UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LUCAS WALL,	:	
	:	
Plaintiff.	:	
	:	
v.	:	Case No. 6:21-cv-975-PGB-DCI
	:	
CENTERS FOR DISEASE CONTROL & PREVENTION,	:	District Judge Paul Byron
	:	
DEPARTMENT OF HEALTH & HUMAN SERVICES,	:	Magistrate Judge Daniel Irick
	:	
TRANSPORTATION SECURITY ADMINISTRATION,	:	
	:	
DEPARTMENT OF HOMELAND SECURITY,	:	
	:	
DEPARTMENT OF TRANSPORTATION,	:	
	:	
JOSEPH BIDEN, ***in his official capacity***	:	
as president of the United States of America,	:	
	:	
GREATER ORLANDO AVIATION AUTHORITY, **and**	:	
	:	
CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY,	:	
	:	
Defendants.	:	

COMPLAINT

I. STATEMENT OF THE CASE

Plaintiff Lucas Wall brings this suit to permanently enjoin enforcement of the Federal Transportation Mask Mandate ("FTMM") and the International Traveler Testing Requirement ("ITTR") put into place by orders of Defendants Centers for Disease Control & Prevention ("CDC"), Department of Health & Human Services ("HHS"), Transportation Security Administration ("TSA"), Department of Homeland Security ("DHS"), Department of Transportation ("DOT"), and President Joseph Biden (collectively "the Federal Defendants"). I also seek to enjoin any requirement to wear face coverings issued by Defendant Greater

Orlando Aviation Authority ("GOAA"), which administers Orlando International Airport, and the Central Florida Regional Transportation Authority, doing business as "LYNX," the public-transportation operator for the Greater Orlando region as these mandates are in direct violation of a Florida executive order prohibiting any subdivision of the state from requiring face coverings.

Surprisingly, this lawsuit appears to be the first in the nation to challenge all aspects of the FTMM, and the first seeking to strike down the ITTR. Searches of Ballotpedia's database of 997 "lawsuits about state actions and policies in response to the coronavirus (COVID-19) pandemic, 2020-2021" did not reveal any suits similar to this one. https://tinyurl.com/wkdwx59f (visited May 19, 2021). My research found only one similar lawsuit regarding the three TSA security directives and one emergency amendment challenged here. *Corbett v. TSA*, No. 21-1074 (D.C. Cir. 2021; *oral argument date not yet scheduled*). *Corbett* solely challenges Defendant TSA's four orders related to enforcing the FTMM; it does not raise the many other issues I do here.

Multiple Google searches today (June 6) located no cases beyond the instant action and the *Corbett* litigation concerning the FTMM, and zero cases regarding the ITTR.

The defendants' goal of easing the impact of COVID-19 is laudable but grossly misguided. In attempting to mandate masks for all American travelers and to require anyone flying into the United States – even those fully vaccinated and/or with natural immunity – to obtain an expensive coronavirus test within three days of departing a foreign nation, defendants have acted without statutory authorization or following the rulemaking process required by the Administrative Procedure Act ("APA"). These policies also raise serious constitutional concerns. Because of the FTMM, numerous state, local, and regional transportation agencies are required to enforce a federal policy that is in direct conflict with state law.

The Court should hold unlawful and immediately vacate both the FTMM and the ITTR because they are improper, illegal, and unconstitutional exercises of executive authority. Both mandates are procedurally defective because the Federal Defendants adopted a rule without following the APA's notice-and-

comment requirements or considering the impact on tens of millions of travelers such as myself. They also ignored countless scientific and medical data showing that face masks are totally ineffective in reducing coronavirus spread (and are actually harmful in many circumstances), CDC's own updated guidance on masks for Americans who are fully vaccinated against COVID-19, and numerous other data regarding the negative effects of mandating masks and international travel coronavirus testing.

Both the FTMM and ITTR exceed CDC's statutory authority because § 361 of the Public Health Service Act contains no authority to adopt a nationwide mask mandate for the transportation (or any other) sector nor a first-of-its-kind requirement that anyone flying into the United States be tested for a disease. Congress never intended for the Executive Branch to have the authority to promulgate these polices – and even if it did, they are unconstitutional.

Congress has enacted at least 20 laws directly concerning the coronavirus pandemic, yet none of these have authorized a mask mandate or international testing requirement. The Federal Defendants may not exercise their authority in a manner that is inconsistent with the administrative structure that Congress enacted.

The FTMM and ITTR are arbitrary and capricious because the Federal Defendants failed to reasonably explain why other measures are insufficient to tackle the rapidly declining COVID-19 infection and death rates.

Finally, the FTMM and ITTR raise constitutional questions including separation of powers, right to due process, the freedom to travel, and states' rights, among others. If Section 361 of the Public Health Service Act confers such broad authority upon Defendant CDC to adopt these policies, the statute would violate the nondelegation doctrine because it contains no intelligible principle guiding CDC's exercise of its authority. The FTMM and ITTR are also unconstitutional because they effectuate a taking of private property (transportation services paid for) without just compensation and delegate enforcement and exemption decisionmaking to nonfederal entities.

II. PARTIES

Plaintiff Lucas Wall resides at 435 10th St., NE, Washington, DC 20002. I am a frequent traveler, having flown more than 1.5 million miles and visited 134 nations as well as all 56 U.S. states and territories. I am currently stranded at my mother's house in The Villages, Florida, (located in this judicial district) because Defendant TSA refused to let me board a flight June 2, 2021, out of Orlando International Airport (MCO) for not wearing a mask even though I have a qualifying disability.

Defendant Centers for Disease Control & Prevention is an agency of HHS. It is headquartered at 1600 Clifton Rd., Atlanta, GA 30329.

Defendant Department of Health & Human Services is a department of the Executive Branch. It is headquartered at 200 Independence Avenue, SW, Washington, DC 20201.

Defendant Transportation Security Administration is an agency of DHS. It is headquartered at 6595 Springfield Center Dr., Springfield, VA, 20598.

Defendant Department of Homeland Security is a department of the Executive Branch. It is headquartered at 2707 Martin Luther King Jr. Ave., SE, Washington, DC 20528-0458.

Defendant Department of Transportation is a department of the Executive Branch. It is headquartered at 1200 New Jersey Ave., SE, Washington, DC 20590.

Defendant Joseph Biden is president of the United States. He is located at 1600 Pennsylvania Ave., NW, Washington, DC 20500.

Defendant Greater Orlando Aviation Authority is a State of Florida agency that manages Orlando International Airport. GOAA is governed by a seven-member board: the mayor of the City of Orlando, the Mayor of Orange County, and five other members who are appointed by the governor, subject to confirmation by the Florida Senate. GOAA's chief executive officer is Phillip Brown. It is headquartered at 1 Jeff Fuqua Blvd., Orlando, FL 32827-4399.

Defendant Central Florida Regional Transportation Authority (d/b/a LYNX) is a State of Florida agency that provides public-transportation services to Orange, Seminole, and Osceola counties, an area of approximately 2,500 square miles with a resident population of more than 1.8 million people. Small portions of Polk and Lake counties are served as well. LYNX provides more than 79,000 rides each weekday. LYNX's chief executive officer is Jim Harrison. It is headquartered at 455 N. Garland Ave., Orlando, FL 32801.

III. BASIS FOR JURISDICTION, VENUE, & STANDING

This Court has jurisdiction over this case under 28 U.S.C. § 1331: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." My claims arise under federal law, specifically the APA (5 U.S.C. § 702 *et. seq*.), as well as the U.S. Constitution and the Code of Federal Regulations. I also include a state claim against GOAA and LYNX since they are directly related to federal enforcement of the FTMM.

This Court has the authority to grant declaratory relief and to vacate the FTMM and ITTR under the Declaratory Judgment Act, the APA, and this Court's inherent equitable powers. 28 U.S.C. §§ 2201, 2202; 5 U.S.C. §§ 702, 706.

Venue is proper in this judicial district because a substantial part of the events giving rise to this lawsuit occurred in Orlando, Florida. "A civil action may be brought in … a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred …" 28 U.S.C. § 1391(b)(2). Also "A civil action in which a defendant is … an agency of the United States … may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred …" 28 U.S.C. § 1391(e)(1).

I have standing to sue the defendants because the FTMM and ITTR restrict my freedom of travel and constitute illegal taking of my property (transportation services purchased). I was denied June 2, 2021, the ability to fly and use LYNX public transportation because of the FTMM – and I have an international

aviation trip booked later this month that would force me to submit to the ITTR before returning to the United States. A court order declaring unlawful and setting aside the FTMM and ITTR would redress my injuries because my freedom to travel without covering my face and paying for a costly COVID-19 test when I'm already fully vaccinated would be restored. As of now, I am unable to use the eight airline tickets I have purchased because of the FTMM and ITTR, depriving me of my property without due process.

IV. STATEMENT OF FACTS

1. **MY PURCHASE OF AIRLINE TICKETS FOR SUMMER 2021 TRAVEL:** I've been taking care of my elderly mother in The Villages, Florida – located in this judicial district – during the last several months of the COVID-19 pandemic.
2. May 31, 2021: Now that my mom and I are both fully vaccinated, I booked eight airline tickets for summer travel to see friends and family as well as visit several National Park Service units. My airline tickets are:
3. June 2, 2021: Southwest Airlines Flight 2204 from Orlando (MCO) to Fort Lauderdale (FLL). Pl. Ex. 45.
4. June 16, 2021: JetBlue Airways Flight 2319 from Fort Lauderdale (FLL) to Salt Lake City (SLC). Pl. Ex. 46.
5. June 18, 2021: Frontier Airlines Flight 2943 from Salt Lake City (SLC) to Phoenix (PHX). Pl. Ex. 47.
6. June 20, 2021: Allegiant Air Flight 543 from Mesa, Arizona, (IWA) to Houston (HOU). Pl. Ex. 48.
7. June 22, 2021: Southwest Airlines Flight 32 from Houston (HOU) to Dallas (DAL). Pl. Ex. 49.
8. June 24-25, 2021: Delta Airlines Flight 1776 from Dallas (DFW) to Atlanta (ATL), then Delta Airlines Flight 14 from Atlanta (ATL) to Frankfurt, Germany (FRA). June 30, 2021: Delta Airlines Flight 15 from Frankfurt (FRA) to Atlanta (ATL), then Delta Connection Flight 5412 from Atlanta (ATL) to Myrtle Beach, South Carolina (MYR). Pl. Ex. 50.

9. July 3, 2021: Spirit Airlines Flight 454 from Myrtle Beach (MYR) home to Baltimore/Washington (BWI). Pl. Ex. 51.

10. July 10, 2021: Alaska Airlines Flight 1032 from Washington (IAD) to Seattle (SEA). July 15, 2021: Alaska Airlines Flight 1078 from Seattle (SEA) home to Washington (IAD). Pl. Ex. 52.

11. **SUBMISSION OF MASK EXEMPTION FORMS TO SOUTHWEST:** Immediately after booking my two tickets May 31 on Southwest Airlines, I submitted the same day the company's "Passenger Application for Exemption to Federal Mask Requirement" for both my June 2 MCO-FLL flight and my June 22 HOU-DAL flight. Pl. Ex. 204.

12. I noted at the bottom of each form: "It is illegal pursuant to 14 CFR Part 382 to require advance notice of disability accommodation. I object to having to submit this form." *Id.*

13. I attached to each of the two forms a printout of the "Exemption to Federal Mask Requirement on Southwest Airlines" webpage. On this printout, I noted the numerous provisions that are illegal under the Air Carrier Access Act ("ACCA") (49 USC § 41705) and its accompanying regulations (14 CFR Part 382). *Id.*

14. Southwest requires disabled passengers who can't wear masks to submit the exemption from using its website's "Comment/Question – Disability – Future Travel Assistance" form. *Id.*

15. I wrote in the text box of that form: "Please note it is illegal under the Air Carrier Access Act regulations (14 CFR § 382) for you to require: 1. a disability accommodation request be submitted in advance; 2. a signed letter from my medical physician attesting to my disability that precludes me from wearing a face mask; 3. me to undergo a private medical screening with a third-party medical provider; and 4. require me to provide evidence of a qualifying COVID negative viral test taken within three calendar days preceding my scheduled date of travel." *Id.*

16. I also wrote: "Your face-mask-exemption policy constitutes illegal discrimination against passengers with disabilities pursuant to the Air Carrier Access Act (49 USC § 41705). The U.S. Code and

Code of Federal Regulations provisions are attached for your reference. I refuse to abide by your requests for a physician letter, private medical screening, and negative COVID test since these are illegal. Also, I am fully vaccinated and don't pose a threat to anyone." *Id.*

17. In addition to my mask-exemption form, I also attached to my submission copies of the ACCA and its accompanying regulations. *Id.*

18. After submitting my forms, I received two automatic e-mail replies from Southwest stating: "You indicated that your reason for contacting us is regarding a disability-related service. Depending on the nature of your correspondence and regulatory requirements, ***it may take up to 30 days before you receive a response***." *Id.* (emphasis added).

19. **I AM FULLY VACCINATED:** I received my first COVID-19 Moderna vaccine shot March 29, 2021. I received my second and final Moderna vaccine jab April 26, 2021. Pl. Ex. 53. According to CDC guidelines that a person becomes "fully vaccinated" two weeks after the final inoculation, I have been fully vaccinated since May 10, 2021.

20. **I CAN'T TOLERATE WEARING A FACE MASK:** Due to my Generalized Anxiety Disorder, I have never covered my face. I tried a mask a couple times for brief periods last year, but had to remove it after five or so minutes because it caused me to instigate a feeling of a panic attack, including hyperventilating and other breathing trouble. I carry cards in my wallet to hand to anybody who asks me to wear a mask. Pl. Ex. 54.

21. I also strongly oppose any mask mandate on numerous grounds including that it's a violation of my civil liberties to be ordered to block my nose and mouth, my only two sources of oxygen; face masks have proven to be totally ineffective in reducing COVID-19 infections and deaths (see discussion below); and researchers have identified dozens of health problems that occur among maskwearers (see discussion below).

22. “For many individuals with different types of disabilities the effects of wearing a mask are far more severe than being slightly uncomfortable. Wearing a face mask can have a significant impact on their health, wellbeing, and ability to function. … ***People with anxiety disorders and post-traumatic stress disorder (PTSD) may develop severe anxiety when wearing a face mask***.” Pl. Ex. 143.

23. **GOAA HAS POSTED SIGNS AT ORLANDO AIRPORT REQUIRING MASKS IN VIOLATION OF FLORIDA LAW**: Defendant GOAA, which operates Orlando International Airport (MCO), has posted numerous signs demanding passengers cover their faces, which is in violation of Florida Executive Order 21-102. Pl. Ex. 55.

24. As I drove into MCO the morning of June 2, 2021, for my Southwest flight to Fort Lauderdale, I encountered large electronic signs stating “Federal law requires wearing a mask at all times in the airport” and “Failure to comply may result in removal and penalties” in violation of Florida E.O. 21-20. Pl Ex. 200.

25. I also came across numerous signs inside the airport terminal instructing passengers to wear mask in violation of Florida E.O. 21-102. Pl. Ex. 201.

26. Defendant GOAA issued a press release after the FTMM went into effect Feb. 1, 2021: “Wearing a mask at Orlando International Airport (MCO) remains mandatory. … ‘We will continue to strongly encourage the public and staff to always wear a mask while at the airport,’ says Brian Gilliam, Director of Security for the Greater Orlando Aviation Authority. ‘If they do not comply, law enforcement may be called in and the individual may face federal penalties and be asked to leave the building.” Pl. Ex. 56.

27. “Reinforcing the mask message, travelers will see updated signage around the airport, both inside and on roadways leading into the property. Passengers will also notice new audio terminal messages reminding them that mask-wearing is mandatory and is a federal order.” *Id*.

28. Defendant GOAA issued another statement May 4, 2021, in violation of Florida law: "The federal mask mandate requiring the traveling public to wear face masks or coverings at Orlando International Airport remains in effect. The mandate, which went into effect in February, applies to all modes of federally-regulated public transportation including airports, at security checkpoints, and while traveling on commercial flights." Pl. Ex. 57.

29. Defendant GOAA's website contains no information regarding how a disabled person can request a mask exemption. Pl. Ex. 58.

30. As noted above, Defendant GOAA's mask policy, imposed by the federal government, violates Florida law. Gov. Ron DeSantis signed May 3, 2021, Executive Order 21-102 "Suspending All Remaining Local Government Mandates and Restrictions Based on the COVID-19 State of Emergency." Pl. Ex. 55. This raises serious constitutional concerns under the 10th Amendment.

31. Florida is one of 10 states that never had a statewide mask mandate, and Gov. DeSantis made it the clear policy of Florida is that no person should ever be required to cover their face, acknowledging the health dangers masking creates: "[O]n April 29, 2021, Surgeon General Dr. Scott Rivkees issued a Public Health Advisory … stating that continuing COVID-19 restrictions on individuals, including long-term use of face coverings and withdrawal from social and recreational gatherings, pose a risk of adverse and unintended consequences …" *Id.*

32. "[T]he State and the majority of local governments have declined to issue mask mandates … local communities lack justification in continuing to impose COVID-19 mandates or restrictions upon their citizens … with my encouragement, the Florida Legislature passed and I signed SB 2006, a measure designed to curb restrictions and closures of businesses during an extended emergency, to add significant accountability and difficulty for the continuation of any local limitation on the rights or liberties of individuals or businesses, and to declare in no uncertain terms that ***the policy of the State of Florida will favor a presumption of commercial operation and individual liberty***

with no toleration for unending and unjustified impediments to that liberty …" *Id.* (emphasis added).

33. "I find that it is necessary for the State of Florida to enhance its rapid and orderly restoration and recovery from the COVID-19 emergency ***by preempting and suspending all remaining local emergency restrictions on individuals*** and businesses and to return day-to-day life back to normal everywhere in the State. … all local COVID-19 restrictions and mandates on individuals and businesses are hereby suspended." *Id*. (emphasis added).

34. "This order eliminates and supersedes any existing emergency order or ordinance issued by a county or municipality that imposes restrictions or mandates upon businesses or individuals due to the COVID-19 emergency. … For the remaining duration of the state of emergency initiated by Executive Order 20-52, no county or municipality may renew or enact an emergency order or ordinance, using a local state of emergency or using emergency enactment procedures under Chapters 125, 252, or 166, Florida Statutes, that imposes restrictions or mandates upon businesses or individuals due to the COVID-19 emergency." *Id.*

35. Several airlines also have their own signs posted at MCO demanding that passengers cover their faces in violation of the ACCA. Pl. Ex. 202.

36. **TSA & SOUTHWEST REFUSED TO LET ME BOARD MY FLIGHT EVEN THOUGH I'M FULLY VACCINATED & SUBMITTED A MEDICAL EXEMPTION:** Defendant TSA, in conjunction with Southwest Airlines, refused to let me board Flight 2204 from MCO to Fort Lauderdale (FLL) the morning of June 2. Watch my video posted to YouTube at https://bit.ly/LucasFTMM1.

37. This trip occurs solely within the state of Florida and in Florida the governor has signed an executive order prohibiting any governmental agency from requiring anyone to wear a face mask. So the FTMM is in direct violation of Florida law. I am not traveling to another state today, thus the federal government has no jurisdiction to force me to cover my face. *Id.*

38. 8:37 a.m.: My documents are in hand so let's approach the checkpoint. I reach the TSA checkpoint for Gates 70-129. TSA officer immediately hands me back my vaccination card. "Hold that, I don't need that. You need to put your mask on," he said. *Id*.

39. The TSA officer was about to hand me a mask. No, I won't wear a mask that's why I have my vaccination card. "To get in you need a mask," he told me. *Id.*

40. No, that's a violation of Florida law. I'm traveling to Fort Lauderdale. "Just wait on the side for me" the agent said, then he calls for a supervisor. *Id.*

41. A Transportation Security Administration uniformed supervisor approaches me. I tell him that I'm traveling to Fort Lauderdale. I'm not traveling in interstate commerce and I have my fully vaccinated card. "You can't go through here without a mask," he tells me. Watch my video posted to YouTube at https://bit.ly/LucasFTMM2.

42. I refuse to comply with that. I can't wear a mask because of my anxiety. "Do you have medical documentation concerning your anxiety issue that's preventing you from wearing a mask?" the supervisor asks. I don't have it with me, no. The supervisor asks me to stand by. *Id*.

43. "As a rule people with disabilities do not carry documentation of disability or a doctor's note." Pl. Ex. 143.

44. "In the nonemployment context (i.e., a customer relationship), a business generally cannot demand documentation confirming that an individual is disabled or needs a particular accommodation, so businesses may run the risk of alienating customers with disabilities, or even draw a bona fide complaint to the DOJ or a lawsuit, by requiring a showing of such proof." *Id.*

45. Defendant TSA has signs posted at its security checkpoints at MCO informing travelers of their duty to wear face masks. Pl. Ex. 203.

46. Next blue-shirt and plain-clothes TSA supervisors approach. I'm fully vaccinated and I suffer from anxiety so I can't wear a face mask. "Do you have that on your boarding pass?" I'm asked. No I

don't think so. I sent Southwest a form when I booked my ticket two days ago. "We checked with them and they don't have anything on record for you," I'm told. I have the form. Watch my video posted to YouTube at https://bit.ly/LucasFTMM2.

47. "That's something you have to take up with Southwest, but the federal mandate requires you to wear a mask in the airport," I'm told by agents of Defendant TSA. But I'm traveling solely within Florida, I'm not crossing state boundaries. "It doesn't matter," I'm told. But it does matter. The Florida governor has issued an executive order prohibiting anyone to be required to wear a face mask. Defendant TSA has to recognize disabilities that prevent wearing a face mask under the Americans with Disabilities Act and the Air Carriers Access Act. *Id.*

48. I tell TSA supervisors here I've got the passenger exemption to federal face mask requirement on Southwest Airlines form that I filed out when I booked my ticket two days ago. It looks like they've called the police over now. I've also got the state of Florida executive order banning any agency from enforcing face masks. Looks like they're having a powwow over there. There's a TSA supervisor, TSA officer, and two police officers are getting on their cellphones now. Watch my video posted to YouTube at https://bit.ly/LucasFTMM3.

49. They're saying even though I sent in the passenger application for exemption to mask mandate requirement on Southwest Airlines form that the airline hasn't placed anything special on my boarding pass to clear me through security. *Id.*

50. The situation definitely does make me anxious trying to be put through all this just to board my flight I paid for. Just patiently waiting see if they are going to bring someone from Southwest to speak with me. I submitted the form to Southwest two days ago and got an automatic notification that my form had been received but there was no other communication indicating that my exemption had been denied or anything like that. *Id.*

51. Pretty crazy this far into the pandemic and after the CDC repealed the mask guidance for fully vaccinated people May 13 to see all these people standing around covering their faces. This is quite a disruption to someone's travel. *Id.*

52. This is taking quite a long time but I am just going to stay calm and wait here patiently. Definitely aggravating to have to go through this though. A year ago this would be a nonissue. All you had to do is say "I have a medical exemption" and you'd be waived straight through. Then last summer airlines starting imposing strict requirements on mask exemptions requiring you to submit forms in advance. Some airlines illegally totally banned anyone requesting a medical exemption from covering their face from flying at all. *Id.*

53. I'm now counting 12 people who seem to be assembled for this conversation about my refusal to wear a mask through the TSA security checkpoint. Watch my video posted to YouTube at https://bit.ly/LucasFTMM4.

54. TSA enforces the FTMM but it's up to the airlines' discretion on whether to grant you the mask exemption, which kind of puts law enforcement into the hands of private companies, which is certainly something I object to. *Id*.

55. Southwest Airlines agents and a manager approach me. I tell them I have my boarding pass, my card showing I'm fully vaccinated, and the form I submitted to Southwest when I booked my ticket two days ago. I'm asked if I got a reply back. Nope, I did not. "Let's look in your reservation to see if it's been updated," a Southwest agent tells me. *Id*.

56. I also have the Florida executive order stating no one in Florida may be required to wear a face mask and my flight is to Fort Lauderdale, so I'm not traveling in interstate commerce today. "However, you are under restrictions at the airport as well as the airline," I'm told. I respond that the FTMM could only apply if I leave the state of Florida; this is the law in the state of Florida. If I were

flying to South Carolina or Texas, that might be a different scenario. This is the law in the state of Florida as of May 3. *Id.*

57. "We'll see if [your mask exemption] has been noted. Can I see the medical exemption request?" a Southwest agent asks. She tells me, "You're supposed to submit this 72 hours before your flight." But my flight was just boked two days ago, so how am I supposed to submit a form 72 hours in advance? "That's our requirement" she replied. Well that's illegal under the Air Carrier Access Act. *Id.*

58. "We're going to see if it's in there. If it's not in there, you'll have to be required to wear your mask," she says. Well I will not wear a mask because of my anxiety. It gives me panic attacks. I'm already starting to have one just based on the adversarial confrontation here. All I'm trying to do is board my flight. This makes me very upset. "We're going to check and see if it's in there," the Southwest agent replies. *Id.*

59. I told her if you call your legal department, tell them to look at I believe it's 14 CFR Part [382]. Airlines are not allowed to request an exemption in advance for any accommodation related to a disability. That is the federal regulation. I've done a lot of research on this. "I have to adhere to the policy of Southwest Airlines," she says. *Id.*

60. "Right now you have to wear a mask in the airport. You have to get past the TSA and you're not wearing a mask, and you don't have the medical exemption in [your reservation]" she says. Just be aware if you deny me boarding, I will see you in federal court. *Id.*

61. Southwest supervisor Tom Starr comes over and I'm told SW is going check about my request for mask exemption I submitted two days ago after booking my ticket. Watch my video posted to YouTube at https://bit.ly/LucasFTMM5.

62. So the issue we have here is directly related to the 10th Amendment of the Constitution. Congress does not have powers except those expressly delegated by the Constitution to it and all other

powers are reserved to the states or to the people. We have a clash here between the federal executive order by President Biden putting into place the FTMM versus the Florida executive order banning face coverings. *Id*.

63. Mr. Kappel (sp?) from Defendant GOAA greets me. He says he's been in touch with GOAA's lawyer, Mr. Gerber. Mr. Kappel (sp?) asked if I have something showing that I am medically exempt from not wearing a mask. I told him I submitted the Southwest medical exemption form and I have the card that I normally carry. *Id.*

64. "As long as you have that, you're good to go in the terminal and all the public spaces," Mr. Kappel (sp?) says. "If we can help you, let us know. We have no problem with you because you have a medical exemption." *Id.*

65. GOAA is taking the position they are going to accept my medical exemption without requiring any other documentation. That should be the policy of TSA and the airlines as well, but that is what I am going to challenge in court. *Id.*

66. A female TSA supervisor in a flowery red-and-pink blouse just came over to talk to me and see my medical exemption form. She said her boss has shown up, so I assume that's the woman in the navy suit. There are now four TSA managers who are huddling over the situation. Meanwhile we are waiting for someone from Southwest Airlines to come back over here. Watch my video posted to YouTube at https://bit.ly/LucasFTMM6.

