that FDA has determined to be necessary or appropriate to protect the public health—be strictly followed, and that no additional conditions be imposed.

States cannot override federal law or set up their own mandatory scheme. See for example, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 570-71 (2001), which overturned a state public health law because it was already the subject of a comprehensive federal scheme to manage public health, and Department of the *Navy v. Egan*, 484 U.S. 518, 530 (1988).

The previously referenced section (21 U.S.C. § 360bbb-3) of the Federal Food, Drug, and Cosmetic Act governing medical products approved for emergency states that the FDA-approved fact sheet must state "the consequences, if any, of refusing administration of the product."

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[11] https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities

Nowhere in the FDA fact sheet does it specify that a person may be denied education, denied student health services, disciplined or otherwise discriminated against for refusal. And it certainly does not state that people declining will be forced to use still other EUA products.

The EUA law applies to "a person who carries out any activity for which the authorization is issued." While this phrase plainly refers to healthcare workers, i.e., those who vaccinate the public, it can also refer to anyone who participates in the EUA activity, such as institutions requiring the product (see especially reference to "program planners").[12] The FDA also applies the term to those that advertise the product. Indeed, the EUA law covers those who get involved in distributing the product (including Respondent College Parties), such as employers carrying out their own vaccination requirements, as well as states and municipalities.

If an institution mandates EUA vaccines despite the EUA, official statements suggest that the institution might lose liability protection against damages from vaccine injury. According to the Congressional Research Service[13], institutions are subject to civil liability unless they "acted consistent with applicable directions, guidelines, or

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[12] *Id.*

[13] https://crsreports.congress.gov/product/pdf/LSB/LSB10443

recommendations by the Secretary regarding the administration or use of a covered countermeasure" [and even] "private businesses may qualify as 'program planners' (and thus covered persons) when performing certain functions)."

EUAs for past medical emergencies are instructive. In 2009, when the Secretary of the U.S. Department of Health and Human Services (HHS) declared the H1N1 virus emergency, the FDA authorized the emergency use of the drug Peramivir IV.[14] The fact sheet stated that the healthcare provider should communicate to the patient:

> 1. The Secretary of HHS has authorized the emergency use of Peramivir IV, which is not an FDA approved drug.
> 2. The patient has the option to accept or refuse Peramivir IV.

It strains credibility to think that Peramivir could have been mandated universally, with students kicked out of school for declining it, or else forced to undergo EUA nasal swabs and EUA face masks.

Where does it stop? Mandamus is required to put a stop to these unmitigated violations of Federal law.

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[14] https://www.fda.gov/media/77787/download

B. The Segregation and Forced Testing Alternative To the Vaccine Mandate Also Violates Fundamental Rights.

The segregation and forced testing alternative (i.e., if you're religious, you get a swab up your nose and a mask on your face) to the vaccine mandate is also a fundamental rights violation of bodily integrity.

College Parties' unscientific discrimination against unvaccinated Covid-19 recovered students (who have *superior* immunity) is part of a pattern and practice that College Parties tweak rapidly and dictate forcefully:

- Dictating that Covid-19 vaccinated students are presumed healthy, but unvaccinated Covid-19 recovered students with superior immunity must submit to PCR genetic testing (an EUA product requiring forceful penetration of the student's nasal cavity creating risk of serious harm) and miscellaneous health examinations intruding student medical privacy.
- Dictating that Covid-19 vaccinated students may breathe freely (i.e., no mask), but unvaccinated Covid-19 recovered students with superior immunity can only breathe as the UC and Chancellor authorize (i.e., through an EUA mask).
- Dictating that Covid-19 vaccinated students may physically access classes on campus, but unvaccinated Covid-19 recovered students

with superior immunity are denied access to the education (and the rights and services that come with it, including healthcare) for which they have prepaid and invested their livelihoods.

- Dictating Covid-19 vaccinated students may congregate normally, but unvaccinated Covid-19 recovered students with superior immunity must maintain 6-feet distancing from others, and be subjected to various physical barriers.

