Concerned IBM Employees
Point of Contact: Justin Albano
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January 12, 2022

[redacted]

[redacted]

Thank you for your response on January 3, 2022, to our medical inquiry. We are, however, disappointed by the delay in which the response was received. On December 17, 2021, we sent a PDF of the letter through email[1] and mailed a physical copy of the letter,[2] which was delivered on December 18, 2021.[3] We did not receive a substantive response until January 6, 2022[4] – a full 20 days after our original letter of inquiry was sent.

Such a delay – considering the lack of detail and substantiveness of the response – demonstrates an absence of good faith and lack of urgency by IBM to respond to the pressing COVID-19 vaccine policy questions of its employees. Despite the delay, we wish to prudently respond to the content of your reply in three parts (please refer to the Endnotes section for the accompanying citations):

1. Experimental Vaccines
2. The Nuremburg Code
3. Unanswered Questions

Experimental Vaccines

In your response, you claim that our statement that all US COVID-19 vaccines are authorized for use under an Emergency Use Authorization (EUA) is "not a true statement." You also assert that "Pfizer has full FDA approval." This is incorrect: Pfizer-BioNTech has *not* received full approval by the US Food and Drug Administration (FDA). Currently, only Comirnaty has received full approval for use in the US, effective August 23, 2021.[5]

Many – including fact-checkers such as FactCheck.org[6] and Reuters[7] – have falsely claimed that Pfizer-BioNTech, by extension, is also approved. According to the FDA, Pfizer-BioNTech and Comirnaty "can be used interchangeably without presenting any *safety or effectiveness* concerns" (emphasis added).[8] This interchangeability claim is also made by Pfizer, which says "The FDA-approved COMIRNATY® (COVID-19 Vaccine, mRNA) and the EUA-authorized Pfizer-BioNTech COVID-19 Vaccine have the same formulation and *can be used interchangeably to provide the COVID-*

19 vaccination series" (emphasis added).[9] This wording is carefully chosen: According to Pfizer and the FDA, the Pfizer-BioNTech and Comirnaty vaccines can be considered interchangeable with respect to safety and efficacy, and when administering the vaccines in a multi-dose regimen (i.e., the first shot in a 2-dose regimen could be Pfizer-BioNTech while the second shot could be Comirnaty, or vice-versa). This claim is made because Pfizer-BioNTech and Comirnaty have the "same formulation" and are therefore the same (or sufficiently similar) chemical substances. That is to say, the contents of the vials are the same, but the packaging, labeling, manufacturing, marketing, and other factors may be different.

While the contents of the vial may be the same, the legality of its use is vastly different. According to the FDA, although the safety and effectiveness of the two vaccines are interchangeable, "[t]he products are legally distinct."[10] This is corroborated in the case of *Doe v. Austin*, in which US District Judge Allen Winsor ruled that Department of Defense's (DoD) claim that Comirnaty and Pfizer-BioNTech are legally interchangeable was "unconvincing."[11]

Therefore, when the vaccine labeled and marketed as Comirnaty is administered, it is done under full FDA-approval; when the vaccine labeled and marketed as Pfizer-BioNTech is administered, it is done under an EUA. This distinction is critically important because it means that if the recipient of a Pfizer-BioNTech vaccine – which is authorized only through an EUA – is harmed, the vaccine manufacturer is not liable (regardless of whether a copy of the drug exists that has FDA approval).[12]

It is also unclear whether Comirnaty is currently available at all in the US. When the FDA reissued the EUA for the Pfizer-BioNTech vaccine on January 3, 2022, it stated that an EUA was still appropriate because "Although COMIRNATY (COVID-19 Vaccine, mRNA) is approved to prevent COVID-19 in individuals 16 years of age and older, *there is not sufficient approved vaccine available for distribution to this population in its entirety* at the time of reissuance of this EUA" (emphasis added).[13] The FDA made the same statement in its January 7, 2022, reissuance of the Moderna EUA[14] and its November 19, 2021 reissuance of the Johnson & Johnson Janssen EUA.[15] Additionally, according to *Doe v. Austin*, the DoD "could not even say whether vaccines labeled as 'Comirnaty' exist at all."[16]

There are also reports that, despite Comirnaty's approval, vials of the Pfizer-BioNTech vaccine are still being distributed. For example, "as of today's stock," OhioHealth is "currently distributing the Pfizer vaccine that does not have the Comirnaty branding label."[17] Thus, the EUA product (Pfizer-BioNTech) is still distributed despite Comirnaty's approval, and it is questionable whether Comirnaty is even available at this time.