67. 9:21 a.m.: My flight boards in nine minutes and there has been a lengthy disappearance of the Southwest Airlines agents. Earlier they told me I had to submit my medical exemption form three days in advance but I booked my ticket two days ago. She didn't answer the question as to how someone is supposed to submit a form three days in advance when the ticket is purchased two days in prior to the flight. *Id.*

68. A male agent with Southwest just came over to tell me "what we are trying to do, we are trying to expedite the approval but it has to go through our Customer Relations Department. I think they quoted you three days but it's actually a seven-day process." I booked my flight two days ago so I was asking your colleague how I'm supposed to submit a form seven days in advance when I book a ticket two days beforehand. *Id.*

69. "That's just part of the process," the Southwest agent says. "We're trying to get it expedited it but it has to go through an approval process. It's not something we can just come out and say 'he's approved.' The good thing is you have your COVID vaccination card so we did share that with them. You don't happen to have a negative test that you took three days ago?" No, I reply, there's no reason for me to take a test because I'm fully vaccinated. *Id.*

70. This is creating so much anxiety for me right now to be denied the ability to just go board my flight because of my disability and these requirements. *Id*.

71. 9:39 a.m.: After waiting here at the TSA checkpoint for exactly one hour, here comes the people from Southwest Airlines. "Unfortunately I tried to see if I could push this through, because you didn't meet the requirements, and unfortunately our company is saying now you have to wear a mask if you go through" the TSA checkpoint, an agent tells me. "Also I did want to give this [mask-exemption policy] to you because if you fly on Southwest a lot, that's the exemption …" she says. Pl. Ex. 205 and watch my video at https://bit.ly/LucasFTMM7.

72. That's unreasonable and not possible. "I'm sorry. We did try sir," she says. Watch my video posted to YouTube at https://bit.ly/LucasFTMM7.

73. "You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act." 14 CFR § 382.11 (a)(4).

74. “In providing air transportation, an air carrier … may not discriminate against an otherwise qualified individual on the following grounds: (1) the individual has a physical or mental impairment that substantially limits one or more major life activities …” 49 USC § 41705(a).

75. “Major life activities means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, ***breathing***, learning, and working.” 14 CFR § 382.3 (emphasis added).

76. Three of Defendant TSA’s supervisors I dealt with identified themselves as Carmen Shans (mustard jacket), Ms. Burgess (navy suit), and Ms. Castillo (flowery blouse). I asked for their business cards but they declined to give them to me. Watch my video posted to YouTube at https://bit.ly/LucasFTMM7.

77. Three of the Southwest Airlines agents I dealt with did give me their business cards: Carolos Dunn, manager customer service; Lisa Tibbs, assistant station manager; and Anita Norris, supervisor. Pl. Ex. 206.

78. 9:48 a.m.: I’m at the Southwest ticket counter waiting for manager Mr. Dunn to get me the names and contact information of the people at the corporate office who denied me boarding, refusing to grant my mask exemption. The employees at Southwest and TSA have been cooperative but it is outrageous to be denied boarding. Watch my video posted to YouTube at https://bit.ly/LucasFTMM8.

79. This is the sign at the Southwest check-in area indicating that “We are requiring face coverings for Customers and Employees.” Southwest doesn’t mention anything on the sign about exemptions for people with disabilities who can’t tolerate wearing a face mask. Right now I’m waiting for a final contact for the person at Southwest headquarters in Dallas who refused to let me board my fight without a mask (her name is Melissa Dalton at the office of ground operations standards). *Id*.

80. It wasn't until the next day (June 3) that I received another reply from Southwest regarding the two mask-exemption forms I had submitted May 31. These e-mails state, "Due to the nature of your issue, we are forwarding your email to our Customer Relations Department for further review. ***You should expect a response to your concern within 30 days*** …" Pl. Ex. 207 (emphasis added).

81. **LYNX REFUSED TO LET ME BOARD A BUS IN VIOLATION OF FLORIDA LAW:** 11:03 a.m.: Here's the bus stops for LYNX, the city bus system run by the Central Florida Regional Transportation Authority. Each bus has a sign near the front door indicating a face mask is mandatory even though this is prohibited by Florida law. Watch my video posted to YouTube at https://bit.ly/LucasFTMM9.

82. I board Route 11 to downtown Orlando. I ask the driver what happens if I refuse to wear a mask? "You won't come into the bus sir," he replies. Even though I'm fully vaccinated? I ask. "We're all vaccinated. I'm vaccinated too." *Id.*

83. They still make you wear a muzzle? "Yes. You gotta deal with TSA. You don't want me to call TSA," the driver responds. So you won't allow me on the bus or you'll call TSA? "Yeah." *Id.*

84. Thank you very much. I'm going to be suing LYNX over this matter. You can let your supervisor and your lawyer know. *Id.*

85. So I was denied boarding of LYNX Bus 11 to the LYNX Central Station due to their illegal face-mask policy and the driver threatened to call the TSA if I refused to comply. *Id.*

86. Defendant LYNX has a Riders' Code of Conduct, which was last updated March 15, 2011: "[C]ustomers also have the responsibility to themselves and others to ensure that everyone has a safe and secure trip by refraining from inappropriate behavior/conduct, threats, violence and/or any activities that may provoke violence. Public safety and security is everyone's responsibility." Pl. Ex. 59.

87. Defendant LYNX (Central Florida Regional Transportation Authority) Board of Directors formally adopted the Riders' Code of Conduct. It has not been revised in a decade. *Id.*

88. Defendant LYNX's Riders' Code of Conduct does not include any requirement that passengers wear face masks. The only requirement concerning what must be worn on a person's body is: "2.2 Riders must wear appropriate clothing (shirt and shoes) while riding. Riders wearing clothing with offensive or obscene pictures or sayings will be asked to cover or remove these articles of clothing." *Id.*

89. In response to the FTMM, Defendant LYNX posted a statement on its website April 24, 2021: "We are mandating the use of masks or face coverings on all LYNX buses and facilities. Face masks are being provided free of charge to riders at the LYNX Central Station terminal window (while supplies last). … Wear a Mask or Face Covering over your nose and mouth when boarding a LYNX vehicle and out in public to help slow the spread of COVID-19. Face masks or coverings are mandatory to ride our buses." Pl. Ex. 60.

90. Defendant LYNX's website statement is in violation of Florida law as of Gov. DeSantis' May 3 Executive Order, and the policy has no effect anyway since it has not been formally adopted by the authority's Board of Directors into the Riders' Code of Conduct.

91. No information was found on LYNX's website regarding how a disabled person can request an exemption from the FTMM.

92. **PANDEMIC DECLARATIONS:** Jan. 30, 2020: The World Health Organization ("WHO") declared that COVID-19 constituted a Public Health Emergency of International Concern. Pl. Ex. 1.

93. Jan. 31, 2020: The secretary of Defendant HHS declared COVID-19 to be a public-health emergency in the United States under § 319 of the Public Health Service Act. *Id.* Section 319 authorizes the secretary to determine that a public-health emergency exists. This determination triggers emergency powers that permit the federal government to engage in activities such as assisting

state and local governments, suspending or modifying certain legal requirements, and expending available funds to address the public health emergency. 42 U.S.C. § 247(d).

94. A § 319 determination remains in effect for 90 days or until the secretary determines that the emergency no longer exists, whichever occurs first. If the same or additional conditions continue to warrant a public-health emergency, the secretary may renew the determination for additional 90-day periods. Pl. Ex. 1.

95. The Public Health Emergency Declaration for COVID-19 has been renewed April 21, 2020; July 23, 2020; Oct. 2, 2020; Jan. 7, 2021; and April 15, 2021 (effective April 21). Pl. Ex. 12. Per the 90-day limit, the current emergency declaration expires July 20, 2021 (however it appears Defendant DHS can extend it indefinitely so long as it believes COVID-19 presents a public-health emergency).

96. March 11, 2020: WHO characterized the outbreak of COVID-19 as a pandemic. *Id.*

97. March 13, 2020: Then-President Donald Trump declared a national emergency concerning the COVID-19 outbreak. *Id.*

98. **INTERNATIONAL TRAVELER TESTING REQUIREMENT:** Without providing public notice or soliciting comment, on Jan. 12, 2021, Defendant CDC announced an Order (the ITTR) requiring all air passengers arriving to the United States from a foreign country to get tested no more than three days before their flight departs and to present the negative result or documentation of having recovered from COVID-19 to the airline before boarding the flight. Air passengers will also be required to confirm that the information they present is true in the form of an attestation. Pl. Ex. 2. This Order was issued in the waning days of the Trump Administration.

99. The day after taking office (Jan. 21, 2021), Defendant President Joseph Biden issued "Executive Order Promoting COVID-19 Safety in Domestic & International Travel." E.O. 13998, 86 Fed. Reg. 7205 (Jan. 26, 2021). This Executive Order directed the ITTR be continued. Pl. Ex. 6.

100. "It is the policy of my Administration that, to the extent feasible, travelers seeking to enter the United States from a foreign country shall be: (i) required to produce proof of a recent negative COVID-19 test prior to entry …" *Id*.

101. The ITTR took effect Jan. 26, 2021. *Id*.

102. CDC updated the ITTR on its effective date (Jan. 26): "Requirement for Negative Pre-Departure COVID–19 Test Result or Documentation of Recovery From COVID-19 for all Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country." 86 Fed. Reg. 7,387 (Jan. 28, 2021). "This Order supersedes the previous order signed by the U.S. Centers for Disease Control and Prevention (CDC) Director on January 12, 2021." Pl. Ex. 3.

103. Authority cited by CDC for issuing the ITTR are §§ 361 and 365 of the Public Health Service Act (42 USC § 264) and 42 CFR §§ 71.20 & 71.31(b). But the "Summary" section begins only by citing "Pursuant to 42 CFR 71.20," and later in the Summary, the order states: "Pursuant to 42 CFR 71.31(b) …" *Id.*

104. "This Order prohibits the introduction into the United States of any aircraft passenger departing from any foreign country unless the passenger: (1) Has a negative pre-departure test result for SARS-CoV-2, the virus that causes COVID–19 (Qualifying Test); or (2) written or electronic documentation of recovery from COVID-19 after previous SARS–CoV–2 infection in the form of a positive viral test result and a letter from a licensed health care provider or public health official stating that the passenger has been cleared for travel." *Id.*

105. "Statement of Intent: This Order shall be interpreted and implemented to achieve the following paramount objectives: • Preservation of human life; • Preventing the further introduction, transmission, and spread of the virus that causes COVID–19 into the United States, including new virus variants; • Preserving the health and safety of crew members, passengers, airport personnel,

and communities; and Preserving hospital, healthcare, and emergency response resources within the United States." *Id.*

106. "The following categories of individuals and organizations are exempt from the requirements of this Order: • Crew members of airlines or other aircraft operators provided that they follow industry standard protocols for the prevention of COVID–19 as set forth in relevant Safety Alerts for Operators (SAFOs) issued by the Federal Aviation Administration (FAA). • Airlines or other aircraft operators transporting passengers with COVID–19 pursuant to CDC authorization and in accordance with CDC guidance. • Federal law enforcement personnel on official orders who are traveling for the purpose of carrying out a law enforcement function, provided they are covered under an occupational health and safety program in accordance with CDC guidance. Those traveling for training or other business purposes remain subject to the requirements of this Order. • U.S. Department of Defense (DOD) personnel, including military personnel and civilian employees, dependents, contractors (including whole aircraft charter operators), and other U.S. government employees when traveling on DOD assets, provided that such individuals are under competent military or U.S. government travel orders and observing DOD precautions to prevent the transmission of COVID–19 as set forth in Force Protection Guidance Supplement 14 – Department of Defense Guidance for Personnel Traveling During the Coronavirus Disease 2019 Pandemic (December 29, 2020) including its testing guidance." *Id*.

107. "Background: The COVID–19 pandemic has spread throughout the world. Individuals who travel may be at risk for exposure to SARS–CoV–2 before, during, and after travel. This could result in U.S.-bound travelers further spreading the virus to others during travel, upon arrival in the United States, and at their destinations. Over the last few weeks, the United Kingdom (UK) has faced a rapid increase in COVID–19 cases in South East England, leading to enhanced epidemiological and virological investigations." *Id*.

108. “A second new variant of SARS–CoV–2 was reported in the Republic of South Africa (RSA) on December 18, 2020 …” *Id.*

109. “On December 25, 2020, CDC issued an Order requiring proof of a negative Qualifying Test result for all airline passengers arriving from the UK to the United States. Since then, cases of the UK and RSA variants have been discovered in four Canadian provinces, including in individuals with no travel history, indicating spread in Canada.” *Id.*

110. “The first case of the UK variant in the United States was found in Colorado on December 29, in an individual with no known travel history. On December 30, a second case was reported in California. Since then, the UK variant strain has accounted for 144 cases in 20 U.S. states.” *Id.*

111. “[T]hese new variants have emerged at a time when numbers of new cases in the United States have continued to increase at alarming rates. … Accordingly, further action is needed to help mitigate the spread of these and other new virus variants into the United States.” *Id.*

112. “[E]xpanding current UK pre-departure testing requirements to all foreign countries and U.S.-bound passengers is warranted.” *Id*.

113. “Pre-departure testing does not eliminate all risk.” *Id.*

114. “I hereby determine that passengers covered by this Order are at risk of transmitting the new SARS-CoV-2 virus variants or other potential variants and that requiring such passengers to demonstrate either negative COVID-19 test results or recovery from COVID-19 after previous SARS-CoV-2 infection is needed as a public health measure to protect the health of fellow travelers and U.S. communities.” *Id*.

115. “Any passenger who fails to comply with the requirements of section 2, ‘Requirements for Aircraft Passengers,’ may be subject to criminal penalties under, inter alia, 42 U.S.C. 271 and 42 CFR71.2, in conjunction with 18 U.S.C. 3559 and 3571.” *Id.*

116. "CDC may modify this Order by an updated publication in the Federal Register or by posting an advisory to follow at www.cdc.gov." *Id.*

117. "This Order shall … remain in effect until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID–19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) December 31, 2021." *Id.*

118. The Order was signed in the Federal Register by Sherri Berger, CDC's acting chief of staff. *Id.*

119. Before checking in for an international flight to the United States, CDC requires travelers to complete a "Passenger Disclosure & Attestation to the United States of America" form. All airlines must provide the disclosure to their passengers and collect the attestation prior to embarkation. Pl. Ex. 4.

120. "[A]ll airlines or other aircraft operators must confirm either a negative COVID-19 test result or recovery from COVID-19 and clearance to travel and collect a passenger attestation on behalf of the U.S. Centers for Disease Control and Prevention (CDC) for certain passengers on aircraft departing from a foreign country and arriving in the United States. Each individual 2 years of age or older must provide a separate attestation." *Id*.

121. "Failure to provide this attestation, or submitting false or misleading information, could result in delay of travel, denial of boarding, denial of boarding on future travel, or put the passenger or other individuals at risk of harm, including serious bodily injury or death. Any passenger who fails to comply with these requirements may be subject to criminal penalties under, among others, 42 U.S.C. § 271 and 42 C.F.R. § 71.2, in conjunction with 18 U.S.C. §§ 3559 and 3571." *Id.*

122. "Privacy Act Statement: The United States Centers for Disease Control and Prevention (CDC) requires airlines and other aircraft operators to collect this information pursuant to 42 C.F.R. §§ 71.20 and 71.31(b), as authorized by 42 U.S.C. § 264. Providing this information is mandatory for

all passengers arriving by aircraft into the United States. Failure to provide this information may prevent you from boarding the plane." *Id.*

123. "Public reporting burden of this collection of information is estimated to average 2 hours per response …" Pl. Ex. 5.

124. "CDC will use this information to help prevent the introduction, transmission, and spread of communicable diseases by performing contact tracing investigations and notifying exposed individuals and public health authorities; and for health education, treatment, prophylaxis, or other appropriate public health interventions, including the implementation of travel restrictions." *Id.*

125. "International travel poses additional risks and even fully vaccinated travelers are at increased risk for getting and possibly spreading new COVID-19 variants." Pl. Ex. 2.

126. "Does this Order apply to land border crossings? No, the requirements of this Order only apply to air travel into the US." *Id.*

127. "[A]ll air passengers traveling to the US***, regardless of vaccination or antibody status***, are required to provide a negative COVID-19 test result or documentation of recovery. … If a passenger chooses not to present a test result or documentation of recovery, the airline must deny boarding to the passenger." *Id.* (emphasis added).

128. If the country where a passenger bound for the United States does not have sufficient availability of COVID-19 testing wherein results can be delivered within three days, "Travelers may need to consider a routing change to a different country or city in order to meet the testing requirement." *Id.*

129. Passengers who are only connecting in the United States from one country to a third country are subject to the ITTR, even though they will only be in the USA for a few hours: "If I am connecting through the US to another country, do I still need to get tested? Yes. Any flight entering the US, even for a connection, will require testing before departure." *Id.*

130. If a passenger's flight to the United States is delayed/rescheduled more than 48 hours past the three-day limit, then he/she will need to be retested. *Id.*

131. "Do I need to get a test before leaving the US? At this time, CDC does not have a testing requirement for outbound travelers …" *Id.*

132. The ITTR imposes significant financial and time burdens on international travelers: "CDC does not reimburse and is unable to help travelers get reimbursements for travel expenses as a result of canceled or delayed travel because of COVID-19 or testing requirements for air passengers flying to the US. ... CDC is not able to reimburse travelers for COVID-19 testing fees." *Id.*

133. "DOD whole aircraft contract charter operators are also exempt from the requirements of CDC's order when transporting DOD personnel including military personnel and civilian employees, dependents, other US Government employees, and contractors traveling under competent orders …" *Id.*

134. **MASK MANDATE FOR FEDERAL BUILDINGS & LANDS:** The day he was inaugurated (Jan. 20, 2021), Defendant Biden issued "Executive Order on Protecting the Federal Workforce & Requiring Mask-Wearing." E.O. 13991. Pl. Ex. 7.

135. "[O}n-duty or on-site Federal employees, on-site Federal contractors, and other individuals in Federal buildings and on Federal lands should all wear masks, maintain physical distance, and adhere to other public health measures, as provided in CDC guidelines." *Id.*

136. That mask mandate was lifted shortly after Defendant CDC issued new guidance May 13, 2021, that vaccinated Americans do not need to wear masks indoors or outdoors: "The federal government is lifting mask requirements for vaccinated people in its buildings and in national parks following last week's guidance from the Centers for Disease Control and Prevention (CDC). A notice from the Office of Management and Budget (OMB) sent to all federal government agencies lifts the mask requirement for anyone two weeks post-vaccine. It's [a] change not only for

the nation's more than 2 million federal workers but any contractor or visitor to a federal facility, including post offices and at the country's more than 400 national parks. 'If you are fully vaccinated (at least 2 weeks past your final dose), you are no longer required to wear a mask,' OMB wrote in the memo." Pl. Ex. 8.

137. "The announcement was one of the first major updates to an executive order President Biden Joe Biden signed on Inauguration Day that required federal employees to wear masks. The order says agencies should be in 'compliance with CDC guidelines.' The move has had ramifications beyond the civilian federal workforce. The Department of Defense announced Friday that vaccinated personnel would no longer have to wear masks, lifting the requirement for more than 600,000 service members and 250,000 civilian employees." *Id.*

138. The repeal of Defendant Biden's E.O. 13991 leaves the FTMM as the administration's only requirement that Americans wear a face covering. "'The executive order requires compliance with CDC guidelines on masking and other measures to prevent the spread of COVID-19, and that includes the new guidance issued last week,' an OMB official told Government Executive on Monday. … When asked about any changes to the federal transportation mask mandate, [White House Press Secretary Jen Psaki] said she did not have any updates, but said, 'We'll continue to look to them for guidance on what is safe on an airplane or a train or anything like that.' The White House loosened its own mask requirements last week." Pl. Ex. 9.

139. **FEDERAL TRANSPORTATION MASK MANDATE, PRESIDENTIAL ACTION:** The day after taking office (Jan. 21, 2021), Defendant Biden issued "Executive Order Promoting COVID-19 Safety in Domestic & International Travel." E.O. 13998, 86 Fed. Reg. 7205 (Jan. 26, 2021). This executive order set in motion the Federal Transportation Mask Mandate issued by Defendants CDC, HHS, TSA, DHS, and DOT. Pl. Ex. 6.

140. It "is the policy of my Administration to implement these public health measures ***consistent with CDC guidelines*** on public modes of transportation and at ports of entry to the United States." … Heads of agencies "shall immediately take action, to the extent appropriate and ***consistent with applicable law, to require masks to be worn in compliance with CDC guidelines*** in or on: (i) airports; (ii) commercial aircraft; (iii) trains; (iv) public maritime vessels, including ferries; (v) intercity bus services; and (vi) all forms of public transportation as defined in section 5302 of title 49, United States Code." *Id.* (emphasis added).

141. "To the extent permitted by applicable law, the heads of agencies shall ensure that any action taken to implement this section does not preempt State, local, Tribal, and territorial laws or rules …" *Id.*

142. Defendant Biden's action marked an abrupt change of policy from the former administration. Defendant DOT "in October [2020] rejected a petition to require masks on airplanes, subways, and other forms of transportation, with Secretary Elaine Chao's general counsel saying the department 'embraces the notion that there should be no more regulations than necessary.'" Pl. Ex. 91.

143. "The nation's aviation regulator has deferred to airlines on masks, with Federal Aviation Administration chief Stephen Dickson telling senators at a June hearing 'we do not plan to provide an enforcement specifically on that issue.' Such matters are more appropriately left to federal health authorities, Dickson argued. 'As Secretary Chao has said, we believe that our space is in aviation safety, and their space is in public health,' Dickson said, referring to the CDC and other health officials." *Id*.

144. "The White House also blocked a nationwide order, drafted by the CDC, that would have required masks on all forms of public transportation." *Id*.

145. **FTMM, DHS ACTION:** To carry out E.O. 13998, Defendant DHS issued Determination 21-130 on Jan. 27, 2021, signed by David Pekoske, acting secretary of homeland security: "Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using & Employed by the Transportation System." Pl. Ex. 10.

146. Defendant DHS claims that it possesses authority 49 USC § 114(g) to determine that a national emergency exists. Pekoske directed Defendant TSA "to take actions consistent with the authorities in ATSA as codified at 49 U.S.C. sections 106(m) and 114(f), (g), (l), and (m) to implement the Executive Order to promote safety in and secure the transportation system." *Id.*

147. "This includes supporting the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system, to the extent appropriate and consistent with applicable law. I specifically direct the Transportation Security Administration to use its authority to accept the services of, provide services to, or otherwise cooperate with other federal agencies, including through the implementation of countermeasures with appropriate departments, agencies, and instrumentalities of the United States in order to address a threat to transportation, recognizing that such threat may involve passenger and employee safety." *Id.*

148. **FTMM, CDC ACTION:** Without providing public notice or soliciting comment, Defendant CDC – an agency within Defendant HHS – issued an Order "Requirement for Persons To Wear Masks While on Conveyances & at Transportation Hubs" on Feb. 1, 2020, effective immediately. 86 Fed. Reg. 8,025 (Feb. 3, 2021). The Federal Register Order was signed by Sherri Berger, Defendant CDC's acting chief of staff. Pl. Ex. 11.

149. Defendant CDC "announces an Agency Order requiring persons to wear masks over the mouth and nose when traveling on any conveyance (e.g., airplanes, trains, subways, buses, taxis, ride-

shares, ferries, ships, trolleys, and cable cars) into or within the United States. A person must also wear a mask on any conveyance departing from the United States until the conveyance reaches its foreign destination. Additionally, a person must wear a mask while at any transportation hub within the United States (e.g., airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation within the United States). Furthermore, operators of conveyances and transportation hubs must use best efforts to ensure that persons wear masks as required by this Order." *Id.*

150. Defendant CDC asserts the FTMM is required to "mitigate the further introduction, transmission, and spread of COVID–19 into the United States and from one state or territory into any other state or territory …" *Id.*

151. "This Order will remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists." *Id.*

152. The current Public Health Emergency Declaration by Defendant HHS' secretary expires July 20, 2021 (however it appears Defendant DHS can extend it indefinitely so long as it believes COVID-19 presents a public-health emergency). Pl. Ex. 12.

153. As authority for the FTMM, Defendant CDC invoked § 361 of the Public Health Service Act (42 USC § 264) and CDC regulations implementing that statute (42 CFR §§ 70.2, 71.31(b), and 71.32(b)), but CDC provided no analysis of this authority in the FTMM Order. Pl. Ex. 11.

154. Section 361 authorizes Defendant CDC to promulgate regulations to "prevent the introduction, transmission, or spread of communicable diseases" into the United States or among the states. 42 U.S.C. § 264(a). The next sentence permits CDC to "provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be

so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in [its] judgment may be necessary." *Id.*

155. Defendant CDC's regulation implementing § 361 permits the agency's director, upon "determin[ation] that the measures taken by health authorities of any State or possession … are insufficient to prevent the spread of any of the communicable diseases," to "take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection." 42 C.F.R. § 70.2.

156. Defendant CDC's FTMM Order did not contain the required determination that the measures taken by health authorities of any ***specific*** state or possession are insufficient to prevent the spread of any communicable diseases. It only issued a broad generalized claim – without supporting evidence – that "Any state or territory without sufficient mask-wearing requirements for transportation systems within its jurisdiction has not taken adequate measures to prevent the spread of COVID–19 from such state or territory to any other state or territory." Pl. Ex. 11.