All of the above techniques create an educational environment that is separate, unequal, and discriminatory based on medical condition and genetic status.

It does not make sense that informed consent is categorized by the State as not being in the public interest, and that government clamoring to inject everyone with experimental mRNA in their bodies is immediately a so-called 'complete success' and 'not genetic manipulation'. Petitioners respectfully contend that the State sponsored propaganda (i.e., 'wear a mask, actually two masks, actually masks don't work, wait now they work again') is palpable, and the American people know this.

Mandates, and the institutions that propagate them, are hemorrhaging credibility with the American people. The District Court appeared unwilling to do what courts *should* do best, look behind any

government propaganda narrative (i.e., behind the CDC's inflammatory rhetoric 'pandemic of the unvaccinated') to examine the actual data. When the CDC's propaganda is removed, the data in reality shows the CDC disingenuously included hospitalization and mortality data *from January 2021* when the vast majority of the United States population was unvaccinated during that timeframe. For example, January 1, 2021, only 0.5% of the U.S. population had received a COVID shot. Fortunately, Fox News easily exposed this propaganda. See e.g., Laura Ingraham Report featuring Canadian viral immunologist Dr. Byram Bridle.[15]

Further exposure of the propaganda comes from real-world data (and real time reporting from both institutional and independent sources) from areas with high COVID vaccination rates (such as Israel, Scotland, Massachusetts and Gibraltar), which emphasizes that the American people are seeking and finding credible information at odds with official government narratives:

August 1, 2021, director of Israel's Public Health Services, Dr. Sharon Alroy-Preis, announced half of all COVID-19 infections were among the fully vaccinated.[16]

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[15] https://video.foxnews.com/v/video-embed.html?video_id=6266738894001

[16] https://www.bostonglobe.com/2021/08/01/nation/israel-sees-

August 5, 2021, Dr. Kobi Haviv, director of the Herzog Hospital in Jerusalem, appeared on Channel 13 News, reporting that 95% of severely ill COVID-19 patients are fully vaccinated, and that they make up 85% to 90% of COVID-related hospitalizations overall.[17]

As of August 2, 2021, 66.9% of Israelis had received at least one dose of Pfizer's injection, which is used exclusively in Israel; 62.2% had received two doses. [18]

In Scotland, official data on hospitalizations and deaths show 87% of those who have died from COVID-19 in the third wave that began in early July were vaccinated.[19]

A CDC investigation of an outbreak in Barnstable County, Massachusetts, between July 6 through July 25, 2021, found 74% of those who received a diagnosis of COVID19, and 80% of hospitalizations, were among the fully vaccinated, as most (but not all), had the Delta variant of the virus.[20]

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waning-coronavirus-vaccine-effectiveness/

[17] https://americanfaith.com/vaxxed-make-up-85-90-of-the-hospitalizations-from-covid-infection-in-israel-dr-kobi-haviv/

[18] https://ourworldindata.org/vaccination-israel-impact

[19] https://dailyexpose.co.uk/2021/07/29/87-percent-covid-deaths-are-vaccinated-people/

[20] https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w

The CDC also found that fully vaccinated individuals who contract the infection have as high a viral load in their nasal passages as unvaccinated individuals who get infected.[21] This means the vaccinated are just as infectious as the unvaccinated.

C. The District Court Committed Reversible Error of Law by Failing to Respect the Scientific Consensus that Natural Immunity is Protecting Lives Every Day, And Is Not Arbitrarily Limited to 90-Days as Claimed by Respondent College Parties.

In medicine, doctors do not give unnecessary vaccinations to healthy patients, even during emergencies. Rather, for hundreds of years it has been the established medical standard of care to screen patients for natural immunity as part of their informed consent/refusal process. See, Appendix C, ER-88-125 (expert declarations in support of TRO).