The claim that *all* US COVID-19 vaccines are authorized under an EUA is supported by the complaint filed by Leigh Taylor Dundas, et al. on December 15, 2021 with the Federal Aviation Administration (FAA). This complaint states that all US COVID-19 vaccines authorized by the Centers for Disease Control (CDC) are non-FDA-approved and, according to Title 14 Code of Federal Regulations §61.53, all pilots who have received these vaccines must be tested and medically

recertified.[18] To support their claim that all US COVID-19 vaccines are non-FDA-approved, the authors state (emphasis in original quotation):[19]

> As the recipients are likely aware, **the FDA has not approved any of the COVID-19 shots currently available in the United States**. On August 23, the FDA granted BioNTech Manufacturing GmbH's Biologics Licensing Application to distribute the Comirnaty vaccine in the United States once certain conditions are met; however, the Comirnaty vaccine is not currently available in the United States – and will not be until the supply of the Pfizer-BioNTech vaccine is first exhausted. See https://www.fda.gov/media/151710/download. The Pfizer-BioNTech vaccine is currently available only under an EUA, which the FDA extended on August 23, 2021. See https://www.fda.gov/media/150386/download. It is also important to note that the approved vaccine, Comirnaty, cannot be said to be interchangeable with unapproved inoculations.

This claim is footnoted with the following, which clarifies the distinction between the Pfizer-BioNTech vaccine and the Comirnaty vaccine – which is approved under a Biologics License Application (BLA) (emphasis in original quotation):[20]

> The concept that unapproved COVID inoculations should be considered "interchangeable" was recently adjudged to be incorrect by a federal court examining the argument. See Doe et al v. Austin et al, (USDC Northern Dist. Florida) (October 6, 2021). In this decision relating to the DOD and vaccine mandates for military members, a federal judge began by noting that, under the relevant EUA statute, recipients of EUA drugs must be "informed … of the option to accept or refuse administration of the product." The court went on to explain that "DOD's guidance documents explicitly say only FDA-licensed COVID-19 vaccines are mandated" and that while such a mandate would be applicable to the Comirnaty vaccine since it was FDA-approved, the "plaintiffs have shown that the DOD is requiring injections from vials **not** labeled 'Comirnaty' and that "defense counsel could not even say whether vaccines labeled 'Comirnaty' exist at all." In considering the DOD's argument that it was okay to interchange vaccine vials because allegedly "the contents of EUA-labeled vials are chemically identical to the contents of vials labeled 'Comirnaty'" the judge noted that such argument was entirely "unconvincing" and went on to further state that "FDA licensure does not retroactively apply to vials shipped before BLA approval" and that EUA provisions suggest "drugs mandated for military personnel be actually BLA-approved, not merely chemically similar to a BLA-approved drug." Id.

Therefore, although Comirnaty received FDA approval on August 23, 2021, Pfizer-BioNTech has no such approval and is still issued under an EUA. While theoretically, Comirnaty does exist, it has not been shown by the US government (the DoD or the FDA) to be distributed in the US at this time, and at best, it is very likely that any Pfizer COVID-19 vaccine administered in the US is the Pfizer-BioNTech vaccine under an EUA. Thus, all COVID-19 vaccines administered in the US today are issued under an EUA.

This amounts to a bait-and-switch. In essence, a non-existent copy of Pfizer-BioNTech has been approved, but not supplied, and it is falsely claimed that the existing Pfizer-BioNTech vaccines are by extension also approved. This is legally incorrect at best and a nefarious scheme at worst. There is also a perverse incentivization for Pfizer not to distribute Comirnaty in the US. If a recipient takes the Pfizer-BioNTech vaccine, Pfizer is not liable for harm, but if a recipient takes the Comirnaty vaccine, Pfizer is liable under the vaccine laws of the US.

In addition, the EUA for Pfizer-BioNTech can only be continued by the FDA if "there is not sufficient approved vaccine available for distribution to this population in its entirety."[21] This means that Pfizer has an incentive to never distribute Comirnaty to the general population, as it will open the company up to liability, and the sufficient distribution of Comirnaty would necessitate the removal of the EUA which shields the Pfizer-BioNTech vaccine from liability.