157. Defendant CDC's FTMM Order requires that: "(1) Persons must wear masks over the mouth and nose when traveling on conveyances into and within the United States. Persons must also wear masks at transportation hubs as defined in this Order. (2) A conveyance operator transporting persons into and within the United States must require all persons onboard to wear masks for the duration of travel. … (4) Conveyance operators must use best efforts to ensure that any person on the conveyance wears a mask when boarding, disembarking, and for the duration of travel. Best efforts include: • Boarding only those persons who wear masks; • instructing persons that Federal law requires wearing a mask on the conveyance and failure to comply constitutes a violation of Federal law; • monitoring persons onboard the conveyance for anyone who is not wearing a mask and seeking compliance from such persons; • at the earliest opportunity, disembarking

any person who refuses to comply … (5) Operators of transportation hubs must use best efforts to ensure that any person entering or on the premises of the transportation hub wears a mask. *Id.*

158. Defendant CDC's FTMM Order defines "interstate traffic" as having "the same definition as under 42 CFR 70.1, meaning ''(1): (i) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation that is entirely within a state or possession— (ii) From a point of origin in any state or possession to a point of destination in any other state or possession …" *Id.*

159. However, Defendant CDC's FTMM Order also applies to wholly intrastate transportation, including taking a rideshare, city bus, subway, or other mode of transit less than one mile – or even just sitting alone at a city bus stop or train station reading a newspaper or talking on a cellphone without any intent to travel. *Id*.

160. Strangely Defendant CDC's FTMM Order applies to "rideshares [such as app-based services including Uber and Lyft] meaning arrangements where passengers travel in a privately owned road vehicle driven by its owner in connection with a fee or service," but not to taxis, car services, limousines, etc. *Id.*

161. "Transportation hub means any airport, bus terminal, marina, seaport or other port, subway station, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States." *Id.*

162. "This Order exempts the following categories of persons: • A child under the age of 2 years; • A person with a disability who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act … This is a narrow exception that

includes a person with a disability who cannot wear a mask for reasons related to the disability." *Id.*

163. "Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask." *Id.*

164. "Operators of conveyances or transportation hubs may impose requirements, or conditions for carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the operator, as well as require evidence that the person does not have COVID–19 such as a negative result from a SARS–CoV–2 viral test or documentation of recovery from COVID–19. … Operators may further require that persons seeking exemption from the requirement to wear a mask ***request an accommodation in advance***." *Id.* (emphasis added).

165. Defendant CDC's FTMM Order is in direct conflict with the ACCA (49 USC § 41705) and the regulations promulgated thereunder. For example, "May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight? As a carrier, ***you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight***." 14 CFR § 382.25 (emphasis added).

166. Defendant CDC's FTMM Order is in direct conflict with numerous other regulations promulgated by Defendant DOT, who has thus far neglected its duty to enforce the ACCA. *See* 14 CFR Part 382 for an extensive list of ACCA requirements.

167. Defendant CDC's FTMM Order is so broad it even applies to "Commercial motor vehicles or trucks as these terms are defined in 49 CFR 390.5, unless the driver is the sole occupant of the vehicle or truck …" Pl. Ex. 11. Thus the Order applies to a delivery truck transporting locally made goods within a city with two fully vaccinated employees having no nexus to interstate commerce.

168. "This Order applies to persons on conveyances and at transportation hubs directly operated by U.S. state, local, territorial, or tribal government authorities, as well as the operators themselves. U.S. state, local, territorial, or tribal government authorities directly operating conveyances and transportation hubs may be subject to additional federal authorities or actions, and are encouraged to implement additional measures enforcing the provisions of this Order regarding persons traveling onboard conveyances and at transportation hubs operated by these government entities." *Id.*

169. Defendant CDC's FTMM Order makes numerous false claims about the effectiveness of face coverings including that "Masks help prevent people who have COVID–19, including those who are presymptomatic or asymptomatic, from spreading the virus to others. … Masks also provide personal protection to the wearer by reducing inhalation of these droplets, i.e., they reduce wearers' exposure through filtration. … Appropriately worn masks reduce the spread of COVID–19 – particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID-19. … Requiring a properly worn mask is a reasonable and necessary measure to prevent the introduction, transmission, and spread of COVID–19 into the United States and among the states and territories under 42 U.S.C. 264(a) and 42 CFR 71.32(b)." *Id.*

170. "Individuals traveling into or departing from the United States, traveling interstate, ***or traveling entirely intrastate***, conveyance operators that transport such individuals, and transportation hub operators that facilitate such transportation, must comply with the mask-wearing requirements set forth in this Order." *Id*. (emphasis added).

171. Defendant CDC's FTMM Order makes false claims about vaccines against COVID-19 available in the United States and ignores the science showing that people who have recovered from coronavirus have long-lasting natural immunity: "While vaccines are highly effective at preventing severe or symptomatic COVID–19, at this time ***there is limited information on how much the available COVID–19 vaccines may reduce transmission in the general population and how long protection lasts***. ***Therefore, this mask requirement***, as well as CDC recommendations to prevent spread of COVID–19, ***additionally apply to vaccinated persons***. Similarly, CDC recommends that people who have recovered from COVID–19 continue to take precautions to protect themselves and others, including wearing masks; therefore, ***this mask requirement also applies to people who have recovered from COVID–19.***" *Id.* (emphasis added).

172. "To address the COVID-19 public health threat to transportation security, this Order shall be enforced by the Transportation Security Administration under appropriate statutory and regulatory authorities including the provisions of 49 U.S.C. 106, 114, 44902, 44903, and 46301; and 49 CFR part 1503, 1540.105, 1542.303, 1544.305 and 1546.105." *Id.*

173. Defendant CDC's FTMM Order does not cite any authority whereby it may delegate its statutory authority to another governmental agency. *Id.*

174. On its website, Defendant CDC falsely claims that "Most people, including those with disabilities, can tolerate and safely wear a mask ..." Pl. Ex. 13.

175. Defendant CDC's FTMM Order even applies to school buses, which rarely ever cross state lines, in direct contradiction to the policies of numerous states that forbid school districts from requiring that students be muzzled: "passengers and drivers on school buses must wear a mask, including on buses operated by public and private school systems …" Pl. Ex. 14.

176. Defendant CDC's FTMM Order applies outdoors even though there is no scientific evidence that COVID-19 is easily transmissible outside: "A transportation hub is any location, indoors or outdoors, where people await, board, or disembark public transportation conveyances." *Id.*

177. Defendant CDC's FTMM Order regulates not only travelers, but all employees working in the transportation sector – most of whom never cross state lines: "Employees must wear a mask while on the premises of a transportation hub unless they are only person in the work area, such as might occur in private offices, private hangars at airports, or in railroad yards." *Id.*

178. Defendant CDC's FTMM Order applies to foreign-flagged ships traveling in international waters beyond the jurisdiction of the United States: "Yes, the mask order applies to all persons traveling on commercial maritime conveyances into, within, or out of the United States and to all persons at U.S. seaports. The term commercial maritime conveyance means all forms of commercial maritime vessels, including but not limited to cargo ships, fishing vessels, research vessels, self-propelled barges, and all forms of passenger carrying vessels including ferries, river cruise ships, and those chartered for fishing trips, unless otherwise exempted." *Id.*

179. Defendant CDC's FTMM Order is so broad it appears to require passengers on ferries, cruiseships, and long-distance trains to wear masks even within their own private cabins, completely segregated from other people. *Id*.

180. **FTMM, TSA ACTION:** Based on Defendant CDC's questionable delegation of its authority, Defendant TSA issued three security directives and one emergency amendment Feb. 1, 2021, to transportation operators requiring them to vigorously enforce Defendant CDC's FTMM. These four orders were effective until May 11, 2021.

181. SD 1542-21-01 "Security Measures – Mask Requirements" was issued to airport operators. Pl. Ex. 15.

182. SD 1544-21-02 "Security Measures – Mask Requirements" was issued to aircraft operators. Pl. Ex. 16.

183. EA 1546-21-01 "Security Measures – Mask Requirements" was issued to foreign air carriers for all flights to, from, or within the United States. Pl. Ex. 17.

184. SD 1582/84-21-01 "Security Measures – Mask Requirements" was issued to operators of passenger railroads, intercity bus services, and public transportation. Pl. Ex. 18.

185. When Defendant TSA's FTMM security directives and emergency amendment expired May 11, the administration extended their effective date from May 12 to Sept. 13, 2021. These are the SD's and EA currently in effect. All four extensions were signed by Darby LaJoye, senior official performing the duties of the TSA administrator.

186. SD 1542-21-01A "Security Measures – Mask Requirements" was issued to airport operators, including Defendant GOAA, which operates Orlando International Airport. Pl. Ex. 19.

187. Defendant TSA claims statutory authority for its FTMM comes from 49 USC §§ 114 & 44903 as well as 49 CFR §§ 1542.303. *Id.*

188. "TSA is issuing this SD requiring masks to be worn to mitigate the spread of COVID-19 during air travel. TSA developed these requirements in consultation with [Defendant DOT's] Federal Aviation Administration and CDC. The requirements in this directive apply to all individuals, ***including those already vaccinated***." *Id.* (emphasis added).

189. "[A]irport operator[s] must apply the following measures: A. The airport operator must make best efforts to provide individuals with prominent and adequate notice of the mask requirements to facilitate awareness and compliance. This notice must also inform individuals of the following: 1. Federal law requires wearing a mask at all times in and on the airport and failure to comply may result in removal and denial of re-entry. 2. Refusing to wear a mask in or on the airport is a viola-

tion of federal law; individuals may be subject to penalties under federal law. B. The airport operator must require that individuals in or on the airport wear a mask … If individuals are not wearing masks, ask them to put a mask on. 2. If individuals refuse to wear a mask in or on the airport, escort them from the airport. C. The airport operator must ensure direct employees, authorized representatives, tenants, and vendors wear a mask at all times in or on the airport …" *Id.*

190. "If an individual refuses to comply with mask requirements, follow incident reporting procedures in accordance with the Airport Security Program and provide the following information, if available: 1. Date and airport code; 2. Individual's full name and contact information; 3. Name and contact information for any direct airport employees or authorized representatives involved in the incident; and 4. The circumstances related to the refusal to comply." *Id*.

191. Defendant TSA sent signs to airport operators and demanded they display them throughout every airport across America, overturning the no-mask policies in place in the vast majority of states. Pl. Ex. 23.

192. SD 1544-21-02A "Security Measures – Mask Requirements" was issued to aircraft operators requiring them to apply this SD to "all persons onboard a commercial aircraft operated by a U.S. aircraft operator, including passengers and crewmembers, ***including those already vaccinated***." Pl. Ex. 20 (emphasis added).

193. "ACTIONS REQUIRED: A. The aircraft operator must provide passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance. At a minimum, this notice must inform passengers, at or before check-in and as a pre-flight announcement, of the following: 1. Federal law requires each person to wear a mask at all times throughout the flight, including during boarding and deplaning. 2. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law. … B. The aircraft operator must not board any person who is not wearing a mask … C. The

aircraft operator must ensure that direct employees and authorized representatives wear a mask at all times while on an aircraft or in an airport location under the control of the aircraft operator …" *Id.*

194. "Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips." *Id.*

195. "Aircraft operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the air craft operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-Co V-2 viral test or documentation of recovery from COVID-19." *Id.* These requirements violate the ACCA.

196. "Aircraft operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. ***Aircraft operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.***" *Id.* (emphasis added).

197. Defendant TSA's FTMM is in direct conflict with the ACCA (49 USC § 41705) and the regulations promulgated thereunder. For example, "May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight? As a carrier, ***you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight***." 14 CFR § 382.25 (emphasis added).

198. Defendant TSA's FTMM is in direct conflict with numerous other regulations promulgated by Defendant DOT, who has thus far neglected its duty to enforce the ACCA. *See* 14 CFR Part 382 for an extensive list of ACCA requirements.

199. "If a passenger refuses to comply with an instruction given by a crew member with respect to wearing a mask, the aircraft operator must: 1. Make best efforts to disembark the person who refuses to comply as soon as practicable; and 2. Follow incident reporting procedures in accordance with its TSA-approved standard security program and provide the following information, if available: a. Date and flight number; b. Passenger's full name and contact information; c. Passenger's seat number on the flight; d. Name and contact information for any crew members involved in the incident; and e. The circumstances related to the refusal to comply." Pl. Ex. 20.

200. EA 1546-21-01A "Security Measures – Mask Requirements" was issued to foreign air carriers for all flights to, from, or within the United States. It requires foreign airlines to apply the EA to "to all persons onboard a commercial aircraft operated by a foreign air carrier, including passengers and crewmembers, ***and those already vaccinated***." Pl. Ex. 21 (emphasis added).

201. The actions required of foreign airlines are similar to those required of U.S. airlines. *Id*.

202. SD 1582/84-21-01A "Security Measures – Mask Requirements" was issued to owners and operators of public-transportation vehicles "identified in 49 CFR 1582.1(a); each owner/operator identified in 49 CFR 1584.1 that provides fixed-route service as defined in 49 CFR 1500.3." Pl. Ex. 22.

203. "The requirements in this SD must be applied to all persons in or on one of the conveyances or a transportation facility used by one of the modes identified above, ***including those already vaccinated***. TSA developed these requirements in consultation with the Department of Transportation (including the Federal Railroad Administration, the Federal Transit Administration, and the Federal Motor Carrier Safety Administration) and the CDC." *Id.* (emphasis added).

204. “For the purpose of this SD, the following definitions apply: Conveyance has the same definition as under 42 CFR 70.1, meaning "an aircraft, train, road vehicle, vessel .. or other means of transport, including military. … Transportation hub/facility means any airport, bus terminal, marina, seaport or other port, subway stations, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.” *Id.*

205. The actions required of public-transportation operators are similar to those required of airports and airlines. *Id*.

206. Defendant TSA’s security directive’s requirements are so onerous they apply to people who are not traveling interstate, employees working at facilities and on conveyances that only serve intrastate travelers, people at a transportation hub for purposes other than traveling interstate (i.e. buying tickets for future travel, waiting on a train platform for a family member to arrive, etc.), and so on. *Id.*

207. “If an individual's refusal to comply with the mask requirement constitutes a significant security concern, the owner/operator must report the incident to the Transportation Security Operations Center (TSOC) at 1-866-615-5150 or 1-703-563-3240 …” *Id.*

208. In update to a press release posted on its website, Defendant TSA announced: “Regarding the civil penalty fine structure for individuals who violate the Security Directive, TSA will recommend a fine ranging from $250 for the first offense up to $1,500 for repeat offenders. Based on substantial aggravating or mitigating factors, TSA may seek a sanction amount that falls outside these ranges. TSA has provided transportation system operators specific guidance on how to report violations so that TSA may issue penalties to those who refuse to wear a face mask.” Pl. Ex. 24. Promulgating a fine structure by press release is hardly the type of notice-and-comment rulemaking Congress had in mind then it adopted the APA.

209. “Passengers who refuse to wear a mask will not be permitted to enter the secure area of the airport, which includes the terminal and gate area. Depending on the circumstance, those who refuse to wear a mask may be subject to a civil penalty for attempting to circumvent screening requirements, interfering with screening personnel, or a combination of those offenses.” *Id.*

210. Despite Defendant CDC amending its guidance May 13, 2021, to advise that no American who is vaccinated needs to wear a face covering, Defendants CDC, TSA, and DOT issued a joint statement May 14, 2021, titled “Mask Mandate On Public Transportation Remains in Effect.” Pl. Ex. 25.

211. Federal Defendants issued a contradictory statement reminding “the traveling public that at this time if you travel, you are still required to wear a mask on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States, and in U.S. transportation hubs such as airports and stations. ***CDC guidance is clear that fully vaccinated people are safe to travel and can resume travel***.” *Id*. Yet despite this guidance from Defendant CDC, the announcement did mention repealing the FTMM for vaccinated travelers and transportation industry employees.

212. **FTMM, DOT ACTIONS:** Defendant DOT has also acted illegally and unconstitutionally to enforce the FTMM. The department “launched a ‘Mask Up’ campaign to educate travelers and transportation providers, including transit agencies, on their responsibility to comply with the Federal mask requirement on public transportation. The national requirement to wear a mask while traveling, follows the Centers for Disease Control and Prevention (CDC) Order and Transportation Security Administration Security Directive, and failure to comply with the requirement can result in civil penalties.” Pl. Ex. 26.

213. “The centerpiece of the campaign is a digital toolkit that includes background materials, talking points, digital assets and print-ready resources, in English and Spanish, to support your outreach efforts. Each item is downloadable and shareable.” *Id.*

214. Defendant DOT has created several e-mail addresses for travelers, employees, and transportation operators to contact it with questions about the FTMM including TransitMaskUp@dot.gov. *Id*.

215. "U.S. federal law requires the wearing of face masks on planes, buses, trains, and other forms of public transportation. To get the message out to passengers about this new federal law, the U.S. Department of Transportation started the Mask Up initiative. We developed a helpful FAQ page. We've also created materials to help industry and safety partners effectively communicate the mandate to the traveling public." Pl. Ex. 27.

216. Defendant DOT issued a lengthy "Frequently Asked Questions" bulletin about the FTMM. Pl. Ex. 28.

217. "Additional requirements or conditions may be imposed that provide greater public health protection and are more restrictive than the requirements of the CDC Order, including requirements for persons requesting an exemption from the mask requirement, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the operator." *Id.*

218. Defendant DOT's FTMM FAQ's is in direct conflict with the ACCA (49 USC § 41705) and the regulations promulgated thereunder. Defendant DOT has thus far neglected its own statutory duty to enforce the ACCA. *See* 14 CFR Part 382 for an extensive list of ACCA requirements.

219. Defendant DOT's FTMM FAQ's is extreme in its enforcement guidelines, applying to, for instance: "A transit employee is required to wear a mask unless covered under an exemption, even if the employee is separated from passengers or other employees by plexiglass or another protective barrier." Pl. Ex. 28. This is only one example of hundreds, perhaps thousands, of scenarios where the FTMM applies in direct contradiction to Defendant CDC's guidance that face coverings

are not required for any American – vaccinated or not – when physical distancing (3-6 feet) and other protective measures are used.

220. "Transit employees must wear masks while on public transportation conveyances and at transportation hubs. The starting point is that everyone should be wearing a mask and employees are broadly required to wear masks by the CDC Order." *Id.* So, for example, a fully vaccinated train-station worker eating lunch outside on a bench at the station with not another human being within 25 yards, is required by the federal government to wear a mask between bites and sips.

221. Another absurdity that goes against Defendant CDC's guidelines: "Are transit operators required to wear masks when there are no passengers on the vehicle? Yes … the operator must wear a mask when there are no passengers on the vehicle." *Id*.

222. Defendant DOT's FTMM FAQ's inform transit agencies that the Federal Transit Administration (an agency of DOT) has gone way beyond its legal authority by amending its "Master Agreement" to incorporate the requirements of the CDC FTMM Order. "Pursuant to the terms and conditions of FTA Master Agreement FTA MA(28), FTA may take enforcement action against a recipient or subrecipient that fails to comply with this Order, including, but not limited to, actions authorized by 49 U.S.C. § 5329(g) and 2 CFR §§ 200.339-.340 when a recipient does not comply with Federal law with respect to the safety of its public transportation system." *Id.* Therefore if a transit system such as Defendant LYNX in a state such as Florida decides to obey its own state law prohibiting face coverings, Defendant DOT will strip the agency of some of its federal funding.

223. Disabled Americans seeking an exemption from the FTMM face high hurdles under Defendant DOT's FTMM FAQ's: "May a transit agency require requests for exemptions from mask requirements to be made in advance of travel? Yes. … Consistent with the CDC Order and TSA Security

Directive, fixed-route transit providers may require individuals to request an exemption in advance of being allowed to travel and could issue riders a card or other document noting the exemption to present to transit personnel on future trips." *Id.*

224. Numerous transit agencies across the nation are requiring disabled passengers to seek a mask exemption in advance and are required to carry a card with them. For one example, Kitsap Transit, a public agency serving Kitsap County, Washington, part of the Seattle metropolitan area, mandates disabled customers obtain a mask-exemption card. Pl. Ex. 29. This creates an immense burden on any disabled American traveling around the nation as they could potentially need to acquire dozens or even hundreds of exemption cards from various transit agencies.

225. From the information posted on Defendant LYNX's website, it does not appear LYNX requires advance application for a mask exemption by a disabled passenger. However, LYNX's website also contains no information about how to request an exemption.

226. Defendant DOT's FTMM FAQ's apply to a single person standing outside on a city street at a bus stop with nothing more than a sign indicating the route served – hardly what the average American would define as a transportation hub: "The CDC Order defines a transportation hub as any location where people gather to await, board, or disembark public transportation. This includes bus stops with or without shelters or benches." *Id.* The mask requirement applies even to a person waiting alone for a bus at 5:00 in the morning with not another soul around.

227. Defendant DOT's agency Federal Railroad Administration ("FRA") has said that "both passenger and freight train operators and rail employees are subject to Executive Order 13998 and the CDC's Order requiring masks during rail transportation." *Id.*

228. FRA's rules apply mostly to train personnel who never cross state lines or even come into contact with passengers who do: "This applies to railroad terminals, yards, storage facilities, yard

offices, crew rooms, maintenance shops, and other areas regularly occupied by railroad personnel. Masks are also required in vans hauling crews and occupied engines. The CDC Order broadly requires persons to wear masks in such settings and applies in both passenger and freight rail facilities." *Id.*

229. "Any violation of FRA's Emergency Order may subject the railroad carrier committing the violation to a civil penalty of up to $118,826 for each day the violation continues." *Id.*

230. Defendant DOT's agency Federal Motor Carrier Safety Administration notes that "school bus operators, including operations by public school districts, and their passengers are required to wear masks as defined by the Order issued by" Defendant CDC. *Id.* This violates the law in several states where school districts are prohibited from requiring students to be muzzled – and school buses extremely rarely ever cross state lines since school districts are created by states to serve children residing in that state only.

231. **DOT HAS FAILED TO ENFORCE THE AIR CARRIER ACCESS ACT & ITS OWN REGULATIONS:** The Office of Aviation Consumer Protection ("OACP"), a unit within the Office of the General Counsel of Defendant DOT, issued a Notice of Enforcement Policy "Accommodation by Carriers of Persons with Disabilities Who Are Unable to Wear or Safely Wear Masks While on Commercial Aircraft" "to remind U.S. and foreign air carriers of their legal obligation to accommodate the needs of passengers with disabilities when developing procedures to implement the Federal mandate on the use of masks to mitigate the public health risks associated with the Coronavirus Disease 2019 (COVID-19). Pl. Ex. 208.

232. "OACP will exercise its prosecutorial discretion and provide airlines 45 days from the date of this notice to be in compliance with their obligation under the Air Carrier Access Act ("ACAA") and the Department's implementing regulation in 14 CFR Part 382 ("Part 382") to provide reasonable accommodations to persons with disabilities who are unable to wear or safely wear masks, so

long as the airlines demonstrate that they began the process of compliance as soon as this notice was issued." *Id.*

233. The 45-day deadline was March 22, 2021.

234. "[T]he ACAA and Part 382, which are enforced by OACP, require airlines to make reasonable accommodations, based on individualized assessments, for passengers with disabilities who are unable to wear or safely wear a mask due to their disability." *Id.*

235. "To ensure that only qualified persons under the exemptions would be able to travel without a mask, the CDC Order permits operators of transportation conveyances, such as airlines, to impose requirements, or conditions for carriage, on persons requesting an exemption, including ***requiring a person seeking an exemption to request an accommodation in advance***, submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the operator. The CDC Order also permits operators to require protective measures, such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19 or seating or otherwise." *Id.* (emphasis added).

236. OACP's Notice of Enforcement Policy did not advise airlines that the CDC's Order allowing carriers to impose additional requirements is illegal (such as requesting a mask exemption in advance, submitting to a third-party medical consultation, submitting a medical certificate, and requiring a negative COVID-19 test). *Id.*

237. "As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part." 14 CFR § 382.19(a).

238. "As a carrier, ***you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight***." 14 CFR § 382.25 (emphasis added).

239. "Except as provided in this section, ***you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation***." 14 CFR § 382.23(a) (emphasis added).

240. "You may also require a medical certificate for a passenger ***if he or she has a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight***." 14 CFR § 382.23(c)(1) (emphasis added). This requirement does not include ***speculation*** that a person ***might*** have a communicable disease such as COVID-19; evidence is required that the passenger ***has*** a communicable disease, i.e. has tested positive for the coronavirus.

241. Since airlines may not require a medical certificate for a passenger unless he/she has a communicable disease, they may also not require a third-party medical consultation. "As a carrier, you may require that a passenger ***with a medical certificate*** undergo additional medical review by you ***if there is a legitimate medical reason for believing that there has been a significant adverse change in the passenger's condition*** since the issuance of the medical certificate …" 14 CFR § 382.23(d) (emphasis added).

242. No provision of the ACCA or its accompanying regulations promulgated by Defendant DOT permits airlines from requiring passengers submit a negative test for any communicable disease.

243. In its Feb. 5 Notice of Enforcement Policy, OACP admitted it had failed to enforce the ACCA and its regulations in 2020 when many airlines banned all passengers with disabilities who could not wear a face covering: "Some carriers have adopted policies that expressly allow 'no exceptions' to the mask requirement other than for children under the age of two. OACP has received complaints from persons who assert they have a disability that precludes their wearing a mask, and who contend that they were denied transport by an airline under a 'no exceptions allowed' mask policy." Pl. Ex. 208.

244. "The CDC and other medical authorities recognize that individuals with certain medical conditions may have trouble breathing or other difficulties such as being unable to remove the mask without assistance if required to wear a mask that fits closely over the nose and mouth." *Id.*

245. "It would be a violation of the ACAA to have an exemption for children under 2 on the basis that children that age cannot wear or safely wear a mask and not to have an exemption for … individuals with disabilities who similarly cannot wear or safely wear a mask when there is no evidence that these individuals with disabilities would pose a greater health risk to others." *Id.*

246. "The ACAA prohibits U.S. and foreign air carriers from denying air transportation to or otherwise discriminating in the provision of air transportation against a person with a disability by reason of the disability. When a policy or practice adopted by a carrier has the effect of denying service to or otherwise discriminating against passengers because of their disabilities, the Department's disability regulations in Part 382 require the airline to modify the policy or practice as necessary to provide nondiscriminatory service to the passengers with disabilities …" *Id.*

247. "Part 382 allows an airline to refuse to provide air transportation to an individual whom the airline determines presents a disability-related safety risk, provided that the airline can demonstrate that the individual would pose a 'direct threat' to the health or safety of others onboard the aircraft, and that a less restrictive option is not feasible." *Id.*

248. OACP illegally advised airlines that "In accordance with the CDC Order, as conveyance operators, airlines are required to implement face mask policies that ***treat passengers presumptively as potential carriers of the SARS-CoV-2 virus*** and, therefore, as presenting a potential threat to the health and safety of other passengers and the crew." *Id.* This advice violates 14 CFR § 382.23(c)(1), which provides that an airline must have evidence that the passenger ***"has"*** a communicable disease, i.e. has tested positive for the coronavirus. A "presumptive" determination

that every single airline passenger – even those who are fully vaccinated and/or naturally immune – is infected with COVID-19 goes against the plain language of 14 CFR § 382.23(c)(1).