Experts for Respondent College Parties did not even attempt to dispute this. Indeed, Petitioner Doctors & Immune Students' request for TRO was expressly focused upon undeniable scientific consensus, as confirmed by the Respondent UC's own Joseph A. Ladapo, MD, PhD,

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https://www.cnbc.com/2021/07/30/cdc-study-shows-74percent-of-people-infected-in-massachusetts-covid-outbreak-were-fully-vaccinated.html

[21] https://www.nbcnews.com/science/science-news/delta-variant-viral-load-scientists-are-watching-covid-pandemic-rcna1604

associate professor with UCLA School of Medicine, whose supporting declaration *for Petitioners in this case* states, "The indisputable scientific facts are that natural immunity exists and is not arbitrarily limited to 90-days, and current COVID-19 vaccines are a medical intervention that carry both known and unknown risks of injury".

The District Court committed reversible error of law in its Order:

> Strict scrutiny is not applicable here… Plaintiffs make no showing that the interest at issue here (bodily autonomy or informed consent) is fundamental under the Constitution so as to require greater scrutiny. Thus, the Court applies rational basis.
> See, Appendix B, page 7 (District Court Order)

For starters, the California Supreme Court and Federal Courts have held that even prisoners have a fundamental right to informed consent in medical decision making. *See e.g., Thor v. Superior Court*, 5 Cal. 4th 725, 732, 743 (1993),

> After due deliberation, we hold that under California law a competent, informed adult has a **fundamental** right of self-determination to refuse or demand the withdrawal of medical treatment of any form irrespective of the personal consequences… Under the facts of this case, we further conclude that in the absence of evidence demonstrating a threat to institutional security or public safety, prison officials, including medical personnel, have no affirmative duty to administer such treatment and may not deny a person incarcerated in state prison this freedom of choice.… Indeed, if the patient's right to **informed consent** is to have any

> meaning at all, it must be accorded respect even when it conflicts with the advice of the doctor or the values of the medical profession as a whole. [citations omitted; emphasis added]

See also *Arteaga v. Hubbard*, No. 15-cv-03950 NC (PR), 2017 U.S. Dist. LEXIS 94165, at *17-18 (N.D. Cal. June 19, 2017) (Recognizing freedom from unwanted "medical treatment" among “those rights that are fundamental”, as compared to a prison program with behavioral improvement suggestions).

One of the best descriptions of the established “fundamental right” of “informed consent” (“14th Amendment” “bodily integrity”) is found in the Flint Michigan water case, *Guertin v. Michigan*, 912 F.3d 907, 918-21 (6th Cir. 2019), where the Federal Appeals Court cited abundant US Supreme Court precedents (including precedents cited in this case for the TRO application), describing the current state of American law:

> Plaintiffs' complaint deals with the scope of the right to bodily integrity, an indispensable right recognized at common law as the "right to be free from . . . unjustified intrusions on personal security" and "encompass[ing] freedom from bodily restraint and punishment." *Ingraham*, 430 U.S. at 673-74; *see also Davis v. Hubbard*, 506 F. Supp. 915, 930 (N.D. Ohio 1980) ("In the history of the common law, there is perhaps no right which is older than a person's right to be free from unwarranted personal contact." (collecting authorities)).
>
> This common law right is first among equals. As the Supreme Court has said: **"No right is held more sacred,**

or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251, 11 S. Ct. 1000, 35 L. Ed. 734 (1891); *cf. Schmerber v. California*, 384 U.S. 757, 772, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966) ("The integrity of an individual's person is a cherished value of our society."). Absent lawful authority, invasion of one's body "is an indignity, an assault, and a trespass" prohibited at common law. *Union Pac. Ry.*, 141 U.S. at 252. On this basis, we have concluded "[t]he right to personal security and to bodily integrity bears an impressive constitutional pedigree." *Doe v. Claiborne Cty.*, 103 F.3d 495, 506 (6th Cir. 1996).