Although all COVID-19 vaccines issued in the US are under an EUA, this does not necessarily follow that these vaccines are "experimental." You addressed this exact point on the `#join-arvind` thread for the January 12, 2022 Office Hours, when you stated:[22]

> Emergency Use Authorization (EUA) does not mean that a drug or medical device is experimental but that due to disease outbreak (pandemic or epidemic) priority was given to it's [sic] design and development and more resources were dedicated to ensure timely production. The vaccines have been robustly tested and deemed safe with regulatory approvals given. Due to the pandemic there are other products available with an EUA e.g. test kits.

Not all products issued under an EUA are experimental, but the COVID-19 vaccines are experimental products, and their experimental nature is publicly disclosed by the FDA. For example, in the EUA reissuance letters for Pfizer-BioNTech,[23] Moderna,[24] and Johnson & Johnson's Janssen,[25] the FDA states that each is "an investigational vaccine not licensed for any indication." The CDC definition for an "investigational vaccine" asserts that these vaccines are still in the testing phase – and are therefore experimental (emphasis added):[26]

> A vaccine that has been approved by the Food and Drug Administration (FDA) for use in *clinical trials* on humans. However, *investigational vaccines are still in the testing and evaluation phase* and are not licensed for use in the general public.

Therefore, all the COVID-19 vaccines currently available in the US are experimental.

In summary:

- Pfizer-BioNTech is under EUA in the US
- Comirnaty has a BLA approved effective August 23, 2021
- Pfizer-BioNTech and Comirnaty are legally distinct and not legally interchangeable
- Pfizer-BioNTech has not received approval as an extension of the approval of Comirnaty

- There is no evidence to suggest that Comirnaty has been distributed in the US
- Pfizer has an immense incentive not to distribute Comirnaty in the US
- All COVID-19 vaccines authorized in the US are experimental

Since Pfizer-BioNTech is not approved by the FDA, and the CDC has only authorized Pfizer-BioNTech, Comirnaty (which is not available), Moderna, and Johnson & Johnson's Janssen for use in the US,[27] all COVID-19 vaccines authorized for use in the US are done so through an EUA. As cited above in the EUA issuance letters, all COVID-19 vaccines available in the US are also experimental.

As a Chief Medical Officer of IBM, in a position of authority at IBM and over the employees of IBM, this is information that you do know, or should know.

The Nuremburg Code

The next point in your response that we wish to address is the following statement:

> Similarly, the Nuremberg Code has no application to a private employer's COVID-19 vaccine policy. Nor is anyone forced to take any vaccine – that is an individual choice that each IBMer must make.

This is the most startling statement in the response. The Nuremberg Code is a code of ethics – codified in US law under U.S. Code Title 21 § 360bbb–3[28] – and applies to all people, medical or otherwise. In the interest of ascribing the best of intentions, we assume that the phrasing "has no application" means that the Nuremberg Code does not apply in this particular case, presupposing that not all the COVID-19 vaccines are experimental. Given the information in this letter, the assertion that not all US COVID-19 vaccines are experimental has been disabused and the Nuremberg Code does in fact apply to the IBM COVID-19 vaccine mandate, as well as all other US private employer's COVID-19 vaccine policies.

In our original letter of Medical Inquiry, the word "force" was specifically omitted. Section 1 of the Nuremberg Code does not require that only "force" be used: An experiment or an experimental procedure – which the COVID-19 vaccines are – cannot be applied to a subject using "coercion" or under "duress."[29] According to Black's Law Dictionary, coercion is (emphasis added):[30]

> Compulsion; force; duress. It may be either actual, (direct or positive.) where physical force Is put upon a man to compel him to do an act against his will, or implied, (legal or constructive.) *where the relation of the parties is such that one is under subjection to the other, and is thereby constrained to do what his free will would refuse*.

As stated in the original October 7, 2021 enactment of the COVID-19 vaccination policy,[31] as well as your response letter to the Medial Inquiry,[32] IBM instituted its policy knowing that there is an "abundance of vaccine availability in the US."[33] It would stand to reason that all US IBM employees who wished to receive the COVID-19 vaccine of their own free will have already done so already. IBM has continued to promote COVID-19 vaccination as a positive goal, which is corroborated with

your statement at "I am proud to say that the vast majority of US IBMers are vaccinated." Clearly, the intent of the IBM's COVID-19 vaccination policy is to apply pressure and compel as many US IBM employees as possible to be vaccinated.