249. OACP wrongly informed airlines Feb. 5 that "both the CDC Order and Part 382 permit airlines to require passengers to consult with the airline's medical expert and/or to provide medical evaluation documentation from the passenger's doctor sufficient to satisfy the airline that the passenger does, indeed, have a recognized medical condition precluding the wearing or safe wearing of a mask." Pl. Ex. 208. *See* 14 CFR § 382.23(a).

250. OACP wrongly informed airlines that "Part 382, like the CDC Order, permits airlines to require passengers with disabilities who are unable to wear masks to request an accommodation in advance." *See* 14 CFR § 382.25.

251. OACP wrongly informed airlines that they "may impose protective measures to reduce or prevent the risk to other passengers. For example, airlines may require protective measures, such as a negative result from a SARS-CoV-2 test, taken at the passenger's own expense, during the days immediately prior to the scheduled flight." Pl. Ex. 208. As noted above, there is no provision of the ACCA or 14 CFR Part 382 that allows airlines to require a negative test to board a plane.

252. "Airlines are expected to review their face mask policies immediately and to revise them as necessary to comply with the ACAA and Department's disability regulation in Part 382." *Id.*

253. Information provided to passengers by Defendant DOT contradicts OACP's Feb. 5 Notice of Enforcement Policy. In a document "New Horizons: Information for the Air Traveler with a Disability," DOT informs flyers that "***Airlines may not require passengers with disabilities to provide advance notice of their intent to travel or of their disability*** …" Pl. Ex. 209 (emphasis added).

254. "A medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the flight safely without requiring extraordinary medical care. A disability is not sufficient grounds for a carrier to request a medical certificate. ***Carriers shall not***

require passengers to present a medical certificate unless the person: … Has a communicable disease or infection that has been determined by federal public health authorities to be generally transmittable during flight." *Id.* (emphasis added).

255. "If a person who seeks passage ***has an infection or disease*** that would be transmittable during the normal course of a flight, and ***that has been deemed so by a federal public health authority knowledgeable about the disease or infection, then the carrier may: … Impose on the person a condition or requirement not imposed on other passengers (e.g., wearing a mask)***." *Id.* (emphasis added).

256. Defendant DOT publishes a 190-page handbook "What Airline Employees, Airline Contractors, & Air Travelers with Disabilities Need to Know About Access to Air Travel for Persons with Disabilities: A Guide to the Air Carrier Access Act (ACAA) and its implementing regulations, 14 CFR Part 382 (Part 382)." Relevant excerpts of this handbook are attached as Pl. Ex. 210.

257. "In 1986, Congress passed the ACAA, which prohibits discrimination by U.S. air carriers against qualified individuals with disabilities. 49 U.S.C. 41705. In 1990, the Department of Transportation (DOT) issued part 382, the regulations defining the rights of passengers with disabilities and the obligations of U.S. air carriers under the ACAA." *Id.*

258. "In 2000, Congress required DOT to create a technical assistance manual to provide guidance to individuals and entities with rights or responsibilities under the ACAA. This manual responds to that mandate." *Id.*

259. "May I ask an individual what his or her disability is? Only to determine if a passenger is entitled to a particular seating accommodation pursuant to section 382.38. ***Generally, you may not make inquiries about an individual's disability or the nature or severity of the disability***." *Id.*

260. "***You must not refuse transportation to a passenger solely on the basis of a disability***. [Sec. 382.31(a)]." *Id*. (emphasis added).

261. "***You shall not require a passenger with a disability*** to travel with an attendant or ***to present a medical certificate***, except in very limited circumstances. [Secs. 382.35(a) and 382.53(a)]" *Id.* (emphasis added).

262. "***You cannot require passengers with disabilities to provide advance notice of their intention to travel or of their disability*** except as provided below. [Sec. 382.33(a)]." *Id.* (emphasis added).

263. "If you are faced with particular circumstances where you are required to make a determination as to whether a passenger with a communicable disease or infection poses a direct threat to the health or safety of others, ***you must make an individualized assessment*** based on a reasonable judgment, relying on current medical knowledge or the best available objective evidence." No presumptive judgment that every single person has a communicable disease or infection is permitted. *Id.* (emphasis added).

264. "If, in your estimation, a passenger ***with a communicable disease or infection*** poses a direct threat to the health or safety of other passengers, you may … (iii) impose on that passenger a special condition or restriction ***(e.g., wearing a mask)***." … [Sec. 382.51(b)(4)]." *Id.* (emphasis added).

265. "Except under the circumstances described below, ***you must not require medical certification of a passenger with a disability as a condition for providing transportation***. You may require a medical certificate only if the passenger with a disability is an individual who is traveling on a stretcher or in an incubator (where such service is offered); needs medical oxygen during the flight (where such service is offered); or has a medical condition that causes the carrier to have reasonable doubt that the passenger can complete the flight safely without requiring extraordinary medical assistance during the flight. [Sec. 382.53 (a) and (b)]." *Id.*

266. "In addition, if you determine that a passenger ***with a communicable disease or infection*** poses a direct threat to the health or safety risk of others, you may require a medical certificate from the passenger. [Sec. 382.53(c)(1)]." *Id.* (emphasis added).

267. "Generally, you must not refuse travel to, require a medical certificate from, or impose special conditions on a passenger with a communicable disease or infection." *Id.*

268. "Some Examples of Mental or Psychological Impairments [Sec. 382.5(a)(2)]: Mental retardation; Depression; ***Anxiety disorders*** …" *Id.* (emphasis added).

269. "Discrimination is Prohibited: Management of carriers are required to ensure that the carrier (either directly or indirectly through its contractual, licensing, or other arrangements for provision of air transportation) does not discriminate against qualified individuals with a disability by reason of such disability. [Sec. 382.7(a)(1)]." *Id.*

270. "***Carriers must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability unless it is expressly permitted*** by the ACAA and part 382. [Sec. 382.31(a)]." *Id.* (emphasis added).

271. "Written Explanation for Refusal of Transportation: When a carrier refuses to provide transportation to a passenger on a basis relating to disability, the carrier must specify in writing to the passenger the basis for the determination within 10 days of the refusal of transportation. [Sec. 382.31(e)]." *Id.*

272. Southwest Airlines' written explanation for refusing to transport me from Orlando (MCO) to Fort Lauderdale (FLL) is due June 12, 2021. I have not yet received a written explanation.

273. **WORLD HEALTH ORGANIZATION MASK GUIDELINES:** Jan. 29, 2020: As knowledge of COVID-19 began to spread around the globe, WHO issued guidance on face coverings: "Wearing medical masks when not indicated may cause unnecessary cost, procurement burden, and create a false

sense of security that can lead to neglecting other essential measures such as hand hygiene practices. Furthermore, using a mask incorrectly may hamper its effectiveness to reduce the risk of transmission." Pl. Ex. 31.

274. In the community setting, "a medical mask is not required, as no evidence is available on its usefulness to protect non-sick persons." *Id.*

275. "Cloth (e.g. cotton or gauze) masks ***are not recommended under any circumstance***." *Id.* (emphasis added).

276. March 31, 2020: WHO officials "said ***they still recommend people not wear face masks*** unless they are sick with Covid-19 or caring for someone who is sick. 'There is no specific evidence to suggest that the wearing of masks by the mass population has any potential benefit. In fact, there's some evidence to suggest the opposite in the misuse of wearing a mask properly or fitting it properly,' Dr. Mike Ryan, executive director of the WHO health emergencies program, said at a media briefing in Geneva, Switzerland ..." Pl. Ex. 30 (emphasis added).

277. April 6, 2020: WHO updated its interim guidance on masks: "the use of a mask alone is insufficient to provide an adequate level of protection, and other measures should also be adopted. Whether or not masks are used, maximum compliance with hand hygiene and other [infection prevention and control] measures is critical to prevent human-to-human transmission of COVID-19." Pl. Ex. 33.

278. "There is limited evidence that wearing a medical mask by healthy individuals in the households or among contacts of a sick patient, or among attendees of mass gatherings may be beneficial as a preventive measure. However, there is currently no evidence that wearing a mask (whether medical or other types) by healthy persons in the wider community setting, including universal community masking, can prevent them from infection with respiratory viruses, including COVID-19." *Id*.

279. "[T]he wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks." *Id*.

280. "[T]he following potential risks should be carefully taken into account in any decision-making process: • self-contamination that can occur by touching and reusing contaminated mask; • depending on type of mask used, potential breathing difficulties; • false sense of security, leading to potentially less adherence to other preventive measures such as physical distancing and hand hygiene; … • diversion of resources from effective public health measures, such as hand hygiene." *Id.*

281. "The use of masks made of other materials (e.g., cotton fabric), also known as nonmedical masks, in the community setting has not been well evaluated. There is no current evidence to make a recommendation for or against their use in this setting." *Id.*

282. "The following information on the correct use of masks is derived from practices in health care settings. … Replace masks as soon as they become damp with a new clean, dry mask. • Do not re-use single-use masks. • Discard single-use masks after each use and dispose of them immediately upon removal." *Id*.

283. There is no evidence that most Americans wearing face coverings adhere to these essential recommendations about not reusing masks.

284. April 7, 2020: "The use of face masks on healthy people during the coronavirus pandemic has been a major point of contention and confusion among scientists and the public. … On Friday, the US Centers for Disease Control and Prevention recommended that all Americans wear face masks when they are in public. But new guidance from the World Health Organization released on Monday says ***healthy people don't need to wear face masks and that doing so won't provide added protection from the coronavirus.*** … ***WHO officials said healthy people who wear masks might***

touch their own faces more often than necessary, which could increase their risk for COVID-19." Pl. Ex. 34 (emphasis added).

285. April 10, 2020: WHO "has stayed consistent in its recommendation, Margaret Harris of its coronavirus response team told NPR. And that position is: yes to masks for health-care workers and people with symptoms, no for the general public. WHO and other agencies have also raised concerns about the potential problems that could arise due to the wearing of a mask – for example, a false sense of security that would undermine other preventive measures or self-contamination from touching a contaminated mask." Pl. Ex. 32.

286. June 5, 2020: WHO updated its guidance to reiterate that "the use of a mask alone is insufficient to provide an adequate level of protection or source control, and other personal and community level measures should also be adopted to suppress transmission of respiratory viruses." Pl. Ex. 35.

287. WHO still expressed skepticism about the effectiveness of face coverings, writing that "This could be considered to be indirect evidence for the use of masks (medical or other) by healthy individuals in the wider community; however, these studies suggest that such individuals would need to be in close proximity to an infected person in a household or at a mass gathering where physical distancing cannot be achieved, to become infected with the virus." *Id*.

288. "Results from cluster randomized controlled trials on the use of masks among young adults living in university residences in the United States of America indicate that face masks may reduce the rate of influenza-like illness, but showed no impact on risk of laboratory-confirmed influenza. At present, there is no direct evidence (from studies on COVID-19 and in healthy people in the community) on the effectiveness of universal masking of healthy people in the community to prevent infection with respiratory viruses, including COVID-19." *Id*.

289. “Many countries have recommended the use of fabric masks/face coverings for the general public. At the present time, the widespread use of masks by healthy people in the community setting is not yet supported by high quality or direct scientific evidence and there are potential benefits and harms to consider …” *Id.*

290. WHO concluded that the potential advantages/benefits of requiring universal masking outside healthcare settings are mostly psychological, as opposed to actually reducing COVID-19 spread and deaths: “reduced potential stigmatization of individuals wearing masks to prevent infecting others (source control) or of people caring for COVID-19 patients in non-clinical settings; • making people feel they can play a role in contributing to stopping spread of the virus; reminding people to be compliant with other measures (e.g., hand hygiene, not touching nose and mouth).” *Id.*

291. “Fabric masks can also be a form of cultural expression, encouraging public acceptance of protection measures in general.” *Id.*

292. “Potential harms/disadvantages: The likely disadvantages of the use of masks by healthy people in the general public include: • potential increased risk of self-contamination due to the manipulation of a face mask and subsequently touching eyes with contaminated hands; • potential self-contamination that can occur if non-medical masks are not changed when wet or soiled. This can create favorable conditions for microorganism to amplify; • potential headache and/or breathing difficulties, depending on type of mask used; • potential development of facial skin lesions, irritant dermatitis, or worsening acne, when used frequently for long hours; • difficulty with communicating clearly; • potential discomfort; • a false sense of security, leading to potentially lower adherence to other critical preventive measures such as physical distancing and hand hygiene; • poor compliance with mask wearing, in particular by young children; • waste manage-

ment issues; improper mask disposal leading to increased litter in public places, risk of contamination to street cleaners and environment hazard; • difficulty communicating for deaf persons who rely on lip reading; • disadvantages for or difficulty wearing them, especially for children, developmentally challenged persons, those with mental illness, elderly persons with cognitive impairment, those with asthma or chronic respiratory or breathing problems, those who have had facial trauma or recent oral maxillofacial surgery, and those living in hot and humid environments." *Id.*

293. "A non-medical mask is neither a medical device nor personal protective equipment. … The lower filtration and breathability standardized requirements, and overall expected performance, indicate that the use of non-medical masks, made of woven fabrics such as cloth, and/or non-woven fabrics, should only be considered for source control (used by infected persons) in community settings and not for prevention." *Id.*

294. Aug. 21, 2020: WHO issued "Advice on the use of masks for children in the community in the context of COVID-19." Pl. Ex. 36.

295. This advice confirmed what most medical professionals and scientists had been emphasizing: Children are at low risk for serious infection from COVID-19 and for spreading the virus to adults, therefore mask wearing is discouraged. "[E]vidence from available studies of contacts of COVID-19 cases and cluster investigations suggests that children are unlikely to be the main drivers of COVID-19 transmission. To date, documented transmission among children and staff within educational settings is limited. Evidence is also limited regarding the prevalence of SARS-CoV-2 infection among children, as measured by seroepidemiology studies. However, available evidence suggests that seroprevalence appears to be lower for younger children compared to older children and adults." Pl. Ex. 36.

296. WHO recommends children under age five do NOT wear masks and "children between five and 11 years old were significantly less protected by mask wearing compared to adults …" *Id*.

297. "Several studies found that factors such as warmth, irritation, breathing difficulties, discomfort, distraction, low social acceptability, and poor mask fit were reported by children when using masks. … The benefits of wearing masks in children for COVID-19 control should be weighed against potential harm associated with wearing masks, including feasibility and discomfort, as well as social and communication concerns. ... Do no harm: the best interest, health and well-being of the child should be prioritized." *Id.*

298. "Based on the expert opinion gathered through online meetings and consultative processes, children aged up to five years should not wear masks for source control. This advice is motivated by a "do no harm" approach …" *Id.*

299. Children with severe cognitive or respiratory impairments who have difficulties tolerating a mask ***should, under no circumstances, be required to wear masks***. … potential impact of mask wearing on learning and psychosocial development … For children of any age with developmental disorders, disabilities. or other specific health conditions that might interfere with mask wearing, the use of masks should not be mandatory …" *Id.* (emphasis added).

300. Federal Defendants have ignored the WHO advice by requiring children age two and above to muzzle themselves when traveling – including young children with medical disorders such as autism – a policy that has caused havoc throughout the nation's transportation system (*see* discussion below).

301. Dec. 1, 2020: WHO issued another update to its "Mask Use in the Context of COVID-19: Interim Guidance." The update stresses again that "A mask alone, even when it is used correctly, is insufficient to provide adequate protection or source control" and masks should only be worn (if at all) "where physical distancing of at least 1 meter [3.28 feet] cannot be maintained." Pl. Ex. 37.

302. [T]he use of a mask alone, even when correctly used (see below), is insufficient to provide an adequate level of protection for an uninfected individual or prevent onward transmission from an infected individual (source control)." *Id.*

303. "Hand hygiene, physical distancing of at least 1 meter [3.28 feet], respiratory etiquette, adequate ventilation in indoor settings, testing, contact tracing, quarantine, isolation, and other infection prevention and control (IPC) measures are critical to prevent human-to-human transmission of SARS-CoV-2, whether or not masks are used." *Id.*

304. "At present there is only limited and inconsistent scientific evidence to support the effectiveness of masking of healthy people in the community to prevent infection with respiratory viruses, including SARS-CoV-2. A large randomized community-based trial in which 4,862 healthy participants were divided into a group wearing medical/surgical masks and a control group ***found no difference in infection with SARS-CoV-2***." *Id.* (emphasis added).

305. "The review concluded that wearing a mask may make little or no difference to the prevention of influenza-like illness … There is limited evidence that wearing a medical mask may be beneficial for preventing transmission between healthy individuals sharing households with a sick person or among attendees of mass gatherings." *Id.*

306. WHO again emphasized there is "limited evidence of protective efficacy of mask wearing in community settings …" *Id.*

307. WHO again stressed that many potential advantages of muzzling are only theoretical: "The potential advantages of mask use by healthy people in the general public include … making people feel they can play a role in contributing to stopping spread of the virus … Fabric masks can also be a form of cultural expression, encouraging public acceptance of protection measures in general." WHO again made a long list of the potential disadvantages of mask use by healthy people in the general public. *Id.*

308. Nonmedical face masks "are not regulated by local health authorities or occupational health associations, nor is it required for manufacturers to comply with guidelines established by standards organizations. Non-medical masks may be homemade or manufactured. … A number of reviews have been identified on the effectiveness of non-medical masks. … Overall, ***the reviews concluded that cloth face masks have limited efficacy in combating viral infection transmission***." *Id.* (emphasis added).

309. **EVER-CHANGING, CONFUSING, & CONTRADICTORY CDC MASK GUIDELINES:** Defendant CDC has been widely criticized by lawmakers, state and local officials, businesses, medical professionals, scientists, the media, and the general public over its ever-changing, confusing, and contradictory mask guidelines. Pl. Ex. 38. The facts of CDC's flip-flops, inconsistency, and failure to follow WHO and other scientific guidelines will take many pages to explore.

310. Jan 30, 2020: Dr. Nancy Messonnier, director of the Center for the National Center for Immunization & Respiratory Diseases, said in a briefing. "We don't routinely recommend the use of face masks by the public to prevent respiratory illness. And we certainly are not recommending that at this time for this new virus." Pl. Ex. 195.

311. As the COVID-19 crisis emerged in February 2020 in the United States, "Masks quickly emerged as a point of confusion, as public health officials at first discouraged people from wearing them, citing shortages, and then endorsed them. Mask mandates became a flash point in the culture wars as states, counties and cities across the country adopted a patchwork of policies." Pl. Ex. 39.

312. Feb. 29, 2020: Surgeon General Dr. Jerome Adams pleaded on Twitter with the American public: "***Seriously people — STOP BUYING MASKS! … They are NOT effective in preventing general public from catching #Coronavirus***, but if health care providers can't get them to care for sick patients, it puts them and our communities at risk!" *Id.* (emphasis added).

313. "[E]arly health experts actually discouraged the public from wearing masks. The US Surgeon General, the CDC, and Dr. Anthony Fauci [director of the National Institute of Allergy & Infectious Diseases] advised from the beginning that the sick and the medical community will benefit from wearing masks, not the general public." Pl. Ex. 129.

314. March 8, 2020: "In a 60 Minutes interview … Dr. Fauci said wearing a face mask should be reserved for 'healthcare providers needing them, and people who are ill.' … 'There's no reason to be walking around with a mask. ***When you're in the middle of an outbreak, wearing a mask might make people feel a little bit better, and it might even block a droplet, but it's not providing the perfect protection that people think that it is***,' Fauci said." *Id.* (emphasis added).

315. March 15, 2020: Defendant CDC made no mention of masks when it recommended that gatherings in the United States – including weddings, festivals, parades, concerts, sporting events, and conferences – be limited to 50 people. Pl. Ex. 39.

316. April 2020: In direct contradiction of WHO guidance, Defendant CDC abruptly reversed course, urging all Americans to wear a mask outside their homes to supplement other public-health measures such as physical distancing and hand washing. *Id.*

317. President Donald Trump immediately disagreed with Defendant CDC, saying muzzling "was voluntary and by vowing not to wear a mask himself." *Id.*

318. May 27, 2020: During an interview with CNN, Dr. Fauci urged Americans to wear face masks in public as a sign of "respect" for others, and stated that he had been doing so himself because "I want to protect myself and protect others, and also because ***I want to make it be a symbol for people to see that that's the kind of thing you should be doing***." Pl. Ex. 63 (emphasis added).

319. Later in 2020 and into 2021: Following CDC advice rather than WHO, 40 states plus the District of Columbia imposed some form of statewide mask mandate. Many localities and businesses –

including airlines – followed suit despite having no verified scientific data showing that face coverings would reduce coronavirus spread and deaths.

320. March 2021: Seeing that mandatory masking had zero effect on their COVID-19 cases, hospitalizations, and fatalities, and with vaccinations soaring, many states – ignoring CDC guidance – began lifting the requirement: "Gov. Greg Abbott of Texas, a Republican, lifted the mask mandate and capacity limits on all businesses starting March 10. The order ensured that 'all businesses and families in Texas have the freedom to determine their own destiny,' Mr. Abbott said. Utah, Arizona, Iowa, and Wisconsin did the same. The governors of Montana, North Dakota, and New Hampshire allowed statewide mask mandates to expire. Gov. Eric Holcomb of Indiana, a Republican, would follow suit in April by replacing a statewide mask mandate with an advisory." *Id.*

321. April 27, 2021: Heavily disparaged for recommending mask use outdoors, Defendant CDC relaxed "masking advice for people who gather outdoors: … fully vaccinated people generally no longer needed to wear masks outdoors, but should continue to wear them at indoor gatherings or at crowded outdoor events. A growing body of research indicates that the risk of spreading the virus is far lower outdoors than indoors. Viral particles quickly disperse outdoors, public health officials have said, so the transmission risk is far lower, though not impossible." *Id.*

322. May 13, 2021: Defendant CDC "says vaccinated people don't need masks in most places: … ***people who are fully vaccinated can stop wearing masks*** or maintaining social distance in most indoor and outdoor settings." *Id.* (emphasis added).

323. Defendant CDC finally admitted "The science is clear***: If you are fully vaccinated, you are protected, and you can start doing the things that you stopped doing because of the pandemic*** …" *Id.* (emphasis added).

324. "But there are caveats: Masks are still [recommended] for everyone, ***regardless of vaccination status***, at doctors' offices, hospitals, or long-term care facilities like nursing homes; when

traveling by bus, plane, train or other modes of public transportation, or while in transportation hubs like airports and bus stations; and when in prisons, jails, or homeless shelters." *Id.*

325. Defendant CDC's May 13 "Interim Public Health Recommendations for Fully Vaccinated People" states: "***Fully vaccinated people can: Resume activities without wearing masks*** or physically distancing … Resume domestic travel and ***refrain from testing before or after travel*** or self-quarantine after travel. Refrain from testing before leaving the United States for international travel (unless required by the destination) and refrain from self-quarantine after arriving back in the United States." Pl. Ex. 40 (emphasis added).

326. Defendant Biden greeted the new CDC guidance with jubilation, finally taking off the mask he'd been wearing for several months even though he was among the first Americans to be fully vaccinated. Those who have been fully vaccinated had "earned the right to do something that Americans are known for all around the world – greeting others with a smile," Defendant Biden said. Pl. Ex. 63.

327. However, the Federal Defendants have not acted after CDC's May 13 recommendations to repeal the FTMM and ITTR that I am challenging in this lawsuit despite getting rid of mask and testing guidance in almost every other situation for the fully vaccinated. Pl. Ex. 40.

328. Defendant CDC issued a color-coded chart showing that the fully vaccinated should not wear a mask in any listed situation. Pl. Ex. 41.

329. "Currently authorized vaccines in the United States are highly effective at protecting vaccinated people against symptomatic and severe COVID-19. Additionally, a growing body of evidence suggests that fully vaccinated people are less likely to have asymptomatic infection or transmit SARS-CoV-2 to others." Pl. Ex. 40.

330. However, Defendant CDC's continuation of the FTMM and ITTR have been extensively rebuked as totally ineffective measures when it comes to reducing COVID-19 infections and fatalities. The FTMM and ITTR also undermine public confidence in vaccines, as seen by a rapidly decreasing number of daily vaccine doses administered across the nation. "If the CDC insists that masks must be worn, even by the fully vaccinated, it would signal that our public health officials don't trust the vaccines." Pl. Ex. 42.

331. "Guiding Principles for Fully Vaccinated People: Indoor and outdoor activities pose minimal risk to fully vaccinated people. Fully vaccinated people have a reduced risk of transmitting SARS-CoV-2 to unvaccinated people. … ***Risk of SARS-CoV-2 infection is minimal for fully vaccinated people. The risk of SARS-CoV-2 transmission from fully vaccinated people to unvaccinated people is also reduced. Therefore, fully vaccinated people can resume activities without wearing a mask*** … Fully vaccinated travelers are less likely to get and spread SARS-CoV-2 and can now travel at low risk to themselves …" Pl. Ex. 40 (emphasis added).

332. Despite all these strong statements that the vaccines are effective and the fully inoculated don't need to cover their faces, Defendant CDC has given no rational explanation for its failure to get rid of the FTMM and ITTR. *Id*.

333. "CDC prevention measures continue to apply to all travelers, ***including those who are vaccinated***. All travelers are required to wear a mask on all planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and in U.S. transportation hubs such as airports and stations." *Id.* (emphasis added).

334. "Fully vaccinated air travelers coming to the United States from abroad, including U.S. citizens, are still required to have a negative SARS-CoV-2 viral test result or documentation of recovery from COVID-19 before they board a flight to the United States." *Id.*

335. "The update comes as the agency has been criticized for being too slow to react to changing science, overly cautious, and even contradictory in its recommendations to the public." Pl. Ex. 43.

336. Defendant CDC "said additional data in the past few weeks has shown the effectiveness of the vaccines in the real world, the vaccines work against variants, and vaccinated people are unlikely to transmit the virus." *Id*.

337. May 28, 2021: Mostly recently, Defendant CDC relaxed summer-camp direction for children: "[V]accinated adolescents do not need to wear masks at camp and that even younger campers who have not been inoculated can generally shed face coverings when outdoors. … such a scenario can enable a 'pre-pandemic camp experience' with neither masking nor physical distancing." Pl. Ex. 44.