"[T]his right is fundamental where 'the magnitude of the liberty deprivation that the abuse inflicts upon the victim strips the very essence of personhood.'" *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998) (quoting *Doe*, 103 F.3d at 506-07) (brackets and ellipsis omitted). "We have never retreated . . . from our recognition that *any* compelled intrusion into the human body implicates significant, constitutionally protected . . . interests." *Missouri v. McNeely*, 569 U.S. 141, 159, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013) (emphasis added); *see also Rochin v. California*, 342 U.S. 165, 172, 72 S. Ct. 205, 96 L. Ed. 183 (1952) (forcibly pumping a detainee's stomach to obtain evidence was "too close to the rack and the screw to permit of constitutional differentiation"). And more broadly, it is beyond debate that an individual's "interest in preserving her life is one of constitutional dimension." *Nishiyama v. Dickson Cty.*, 814 F.2d 277, 280 (6th Cir. 1987) (en banc), *abrogated on other grounds as recognized in Jones v. Reynolds*, 438 F.3d 685, 694-95 (6th Cir. 2006).

“Bodily integrity cases "usually arise in the context of government-imposed punishment or physical restraint," but that is far from a categorical rule. *Kallstrom*, 136 F.3d at

1062 (collecting cases). Instead, the central tenet of the Supreme Court's vast bodily integrity jurisprudence is balancing an individual's common law right to informed consent with tenable state interests, regardless of the manner in which the government intrudes upon an individual's body. *See, e.g.*, *Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 269-70, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990). **Thus, to show that the government has violated one's right to bodily integrity, a plaintiff need not "establish any constitutional significance to the means by which the harm occurs[.]"** *Boler v. Earley*, 865 F.3d 391, 408 n.4 (6th Cir. 2017). That is because "individuals possess a constitutional right to be free from forcible intrusions on their bodies against their will, absent a **compelling state interest.**" *[]*

A few examples illustrate the breadth of this tenet. Consider *Washington v. Harper*, which addressed the State of Washington's involuntary administration of antipsychotic medication to an inmate without a judicial hearing. 494 U.S. 210, 213-17, 110 S. Ct. 1028, 108 L. Ed. 2d 178 (1990). There, the Supreme Court had "no doubt" that the inmate "possess[ed] a significant liberty interest in avoiding unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." *Id.* at 221-22. This "interest in avoiding the unwarranted administration of antipsychotic drugs is not insubstantial.

The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." *Id.* at 229 (citing *Winston v. Lee*, 470 U.S. 753, 105 S. Ct. 1611, 84 L. Ed. 2d 662 (1985), and *Schmerber*, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908). **And this is especially so when the foreign substance "can have serious, even fatal, side effects" despite some therapeutic benefits.** *Id.* But the extent of this interference, reasoned the Court, is circumscribed by the government's interest (there, administering medication in

the custodial setting). *Id.* at 222-27. Examining those interests, the Court permitted the physical intrusion upon a showing of certain circumstances—danger to self or others, and in the inmate's medical interest. *Id.* at 227; *see also Riggins v. Nevada*, 504 U.S. 127, 135-38, 112 S. Ct. 1810, 118 L. Ed. 2d 479 (1992)(applying *Harper* to the forced administration of drugs in trial and pretrial settings and focusing upon the state's "overriding justification and a determination of medical appropriateness" to justify the intrusion); *Sell v. United States*, 539 U.S. 166, 177-86, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003) (similar).

The Supreme Court's seminal "right to die" case, *Cruzan v. Director, Missouri Department of Health*, provides further explication. At issue in *Cruzan* was whether the parents of an individual in a persistent vegetative state could insist that a hospital withdraw life-sustaining care based on her right to bodily integrity. 497 U.S. at 265-69. Writing for the Court, Chief Justice Rehnquist extensively detailed the line between the common law, informed consent, and the right to bodily integrity: "This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment," *id.* at 269, "generally encompass[es] the right of a competent individual to refuse medical treatment," *id.* at 277, and is a right that "may be inferred from [the Court's] prior decisions." *Id.* at 278-79 (citing *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); *Breithaupt v. Abram*, 352 U.S. 432, 77 S. Ct. 408, 1 L. Ed. 2d 448 (1957); *Harper*, 494 U.S. 210, 110 S. Ct. 1028, 108 L. Ed. 2d 178; *Vitek v. Jones*, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980); and *Parham v. J.R.*, 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979)). And, although the Court assumed as much, "the logic of [these] cases . . . embrace[s] . . . a liberty interest" in "artificially delivered food and water essential to life." *Id.* at 279. As with *Harper*, the Court's main inquiry was not whether the case dealt with the right to bodily integrity, but rather how to balance this right with a competing state interest (the protection of life) in relation to the procedural protections provided (the state's requirement