In addition, no exemptions – except those strictly entitled under Title VII of the Civil Rights Act of 1964[34] and other applicable US laws – have been given for this policy. For example, IBM has made no effort known to its employees to exclude them from any government-imposed vaccine requirement under Executive Order (EO) 14042 or the Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard (ETS), or under any client-imposed vaccine requirement, when allowable, such as:

- Exempting those employees who work from home and are therefore exempt from the requirements of the OSHA ETS[35]
- Exempting those employees who do not fall under EO 14042, such as those who are not covered contractor employees[36]
- Exempting those employees who do not work at client worksites that require a COVID-19 vaccination or who are not in close contact with employees of clients who have such requirements

Even if such exemptions were instituted at this time, withholding them for more than three months is a mechanism to ensure that employees would take a COVID-19 vaccine for fear of losing their jobs. It is clear from this blanket policy that the goal of IBM is to vaccinate as many US employees as possible. Given that IBM – and subsequently its executive officers – are in a position of authority over the employees of IBM, by requiring that its employees obtain an experimental procedure (COVID-19 vaccines) and imposing the threat of unpaid leave, IBM is coercing its employees into taking the experimental COVID-19 vaccines under duress.

It is yet to be determined the legality of such a policy, but it is clearly an ethical violation of the highest order, and one for which the Nuremberg Code rightly applies.

In summary:

- All currently available COVID-19 vaccines in the US are experimental
- IBM has made it clear that its goal is to vaccinate as many of its employees as possible
- IBM and its executive officers are in a position of authority over IBM employees
- IBM has used coercion (threat of unpaid leave) to pressure its employees to take a COVID-19 vaccine against their will
- Coercion and duress for experimental medical procedures are an ethical violation of the Nuremberg Code

Unanswered Questions

Lastly, as an entity in a position of authority over us, IBM is ethically required to answer our questions about the experimental COVID-19 vaccines, lest IBM not ensure the informed consent of

its employees. To that end, we are requesting that you please answer the following questions – resubmitted without changes from the original letter of Medical Inquiry:

1. Were you consulted about the safety and efficacy of the Pfizer-BioNTech, Moderna, and Johnson & Johnson's Janssen vaccines prior to the enactment of the vaccine ultimatum on October 7, 2021? Can you please provide details about this consultation process?
2. What data was provided to US IBMers about the benefits and risks – such as the nature and likelihood of adverse events – of these vaccines to ensure proper informed consent prior to the enactment of the vaccine ultimatum?
3. What risk analysis, data, materials, clinical trials, and other supporting documentation was used to determine that the vaccines were safe and effective enough to enact the vaccine ultimatum?
4. What alternative treatments or products – as well as the benefits and risks of these alternatives – were IBM employees informed of when the vaccine ultimatum was enacted?
5. What informative or educational materials were provided to employees to ensure that they were knowledgeable of how each of the COVID-19 vaccines work, their effects on the human body, and their risk profiles?
6. What independent or third-party mechanisms – including safety reviews, critical event reviews, data safety monitoring reviews, and human-ethics reviews – were used or consulted prior to enacting the vaccine ultimatum?
7. What threshold of safety was established whereby a specific number or nature of adverse events would result in the determination that the vaccines were unsafe or ineffective and the vaccine ultimatum should therefore be lifted?
8. What public or private forums, including a combination of doctors, lawyers, researchers, clergy, ethicists, and other stakeholders, took place to debate the safety, efficacy, and morality of these vaccines before instituting the ultimatum?
9. What degree of liability does IBM assume if an IBM employee obtains COVID-19 vaccination in order to continue his or her employment and is adversely affected by the vaccine or injured by the vaccine to the point where he or she can no longer work?
10. Were the ethics of requiring employees to use an experimental product in order to continue their employment discussed? Can you please provide the details and the conclusion of such discussions?
11. What plan does IBM have in place to inform its employees of any updates to the safety and risk profile of vaccines, such as the recommendation by the FDA on December 16, 2021 to receive the Moderna or Pfizer-BioNTech vaccine over the Janssen vaccine?[37]
12. Given legal rulings and medical evidence[38] have concluded that the available COVID-19 vaccines do not stop transmission, what is the medical rationale for requiring COVID-19 vaccines as a condition of employment?