338. "The CDC's previous camp guidance, issued last month, was criticized by some public-health experts, politicians, and parents as being too rigid, particularly when set against the backdrop of a nation that is quickly reopening and unmasking amid rising vaccination rates and falling coronavirus case numbers." *Id.*

339. **CONGRESS HAS DECLINED NUMEROUS TIMES TO ENACT A FTMM OR ITTR:** Federal Defendants' imposition of the FTMM and ITTR go against the express wishes of Congress and thus are unconstitutional. Congress has explicitly failed to mandate masks in any setting. This shows clear, unambiguous congressional intent. Likewise, Congress has explicitly failed to require COVID-19 testing of international travelers, including those who are fully vaccinated and/or naturally immune.

340. The federal legislative response to coronavirus has been enormous with 20 bills related to the COVID-19 pandemic enacted into law, eight bills having passed one chamber, and another 452 bills have been introduced. https://coronavirus.skoposlabs.com (visited May 19, 2021). *See also* Pl. Ex. 61.

341. Not a single provision in any of the 20 enacted bills grant any federal agency the authority to require face masks or international traveler pre-departure coronavirus testing.

342. But that doesn't mean masks haven't been the subject of intense congressional and political debate. Congress, in fact, is considering several bills this session (and failed to enact numerous pieces of legislation last session) to either require masks be worn or prohibit the federal government from enforcing any mask mandates.

343. The "No Mask Mandates Act," H.R. 375, under subcommittee review, would overturn Defendant Biden's two executive orders, allowing people to go maskless on federal property, federal buildings, or interstate travel. "The Biden administration is already headed in the wrong direction. Instead of focusing on reopening our economy and getting Americans back to work, this president wants more mandates," said sponsor Rep. Lauren Boebert, R-Colorado. "Continued federal overreach won't end the COVID-19 pandemic or put food on the table." Pl. Ex. 62.

344. Other mask legislation includes H.R. 348 "Wear Your Mask Act," under subcommittee review, which would "require each federal agency to take action to ensure that an individual is required to wear a face mask inside a federal facility under its jurisdiction if the individual is within six feet of another individual to minimize the transmission of COVID-19"; H.R. 450, under subcommittee review, which would "prohibit the use of federal funds to propose, establish, implement, or enforce any requirement that an individual wear a mask or other face covering, or be vaccinated"; H.R. 1342, under subcommittee review, which would "authorize a study on the efficacy and potential negative impacts of masks to human health"; and H.R. 2175, under committee review, which would "prohibit certain heads of federal agencies and administrations from imposing a mask requirement on certain domestic transportation."

345. June 28, 2020: House Speaker Nancy Pelosi said that a nationwide mask mandate was "long overdue," but she was unable get it passed by the House or Senate. Pl. Ex. 63.

346. July 14, 2020: The House Appropriations Committee adopted an amendment to its Transportation, Housing & Urban Development, & Related Agencies funding bill for Fiscal Year 2021 that would have mandated passengers and employees of airlines, Amtrak, and "large transit agencies" wear masks. *Id.* However, the provision was removed before the appropriations bill was enacted into law.

347. July 15, 2020: Sen. Dianne Feinstein proposed that economic stimulus funding be withheld from states that do not adopt a health order requiring the wearing of masks in public. *Id.* Her amendment failed.

348. July 31, 2020: Reps. Peter DeFazio and Rick Larsen introduced the "Healthy Flights Act," which would have authorized Defendant DOT's Federal Aviation Administration to dictate the wearing of face masks at airports and while on flights. *Id*. The bill did not pass.

349. March 18, 2021: Sen. Rand Paul of Kentucky, a medical doctor, grilled Dr. Fauci over the potential for the Executive Branch to extend the FTMM through 2022. Paul calls wearing masks a "form of theater," especially for Americans who are fully vaccinated. "There's virtually zero percent chance you're going to get it, and you're telling people that have had the vaccine [and/or] who have [natural] immunity [to keep their faces covered]. You're defying everything we know about immunity by telling people to wear masks who have been vaccinated." Pl. Ex. 64.

350. The Senate does not require its members to muzzle themselves, however the House of Representatives does. But that policy has drawn harsh criticism and outright rebellion among numerous representatives, deeply dividing the chamber into pro-mask and anti-mask factions.

351. Several Republican lawmakers in late May 2021 defied a requirement for everyone to wear masks on the House floor, protesting how the rules haven't changed in light of Defendant CDC's May 13 health guidance stating that those who are fully vaccinated against COVID-19 can forgo face coverings. Pl. Ex. 65.

352. Rep. Marjorie Greene posted a photo of herself with three other Republicans on the House floor without masks, writing in a tweet that "Masks are oppressive and nothing but a political tool. End the oppression!" and adding "#FreeYourFace." *Id.*

353. Confrontations over face coverings continued outside the Capitol as barefaced GOP lawmakers posed for a photo together, then got into a heated exchange with pro-maskers in front of reporters on the Capitol steps. *Id*.

354. **FEDERAL DEFENDANTS IGNORED BETTER OPTIONS THAN IMPOSING THE FTMM AND ITTR:** The Federal Defendants have more effective options than the FTMM and ITTR that have not been implemented to reduce COVID-19 infections in the transportation sector – especially as it effects the fully vaccinated and/or those who recovered from coronavirus and now have natural immunity. These passengers – numbering more than half of Americans – pose no threat to others. Yet there's no evidence that existing federal procedures that actually target the sick are being utilized.

355. For example, in June 2007, Defendants HHS, CDC, and DHS developed a public-health Do Not Board List ("DNB"), enabling domestic and international health officials to request that individuals with communicable diseases who meet specific criteria, including having a communicable disease that poses a public health threat to the traveling public, be restricted from boarding commercial aircraft arriving into, departing from, or traveling within the United States. Defendant CDC published a Notice six years ago concerning the "Criteria for Requesting Federal Travel Restrictions for Public Health Purposes, Including for Viral Hemorrhagic Fevers." 18 Fed. Reg. 16,400 (March 27, 2015). Pl. Ex. 66.

356. There also exists a complimentary Public Health Border Lookout Record ("Lookout") system for individuals with communicable diseases that pose a public-health threat to travelers to restrict them from boarding commercial aircraft arriving into, departing from, or traveling within the United States. *Id.*

357. The DNB list is administered by the Defendant DHS. *Id.*

358. Once an individual is placed on the DNB list, airlines are instructed not to issue a boarding pass to the individual for any commercial domestic flight or for any commercial international flight arriving in or departing from the United States. Individuals included on the DNB list are assigned a Lookout record that assists in ensuring that an individual placed on the DNB list is detected if he or she attempts to enter or depart the United States through a port of entry. *Id.*

359. "Currently, HHS/CDC considers whether: (1) The individual is known or reasonably believed to be infectious or reasonably believed to have been exposed to a communicable disease and may become infectious with a communicable disease that would be a public health threat should the individual be permitted to board a commercial aircraft or travel in a manner that would expose the public …" *Id*.

360. Defendant TSA "has the authority to accept the services of, or otherwise cooperate with, other federal agencies including implementing the DNB list. … In administering the DNB list, TSA relies on CDC to make public health findings as the basis for its request." *Id.*

361. I have found no evidence that the Federal Defendants are using the DNB list and Lookout system to stop people who have tested positive for COVID-19 from traveling during the time they are a danger to spread the virus to others (typically considered to be two weeks).

362. "Disease is just a flight away. To protect America's health, CDC partners with the Department of Homeland Security to prevent the spread of serious contagious diseases during travel. CDC uses a Do Not Board list to prevent travelers from boarding commercial airplanes if they are known or suspected to have a contagious disease that poses a threat to the public's health. Sick travelers are also placed on a Lookout list so they will be detected if they attempt to enter the United States by land or sea. These tools can be used for anyone who poses a threat to the public's health." Pl. Ex. 67.

363. “The criteria for adding people to the Do Not Board and Lookout lists are 1. Known or believed to be infectious with, or at risk for, a serious contagious disease that poses a public health threat to others during travel; and any of the following three: 1. not aware of diagnosis or not following public health recommendations, or 2. Likely to travel on a commercial flight involving the United States or travel internationally by any means; or 3. Need to issue travel restriction to respond to a public health outbreak or to help enforce a public health order.” *Id.*

364. “To date, the Do Not Board and Lookout lists have been used for people with suspected or confirmed infectious tuberculosis (TB), including multidrug-resistant tuberculosis (MDR-TB), and measles. However, travel restrictions can also be used for other suspected or confirmed contagious diseases that could pose a public health threat during travel …” *Id*.

365. “Once public health authorities confirm a person is no longer contagious, the person is removed from the lists (typically within 24 hours). Also, CDC reviews the records of all persons on the lists every two weeks to determine whether they are eligible for removal.” *Id*.

366. **ONLY 4 STATES NOW REQUIRE MASKS BE WORN BY ALL:** The FTMM is way out of step with all but four states’ policies when it comes to requiring masks be worn by fully vaccinated Americans: “17 state governments require people who are not yet fully vaccinated against COVID-19 to wear face coverings in most indoor public settings. The District of Columbia and Puerto Rico also have mask orders in place. Most states have modified their mask orders to align with the latest guidance from the U.S. Centers for Disease Control and Prevention (CDC). The federal agency said May 13 that people who are fully vaccinated – meaning they are at least two weeks past receiving their second Pfizer or Moderna shot or the single-dose Johnson & Johnson vaccine – can safely forgo masks in most public settings, indoors and out.” Pl. Ex. 68.

367. Of the 50 U.S. states, 10 never imposed a mask mandate; 15 repealed their mandate before the CDC recommended vaccinated people not wear face coverings May 13, 2021; eight repealed

their mandate after the CDC's May 13 guidance; 14 still have a mandate in effect for unvaccinated people only; and just four still require masks for everyone. Of those four states, the mask mandates in three are scheduled to expire by June 20. Only Hawaii currently has a mask mandate for everyone with no set expiration date. Pl. Ex. 82.

368. By imposing the FTMM, the Federal Defendants have essentially created a national mask mandate since tens of millions of Americans fly on planes, use public transit, and work in the transportation sector every day. The FTMM directly contradicts the policies of 92% of the states – raising severe 10th Amendment concerns.

369. By June 21, 2021, the Federal Transportation Mask Mandate will be the only one in addition to Hawaii forcing everyone to muzzle themselves – demonstrating how extreme the federal mandate is when it comes to contradicting state rules.

370. In my home jurisdiction, District of Columbia Mayor's Order 2021-069 (issued May 17, 2021; effective May 21) states: "Except in specified situations listed in the DC Health mask guidance, persons who are fully vaccinated do not need to wear masks." Pl. Ex. 69.

371. My planned summer travel will take me from Florida to Utah, then Arizona, Texas, Georgia (en route to Germany), South Carolina, Maryland, home to the District of Columbia, and concluding in Virginia and Washington state. None of these nine states or D.C. has a mask mandate that applies to a fully vaccinated person such as myself.

372. In Virginia, home to Washington Dulles International Airport (IAD), Gov. Ralph Northam issued Executive Order 79 (2021) ending public-health restrictions due to COVID-19: "All [nonvaccinated] individuals in the Commonwealth aged five and older should cover their mouth and nose with a mask in accordance with the Center for Disease Control and Protection guidance linked here." Pl. Ex. 70.

373. Like the District of Columbia and Virginia, Utah, Arizona, Texas, Maryland, and Washington state have repealed their mask mandates for fully vaccinated people. The FTMM directly conflicts with all of these states' mask rules.

374. Utah's legislature passed House Bill 294 and it was signed into law by the governor effective March 24, 2021. It terminated April 10, 2021, the public-health order issued by the Utah Department of Health pertaining to a statewide mask requirement. Pl. Ex. 71.

375. South Dakota Gov. Kristi Noem is among many state leaders opposed to the FTMM. She discredits studies and research that support the use of face masks, contending mask mandates have produced "very mixed" outcomes, and arguing that "the science has not proven what's effective and what isn't and what type of mask. We have to stay objective when we look at it." Pl. Ex. 63.

376. **SEVERAL STATES INCLUDING FLORIDA PROHIBIT PUBLIC AGENCIES FROM REQUIRING FACE COVERINGS:** "Several states, including Florida, Texas, Arkansas, and Iowa, have moved via legislation or executive order to prevent cities, counties, and school districts from instituting their own mask rules." Pl. Ex. 68.

377. Of the states I plan to visit during my summer travel, Florida, Georgia, and South Carolina never had a statewide mask mandate.

378. As noted above, Florida prohibits any governmental agency from requiring any person wear a face covering. Pl. Ex. 55. The FTMM directly conflicts with Florida's policy.

379. Some Florida lawmakers have aggressively gone after government agencies that have tried to impose mask mandates. Florida Rep. Anthony Sabatini "has filed eight lawsuits against recently enacted orders, emphasizing that he has no problem with voluntary mask-wearing or government guidance, but he does have a problem with local officials telling constituents where and when to cover their mugs. 'To put it plainly, I just don't think the government owns your face,' said Mr. Sabatini …" Pl. Ex. 76.

380. Florida is a shining example of a state that has made it through the COVID-19 pandemic with few restrictions on individual liberties. "[Y]ou can barely see an increase in the hospitalization level in the Sunshine State from previous years, and the current level appears to be on par with the 2018 flu season, which was more of a pandemic flu than other flus in recent years. And in 2018, we did nothing as a nation to suspend liberties." Pl. Ex. 77.

381. "Taking all these factors in totality, especially in a state like Florida with no lockdown, it has become clear that the entire pretext for shutting down our liberties is built upon misinformation and lack of context." *Id*.

382. Texas Gov. Greg Abbott signed March 2, 2021, Executive Order GA34, which as of March 10 declares that "no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering. … no jurisdiction may impose a penalty of any kind for failure to wear a face covering or failure to mandate that customers or employees wear face coverings …" Pl. Ex. 72.

383. Gov. Abbott issued Executive Order GA36 on May 18, 2021: "No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering …" Pl. Ex. 73. The FTMM directly conflicts with Texas' policy.

384. "Lawsuits have been challenging the mask mandates across the country with lawsuits filed against the City of Austin, Texas, going back to April 2020. When Texas Gov. Greg Abbott lifted the statewide mask mandate in March 2021, it also took away the local governments ability to enforce their own. Texas Atty Gen. Ken Paxton warned the city of Austin over this stating, 'The decision to require masks or otherwise impose COVID-19-related operating limits is expressly reserved to private businesses on their own premises. It does not rest with jurisdictions like the city of Austin or Travis County or their local health authorities.' Paxton also went on to state, 'We have

already taken you to court under similar circumstances. You lost. If you continue to flout the law in this manner, we'll take you to court again and you will lose again.'" Pl. Ex. 64.

385. Texas has also been a huge success story in restoring civil liberties and reopening its economy without requiring face masks. "The number of new Texas COVID cases has dropped to record lows on the year in the weeks since the state moved to scrap mask mandates, despite hysterical warnings from mainstream media and the Biden regime that ditching the masks would result in mass casualties. Newly released figures show the number of new Texas COVID cases has fallen from an all-time high of over 30,000 in January of this year, to well under 10,000 by the final week of March." Pl. Ex. 78.

386. "Texas' Covid-19 cases and death totals have plummeted in the month since Republican Gov. Greg Abbott announced full reopening and repealed the state's mask mandate, The Daily Caller reports. Since Abbott repealed Texas' mask mandate on March 2, Texas' COVID-19 cases dropped by about 4,000 per day, while the state's deaths have dropped by 137 per day … When Abbott repealed the mask mandate, Texas averaged 7,253 new cases and 232 deaths per week. The state is now averaging 3,224 new coronavirus cases and 88 deaths per week." Pl. Ex. 79.

387. "The state of Texas recorded zero deaths among people with COVID-19 on May 16[, 2021,] for the first time since March 2020, Gov. Greg Abbott said. Texas also on May 16 saw the fewest COVID-19 cases in over 13 months, the lowest seven-day COVID-19 positive rate ever, and the lowest number of people hospitalized with COVID-19 in 11 months, Abbott said. … [There's] 'no evidence that the Texas reopening affected the rate of new COVID-19 cases during the five weeks following the reopening.'" Pl. Ex. 80.

388. Arizona Gov. Douglas Ducey issued Executive Order 2021-06 "New Phase of COVID-19 Mitigation" on March 25, 2021: "Pursuant to A.R.S. § 26-307, no county, city, or town may make or issue any order, rule, or regulation that conflicts with or is in addition to the policy, directives, or

intent of this or any other Executive Order relating to the COVID-19 public health emergency, or any other order, rule, or regulation that was not in place as of March 11, 2020. This includes but is not limited to mandated use of face coverings." Pl. Ex. 74. The FTMM directly conflicts with Arizona's policy.

389. South Carolina Gov. Henery McMaster issued Executive Order 2021-23 on May 11, 2021: "During the course of the COVID-19 pandemic, I have repeatedly declined to issue an Order mandating the use of Face Coverings, on a statewide basis … I have determined that any remaining mandates issued by counties, municipalities, or other political subdivisions of this State related to Face Coverings are no longer necessary or appropriate to address and mitigate the existing public health threats … to the extent any county, municipality, or political subdivision of this State continues to impose any ordinance, order, or other measure that requires the general public within its jurisdiction to wear a Face Covering … I have determined and do hereby declare that any such ordinance, order, or other measure is invalid and preempted …" Pl. Ex. 75. The FTMM directly conflicts with South Carolina's policy.

390. "I hereby authorize and direct DHEC to take any necessary and appropriate action to allow for the parent, guardian, legal custodian, foster-care provider, or other representative authorized to provide consent for or on behalf of a student in any public school in the State of South Carolina to opt out of any Face Covering requirement imposed by any public school official or public school district in the State of South Carolina …" *Id.*

391. **STATES WITHOUT MASK MANDATES SUFFERED FEWER DEATHS:** The 10 states that never implemented a statewide mask mandate have 157 deaths attributed to COVID-19 per 100,000 residents compared with the national average of 165. Whereas the 40 states that had a statewide mask requirement at some point during the pandemic have a death rate of 167. Pl. Ex. 82.

392. Deaths in states that never implemented a mask mandate are 6.0% lower than states that had a requirement. *Id.*

393. Deaths in states that never implemented a mask mandate are 4.9% lower than the national average. *Id.*

394. Deaths in states that required face coverings are 1.2% higher than the national average. *Id.*

395. The seven worst states in per-capita deaths all have/had mask requirements. *Id.*

396. Deaths in states that never implemented a mask mandate are 6.5% lower than states that still have a requirement. All three groups of states that adopted a mask mandate at some point fared worse than the 10 states that never did. *Id*.

397. **NUMEROUS BUSINESSES HAVE ADOPTED THE CDC NO-MASK GUIDANCE:** After Defendant CDC updated its mask guidance May 13, 2021, many national and local businesses immediately changed their internal policies to stop requiring face masks. "Walmart, Costco, CVS, Target, and Kohl's are among companies now allowing fully vaccinated customers to shop mask-free …" Pl. Ex. 81. This demonstrates how out of touch the FTMM is compared to what private businesses are doing to get rid of customer- and employee-hated mask rules.

398. "Walmart: The nation's biggest retailer notified employees in a May 14 memo that fully vaccinated customers are no longer required to wear masks in Walmart and Sam's Club stores, and that inoculated staffers can go mask-free starting May 18." *Id*.

399. "Costco: the members-only warehouse club revised the policy May 14, allowing fully vaccinated people to forgo masks in stores." *Id*.

400. "CVS: The drugstore chain announced May 17 that it would no longer require masks for fully vaccinated patrons." *Id*.

401. "Target: 'Given the CDC's updated guidance, Target no longer requires fully vaccinated guests and team members to wear face coverings in our stores' …" *Id*.

402. “Publix: The supermarket chain announced May 14 that it ‘will no longer require fully vaccinated associates or customers to wear face coverings’ …” *Id*.

403. “Kohl’s: The department store revised its policy May 17, announcing that ‘fully vaccinated customers are welcome to shop with or without a mask.’” *Id*.

404. “Starbucks: As of May 17, “facial coverings will be optional for vaccinated customers” … *Id*.

405. “BJ's Wholesale: The membership warehouse club lifted storewide mask requirements for fully vaccinated customers May 15 and will do so for inoculated store employees May 18 …” *Id.*

406. **COVID-19 INFECTION & DEATH DATA:** The seven-day moving average for COVID-19 fatalities in the United States peaked at 3,407 on Jan. 13, 2021, according to CDC data. When the FTMM went into effect Feb. 1, the moving average stood at 2,988. When the mandate was extended May 11, that number had plummeted 80% to 604 from Feb. 1 . On May 26, that moving average plunged to 437 daily deaths, now 85% lower than Feb. 1.

407. The seven-day moving average for COVID-19 infections in the United States peaked at 248,441 on Jan. 8, 2021, according to CDC data. When the FTMM went into effect Feb. 1, the moving average stood at 143,274. When the mandate was extended May 11, that number had plummeted 75% to 36,194 from Feb. 1. On May 26, that moving average plunged to 21,627 daily infections, down 85% from Feb. 1.

408. COVID-19 cases and deaths in the United States have dropped to their lowest levels in nearly a year, according to Defendant CDC’s COVID Data Tracker Weekly Review issued May 28, 2021: “As of May 27, 2021, nearly 133 million people in the U.S. are fully vaccinated, and the national percentage of COVID-19 tests that came back positive over the last 7 days was less than 3%. This is one of the lowest rates the United States has seen since widespread testing began. These encouraging trends come as many people are making plans to travel, gather with friends and family, and resume other activities they had avoided since the start of the pandemic.” Pl. Ex. 83.

409. “The current 7-day moving average of daily new cases (21,627) decreased 22.3% compared with the previous 7-day moving average (27,818). Compared with the highest peak on January 8, 2021 (252,932), the current 7-day average decreased 91.4%.” *Id*.

410. “New Hospital Admissions: The current 7-day average for May 19-May 25 was 3,122. This is a 10.1% decrease from the prior 7-day average (3,473) from May 12-May 18. The current 7-day average is the lowest 7-day average since August 1, 2020. The 7-day moving average for new admissions has been consistently decreasing since April 19.” *Id.*

411. “Deaths: The current 7-day moving average of new deaths (438) has decreased 13.2% compared with the previous 7-day moving average (504).” *Id.*

412. Defendant CDC confirms that COVID-19 is a low risk for healthy Americans: “Data from March 1, 2020, through March 31, 2021, show that 91.9% of adults ages 18 years and older with a laboratory-confirmed COVID-19-assoclated hospitalization have an underlying medical condition.” *Id.*

413. “The CDC website admitted that only around 6% of COVID recorded deaths were due entirely to the Coronavirus. The gist of the report was that COVID-19 is not nearly as deadly as first projected by the WHO and then by Dr. Tony Fauci and Dr. Debra Birx. Based on CDC numbers in August, only 6% of all deaths attributed to COVID-19 were instances where the only factor in the individual’s death was due to COVID-19. … For all the other deaths reported by the CDC linked to COVID-19, the individuals who passed away had 2-3 other serious illnesses or co-morbidities.” Pl. Ex. 84.

414. “CDC Director Rochelle Walensky finally admitted that ‘many, many hospitals’ were counting COVID deaths to include cases that were not COVID deaths. … ‘Many, many hospitals are screening people for COVID when they come in, so not all of those … cases who had COVID actually died of COVID. They may have had mild disease, but died, for example, of a heart attack,” CDC Director Rochelle Walensky said …” *Id.*

415. May 22, 2021: “For the first time in 11 months, the daily average of new coronavirus infections in the United States has fallen below 30,000 amid continuing signs that most communities across the nation are emerging from the worst of the pandemic. The seven-day average dipped to 27,815 on Friday, the lowest since June 22 and less than a tenth of the infection rate during the winter surge …” The Washington Post reported. Pl. Ex. 85.

416. “One prominent model, from the Institute for Health Metrics and Evaluation at the University of Washington, forecasts fewer than 7,000 daily cases by mid-August and fewer than 120 deaths, which is about one-fifth the current number…” *Id.*

417. May 24, 2021: “For the first time since June of last year, there are fewer than 30,000 new daily coronavirus cases in the United States, and deaths are as low as they’ve been since last summer. In much of the country, the virus outlook is improving,” The New York Times reported. Pl. Ex. 86.

418. “I think by June, we’re probably going to be at one infection per 100,000 people per day, which is a very low level,” Dr. Scott Gottlieb, former head of the Food and Drug Administration, said Sunday on the CBS program “Face the Nation.” The U.S. rate is now eight cases per 100,000, down from 22 during the most recent peak, when new cases averaged about 71,000 on April 14. *Id.*

419. “The share of coronavirus tests coming back positive has also fallen to below 3% for the first time since widespread testing began, and the number of hospitalized patients has fallen to the lowest point in 11 months, Dr. Eric Topol of the Scripps Research Translational Institute noted this week.” *Id.*

420. “The United States is reporting about 25,700 coronavirus cases daily, a 39% decrease from two weeks ago, according to a New York Times database. Deaths are down 14% over the same period, to an average of 578 per day.” *Id.*

421. **COVID-19 VACCINATION DATA:** May 25, 2021: "Half of U.S. states have fully vaccinated at least 50% of adults. ... Across the US, roughly 61.3% of American adults have received at least one COVID-19 vaccine dose and about 49.6% are fully vaccinated, CDC data show," CNN reported. Pl. Ex. 87.

422. The U.S. COVID-19 Vaccination Program began Dec. 14, 2020. As of May 27, 2021, 290.7 million vaccine doses have been administered, according to Defendant CDC's COVID Data Tracker Weekly Review issued May 28, 2021. "Overall, about 165.7 million people, or 49.9% of the total U.S. population, have received at least one dose of vaccine. About 132.8 million people, or 40% of the total U.S. population, have been fully vaccinated. As of May 27, the 7-day average number of administered vaccine doses reported to CDC per day was 1.6 million …" Pl. Ex. 83.

423. "As of May 27, 85.5% of people ages 65 or older have received at least one dose of vaccine and 74.3% are fully vaccinated. Over half (62%) of people ages 18 or older have received at least one dose of vaccine and 50.6% are fully vaccinated." *Id.*

424. **THE FTMM HAS CREATED CHAOS IN THE SKIES AND ON THE GROUND, ENDANGERING AVIATION & TRANSIT SAFETY:** Tens of millions of Americans vehemently object to the government ordering them to wear face masks. This is sadly evidenced by the at least 2,500 incidents of unruly behavior aboard airplanes reported to Defendant DOT's Federal Aviation Administration during the pandemic. The FTMM is only worsening the situation for airline passengers and flight crews as some people violently stand up for their right not to wear a mask.

425. There have been thousands and thousands of protests against the FTMM and other mask mandates. Numerous groups and websites organized to oppose forced muzzling. "Last year, protesters staged rallies against official requirements to wear masks, built pyres to burn them in protest, and touched off wild screaming matches when confronted about not wearing them inside supermarkets." Pl. Ex. 197.