> that an incompetent person's wishes to withdraw treatment be proven by clear and convincing evidence). *Id.* at 280-87; *cf. Winston*, 470 U.S. at 759 (**holding that a non-consensual "surgical intrusion into an individual's body for evidence" without a compelling state need is unreasonable**).
>
> [emphasis added]

See also *Kanuszewski v. Mich. HHS*, 927 F.3d 396, 420 (6th Cir. 2019), where the appellate court found the fundamental right of informed consent so robust that the appellate court reversed the District Court in a case of first impression re informed consent in blood collection. The 6th Circuit confirmed once again that violation of the "**fundamental right to direct [] medical care…[triggers] strict scrutiny.**" [emphasis added]); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1203 (10th Cir. 2003) (reversing pretrial dismissal of parents' 14th Amendment challenge to the school's practice of requiring blood tests and physical examinations without parental consent; the 10th Circuit cited the United States Supreme Court to protect "**fundamental rights**" in medical decision making).

How could parents have a fundamental right to make medical decisions for their children but not themselves? This is an example showing the clear departure from law by the District Court.

Petitioner Doctors & Immune Students argue that the right to exercise natural immunity is the most fundamental of rights. Natural

immunity has served humanity for time immemorial, solidifying our status as the undisputed strongest species on the planet. While the Constitution was being approved, the founders were exercising natural immunity. Compare the experimental mRNA and adenovirus vector vaccines mandated by Respondent College Parties, which have been around for about a year, and are already being investigated worldwide for causing excessive death and serious injury.

Another case cited by Petitioner Doctors & Immune Students is *Anderson v. City of Taylor*, No. 04-74345, 2005 U.S. Dist. LEXIS 44706, at *33 (E.D. Mich. Aug. 11, 2005) ("the Court could analogize a blood draw to medical treatment, and find that Plaintiffs have a constitutionally protected liberty interest under the Fourteenth Amendment, and therefore are subject to the governmental interest balancing test."). Strict scrutiny was the balancing test implied by the court, as it distinguished between a blood draw (lesser invasion) and a medical treatment (greater invasion).[22]

[22] Petitioner Doctors & Immune Students also cited the case of *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 169, 179 (2d Cir. 2009) ("Appellants claim that Pfizer, working in partnership with the Nigerian government, failed to secure the informed consent of either the children or their guardians and specifically failed to disclose or explain the experimental nature of the study or the serious risks involved.... United States courts examining the Nuremberg judgments have recognized that "[t]he universal and fundamental rights of human beings identified by Nuremberg--rights against genocide, enslavement, and other inhumane acts . . .--are the direct

Applying strict scrutiny to this case, the law dictates this Court must recognize Respondent College Parties' vaccine mandate fails strict scrutiny because it arbitrarily sets an unscientific 90-day rule that disregards thousands of years of experience with natural immunity. There is no compelling State interest to ignore natural immunity, for the purpose of limiting a student's exercise of a fundamental right (informed consent). Nor would such purpose be narrowly tailored by conditioning the student's entire livelihood and student healthcare coverage upon unnecessary injection of a new genetic medical intervention.