Given the “early February” deadline for compliance with IBM’s COVID-19 vaccination policy, we are requesting that a response be provided forthwith, no later than 5:00 PM ET on January 19, 2022. If it is more convenient to discuss these questions, please let us know and we can schedule a virtual meeting. Regardless of the means of response, if the above questions are not answered by this deadline, we will consider these questions rejected.

Thank you for your time and consideration in this matter.

Most Respectfully,

Justin Albano
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Software Storage
IBM, United States
On Behalf of Concerned IBM Employees

Endnotes

[1] Email entitled *Medical Inquiry with Respect to the COVID-19 Vaccine Mandate*, sent from justin.albano1@ibm.com to campbely@us.ibm.com at 10:44 AM ET on December 17, 2022.

[2] Sent via the United States Postal Service (USPS) Next-Day Priority Mail Express in Saddle Brook, NJ, at 1:40 PM ET on December 17, 2021. Tracking number EI000507835US.

[3] Received at 12:09 PM ET in Durham, NC, on December 18, 2021. Tracking number EI000507835US.

[4] Email entitled *Response to your December 17, 2021 Letter*, sent from campbely@us.ibm.com to justin.albano1@ibm.com at 10:33 AM ET on January 6, 2022.

[5] U.S. Food and Drug Administration. (2021, August 23). *FDA Approves First COVID-19 Vaccine*. Retrieved January 1, 2022, from https://bit.ly/3fhKtZn.

[6] Fichera, A. (2021, August 31). *Researcher Distorts Facts on COVID-19 Vaccine Approval, Liability*. FactCheck.Org. Retrieved January 11, 2022, from https://bit.ly/3r7ptdC.

[7] Check, R. F. (2021, December 21). *Fact Check-Media reports have not lied about Pfizer-BioNTech's FDA approval*. Reuters. Retrieved January 11, 2022, from https://reut.rs/3qgzJks.

[8] *Q&A for Comirnaty (COVID-19 Vaccine mRNA)*. (2021, December 7). U.S. Food and Drug Administration. Retrieved January 11, 2022, from https://bit.ly/3zRcPDx. See section *Is Comirnaty interchangeable with other COVID-19 vaccines?*

[9] *Pfizer-BioNTech COVID-19 Vaccine COMIRNATY® Receives Full U.S. FDA Approval for Individuals 16 Years and Older | Pfizer*. (2021, August 23). Pfizer. Retrieved January 11, 2022, from https://bit.ly/3r7FYGt.

[10] See Endnote 88.

[11] Doe v. Austin, Court Listener (The United States District Court for the Northern District of Florida Pensacola Division November 12, 2021). Retrieved January 10, 2022, https://bit.ly/3tkUWvC.

[12] *Emergency Use Authorization of Medical Products and Related Authorities*. (2018, October 17). U.S. Food and Drug Administration. Retrieved January 11, 2022, from https://bit.ly/3K3xkBt. See VII. Liability Protection.

[13] Jacqueline A. O'Shaughnessy to Amit Patel, January 3, 2022, U.S. Food and Drug Administration. Retrieved January 11, 2022 from https://www.fda.gov/media/150386/download.

[14] Jacqueline A. O'Shaughnessy to Michelle Olsen, January 7, 2022, U.S. Food and Drug Administration. Retrieved January 11, 2022 from https://www.fda.gov/media/144636/download.

[15] Jacqueline A. O'Shaughnessy to Ruta Walawalkar, November 19, 2021, U.S. Food and Drug Administration. Retrieved January 11, 2022 from https://www.fda.gov/media/146303/download.

[16] See Endnote 11. p. 13.

[17] D'Abrosca, P. (2021, December 16). *Exclusive: Large Ohio Hospital System Still Distributing Pfizer COVID-19 Vaccine Not Fully Approved by FDA*. The Ohio Star. Retrieved January 11, 2022, from https://bit.ly/3GokDz4.

[18] *Notice to FAA That Pilots Are Operating Commercial Aircraft in Contravention of Do-Not-Fly Regulations* (December 15, 2021). Retrieved January 10, 2022. p. 1. See also: Trigoso, E. (2021, December 30). *FAA Vaccine Policy Violates Its Own Rules, Attorneys and Doctors Say*. The Epoch Times. Retrieved January 11, 2022, from https://bit.ly/3HW4uRB.