426. “Two major airlines, American and Southwest, have postponed plans to resume serving alcohol on flights in an effort to stop a surge of unruly and sometimes violent behavior by passengers who have shoved, struck, and yelled at flight attendants. Both airlines announced the policies this week after the latest assault was captured on a widely watched video that showed a woman punching a flight attendant in the face on a Southwest Airlines flight from Sacramento to San Diego on Sunday,” The New York Times reported May 29, 2021.

427. “Since Jan. 1, the Federal Aviation Administration has received about 2,500 reports of unruly behavior by passengers, including about 1,900 reports of passengers refusing to comply with a federal mandate that they wear masks on planes. The agency said that in the past it did not track reports of unruly passengers because the numbers had been fairly consistent over the years, but that it began receiving reports of a ‘significant increase’ in disruptive behavior starting in late 2020.” *Id.*

428. “We have just never seen anything like this,” Sara Nelson, the international president of the Association of Flight Attendants, said during an online meeting with federal aviation officials. “We’ve never seen it so bad.” *Id.*

429. “Southwest Airlines issued a statement on Friday citing the ‘recent uptick industrywide of incidents in-flight involving disruptive passengers’ as it announced that it had paused plans to resume serving alcohol on flights. … American Airlines announced a similar policy on Saturday. It said that alcohol sales, which had been suspended in the main cabin since late March 2020, would remain suspended through Sept. 13, when a federal mandate requiring passengers to wear masks on airplanes, buses, and trains is set to expire.” *Id.*

430. “In a memo, American said it recognized that ‘alcohol can contribute to atypical behavior from customers onboard and we owe it to our crew not to potentially exacerbate what can already be a new and stressful situation for our customers.’” *Id*.

431. “The changes also came after the FAA said on Monday that it had proposed fines of $9,000 to $15,000 for five passengers who had exhibited disruptive behavior on flights. … In January, a passenger on Alaska Airlines shoved a flight attendant who was walking down the aisle and documenting which passengers were wearing masks ...” *Id.*

432. As a former commercial airline captain, FAA Administrator Steve Dickson said he knows that disruptive passengers can pose a safety risk. *Id.*

433. All of the “unruly” behavior we’ve seen aboard airplanes when airlines try to enforce the FTMM is explained by science: “Wearing masks, thus, entails a feeling of deprivation of freedom and loss of autonomy and self-determination, which can lead to suppressed anger and subconscious constant distraction, especially as the wearing of masks is mostly dictated and ordered by others. These perceived interferences of integrity, self-determination and autonomy, coupled with discomfort, often contribute to substantial distraction and may ultimately be combined with the physiologically mask-related decline in psychomotoric abilities, reduced responsiveness, and an overall impaired cognitive performance.” Pl. Ex. 157.

434. Being forced to cover a person’s only two sources of oxygen – breathing is of course essential to maintaining life – “leads to misjudging situations as well as delayed, incorrect, and inappropriate behavior and a decline in the effectiveness of the mask wearer.” *Id.*

435. “The use of masks for several hours often causes further detectable adverse effects such as headaches, local acne, mask-associated skin irritation, itching, sensations of heat and dampness, impairments, and discomfort predominantly affecting the head and face. However, the head and face are significant for well-being due to their large representation in the sensitive cerebral cortex (homunculus).” *Id*.

436. “Fort Worth-based American Airlines told crew members that it won’t reintroduce the sale of beer, wine and spirits to main cabin class passengers until federal government officials drop the mask mandate aboard aircraft and airports.” Pl. Ex. 89.

437. “It is no secret that the threats flight attendants face each day have dramatically increased,” said a letter to union members from Julie Hedrick, president of the Association of Professional Flight Attendants, which represents American’s 13,400 flight attendants. “Every day, we are subjected to verbal and sometimes physical altercations, mainly centered around mask compliance.” *Id*.

438. “Airlines and federal officials have noted an uptick in passenger misbehavior. Flight attendant union leaders have attributed much of the uptick in passengers refusing to wear masks …” *Id*.

439. “President Joe Biden made a federal face mask rule on planes one of his first executive orders after he took office. But passenger misbehavior has continued throughout the year despite numerous fines against passengers proposed by the FAA.” *Id*.

440. May 28, 2021: “Incidents of unruly behavior from airplane passengers has risen to an unprecedented level this year, union leader Sara Nelson told CNBC on Friday, the start of the Memorial Day holiday weekend. ‘This is an environment that we just haven't seen before, and we can't wait for it to be over,’ the president of the Association of Flight Attendants-CWA said … She noted the role masks are playing in the surge …” Pl. Ex. 90.

441. “[P]assengers have verbally abused and taunted flight attendants trying to enforce airline mask requirements … The displays of rule-bucking intransigence are described in more than 150 aviation safety reports filed with the federal government since the start of the pandemic …” Pl. Ex. 91.

442. “A flight attendant reported being so busy seeking mask compliance that the employee couldn’t safely reach a seat in time for landing. One airline captain, distracted by mask concerns,

descended to the wrong altitude. The repeated talk of problem passengers in Row 12 led the captain to mistakenly head toward 12,000 feet, not a higher altitude given by air traffic control to keep planes safely apart." *Id.*

443. But passengers are allowed to drop their masks to snack and sip beverages, negating all possible positive impacts of the FTMM. "When you start opening it up to eating, the whole thing kind of weakens," Slovic said. *Id.*

444. Applying mask rules also worsens the already strained position of flight attendants, who are frontline enforcers even as they keep their usual safety responsibilities, experts said. "Flight attendants are dealing with mask compliance issues on every single flight they work right now," said Taylor Garland, spokeswoman for the Association of Flight Attendants-CWA, noting that those efforts range from friendly reminders to facing passengers "actively challenging the flight attendants' authority." *Id.*

445. "On an Allegiant Air flight in August, a passenger hit a flight attendant, yelled obscenities at him, and grabbed his phone as he described a mask-related dispute to the captain …" *Id*.

446. "On a SkyWest Airlines flight to Chicago in August, a passenger took off a mask, 'continually bothered' fellow customers and 'at one point, grabbed a flight attendant's buttock as she walked by the passenger's row of seats,' …" *Id.*

447. A Colorado man is now facing federal charges over an alleged mask dispute while taking a flight from Seattle to Denver this week. "According to the facts contained in the complaint, on March 9, 2021, Grier was a passenger onboard Alaska Airlines flight 1474 traveling from Seattle to Denver," a release from the Department of Justice reads. "During the flight, Grier was asked eight to ten times to put on a face mask, as required by airline policy. Grier initially ignored the flight attendant, but then struck her arm. Later, passengers notified a different flight attendant that Grier was urinating in his seat. A flight attendant notified the captain. When the captain was

notified, he was preparing to land after declaring an emergency for an unrelated maintenance issue." Pl. Ex. 92.

448. "A Delta Air Lines passenger is facing a $27,500 fine for allegedly striking a flight attendant in the face in October. The Federal Aviation Administration on Friday announced the proposed civil penalty for an unnamed passenger traveling on a flight from Miami to Atlanta on Oct. 19. The FAA says the passenger, who has 30 days to respond, was traveling with another passenger who refused to wear a mask, fasten his seat belt, or put up the tray table. As a result, the flight returned to the gate, and the passengers were asked to get off the plane. The passenger facing the fine ignored the flight attendant's instructions to leave the plane, began swearing at the flight attendant, and then struck her under her left eye, the agency says." *Id.*

449. "The FAA adopted a stricter policy on unruly passenger behavior in January due to incidents involving Capitol riot participants and a steady stream of passengers refusing to comply with airline mask policies. Passengers will no longer get any warnings. At the time, the FAA said it had seen a 'disturbing increase' in incidents in which passengers have disrupted flights with violent behavior or threats of violent behavior." *Id*.

450. "Four people are facing nearly $70,000 in civil fines for clashing with airline crews over mask requirements and other safety instructions on recent flights … The latest round of proposed fines, which passengers have 30 days to contest, came just days after the FAA said that it had received more than 1,300 unruly passenger reports from airlines since February." Pl. Ex. 93.

451. "One of the passengers, a woman who was traveling from the Dominican Republic on a JetBlue flight bound for New York on Feb. 7, refused to comply with instructions to wear a mask aboard the plane, hurled an empty liquor bottle that almost hit another passenger, and threw food and shouted obscenities at flight attendants, according to the FAA. The woman grabbed the arm of a flight attendant and hurt her arm, and she struck the arm of another flight attendant

twice and scratched that crew member's hand, causing the flight to return to the Dominican Republic …" *Id.*

452. "What's causing these incidents?" she asked. "Overwhelmingly, it's passengers who refuse to wear masks." *Id.*

453. A " male passenger aboard a Southwest Airlines flight from Chicago to Sacramento on Jan. 26 refused to comply with a flight attendant's instructions to wear a mask over his nose and mouth. The man became combative and used offensive language when a second flight attendant told him he was required to wear a mask, according to the FAA, which said that the passenger hit one of the flight attendants with his bags when he was ordered to leave the plane." *Id.*

454. "A Jan. 30 flight from Bozeman, Mont., to Seattle also returned to the airport after a male passenger refused to put on a mask …" *Id.*

455. "A man was removed from an Allegiant Air flight Monday morning to Punta Gorda, Florida, after allegedly asking a flight attendant to put a face mask on, according to a report by Newsweek." *Id.*

456. "[A] female passenger failed multiple times to comply with flight attendants' instructions to wear a face mask and remain seated with her seatbelt fastened on a JetBlue Airlines flight from Boston to Puerto Rico on Dec. 27. 'The passenger shoved a flight attendant multiple times in her chest/shoulder area, shouted obscenities at the flight attendant, and threatened to have her fired. As a result of the passenger's behavior, the captain diverted the flight back to Boston,' the FAA wrote. She faces a fine of $20,000. Then, just days later on another JetBlue Airlines flight from New York to the Dominican Republic, a male passenger failed multiple times to comply with flight attendants' instructions to wear his facemask … 'After flight attendants issued the passenger a 'Notice to Cease Objectionable Behavior' card, he shouted profanities at them, slammed overhead bins and became more and more uncooperative and agitated,' the FAA wrote." *Id.*

457. “Meanwhile, airlines have recently reported more than 500 cases involving unruly passengers since late December – most of which started with passengers refusing to wear a face mask.” *Id*.

458. “The Federal Aviation Administration is warning air travelers about what it describes as a dramatic increase in unruly or dangerous behavior aboard passenger airplanes. … In Fort Lauderdale, Florida, for example, a fistfight broke out amid a dispute over mask-wearing. In Washington, D.C., a passenger was escorted off a flight after arguing with flight attendants over the mask rule. … In recent days, Alaska Airlines banned an Alaska state senator for refusing to comply with mask requirements …” Pl. Ex. 94.

459. Angela Hagedorn, a former flight attendant with Alaska Airlines, tweeted that she recently resigned. “It has been an exhausting time for all the employees who are just trying to do their job according to their company’s policies," she said. “The constant arguing and pushback from guests, it’s ridiculous." *Id.*

460. “What we have seen on our planes is flight attendants being physically assaulted, pushed, choked,” Nelson said. “We had a passenger urinate. We had a passenger spit into the mouth of a child on board. … “These are some of the things that we have been dealing with,” Nelson said, adding that the physical and verbal abuse that flight attendants have allegedly experienced this year has been “way off the charts” compared to the last 20 years. *Id.*

461. “A family was asked to leave a Spirit Airlines flight before takeoff from Orlando International Airport to Atlantic City, N.J., after their 2-year-old child didn’t have a mask on while eating, according to videos of the confrontation. The videos, which started making the rounds on social media Monday afternoon, showed the young girl on her mother’s lap eating when a flight attendant, relaying a message from the pilot, said the girl had to have a mask on. The mother told the flight attendant the girl had just turned 2. Much like other airlines, Spirit requires passengers

2 and older wear masks except while eating, which the girl is doing. … All the passengers had to deplane and then re-board the plane with a new flight attendant crew …" Pl. Ex. 95.

462. "Spirit Airlines said it removed a family of four from a flight because they refused to wear masks. Video of the incident shows the masked parents being told to leave as their maskless child eats … The Monday fight from Orlando, Florida, to Atlantic City, New Jersey, was ultimately delayed more than two hours after passengers were deplaned and the family was allowed to re-board the flight." Pl. Ex. 102.

463. FAA issued a press release Jan. 13, 2021: "FAA Administrator Steve Dickson today signed an order directing a stricter legal enforcement policy against unruly airline passengers in the wake of recent, troubling incidents. The FAA has seen a disturbing increase in incidents where airline passengers have disrupted flights with threatening or violent behavior. These incidents have stemmed both from passengers' refusals to wear masks … This dangerous behavior can distract, disrupt, and threaten crewmembers' safety functions." Pl. Ex. 96.

464. "On a Spirit Airlines flight on Monday from Orlando to New York, a family was kicked off when their two year old, who was eating yogurt, removed their mask. The mother of the two year old girl is seven months' pregnant, and their other child – traveling with them – is special needs." Pl. Ex. 97. *Id.*

465. "Numerous two year olds have been kicked off of flights when they had difficulty maintaining their masks. … we've even seen one airline remove an 18 month old over failure to wear a mask even though it's not required (nor advisable, according to the CDC) and eating is considered a justifiable reason to temporarily remove a mask …" *Id*.

466. "A Southwest Airlines flight attendant who lost two teeth after she was physically assaulted by a passenger on Sunday is among the more egregious examples of an unsettling increase in

unruly and dangerous behavior on the part of air travelers. There were 477 passenger misconduct incidents on Southwest flights between April 8 and May 15 …" Pl. Ex. 98.

467. "This unprecedented number of incidents has reached an intolerable level, with passenger non-compliance events also becoming more aggressive in nature," Montgomery said. *Id.*

468. "A woman is facing a $9,000 fine for continually refusing to wear a mask properly and cursing at flight attendants on a February 15 Allegiant Air flight from Ft. Lauderdale, Florida, to Knoxville, Tennessee." *Id.*

469. "The Southwest Airlines flight attendant who got two of her teeth knocked out by a passenger was 'very unprofessional' and provoked the wild altercation, another flier said. The shocking incident unfolded just after a flight from Sacramento landed in San Diego on Sunday. It began when the unnamed flight attendant confronted passenger Vyvianna Quinonez, 28, and her other family members about putting their face masks back on …" Pl. Ex. 101.

470. "The unprecedented number of incidents has reached an intolerable level, with passenger noncompliance events also becoming more aggressive in nature," *Id.*

471. A "flier on an Alaska Airlines plane preparing to fly from Bozeman, Mont., to Seattle who ignored repeated reminders to wear a mask, causing the plane to return to the gate, according to the FAA. The incidents of passengers being unruly — ignoring crew members' instructions, fighting and refusing to wear a mask — have been surging, according to the FAA, even while the number of Americans flying on commercial planes remains about 40% below pre-pandemic levels." Pl. Ex. 99.

472. "The number of passengers who have been banned from the nation's airlines continues to rise. Delta Air Lines appears to lead all U.S. carriers by putting on its internal no-fly list about 1,200 passengers who refused to wear a mask or became unruly on a plane. It is followed by Frontier

Airlines with more than 830, United Airlines with about 750, and Alaska Airlines with 542. American Airlines and Southwest Airlines declined to disclose how many passengers they have banned." *Id*.

473. "FAA alleges that an American Airlines passenger assaulted a crew member Saturday on a flight from Miami to New York after refusing to wear a mask." *Id.*

474. "[O]n March 17, three passengers on an American Airlines flight from Fort Lauderdale to Chicago were removed from the plane before takeoff after refusing to wear masks. The flight was delayed, and after the passengers got back to the gate, a fight broke out in the terminal …" *Id.*

475. "The incident took place onboard a JetBlue aircraft as it flew holidaymakers to Cancun, Mexico when it was forced to divert to Florida. … The aircraft was diverted to Florida because the passenger repeatedly removed his mask. … The flight attendants and the pilot made two announcements about the passenger saying that if he didn't keep his mask on then they would have to make an emergency landing and get him off. … Passengers onboard the flight said they were on the ground in Florida for 90 minutes." Pl. Ex. 100.

476. "Federal officials are seeking a $27,500 civil penalty against an airline passenger who allegedly struck a flight attendant who asked the woman and her companion to leave the plane after a dispute over wearing a face mask. The confrontation on board a Delta Air Lines flight departing from Miami International Airport for Atlanta began when the passenger's companion refused to wear a mask, …" Pl. Ex. 103.

477. "Pilots returned the plane to the gate, and the pair was asked to disembark. The female passenger began yelling at the flight attendant and other passengers, then hit the flight attendant under her left eye …" *Id.*

478. Although most well-publicized incidents have occurred in the air, there have also been countless confrontations over mask wearing on the ground, including on mass transit: "There were incidents of violent confrontations and assaults over disagreements about the masking policies of states and private businesses. Numerous reports were made of retail patrons assaulting employees at retail stores over disagreements about the store's masking policies. … ***By September 2020, over 170 transit workers in New York City had reported being assaulted or harassed for asking passengers to wear face masks*** …" Pl. Ex. 63 (emphasis added).

479. "There were also instances of assault against persons who refused to comply with masking policies. In Key Largo, a bus driver was arrested for swinging a metal rod at a passenger who lowered his mask to make a call on his cell phone." *Id.*

480. **THE FTMM UNLAWFULLY DISCRIMINATES AGAINST TRAVELERS WITH DISABILITIES:** Many airlines have illegally banned passengers with disabilities who request face-mask exemptions, including children as young as three in violation of the ACCA (49 USC § 41705) and its accompanying regulations (14 CFR § 382).

481. "The Centers for Disease Control and Prevention (CDC) states that a person who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance should not wear a face mask or cloth face covering. … Additionally, people with post-traumatic stress disorder, ***severe anxiety***, claustrophobia, autism, or cerebral palsy may have difficulty wearing a face mask." *Id.* (emphasis added). Pl. Ex. 117.

482. United Airlines banned a 3-year-old and his family because the child can't tolerate covering his face: "the same flight attendant noticed that Dmitrenko's son had removed his mask. She approached the family and reiterated the same information that United Airlines repeatedly announced upon boarding the aircraft." Pl. Ex. 104.

483. “Dmitrenko says that he told the flight attendant that his son wasn’t going to wear a mask. In fact, he wasn’t capable of wearing a mask. ‘We calmly explained to [the flight attendant] that my son could not wear a mask. I told her that his medical conditions prevent him from doing so. Then I explained that he gets panic attacks and cries when something is covering his face. I DID NOT need to explain the circumstances as to why he could not wear a mask and [why I] was taking [his mask] off. I told her that I’m not going to give my child a mask and make him suffer. Out of courtesy I explained all this to her. LEGALLY, I do not need to explain, nor should the flight attendant have asked why my son cannot wear a mask.’” *Id.*

484. “As he left the aircraft, Dmitrenko was surprised when he learned that security wanted to speak to him. ‘The flight attendant was shouting at me from one end of the plane that security officers were waiting for me. She waved her arms, yelling, ‘here he is!’ and ‘This is him!’ As if I were a criminal or a murderer on an airplane. THAT WAS SO HUMILIATING!’” *Id.*

485. “Dmitrenko soon learned that his refusal to make his son wear a mask on the flight was a significant transgression. The interview concluded with the agents making a copy of Dmitrenko’s identification. Afterward, they informed the family that United Airlines had canceled their return flight. They were not welcome on board United Airlines again.” *Id.*

486. Defendant DOT has told airlines it must accommodate passengers who are unable to tolerate wearing a face mask, however there is no evidence that DOT has actually initiated any civil enforcement against all the airlines failing to accommodate.

487. “Masks or Cloth Face Covering: Recommendation: Everyone should correctly wear a mask or cloth face covering over their nose and mouth at all times in the passenger air transportation system (excluding children under age 2, or anyone who has a medical condition that causes trouble breathing …,” according to a July 2020 report issued by Defendants DOT, DHS, and HHS. Pl. Ex. 105.

488. "Reasonable accommodations should be made for persons with disabilities or ailments who cannot wear masks or cloth face coverings. … Accommodations for persons with disabilities or ailments who cannot wear cloth face coverings should be considered on a case-by-case basis." *Id.*

489. Many airlines starting in Summer 2020 banned all passengers who could not wear a face covering for any reason, in clear violation of the ACCA. DOT issued updated guidance in December 2020, stressing as a key point "Mask Use, specifically the need to accommodate those who cannot wear masks." Pl. Ex. 106. But again, there is no evidence I have located that Defendant DOT's Office of Aviation Consumer Protection has fined any airline who banned customers with disabilities from flying.

490. "Masks Recommendation: Everyone should wear a mask per CDC guidance, over their nose and mouth, at all times in the passenger air transportation system (excluding children under age 2, or anyone who has a medical condition for which wearing a mask is contraindicated … Reasonable accommodations should be made for persons with disabilities or ailments who cannot wear masks." *Id*.

491. "Airports must comply with the Americans with Disabilities Act and the Rehabilitation Act regulations in considering reasonable modifications for persons with disabilities who cannot wear a mask. … Under the Air Carrier Access Act, U.S. and foreign air carriers have legal obligations to accommodate the needs of passengers with disabilities when the airlines develop and implement policies requiring the use of masks to mitigate the public health risks associated with COVID-19." *Id.*

492. "The Air Carrier Access Act and its implementing regulations in 14 CFR Part 382 require airlines to ensure that their mask policies provide for reasonable accommodations, based on individualized assessments, for passengers with disabilities who are unable to wear a face covering

for medical reasons. The Office of Aviation Consumer Protection within the Department of Transportation and the Office of Civil Rights in the Federal Aviation Administration enforce aspects of these requirements within their jurisdiction." *Id.*

493. Children with autism are especially being discriminated against: "A 4-year-old boy with nonverbal autism has been kicked off a flight for not wearing a face mask. Callie Kimball and her husband said that they and their son, Carter, were removed from a Spirit Airlines flight from Las Vegas to their home city of Little Rock on Monday morning, despite showing staff a doctor's note stating that he's exempt from wearing a face-covering." Pl. Ex. 107.

494. "A Chicago family says their 3-year-old boy with autism has been banned from an airline since he would not wear a mask. The family says Spirit Airlines kicked them off the flight … It all started over her autistic son not being able to keep a mask on for the 4-hour flight." Pl. Ex. 108.

495. "Zana, her son and two other family members took the 1,700 mile trek to visit family when it was time to return on Spirit. 'On the way back, she stopped us. She said if he doesn't wear a mask he can't get on the plane. I'm like well he's autistic and we didn't have this problem coming up here,' Zana said." *Id.*

496. "Spirit released a statement, saying they require face covering during the entire flight. The only exceptions are children under 2. Travelers unable to wear them for any reason, including medical, won't be able to fly Spirit." *Id*.

497. "Days later, letters arrived in the mail, one to Zana's sister and another addressed to 3-year-old Cebastian, banning the toddler from flying Spirit for non-compliance of the airlines face covering policy. In 2 years, he can write a letter explaining why the carrier should reconsider." *Id*.

498. "A family boarding a San Jose-bound flight says they were forced to remove their special needs daughter from the airplane because she wasn't wearing a mask. 15-year-old Mya was told

she had to get off the Southwest Airlines plane before it departed Portland if she didn't put on her mask." Pl. Ex. 109.

499. "'She was really upset, crying, she was so excited for the ride and for the trip,' said Tim Cleary. Her mother says they firmly believe in masks, and even though Mya will put it on, after a few minutes it feels constraining in a way most people can't understand." *Id.*

500. "Passenger Jennifer Clymer of Turlock saw it all. She was seated two rows ahead on the Southwest flight. 'We were all very unhappy and thought it was very unfair that the family couldn't take a trip just because an autistic child didn't understand why she had to wear a mask,' said Clymer. Mya and her mom had to get off the flight." *Id.*

501. "A Georgia family heading to New York said they were kicked off a Southwest Airlines flight because their 2-year-old son with autism wouldn't wear a mask. … The couple said they've flown with their son, Elias, before but have never encountered this problem. The family of five was leaving Atlanta for a trip to New York." Pl. Ex. 110.

502. "According to an advocacy group called Autism Speaks, it can be difficult for some on the autism spectrum to wear a mask. CDC guidelines state exemptions can be made for those with disabilities." *Id.*

503. "'I forced it on him, fighting with him to put the mask over him, he ripped it right off and threw it on the floor,' he said. The family was eventually asked to get off the plane, but Edwin Rios said he told them he would only do so if the family was able to get their checked bags back." *Id.*

504. "An Iowa family says they were prohibited from boarding a Southwest Airlines flight because their autistic son could not wear his face mask. Instead, the family said they were forced to rent a car and drive home to Des Moines from St. Louis. The family – parents Cody and Paige Petek and their two children – were waiting on a connecting flight in St. Louis after arriving from Florida, where they had been on vacation." Pl. Ex. 111.

505. “But their 5-year old non-verbal son has autism and a sensory processing disorder, making it difficult for him to wear a face mask. A fellow passenger on the flight, Dr. Vince Hassel, said other customers were lobbying to get the boy on board when the Southwest Airlines crew refused. ‘They weren't going to let the kid on the plane if he didn't put his mask on,’ Hassel said. ‘He just wasn't having it and throwing a fit. Just to watch this play out was absolutely horrible.’” As this was playing out, the family said their son had a seizure. *Id.*

506. “Transportation Security Administration (TSA) policy calls for people with disabilities who cannot wear a mask because of the disability are exempt from having to wear a mask. The Peteks' lawyer said he thinks Southwest Airlines violated the Americans with Disabilities Act.” *Id.*

507. “[O]n Aug. 10, the airline confirms, Southwest removed a family from one of its flights when a 3-year-old was unable to wear his mask on a flight from Midland, Tex., to Houston. The child has autism and doesn’t like his face covered, the mother told Houston’s KPRC-TV, and she had a doctor’s note confirming as much. ‘He was screaming. He was throwing a fit. He was screaming ‘No, no, no!’ she told the news station. ‘I think there needs to be something in place for children or even adults with disabilities who can’t wear a mask. They should have some kind of exemption.’” Pl. Ex. 112.

508. In addition to Southwest, “Alaska, American, Frontier, JetBlue, United, and Spirit airlines all have similar policies in place, requiring face coverings for travelers over the age of 2 without mention of any exceptions for medical conditions or disabilities.” *Id.*

509. Again, I’ve found no evidence that Defendant DOT has sanctioned these air carriers for violating the ACCA by discriminating against Americans with disabilities.

510. “People who are deaf or hard of hearing – or those who care for or interact with a person who is hearing impaired – may be unable to wear cloth face coverings if they rely on lipreading to

communicate. Some people, such as people with intellectual and developmental disabilities, mental health conditions, or other sensory sensitivities, may have challenges wearing a cloth face covering." Pl. Ex. 122.