Petitioner Doctors & Immune Students' supporting expert declarations provide ample evidence to show Respondent College Parties' vaccine mandate (as written) violates strict scrutiny:

- *Joseph A. Ladapo, MD, PhD* (associate professor with UCLA School of Medicine),

> In immunology, the most robust immunity is generally considered to be from natural infection, and the available evidence indicates this has been again shown to be the case. The SARS-CoV-2 causes an infection in humans that results in robust and durable immunity,1 and that is comparable to if not superior to vaccine immunity2. This is particularly true in young persons.

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ancestors of the universal and fundamental norms recognized as *jus cogens*," from which no derogation is permitted, irrespective of the consent or practice of a given State.")

- *Michael Yeadon, PhD* (former Vice President and Chief Scientific Officer at Pfizer),

> [A]cquired immunity lasts for years and in many cases, for life, after a single exposure fight and successful fight with a defined viral pathogen. There are numerous examples of this (chickenpox, measles, mumps, mononucleosis, hepatitis A, hepatitis B, etc.)… This breadth of immunity which follows natural infection can never be bettered by a vaccine…. It is simply inaccurate to use blood levels of antibodies in any way to determine the immune protection possessed by an individual and literally absurd to pretend that, for example, 90 days is an amount of time for which immunity is retained…. If an individual is already immune to a particular respiratory virus, it is neither sensible nor safe to vaccinate them. The reasons for this are obvious: the system is now already primed to respond with vigor to the reappearance of that pathogen or related pathogens.

- *Peter McCullough, MD, MPH* (professor at Texas A&M University School of Medicine; top published physician on Covid-19), "I urge the Court to avoid falling prey to the recent and premeditated asymmetric reporting of cases as 'unvaccinated' and further claiming Covid-19 is a 'pandemic of the unvaccinated'."

- *Richard Urso, MD* (former clinical professor and current board certified ophthalmologist, treated over 450 Covid-19 recovered persons), "COVID recovered patients are at extremely high risk to a vaccine."

- *Angelina Farella, MD* (former Pediatric Chief Resident with University of Texas Medical Branch), "Covid-19 has survivability of 99.8%

globally and 99.97% under age 70 (Ioannidis, Stanford)."

- *Lee Merritt, MD* (former Chief of Staff of regional medical center, US Navy veteran, current clinician),

> The following is a sample of an informed consent that I would find acceptable for COVID-19 vaccines: … The COVID-19 vaccines are experimental and only authorized under an Emergency Use Authorization. This means that this particular vaccine has not been fully studied and we cannot be certain of all of the impacts it could have on you….

Sometimes in life our most obvious virtues we take for granted. But in this case, two of those obvious virtues (natural immunity and informed consent) were not taken for granted by the District Court – they were actively disrespected. Chief Justice William Rehnquist once explained with powerful historical high stakes examples (i.e. *Korematsu* internment of Japanese-Americans) that the most challenging time for lawyers to uphold civil liberties is during an emergency or war, because judicial sentiment tends toward government deference, which in retrospect proved harmful.[23] He adds that these encroachments of civil liberties occur not due to any malfeasance on the part of the judiciary; rather, both institutional and

[23] Rehnquist, W.H. (1998). All The Laws But One: Civil Liberties In Wartime. Alfred A. Knopf, Inc.

human limitations act to restrain judicial review during the emergency. The Chief Justice recommended that courts solve this problem.[24]

No matter how we slice it, it is an egregious error to risk thousands of years of experience with natural immunity, on an already suspicious (and heavily fined) pharmaceutical industry's conjecture on their new genetic vaccines that have been around about a year. It is impossible to reverse a vaccine injection (especially a genetic medical intervention vaccine). If there was ever a time to protect the status quo, it's now.

D. The District Court Committed Reversible Error of Law by Failing to Recognize that a Genetic Vaccine is Irreversible.

The District Court order states,

> Plaintiffs fail to establish that Individual Plaintiffs will be irreparably harmed. Plaintiffs allude to a series of harms resulting from being "forced to unnecessarily vaccinate." But as Defendants point out, Individual Plaintiffs are not "forced" to vaccinate. Rather, under the Policy, vaccination is a condition of physical presence at the University. All students, including Individual Plaintiffs, have a choice – albeit undoubtedly a difficult one – to get vaccinated, seek an exemption (if applicable), or transfer elsewhere… courts have repeatedly held that delays in education are compensable by monetary damages… delays in education do not constitute irreparable harm.
> See, Appendix B (District Court Order)

[24] *Id.* at 224-25.