[19] Ibid, p. 4.

[20] Ibid. p. 4, Footnote 5.

[21] See Endnote 1313. p. 10, Footnote 19.

[22] #join-arvind thread for the January 12, 2022 Office Hours. The following question was posed by Mark Salva on January 10, 2022, at 1:13:38 PM ET:

> (4) There is no available vaccine in the US that is fully FDA approved. Comirnaty is approved but not available. This means that all mandates are for the EUA versions. How does IBM legally demand that employees take experimental vaccines in order to keep their jobs?

The quoted response was delivered on January 10, 2022, at 5:18:58 PM ET.

[23] Denise M. Hinton to Elisa Harkins, May 10, 2021. U.S. Food and Drug Administration. Retrieved January 11, 2022, from https://www.fda.gov/media/144412/download. p. 2.

[24] See Endnote 14, p. 2.

[25] See Endnote 15, p. 2.

[26] *Vaccine Glossary of Terms*. (2020, July 30). Centers for Disease Control and Prevention. Retrieved January 11, 2022, from https://www.cdc.gov/vaccines/terms/glossary.html.

[27] Centers for Disease Control and Prevention. (2021, November 24). *Different COVID-19 Vaccines*. Centers for Disease Control and Prevention. Retrieved December 1, 2021, from https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines.html. See the *Approved or Authorized Vaccines* section.

[28] *21 U.S. Code § 360bbb–3 - Authorization for medical products for use in emergencies*. (2022). Cornell Law School, Legal Information Institute. Retrieved January 11, 2022, from https://www.law.cornell.edu/uscode/text/21/360bbb-3.

[29] United States Holocaust Memorial Museum. (n.d.). *Nuremberg Code. United States Holocaust Memorial Museum*. Retrieved December 17, 2021, from https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/doctors-trial/nuremberg-code.

[30] Black's Law Dictionary, 2nd Edition. (2012, September 29). *What is COERCION? definition of COERCION (Black's Law Dictionary)*. The Law Dictionary. Retrieved January 11, 2022, from https://thelawdictionary.org/coercion/.

[31] Email entitled *Our IBM U.S. COVID-19 vaccination policy* sent by Arvind Krishna at 9:19 AM ET on October 7, 2021.

[32] See Endnote 4.

[33] See Endnote 4.

[34] *Title VII of the Civil Rights Act of 1964*. (2022). U.S. Equal Employment Opportunity Commission. Retrieved January 11, 2022, from https://bit.ly/3K6BdFC.

[35] *COVID-19 Vaccination and Testing ETS - Frequently Asked Questions*. (2022, January). Occupational Safety and Health Administration. Retrieved January 11, 2022, from https://www.osha.gov/coronavirus/ets2/faqs. See 6. Paragraph (g), 6.A:

> Do unvaccinated employees who work remotely need to submit to weekly COVID-19 testing?
>
> No. The requirements of the standard do not apply to the employees of covered employers who do not report to a workplace where other individuals such as coworkers or customers are present or while working from home. This includes the testing requirements of paragraph (g) of the ETS.

[36] Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (2021, November 10). The Safer Federal Workforce Task Force. Retrieved January 10, 2022, from https://bit.ly/3fwxymN. See p. 1:

> The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument.

[37] Kimball, S. (2021, December 16). *CDC recommends Pfizer, Moderna vaccines over J&J shots for adults due to rare blood clot cases*. CNBC. Retrieved December 17, 2021, from https://www.cnbc.com/2021/12/16/cdc-panel-prefers-pfizer-moderna-vaccines-over-jj-due-to-rare-blood-clot-cases.html.

[38] See *Klaassen v. The Trustees of Indiana University* and *Navy SEAL 1 v. Biden*. See also the *Pfizer-BioNTech Emergency Use Authorization (EUA) for an Unapproved Product Review Memorandum*, pp. 13-5, which does not measure viral load or transmissibility in order to determine the efficacy of the Pfizer-BioNTech vaccine. The same is true of the Moderna vaccine, whose application for an EUA does not measure viral load or

transmissibility to determine efficacy (see *Moderna Emergency Use Authorization (EUA) for an Unapproved Product Review Memorandum*, pp. 13-6). See also the *Declaration of Christina Parks, Ph.D.* in *Klaassen v. The Trustees of Indiana University*.