511. "Individuals with asthma, chronic obstructive pulmonary disease (COPD), or other respiratory disabilities may not be able to wear a face mask because of difficulty in or impaired breathing. People with respiratory disabilities should consult their own medical professional for advice about using face masks." *Id.*

512. "Some people with autism are sensitive to touch and texture. Covering the nose and mouth with fabric can cause sensory overload, feelings of panic, and extreme anxiety." *Id.*

513. **MASKS HAVE PROVEN TO BE TOTALLY INEFFECTIVE IN REDUCING COVID-19 SPREAD & DEATHS:** Despite what the Federal Defendants tell us, numerous scientific and medical studies have been released documenting how masks are totally ineffective in reducing COVID-19 infections, hospitalizations, and deaths.

514. "According to the CDC's analysis, between March 1 and December 31 last year, statewide mask mandates were in effect in 2,313 of the 3,142 counties in the United States. And, looking at the county-by-county data, the CDC concludes that mask mandates were associated with an average 1.32% decrease in the growth rates of COVID-19 cases and deaths during the first 100 days after the mask policy was implemented. You read that correctly, they didn't misplace the decimal: according to the federal government agency that is responsible for managing the COVID-19 pandemic, the difference between mask mandates and no mask mandate is literally just a 1.32% difference." Pl. Ex. 113.

515. "[A] recent study published earlier this month in the premier scientific journal Nature shows that Americans who wear masks are more likely engage in riskier activities, like, you know, leaving the house. The study concludes that mask mandates 'lead to risk compensation behavior' and

mask wearers 'spend 11-24 fewer minutes at home on average and increase visits to some commercial locations – most notably restaurants, which are a high-risk location.'" *Id.*

516. "Not only have cases continued to fall in Texas since [it repealed the statewide mask mandate], the seven-day average is now the lowest it's been since June 18, 2020, according to Worldometer. Yesterday the state was averaging just 3,263 daily confirmed infections. On March 10, the day Greg Abbott's order lifting Texas's mask mandate took effect, it was averaging 4,895. Average daily deaths are also the lowest they've been since November – and deaths lag cases by several weeks so they might well continue to fall throughout April. But, Texas is far from the only state seeing fantastic progress." Pl. Ex. 114.

517. "These two states (New York and NJ), by the way, also LEAD THE COUNTRY in deaths per million. People always say that without masks things would be worse, but truly, how much worse could it get than #1 and #2?" *Id*.

518. A study released May 25, 2021, by the University of Louisville found state mask mandates didn't help slow COVID-19 transmission: "Randomized control trials have not clearly demonstrated mask efficacy against respiratory viruses, and observational studies conflict on whether mask use predicts lower infection rates. … Case growth was not significantly different between mandate and non-mandate states at low or high transmission rates, and surges were equivocal." Pl. Ex. 115.

519. "Mask use did not predict Summer 2020 case growth for non-Northeast states or Fall-Winter 2020 growth for all continental states. Conclusions: Mask mandates and use are not associated with slower state-level COVID-19 spread during COVID-19 growth surges. Containment requires future research and implementation of existing efficacious strategies." *Id.*

520. "To reduce COVID-19 spread, governments have issued mandates to wear medical masks or cloth face coverings (henceforth masks) in public settings. [Most] of the United States have issued

mask mandates since April 2020. Mask mandates have limited precedent, making efficacy unclear. Therefore, our first objective was to evaluate the efficacy of mask mandates in attenuating COVID-19 case growth at the state level." *Id.*

521. "We found little to no association between COVID-19 case growth and mask mandates or mask use at the state level. These findings suggest that statewide mandates and enhanced mask use did not detectably slow COVID-19 spread. … Normalized COVID-19 cases increased more than 1,500-fold from March 2020 to March 2021 in the United States" despite widespread masking. *Id.*

522. "Contrary to our hypothesis, early mandates were not associated with lower minimum case growth … Maximum case growth was the same 172 among states with early, late, and no mandates … This indicates that mask mandates were not predictive of slower COVID-19 spread when community transmission rates were low or high. … These findings suggest that mask mandates are not predictive of smaller or slower shifts from low to high case growth." *Id.*

523. "We expected to find lower case growth among early mandate states. Surprisingly, normalized case growth after mandates (actual and effective) were indistinguishable among state groups. Moreover, growth curves after actual and effective mandates were not distinguishable among state groups at any date between mandate issuance and 6 March 2021. Together, these data ***do not support an association between statewide mandates and COVID-19 spread***." *Id.* (emphasis added).

524. "[W]e found no association between mask use and case growth … The 10 states with highest and lowest mask use exhibited indistinguishable growth rates … Together, ***these data suggest that mask use is a poor predicter of COVID-19 growth at the state level***." *Id.* (emphasis added).

525. "These data indicate that mask use does not predict Summer wave or Fall-Winter wave growth at the state level and that low Summer growth in Northeast states did not predict low Fall-

Winter growth. We conclude that ***statewide SARS-CoV-2 transmission waves are independent of reported mask use*** …" *Id.* (emphasis added).

526. "***Our main finding is that mask mandates and use are not associated with lower SARS-CoV-2 spread among US states***. 80% of US states mandated masks during the COVID-19 pandemic. Mandates induced greater mask compliance but did not predict lower growth rates … We infer that mandates likely did not affect COVID-19 case growth … Higher mask use did not predict lower maximum growth rates, smaller surges, or less Fall-Winter growth among continental states." *Id.* (emphasis added).

527. "Masks have generally not protected against other respiratory viruses. … Our study has implications for respiratory virus mitigation. Public health measures should ethically promote behaviors that prevent communicable diseases. The sudden onset of COVID-19 compelled adoption of mask mandates before efficacy could be evaluated. ***Our findings do not support the hypothesis that SARS-CoV-2 transmission rates decrease with greater public mask use***. As masks are required in public in many US states, it is prudent to weigh potential benefits with harms. Masks may promote social cohesion as rallying symbols during a pandemic, but risk compensation can also occur." *Id.* (emphasis added).

528. "In summary, ***mask mandates and use were poor predictors of COVID-19 spread in US states***. Case growth was independent of mandates at low and high rates of community spread, and mask use did not predict case growth during the Summer or Fall-Winter waves." … The research suggests that mandating mask usage didn't turn out to be the magic bullet that many hoped it might be. *Id.* (emphasis added)

529. Mask manufacturers themselves admit their products are ineffective in preventing COVID-19 infection. Just read the fine print on the boxes of masks you can purchase at Costco this month.

530. Two of the mask boxes contain this disclaimer: "Not for medical use. Intended for single use only – discard after use. This general use mask cannot eliminate the risk of contracting an infectious disease." Pl. Ex. 198.

531. Another brand's mask box contains this disclaimer: "These masks are not personal protective equipment and are not intended as replacements or substitutes for personal protective equipment. ***These products are not intended*** for medical use or ***to prevent any disease or illness***. Each mask is intended for single use only – discard immediately after us." Pl. Ex. 199 (emphasis added).

532. "Cloth masks, while comforting to some, should not be implied to provide anything but marginal (at best) protection to this 'epidemic.' When referring to virus particles that can spread via droplets it is fairly apparent that cloth masks do little to nothing for protection (except [peace] of mind). Ex. 116.

533. "Take a COVID 19 positive patient, have them [wear] a cloth mask and exhale sharply, sneeze, or cough in front of a mirror – watch what happens. I understand this is an overly simplified example, but it gets the point across." *Id.*

534. "Wearing a cloth mask may not shield the user from coronavirus because too many infected droplets can slip through, a study has claimed. Scientists at New Mexico State University, in the US, studied five types of face coverings including cloth masks and surgical grade N95 masks. … Some think the masks may also help to 'train' people not to touch their faces, while others argue that the unfamiliar garment will just make people do it more, actually raising infection risks." Pl. Ex. 118.

535. Masks can't be worn while transportation passengers are eating and drinking, thereby eliminating any effectiveness they might have in reducing virus transmission from infected travelers.

536. “Masks are not an effective way of protection from the new coronavirus, only N95 are, and masks have disclaimers saying they cannot prevent someone from acquiring the new coronavirus,” according to an article published in Medical News Today. Pl. Ex. 119.

537. “Masks can be a source of infection for the person wearing them, according to the WHO. A 2017 study involving 16 healthcare professionals showed that self-contamination was common when the volunteers were putting on and removing medical-grade personal protective equipment. … WHO acknowledge that if a person wears the same mask for a long time, microorganisms may grow on the fabric.” *Id*.

538. “The study found that cloth mask wearers had higher rates of infection than even the standard practice control group of health workers, and the filtration provided by cloth masks was poor compared to surgical masks. At the time of the study, there had been very little work done in this space, and so little thought into how to improve the protective value of the cloth masks. Until now, most guidelines on PPE did not even mention cloth masks …” Pl. Ex. 120.

539. “It is important to note that some subjects in the control arm wore surgical masks, which could explain why cloth masks performed poorly compared to the control group. We also did an analysis of all mask wearers, and the higher infection rate in cloth mask group persisted. The cloth masks may have been worse in our study because they were not washed well enough – they may become damp and contaminated. The cloth masks used in our study were products manufactured locally, and fabrics can vary in quality … none have been tested in a clinical trial for efficacy.” *Id*.

540. “[E]vidence from lab studies suggests that homemade fabric masks may capture large respiratory droplets, but there is no evidence they impede the transmission of aerosols implicated in the spread of COVID-19, according to a paper published [April 8, 2020] by the National Academy of Sciences, Engineering, and Medicine.” *Id*.

541. "In the paper, the National Academies' Standing Committee on Emerging Infectious Diseases and 21st Century Health Threats said that because no studies have been done on the effectiveness of cloth masks in preventing transmission of coronavirus to others, it is impossible to assess their benefits, if any. … Because aerosols likely play an important role in coronavirus transmission, cloth masks will do little, if anything, to limit spread of the disease." *Id.*

542. One of the first studies in the world to conclude that face masks don't reduce COVID-19 infections was published in November 2020 by Danish scientists. The study divided thousands of Danish into groups of maskwearers and nonmaskwearers. "4,862 completed the study. Infection with SARS-CoV-2 occurred in 42 participants [wearing] masks (1.8%) and 53 control participants [who did not cover their faces] (2.1%). The between-group difference was 0.3 percentage point … … ***the difference observed was not statistically significant*** …" Pl. Ex. 123 (emphasis added).

543. "Conclusion: The recommendation to wear surgical masks to supplement other public health measures did not reduce the SARS-CoV-2 infection rate among wearers by more than 50% in a community with modest infection rates, some degree of social distancing, and uncommon general mask use. The data were compatible with lesser degrees of self-protection … ***we did not find a subgroup where face masks were effective at conventional levels of statistical significance*** …" *Id.* (emphasis added).

544. "An increasing number of localities recommend masks in community settings on the basis of this observational evidence, but recommendations vary and controversy exists. … ***WHO acknowledges that we lack evidence that wearing a mask protects healthy persons from SARS-CoV-2*** …" *Id*. (emphasis added).

545. "[A] recommendation to wear a surgical mask when outside the home among others did not reduce, at conventional levels of statistical significance, incident SARS-CoV-2 infection compared with no mask recommendation. … The observed infection rate [of this study] was similar to that

reported in other large Danish studies during the study period. … we found a similar seroprevalence of SARS-CoV-2 of 1.9% … in Danish blood donors …" *Id.*

546. "The face masks provided to participants were high-quality surgical masks … The present findings are compatible with the findings of a review of randomized controlled trials of the efficacy of face masks for prevention (as personal protective equipment) against influenza virus." *Id.*

547. "Several challenges regarding wearing disposable face masks in the community exist. These include practical aspects, such as potential incorrect wearing, reduced adherence, reduced durability of the mask depending on type of mask and occupation, and weather. … the wearer of a face mask may change to a less cautious behavior because of a false sense of security, as pointed out by WHO …" *Id.*

548. "***Our results suggest that the recommendation to wear a surgical mask when outside the home among others did not reduce, at conventional levels of statistical significance, the incidence of SARS-CoV-2 infection in maskwearers*** in a setting where social distancing and other public health measures were in effect …" *Id.* (emphasis added).

549. "When it comes to masks, it appears there is still little good evidence they prevent the spread of airborne diseases. … overall, ***there is a troubling lack of robust evidence on face masks and Covid-19***." Pl. Ex. 136.

550. "[N]ow that we have properly rigorous scientific research we can rely on, ***the evidence shows that wearing masks in the community does not significantly reduce the rates of infection***." *Id.* (emphasis added).

551. A study in South Korea determined: "Whether face masks worn by patients with coronavirus disease 2019 (COVID-19) prevent contamination of the environment is uncertain." Pl. Ex. 124.

552. "Patients were instructed to cough 5 times each onto a petri dish while wearing the following sequence of masks: no mask, surgical mask, cotton mask, and again with no mask. … Neither surgical nor cotton masks effectively filtered SARS–CoV-2 during coughs by infected patients. … surgical masks are unlikely to effectively filter this virus." *Id.*

553. "We do not know whether masks shorten the travel distance of droplets during coughing. Further study is needed to recommend whether face masks decrease transmission of virus from asymptomatic individuals or those with suspected COVID-19 who are not coughing." *Id.*

554. "In conclusion, ***both surgical and cotton masks seem to be ineffective in preventing the dissemination of SARS–CoV-2 from the coughs of patients with COVID-19*** to the environment and external mask surface." *Id.* (emphasis added).

555. "Upon our critical review of the available literature, we found only weak evidence for wearing a face mask as an efficient hygienic tool to prevent the spread of a viral infection," according to a study published in the European Journal of Medical Research. Pl. Ex. 125.

556. "Most masks covering the mouth are named mouth nose covering (MNC) according to the Robert Koch Institute (RKI), the German federal government agency and research institute responsible for disease control and prevention) and ***do not protect against respiratory and airborne infections***. … MNCs and self-made masks are not 'leak-proof' and do not provide complete respiratory protection since air can escape through them." *Id.*

557. "Masks for everyday use (temporary masks made from fabric, etc.; Fig. 3): ***These masks grant no protection for the user from being infected***. … The WHO states that the declared protective effect of these masks recommended during the SARS-CoV-2 pandemic can be severely reduced by their inappropriate use, such as improper donning or doffing, insufficient maintenance, long or repeated use of disposable masks, no dry cleaning of fabric masks, or using masks made of nonprotective material." *Id.* (emphasis added).

558. "***Masks give a false sense of security. … MNC do not protect the wearer***. … Breathing dampens the mask. If there is excessive moisture, the masks become airtight. Therefore, air is inhaled and exhaled unfiltered around the edges, losing the protective effect for both the wearer and the environment." *Id.* (emphasis added).

559. "If masks are not exchanged regularly (or washed properly when made of cloth), pathogens can accumulate in the mask. When improperly used, the risk of spreading the pathogen – including SARSCoV-2 – might be critically increased." *Id.*

560. "In controlled laboratory situations, face masks appear to do a good job of reducing the spread of coronavirus (at least in hamsters) and other respiratory viruses. However, evidence shows maskwearing policies seem to have had much less impact on the community spread of COVID-19. Why this gap between the effectiveness in the lab and the effectiveness seen in the community? The real world is more complex than a controlled laboratory situation." Pl. Ex. 126.

561. "The most rigorous, but difficult, way to evaluate the effectiveness of masks is to take a large group of people and ask some to wear masks and others not to, in a so-called controlled trial. We found nine such trials have been carried out for influenza-like illness. Surprisingly, when combined, these trials found only a 1% reduction in influenza-like illness among mask-wearers compared with non-maskwearers, and a 9% reduction in laboratory-confirmed influenza. These small reductions are not statistically significant, and are most likely due to chance." *Id.*

562. "The most comprehensive between-country study of masks for COVID-19 infection is a comparison of policy changes, such as social distancing, travel restrictions, and mask wearing, across 41 countries. ***It found introducing a mask-wearing policy had little impact*** …" *Id.* (emphasis added).

563. "Why might masks not protect the person wearing them? There are several possibilities. Standard masks only protect your nose and mouth incompletely, for one thing. For another, masks

don't protect your eyes. The importance of eye protection is illustrated by a study of community health workers in India. ***Despite protection by three-layer surgical masks, alcohol hand rub, gloves, and shoe covers, 12 of 60 workers developed COVID-19***." *Id.* (emphasis added).

564. "[I]n our systematic review we found three trials that assessed how well mask wearing protects others, but ***none of them found an obvious effect***. … studies on bacteria show masks provide good protection for the first hour and by two hours are doing little." *Id.* (emphasis added).

565. "[N]ew research is urgently needed to unravel each of the reasons why laboratory effectiveness does not seem to have translated into community effectiveness. We must also develop ways to overcome the discrepancy. Until we have the needed research, ***we should be wary about relying on masks as the mainstay for preventing community transmission***." *Id.* (emphasis added).

566. "The CDC has admitted face masks do little to prevent the spread of COVID-19 amid mounting pressure to lift mask mandates across the U.S. In a new study, the CDC found face masks had a negligible impact on coronavirus numbers that didn't exceed statistical margins of error." Pl. Ex. 127.

567. "The study found that between March and December 2020, face mask orders reduced infection rates by 1.5% over the rolling periods of two months each. The masks were 0.5% effective in the first 20 days of the mandates and less than 2% effective after 100 days." *Id.*

568. "It is not clear however, what the scientific and clinical basis for wearing facemasks as protective strategy, given the fact that facemasks restrict breathing, causing hypoxemia and hypercapnia, and increase the risk for respiratory complications, self-contamination, and exacerbation of existing chronic conditions," according to a paper published by the National Institutes of Health ("NIH"), a part of Defendant HHS. Pl. Ex. 128. NIH describes itself as "the nation's medical research agency – making important discoveries that improve health and save lives."

569. "The physical properties of medical and non-medical facemasks suggest that facemasks are ineffective to block viral particles due to their difference in scales. … Due to the difference in sizes between SARS-CoV-2 diameter and facemasks thread diameter (the virus is 1,000 times smaller), ***SARS-CoV-2 can easily pass through any facemask***. In addition, the efficiency filtration rate of facemasks is poor …" *Id.* (emphasis added).

570. "***Clinical scientific evidence challenges further the efficacy of facemasks to block human-to-human transmission or infectivity***. … the WHO stated that 'facemasks are not required, as no evidence is available on its usefulness to protect non-sick persons." In the same publication, the WHO declared that "***cloth (e.g. cotton or gauze) masks are not recommended under any circumstance***.'" *Id.* (emphasis added).

571. "The existing scientific evidences challenge the safety and efficacy of wearing facemasks as preventive intervention for COVID-19. ***The data suggest that both medical and non-medical facemasks are ineffective to block human-to-human transmission of viral and infectious disease such SARS-CoV-2 and COVID-19, supporting against the usage of facemasks***." *Id.* (emphasis added).

572. "***Where others say the science is settled, our analysis shows that is not the case***. We break down the most widely referenced studies on masking policies so you can see for yourself what the data really says. We should also point out that ***it is unscientific to claim that the science is settled***. Science is always a work-in-progress and we should never make the false claim that a scientific theory is settled as fact." Pl. Ex. 129 (emphasis added).

573. "In reality, coronavirus studies have yet to mature to a point of giving prevailing evidence in favor of universal masking policies. … there is no scientific study that definitively proves the effectiveness, in order to stop the spread of the coronavirus by asymptomatic and presymptomatic people." *Id.*

574. “The studies here also make clear that the science is not clear at all, but you would not know that from reading the media description of the studies. The research hasn’t figured out yet how much virus transmission is stopped by wearing a mask, and still hasn’t determined how many COVID-19 infections come from the asymptomatic cases that mask proponents say they’re targeting.” *Id.*

575. “The current body of research is flawed, vague, and incomplete at best. Still, scientists, public officials, and pundits recommend or strongly urge mask mandates on a massive scale. … Lacking evidence cannot be an excuse for leadership to lie and compel private citizens to all wear masks.” *Id.*

576. “In France, homemade masks and some shop bought cloth masks have now been banned … French health minister Olivier Veran announced on 22 January that people in France should no longer wear homemade masks or certain industrially made fabric masks …,” according to an article published in the British Medical Journal (“BMJ”), a weekly peer-reviewed journal published by the British Medical Association. Pl. Ex. 130. The BMJ is one of the world's oldest general medical journals.

577. “[P]eople should be careful not to get their mask wet, especially if they are then going to go indoors wearing the same mask. He explained, ‘If that material gets wet, you can’t breathe through the material, and the mask then loses much of its effectiveness. So if it rains and you’ve got a mask on, it becomes pointless because you can’t breathe through it. If it’s cold outside and your breath wets the mask, as it will do, it becomes much less useful.’” *Id.*

578. “COVID-19 is as politically-charged as it is infectious. Early in the COVID-19 pandemic, the WHO, the CDC, and NIH’s Dr. Anthony Fauci discouraged wearing masks as not useful for non-health care workers. Now they recommend wearing cloth face coverings in public settings where

other social distancing measures are hard to do (e.g., grocery stores and pharmacies). ***The recommendation was published without a single scientific paper or other information provided to support that cloth masks actually provide any respiratory protection***," according to the Association of American Physicians & Surgeons. Pl. Ex. 131 (emphasis added).

579. "Surgical masks are loose-fitting devices that were designed to be worn by medical personnel to protect accidental contamination of patient wounds, and to protect the wearer against splashes or sprays of bodily fluids. They aren't effective at blocking particles smaller than 100 µm." *Id.*

580. "Conclusion: ***Wearing masks (other than N95) will not be effective at preventing SARS-CoV-2 transmission***, whether worn as source control or as PPE." *Id.* (emphasis added).

581. "The cloth that serves as the filtration for the mask is meant to trap particles being breathed in and out. But it also serves as a barrier to air movement because it forces the air to take the path of least resistance, resulting in the aerosols going in and out at the sides of the mask." *Id.*

582. "Study of correct use of masks (2020, Singapore): Overall, data were collected from 714 men and women. Of all ages, only 90 participants (12.6%) passed the visual mask fit test. About 75% performed strap placement incorrectly, 61% left a 'visible gap between the mask and skin,' and about 60% didn't tighten the nose-clip." *Id.*

583. "2012 European study: None of the studies established a conclusive relationship between mask/respirator use and protection against influenza infection." *Id.*

584. "The virus may survive on the surface of the face masks. Self-contamination through repeated use and improper doffing is possible. A contaminated cloth mask may transfer pathogen from the mask to the bare hands of the wearer. Moisture retention, reuse of cloth masks, and poor filtration may result in increased risk of infection." *Id.*

585. “Evidence of a protective effect of masks or respirators against verified respiratory infection was not statistically significant (compared to no mask). … There were no statistically significant differences in preventing laboratory-confirmed influenza, laboratory-confirmed respiratory viral infections, laboratory-confirmed respiratory infection, and influenza-like illness using N95 respirators and surgical masks.” *Id.*

586. “There is limited evidence for face masks’ effectiveness in preventing laboratory-confirmed influenza virus transmission either when worn by the infected person for source control or when worn by uninfected persons to reduce exposure.” *Id.*

587. “2010 Austria: The introduction, retraction, and re-introduction of mandatory face masks in Austria had no influence at all on the infection rate.” *Id.*

588. “In Kansas, the 90 counties without mask mandates had lower coronavirus infection rates than the 15 counties with mask mandates.” *Id.*

589. “[T]here is no large-scale evidence that wearing face masks in a non-professional environment has any positive effect on the spread of viruses, let alone on general health.” *Id*.

590. From the New England Journal of Medicine, “Universal Masking in the Covid-19 Era,” (July 9, 2020): “***We know that wearing a mask outside health care facilities offers little, if any, protection from infection***. Public health authorities define a significant exposure to Covid-19 as face-to-face contact within 6 feet with a patient with symptomatic Covid-19 that is sustained for at least a few minutes (and some say more than 10 minutes or even 30 minutes). The chance of catching Covid-19 from a passing interaction in a public space is therefore minimal. ***In many cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic***.” *Id*. (emphasis added).

591. “In a recent report in Emerging Infectious Diseases, the U.S. Centers for Disease Control & Prevention (CDC) suggests what experts have stated all along: There is no conclusive evidence

that cloth masks protects users from coronavirus, especially since most people do not use them correctly and do not keep them clean." Pl. Ex. 132.

592. "To our knowledge, only 1 randomized controlled trial has been conducted to examine the efficacy of cloth masks in healthcare settings, and the results do not favor use of cloth masks. … ***There is increasing evidence that cloth masks not only may be ineffective against stopping coronavirus transmission, but that they may actually increase the spread of the virus, as well as worsening other health conditions***." *Id*. (emphasis added).

593. "A September report by the CDC found that more than 70% of COVID-positive patients contracted the virus in spite of faithful mask wearing while in public. Moreover, 14% of the patients who said they 'often' wore masks were also infected. Meanwhile, just 4% of the COVID-positive patients said they 'never' wore masks in the 14 days before the onset of their illness." *Id.*

594. The American College of Physicians published an examination of COVID-19 transmission in a cohort study of 3,410 close contacts of 391 index cases of COVID-19 in Guangzhou, China. Pl. Ex. 133.

595. "We found that the secondary attack rate was less than 4% among close contacts of persons with COVID-19. ***Secondary infections acquired while using public transportation were rare***; in contrast, 1 in 10 household contacts was found to be infected. … In addition, we found that the ***risk for transmission via public transportation or health care settings was low***." *Id.*

596. "[T]here does not appear to be much current (i.e. from 2019-2020) medical evidence that supports the effectiveness of face masks specifically vs Covid-19. … Key Point: 'To our knowledge, only 1 randomized controlled trial has been conducted to examine the efficacy of cloth masks in healthcare settings, and ***the results do NOT favor use of cloth masks***.'" Pl. Ex. 134 (emphasis added).

597. Regarding cloth masks: "'[T]here is no evidence of protection' and their use 'might facilitate transmission of pathogens when used repeatedly without adequate sterilization.' … reuse of cloth masks may lead to contamination, which adds to the risk of respiratory infection. There are no clinical data associated with cloth masks currently." *Id*.

598. "***There is little evidence to support the effectiveness of face masks to reduce the risk of infection***. … 'Neither face mask use and hand hygiene, nor face mask use alone was associated with a significant reduction in the rate of influenza-like illness cumulatively.'" *Id.* (emphasis added).