Federal Courts have actually upheld the denial of college education as an injury, especially where the denial is the result of unconstitutional actions (i.e., segregation) that make the injury all the more pervasive. See e.g., *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 280 n.14 (1978),

> The constitutional element of standing is plaintiff's demonstration of any injury to himself that is likely to be redressed by favorable decision of his claim. *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975). The trial court found such an injury, apart from failure to be admitted, in the University's decision not to permit Bakke to compete for all 100 places in the class, simply because of his race. Record 323. Hence the constitutional requirements of Art. III were met. The question of Bakke's admission *vel non* is merely one of relief.

Moreover, the University of California is explicitly identified in the California Constitution, Article IX, section 9, as a public trust ("The University of California shall constitute a public trust"). Accordingly, denying Petitioner Immune Students access to the public trust education they have prepaid is a constitutionally significant injury, especially as Respondent College Parties discriminate against Petitioner Immune Students on the basis of medical condition and genetic status, in violation of California law.

The clear abuse of discretion here is the District Court's failure to apply strict scrutiny in the first place. Regardless, "constitutional violations cannot be adequately remedied through damages and therefore generally

constitute irreparable harm." *Nelson v. NASA*, 530 F.3d 865, 882 (9th Cir. 2008). The Petitioner Immune Student declarations attached to this TRO Application explain in detail the ways that the Immune Students are likely to suffer irreparable harm. See e.g., Appendix C, 1-ER-129 (declaration of Petitioner Carly Powell),

> Because of the vaccine mandate (especially the EUA flip flop), I am scrambling this month to plan my academic, financial, and work situation as classes resume next quarter. The mandate is already upending my academic, physical, and financial stability as I face imminent UCR disenrollment.
>
> The EUA fact sheet for each vaccine says that if I decline the vaccine my decision will not affect my standard healthcare. But if I decline the vaccine then UCR will disenroll me which would remove my standard healthcare offered through UCR Student Health Services.
>
> It feels like I'm forced into a whirlwind to manage academic, physical, and financial responsibilities, all because of the UC's vaccine mandate flip flop that does not represent my medical condition and natural genetic state. It is unfair that the UC is rushing the Covid-19 vaccine mandate in a way that interferes with my ability to work with my chosen physicians and be a responsible student who plans her livelihood for the future.
>
> I'm told that to prevail in court I need to have suffered irreparable harm because of the UC vaccine mandate. I believe the above is an understatement of the irreparable harm that I'm living right now, and many UC students have it even worse than me because of this unfair rushed vaccine mandate that arbitrarily sets a 90-day window rejecting natural immunity.

The District Court did not address all of these harms stated by plaintiffs, including loss of their student healthcare during this time of great societal upheaval. The District Court abused its discretion by downplaying the offense of mandatory genetic vaccine injections into all students. It is difficult to conceive of any injury more *irreparable* than an irreversible genetic injection.

E. Balance of Equities and Public Interest

The District Court order states,

> Plaintiffs Choi and Powell assert an individual liberty interest in refusing unwanted treatment. (See Appl.) While that is certainly an important liberty interest, "[v]accines address a collective enemy, not just an individual one." Klaassen, 2021 WL 3073926, at *24. Thus, Plaintiffs' decision to refuse vaccination does not affect them alone. See, Appendix B at page 12 (District Court Order)

The clear abuse of discretion here is the District Court does not respect the indisputable fact that natural immunity works. Robust and durable natural immunity is a fact, and it is impossible to reverse a genetic vaccine injection.

There is a famous saying among farmers, "never take down a fence until you know why it was put there in the first place." Natural immunity *is* that fence.

The State "is in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions." *Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011). In the balance of equities, this Court can at least maintain the status quo until additional expert perspective can be brought to light on the proven virtues of natural immunity.

Respondent College Parties' unscientific decision to reject Prescreening will increase the short-term and long-term vaccine injury rate thereby making UC campuses less safe from SARS-CoV-2, and other pathogens. The expert evidence shows Respondents' direct attack, under color of law, on Petitioners' bodily integrity is an unconstitutional abuse of power that is harming public health, not advancing it.

F. Burden Shifting Is Appropriate To Address Respondent College Parties' Inability to Cite Science In Support Of Their Rejection of Natural Immunity.

Burden shifting is a recognized pre-trial function of district courts. *See, e.g.*, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973) (after plaintiff makes a prima facie showing of discrimination, the burden shifts to the defendant to show a lawful reason for defendant's conduct).

Respondent College Parties' novel theories for the novel coronavirus and its experimental vaccine are expressly based on conjecture that fails

strict scrutiny when applied as a healthcare mandate, as College Parties *suggest* without confirmed data, for example:

a. Covid-19 vaccines 'could' 'may' 'possibly' 'ideally' create a larger immune response[25] and therefore perhaps hypothetically create superior immunity that just hasn't been observed yet but might be observed in the unknown future by some unknown institution.

b. Sars-Cov-2 'could' 'may' 'possibly' be more likely to mutate in the bodies of unvaccinated persons rather than vaccinated persons[26], even though that too hasn't been observed yet but only might be observed in the unknown future by some unknown institution.

So Respondent College Parties' position is novel and radical. Scientifically accepted virology and immunology precepts[27] hold that immunity from natural infection is the best, most robust, and longest

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[25] https://mediasources.ucr.edu/articles/2021/03/03/what-uc-riverside-scientists-have-say-about-vaccines-variants-and-antibodies ("ideally"); https://campusreturn.ucr.edu/sites/g/files/rcwecm4671/files/2021-04/COVID-19%20Vaccine%20education%20slide%20deck_UCLA_UCR%20%281%29.pdf, page 31 ("There is not enough information" "suggests")); https://uci.edu/coronavirus/testing-response/covid-19-vaccine.php ("usually")

[26] https://www.universityofcalifornia.edu/news/are-we-stuck-covid-19-forever ("may be")

[27] https://www.wiley.com/en-us/Roitt%27s+Essential+Immunology%2C+13th+Edition-p-9781118415771

lasting way to deal with problems such as Covid-19. Respondent College Parties' statements to the contrary are categorically false, and courts must not defer to false statements simply because powerful institutions argue for them, but, rather, courts must apply strict scrutiny.

CONCLUSION

Robust and durable natural immunity is a fact, and it is impossible to reverse a genetic vaccine injection. Petitioner Doctors & Immune Students respectfully request that this Court issue a writ of mandamus directing the District Court to grant the temporary restraining order enjoining Respondent College Parties from enforcing their 7/15 Covid-19 vaccine mandate that rejects scientifically accepted Prescreening. Petitioners further request an Order to Show Cause Why a Preliminary Injunction Should Not Issue against College Parties.

Alternatively, the Court should construe this petition as either (1) a petition for a writ of certiorari seeking review of the court of appeals' August 11, 2021 decision (App. A) or (2) a petition for a common- law writ of certiorari seeking review of the district court decision denying the application for TRO (App. B), and grant certiorari on the questions presented.

Respectfully submitted this 16th of August 2021.

GREGORY J. GLASER

GREGORY J. GLASER

Attorney for Petitioners

CERTIFICATE OF COMPLIANCE

This brief is in compliance with the 9,000 word limit, as permitted by FRAP 33(g), exclusive of items exempt under FRAP 33(d). An electronic word count performed on the final version of the text reported 8,881 words.

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GREGORY J. GLASER

GREGORY J. GLASER

Attorney for Petitioners