599. "While a surgical mask may be effective in blocking splashes and large-particle droplets, a face mask, by design, does not filter or block very small particles in the air … Surgical masks also do not provide complete protection from germs and other contaminants because of the loose fit between the surface of the mask and your face." *Id.*

600. "Although there is a dearth of medical evidence that supports the use of face masks specifically vs Coronavirus***, there IS a growing body of scientific data that indicates face masks do NOT work to stop the spread of Covid-19***." *Id.* (emphasis added).

601. "Focusing on universal masking alone may, paradoxically, lead to more transmission of Covid-19 if it diverts attention from implementing more fundamental infection-control measures." *Id.*

602. "Wearing a mask outside health care facilities offers little, if any, protection from infection. … We did NOT find evidence that surgical-type face masks are effective in reducing laboratory-confirmed influenza transmission, either when worn by infected persons or by persons in the general community to reduce their susceptibility." *Id*.

603. "None of the studies established a conclusive relationship between mask/respirator use and protection against influenza infection." *Id.*

604. "Any SARS CoV-2 particles on, in, or around the mask are more forcefully suctioned into the mouth and lungs." *Id.*

605. "Multiple medical authorities, including the World Health Organization, the CDC, and the New England Journal of Medicine have all acknowledged that there is no scientific justification for normal, healthy people to be wearing masks. ***Prolonged mask wearing actually increases the risk of disease to the wearer***." *Id.* (emphasis added).

606. "A Covid19 particle is about 0.1 micron [but] a surgical mask or a cloth mask are really designed only for particulate matter greater than 5 microns…" *Id.*

607. "37,500+ Medical Doctors and 12,500+ Medical & Public Health Scientists have signed The Great Barrington Declaration which advocates for building herd immunity without the use of masks, lockdowns, etc. for the general public while reserving N95 face masks only for the most vulnerable members of society (i.e. at risk elderly people)." *Id.*

608. "In Europe, no matter how strictly mask laws are enforced nor the level of mask compliance the population follows, cases all fall and rise around the same time." *Id.*

609. "[T]he countries that had the HIGHEST Mask Wearing Compliance were consistently among the countries with the HIGHEST Covid-19 Cases. ***The data here is indisputable – mask compliance does NOT correlate to a preventing Covid-19 cases***. What about in the United States? California started requiring masks in June but cases still went up by more than 300% …" *Id.*

610. "In chart after chart, the analytics of Covid-19 cases and deaths from around the world clearly show that ***face masks are NOT working to stop the spread of Covid-19***." *Id.* (emphasis added).

611. "A Covid-19 cross-country study by the University of East Anglia came to the conclusion that a mask requirement was of no benefit and could even increase the risk of infection. An April 2020 review by two U.S. professors in respiratory and infectious disease from the University of Illinois concluded that face masks have no effect in everyday life, neither as self-protection nor to protect third parties (so-called source control). An article in the New England Journal of Medicine from

May 2020 came to the conclusion that cloth face masks offer little to no protection in everyday life." Pl. Ex. 135.

612. "A July 2020 study by Japanese researchers found that ***cloth masks 'offer zero protection against coronavirus'*** due to their large pore size and generally poor fit." *Id.* (emphasis added).

613. "The question on whether to wear a face mask or not during the Covid-19 pandemic remains emotional and contentious. … Importantly, ***the evidence just is and was not there to support mask use for asymptomatic people to stop viral spread during a pandemic***. While the evidence may seem conflicted, the evidence (including the peer-reviewed evidence) actually does not support its use and ***leans heavily toward masks having no significant impact in stopping spread of the COVID virus***. In fact, it is not unreasonable at this time to conclude that surgical and cloth masks, used as they currently are, have absolutely no impact on controlling the transmission of Covid-19 virus, and ***current evidence implies that face masks can be actually harmful***." Pl. Ex. 137 (emphasis added).

614. "Back in August 2020, a survey by Pew indicated that 85% of Americans wore masks when in public all or most of the time. So, the public has been using masks extensively. We thus set the table in this review on the effectiveness of masking for COVID by asking, if these surgical and cloth masks are effective, why did incidence of the virus (or actual disease; and they're not the same thing) escalate so rapidly despite widespread use? Why is there no evidence across US States and global nations showing that when use is mandated (or not mandated given the general uptake of masking by the public), this contributes to reduced viral transmission?" *Id.*

615. "[U]niversal masking has no merit and cannot be supported by reliable data or research. … ***there is and was no scientific justification to mandate or call for 'voluntary' masking of healthy people***. … ***most of this has been arbitrarily construed by the government leaders and their medical experts***." *Id.* (emphasis added).

616. There's evidence "showing that the use of single masks has not provided any protection insofar as progress of the pandemic is concerned (in fact just the opposite… in virtually every jurisdiction in which mask wearing was mandated, there were very large increases in the rates of infection or at least PCR positivity to be more accurate)." *Id*.

617. "[T]here are multiple US States where it can be shown clearly that after implementing mask mandates (indoor and outdoor), the number of cases went up!" *Id.*

618. "[I]n states (US) with a mandate in effect, there were 9,605,256 confirmed Covid-19 cases, which works out to an average of 27 cases per 100,000 people per day. When states didn't have a statewide order – including states that never had mandates, coupled with the period of time masking states didn't have the mandate in place – there were 5,781,716 cases, averaging 17 cases per 100,000 people per day; a notable reduction as compared to the number of cases observed during mask mandates! ***States with mandates in place produced an average of 10 more reported infections per 100,000 people per day than states without mandates***." *Id.* (emphasis added).

619. A recent publication asserts that face masks become nonconsequential and do not work after 20 minutes due to saturation. "Those masks are only effective so long as they are dry," said Professor Yvonne Cossart of the Department of Infectious Diseases at the University of Sydney. "As soon as they become saturated with the moisture in your breath they stop doing their job and pass on the droplets." In a similar light, ***there are indications that wearing a mask that is already used is riskier that if one wore no mask***. *Id.*

620. "Researchers from the University of Oxford's Center for Evidence-Based Medicine (CEBM) examined the data regarding the effectiveness of the use of masks within the current highly charged backdrop of politics. They concluded that after nearly 20 years of preparedness for coming pandemics, the evidence on face mask use remains very conflicted. … ***The Oxford researchers also***

speculate that there is likely an elevated rate of harm (infection) when using cloth face masks." *Id.* (emphasis added).

621. "The Norwegian Institute of Public Health (NIPH) conducted a recent rapid review to assess if individuals in the community without respiratory symptoms should wear face masks to reduce the spread of Covid-19. … Researchers concluded that based on the existing epidemic/pandemic in Norway, '***wearing face masks to reduce the spread of Covid-19 is not recommended for individuals in the community*** …'" *Id.* (emphasis added).

622. "[I]n the SARS-CoV-2 Transmission among Marine Recruits during Quarantine (CHARM) study on Parris Island, the military recruits used double-layered masks and findings were that masks and social distancing did not stop spread of COVID infection." *Id.*

623. "[M]asking is truly an ineffectual way to manage pandemic-related spread of viral disease. As Kolstoe stated, ***it has become less about the science and more about politics and a symbol of solidarity. Our view is that masks as they are worn now, and the masks that are in use, offer zero protection***." *Id.* (emphasis added).

624. "We state emphatically that public health policy, or any policy for that matter, must be undergirded by sound data and evidence. As we have said, the reality is that widespread use of masks is not supported by science and in fact just the opposite." *Id.*

625. "Masking drives fear in the population and a perennial sense of 'illness' that is crippling. As stated eloquently by Weiss, '***Our universal use of unscientific face coverings is therefore closer to medieval superstition than it is to science***, but many powerful institutions have too much political capital invested in the mask narrative at this point, so the dogma is perpetuated.'" *Id.* (emphasis added).

626. The Federal Defendants "have failed to look at the evidence or follow it, and ***continue to operate in an arbitrary nonscientific, nonevidence informed manner***." *Id.* (emphasis added).

627. “[T]he data supporting the effectiveness of a cloth mask or face covering are very limited. We do, however, have data from laboratory studies that indicate cloth masks or face coverings offer very low filter collection efficiency for the smaller inhalable particles we believe are largely responsible for transmission, particularly from pre- or asymptomatic individuals who are not coughing or sneezing.” Pl. Ex. 138.

628. “Cloth masks or coverings come in a variety of shapes, sizes, and materials and are not made according to any standards. … A cloth mask or face covering does very little to prevent the emission or inhalation of small particles. The epidemiology supports it as an important mode of transmission for SARS-CoV-2, the virus that causes COVID-19.” *Id.*

629. “[C]loth masks and face coverings are likely to have limited impact on lowering COVID-19 transmission, because they have minimal ability to prevent the emission of small particles, offer limited personal protection with respect to small particle inhalation, and should not be recommended …” *Id.*

630. “We do not recommend requiring the general public who do not have symptoms of COVID-19-like illness to routinely wear cloth or surgical masks because: There is no scientific evidence they are effective in reducing the risk of SARS-CoV-2 transmission. Their use may result in those wearing the masks to relax other distancing efforts because they have a sense of protection.” *Id*.

631. “Sweeping mask recommendations … will not reduce SARS-CoV-2 transmission, as evidenced by the widespread practice of wearing such masks in Hubei province, China, before and during its mass COVID-19 transmission experience ... Our review of relevant studies indicates that cloth masks will be ineffective at preventing SARS-CoV-2 transmission, whether worn as source control or as PPE.” *Id.*

632. “[C]loth masks exhibit very low filter efficiency. Thus, even masks that fit well against the face will not prevent inhalation of small particles by the wearer or emission of small particles from the

wearer. … [This is the] reason for the failure of cloth masks required for the public in stopping the 1918 influenza pandemic …" *Id.*

633. "During the influenza pandemic of 1918, officials often advised Americans to wear face masks in public," The Washington Post reported. However, that flu "killed at least 675,000 Americans. … The masks worn by millions were useless as designed and could not prevent influenza …" Pl. Ex. 152.

634. "The history of modern times shows that already in the influenza pandemics of 1918-1919, 1957-58, 1968, 2002, in SARS 2004–2005, as well as with the influenza in 2009, ***masks in everyday use could not achieve the hoped-for success in the fight against viral infection scenarios***. The experiences led to scientific studies describing as early as 2009 that masks do not show any significant effect with regard to viruses in an everyday scenario. Even later, scientists and institutions rated the masks as unsuitable to protect the user safely from viral respiratory infections. Even in hospital use, surgical masks lack strong evidence of protection against viruses." Pl. Ex. 157 (emphasis added).

635. "In sum, given the paucity of information about their performance as source control in real-world settings, along with the extremely low efficiency of cloth masks as filters and their poor fit, there is no evidence to support their use by the public or healthcare workers to control the emission of particles from the wearer. … If masks had been the solution in Asia, shouldn't they have stopped the pandemic before it spread elsewhere?" Pl. Ex. 138.

636. Defendant CDC admitted in its "Emerging Infectious Diseases" May 2020 publication that "Although mechanistic studies support the potential effect of hand hygiene or face masks, evidence from 14 randomized controlled trials of these measures did not support a substantial effect on transmission of laboratory-confirmed influenza. … The effect of hand hygiene combined with face masks on laboratory-confirmed influenza was not statistically significant …" Pl. Ex. 139.

637. "The evidence from RCTs suggested that the use of face masks either by infected persons or by uninfected persons does not have a substantial effect on influenza transmission." *Id.*

638. "In pooled analysis, we found no significant reduction in influenza transmission with the use of face masks … One study evaluated the use of masks among pilgrims from Australia during the Hajj pilgrimage and reported no major difference in the risk for laboratory-confirmed influenza virus infection in the control or mask group. Two studies in university settings assessed the effectiveness of face masks for primary protection by monitoring the incidence of laboratory-confirmed influenza among student hall residents for 5 months. The overall reduction in ILI or laboratory-confirmed influenza cases in the face mask group was not significant in either studies." *Id.*

639. "Disposable medical masks (also known as surgical masks) are loose-fitting devices that were designed to be worn by medical personnel to protect accidental contamination of patient wounds, and to protect the wearer against splashes or sprays of bodily fluids. There is limited evidence for their effectiveness in preventing influenza virus transmission either when worn by the infected person for source control or when worn by uninfected persons to reduce exposure. ***Our systematic review found no significant effect of face masks on transmission of laboratory-confirmed influenza. … improper use might increase the risk for transmission***." *Id.* (emphasis added).

640. "Overall, the available evidence is inconclusive about the degree to which homemade fabric masks may suppress the spread of infection from the wearer to others," according to an article published in The National Academies Press. Pl. Ex. 140.

641. "The greater a mask's breathing resistance, which is reflected in a higher Delta-P, the more difficult it is for users to wear it consistently, and the more likely they are to experience breathing difficulties when they do. … [It] would cause great discomfort to many wearers and cause some to pass out." *Id.*

642. "The effectiveness of homemade fabric masks will also depend on the wearer's behavior. Even if a mask could fit well, its effectiveness still depends on how well the wearer puts it on and keeps it in place. As mentioned, breathing difficulty can impede effective use (e.g., pulling a mask down), as can moisture from the wearer's breath. Moisture saturation is inevitable with fabrics available in most homes. Moreover***, moisture can trap the virus and become a potential contamination source for others after a mask is removed***." *Id.* (emphasis added).

643. "[F]or some users, masks might 'crowd out' other precautionary behaviors, giving them a feeling that they have done enough to protect themselves and others." *Id.*

644. "No RCT study with verified outcome shows a benefit for HCW [healthcare workers] or community members in households to wearing a mask or respirator. There is no such study. There are no ***exceptions. Likewise, no*** study exists that shows a benefit from a broad policy to wear masks in public …" Pl. Ex. 141 (emphasis added).

645. "[I]f anything gets through (and it always does, irrespective of the mask), then you are going to be infected. Masks cannot possibly work. It is not surprising, therefore, that ***no bias-free study has ever found a benefit from wearing a mask*** …" *Id.* (emphasis added).

646. "***Many potential harms may arise from broad public policies to wear masks*** … By making mask-wearing recommendations and policies for the general public, or by expressly condoning the practice, ***governments have both ignored the scientific evidence and done the opposite of following the precautionary principle***. ***In an absence of knowledge, governments should not make policies that have a hypothetical potential to cause harm.*** The government has an onus barrier before it instigates a broad social-engineering intervention …" *Id.* (emphasis added).

647. The University of Colorado School of Medicine published an article in the January/February 2021 edition of Annals of Family Medicine concluding: "Cloth masks lack evidence for adequate protection of health care clinicians against respiratory viral infections. The CDC notes that cloth

masks are not considered PPE [personal protective equipment] and that their capability to protect health care clinicians is not currently known. The CDC does not offer information regarding the degree of protection a cloth mask might provide compared to a medical mask. In addition, there is no recommendation for what the best design of a cloth mask might be in the face of a shortage of PPE." Pl. Ex. 142.

648. "Does the CDC really think that masks prevent the wearer from getting COVID, or from spreading it to others? The CDC admits that the scientific evidence is mixed, as their most recent report glosses over many unanswered scientific questions. But even if it were clear – or clear enough – as a scientific matter that masks properly used could reduce transmission, ***it is a leap to conclude that a governmental mandate to wear masks will do more good than harm***, even as a strictly biological or epidemiological matter." Pl. Ex. 144 (emphasis added).

649. "Thus, it is not surprising that the CDC's own recent conclusion on the use of nonpharmaceutical measures such as face masks in pandemic influenza, warned that scientific 'evidence from 14 randomized controlled trials of these measures did not support a substantial effect on transmission…'" *Id.*

650. "Based on our assessment of this CDC mask mandate report, we find ourselves troubled by the study methods themselves and by extension, the conclusions drawn. The real-world evidence exists and indicates that ***in various countries and US states, when mask mandates were followed consistently, there was an inexorable increase in case counts***." *Id.* (emphasis added).

651. "We think that inclusion of such evidence on the failures of masks mandates globally and states within the US would have made for more balanced, comprehensive, and fully-informed reporting. … ***protective-mask mandates have a poor track record insofar as fighting this pandemic***." *Id.* (emphasis added).

652. "The blind acceptance of the current unsupported dogma has become so entrenched that if cases do go up, the experts wedded to the universal use of masks then claim that this is good news and infer that the masking mandate prevented even more cases from occurring. This is a fine example of tautology and defies reason." *Id.*

653. "Trusting the science means relying on the scientific process and method and not merely 'following the leader.' It is not the same as trusting, without verification, the conclusory statements of human beings simply because they have scientific training or credentials. This is especially so if their views and inquiry have become politicized." *Id.*

654. "Transmission of COVID-19 in 282 clusters in Catalonia, Spain: a Cohort Study," published Feb. 2, 2021, in Lancet Infectious Diseases, "***observed no association of risk of transmission with reported mask usage by contacts*** …" Pl. Ex. 145. (emphasis added).

655. "[W]e did not find any evidence of decreased risk of transmission in individuals who reported mask use. … we did not note any association between mask use and risk either in our unadjusted analysis (table 3) or in a multivariable model excluding type of exposure …" *Id*.

656. "Very little good quality research exists on the use of cloth masks, especially in non-medical settings," according to a study published April 7, 2020, in the British Medical Journal. "One randomized controlled clinical trial of cloth masks, published in BMJ Open in 2015, compared their effectiveness with that of medical masks worn by hospital healthcare workers. The study, involving the industry partner 3M (which makes medical masks), reported that healthcare workers 'should not use cloth masks as protection against respiratory infection. Cloth masks resulted in significantly higher rates of infection than medical masks, and also performed worse than the control arm.'" Pl. Ex. 146.

657. "***The evidence is not sufficiently strong to support widespread use of facemasks as a protective measure against covid-19***." *Id.* (emphasis added).

658. Commenting on these findings, Simon Clarke, associate professor in cellular microbiology at the University of Reading, said, "There is only very limited evidence of the benefits of wearing face masks by the general public, no evidence that wearing them in crowded places helps at all, and no evidence at all yet related to covid-19 …" *Id.*

659. Susan Michie, director of University College London's Center for Behavior Change and a fellow of the Academy of Medical Sciences, said, "There are several explanations as to why face masks have not generally been found to be effective if worn by the general population: they do not protect against the virus getting into the eyes (only close fitting goggles do this); people may not fit the masks properly or take them on and off; and people may have a false sense of reassurance and thus pay less attention to other behaviors key to reducing transmission, such as social distancing and handwashing." *Id.*

660. This was echoed by the infectious disease physician Ben Killingley. He said there were several reasons why masks were not seen as being as effective in the community. These included that people "find it difficult to be compliant with mask use all of the time and that people may start wearing the masks too late." *Id.*

661. "At the very end of 2020, the WHO updated their guidelines, noting that any kind of mask was ineffective if the wearer come into close contact with someone for 15 minutes or more. … A mask alone, even when it is used correctly, is insufficient to provide adequate protection or source control." Pl. Ex. 147.

662. "In September of 2020, the ***CDC reported that 85% of COVID-19 cases in July were people who often or always wear masks***." *Id.*

663. "Anders Tegnell, chief epidemiologist at Sweden's Public Health Agency, stated that evidence about the effectiveness of face mask use was 'astonishingly weak.'" Pl. Ex. 148.

664. It's no secret in America that anti-mask studies, research, and medical opinions have been ignored by Defendant Biden and his administration. "There has been an active and misguided (and perhaps evil) effort to suppress, censor, and eliminate information that contradicts the overall fear narrative that has been the primary motivational tool by politicians and leaders to enforce mitigation strategies." *Id.*

665. "Wearing masks continuously is bad for your health, and studies consistently show that masks cannot stop the spread of a respiratory virus …" *Id*.

666. "The World Health Organization admits there is no scientific medical reason for any healthy person to wear a mask outside of a hospital. … If you do not have any respiratory symptoms, such as fever, cough, or runny nose, you do not need to wear a medical mask. When used alone, masks can give you a false feeling of protection and can even be a source of infection when not used correctly." Pl. Ex. 149.

667. "***The science***, contrary to the ignorant platitudes we are bombarded with, ***has NOT proven that universal masking is effective for viral containment, and has instead provided substantial grounds for skepticism of such a policy***." *Id*. (emphasis added).

668. "WHO stands by recommendation to not wear masks if you are not sick or not caring for someone who is sick. There is no specific evidence to suggest that the wearing of masks by the mass population has any potential benefit. In fact, there's some evidence to suggest the opposite in the misuse of wearing a mask properly or fitting it properly." *Id.*

669. Many arguments "have been advanced against mask requirements during the coronavirus (COVID-19) pandemic. These arguments come from a variety of sources, including public officials, journalists, think tanks, economists, scientists, and other stakeholders." Pl. Ex. 150.

670. "There are six main types of arguments against mask requirements: • Mask requirements are not necessary to stop the spread of coronavirus • Mask requirements give a false sense of security

• Mask requirements restrict freedom • Masks present other health risks • Mask requirements have harmful social consequences • Mask requirements are unenforceable." *Id*.

671. "There is insufficient data to support that mask requirements effectively prevent the spread of coronavirus: the requirement to wear a facial covering is not effective in stopping the spread of COVID-19. As such, the requirement to wear a face mask is overbroad and violates fundamental rights …" *Id.*

672. "Claims that low mask compliance is responsible for rising case counts are also not supported by Gallup data, which show that the percentage of Americans reporting wearing masks has been high and relatively stable since June***. Health officials and political leaders have assigned mask mandates a gravity unsupported by empirical research***." *Id.* (emphasis added).

673. "A group of scientists and doctors sent a letter to the Editorial Board of the Proceedings of the National Academy of Sciences criticizing a study regarding the effectiveness of masks to slow the spread of the coronavirus and saying that the study's conclusions that 'airborne transmission represents the only viable route for spreading the disease' and the ineffectiveness of social distancing, quarantine, and hand washing recommendations was misleading and harmful.'" *Id*.

674. "[T]he justification for mask-wearing is based on a nonsense narrative with little to no scientific basis. To illustrate [the doctor's] point, she showed a video of a man installing drywall while wearing a surgical mask with ear loops, similar to the mask that health authorities encourage people to wear to prevent infection. However, when the man removed his mask, he still had flecks of drywall stuck around his nose and mouth. The mask failed to filter out drywall dust, which is about 10 micrometers (um) in size. Yet health authorities have been claiming that such surgical masks can protect against SARS-CoV-2, which measures about 0.125 um." Pl. Ex. 151.

675. "An especially popular misconception is the idea that masks keep particles in when the wearer talks, coughs, or sneezes. These activities generate small liquid droplets called aerosols, which

bacteria or viruses can latch onto. Merritt explained that when the wearer sneezes, coughs, or even just talks, the aerosols generated would simply take the path of least resistance. Depending on the type of face mask, aerosols may travel right through the material or exit through gaps along the sides of the face mask." *Id.*

676. "For people at no realistic risk to others to be forced or even guilted into wearing masks to mollify the ideological sensibilities of those unwilling to accept the CDC's (belated but nevertheless unambiguous) guidance inflicts real costs on parties simply acting at the direction of public health authorities." Pl. Ex. 153.

677. "'Evidence that masking as a source [of] control results in any material reduction in transmission was scant, anecdotal, and, in the overall, lacking … [and ***mandatory masking] is the exact opposite of being reasonable***,' ruled a hospital arbitrator in a dispute between the Ontario Nurses' Association and the Toronto Academic Health Science Network," according to an article published Jan. 23, 2021, in Canada's Global Research. Pl. Ex. 154 (emphasis added).

678. "By making mask-wearing recommendations and policies for the general public, or by expressly condoning the practice, governments have both ignored the scientific evidence and done the opposite of following the precautionary principle," Denis Rancourt, PhD, wrote in his 2020 paper "Masks Don't Work." *Id.*

679. ***Masks "were made mandatory 'not because of scientific evidence, but because of political pressure and public opinion.'"*** *Id.* (emphasis added).

680. "In fact, there is no study to even suggest that it makes any sense for healthy individuals to wear masks in public," wrote Karina Reiss, Ph.D., and Dr. Sucharit Bakdi. "One might suspect that the only political reason for enforcing the measure is to foster fear in the population." *Id*.

681. "***Masks are utterly useless***," testified Dr. Roger Hodkinson, a pathologist certified with the Royal College of Physicians and Surgeons of Canada, at a city council meeting. "Masks are simply

virtue-signaling… It's utterly ridiculous seeing these unfortunate, uneducated people – I'm not saying that in a pejorative sense – walking around like lemmings, obeying without any knowledge base, to put the mask on their face." *Id.* (emphasis added).

682. **SCIENTISTS HAVE KNOWN FOR A LONG TIME THAT MASKS AREN'T EFFECTIVE IN REDUCING TRANSMISSION OF RESPIRATORY VIRUSES:** The numerous paragraphs above detail articles and research studies written since the COVID-19 pandemic began in Wuhan, China, in late 2019. But scientists have known for a long time that masks aren't effective in reducing transmission of respiratory viruses. For example, let's take a look at two studies, one from 2015 and the other from 2007.

683. "Laboratory tests showed the penetration of particles through the cloth masks to be very high … Penetration of cloth masks by particles was almost 97% and medical masks 44%," according to a study from Vietnam published April 22, 2015, in the British Medical Journal. Pl. Ex. 155.

684. "This study is the first [Randomized Clinical Trial] of cloth masks, and ***the results caution against the use of cloth masks***. This is an important finding to inform occupational health and safety. Moisture retention, reuse of cloth masks and poor filtration may result in increased risk of infection." *Id.* (emphasis added).

685. "Further, there is a lack of high-quality studies around the use of facemasks and respirators in the healthcare setting, with only four randomized clinical trials (RCTs) to date. Despite widespread use, cloth masks are rarely mentioned in policy documents, and have never been tested for efficacy in a RCT. Very few studies have been conducted around the clinical effectiveness of cloth masks, and most available studies are observational or in vitro. Emerging infectious diseases are not constrained within geographical borders, so it is important for global disease control that use of cloth masks be underpinned by evidence." *Id.*

686. "We have provided the first clinical efficacy data of cloth masks, which suggest [healthcare workers] should not use cloth masks as protection against respiratory infection. Cloth masks resulted in significantly higher rates of infection …" *Id*.

687. "Given the obligations to HCW occupational health and safety, it is important to consider the potential risk of using cloth masks." *Id*.

688. "[T]here is scope for research into more effectively designed cloth masks, but until such research is carried out, ***cloth masks should not be recommended***. We also recommend that infection control guidelines be updated about cloth mask use to protect the occupational health and safety of HCWs." *Id.* (emphasis added).

689. "Other non-pharmaceutical interventions including mask-use and other personal protective equipment for the general public, school and workplace closures early in an epidemic, and mandatory travel restrictions were rejected as likely to be ineffective, infeasible, or unacceptable to the public," according to a research article published Aug. 15, 2007, in BioMed Central Public Health. Pl. Ex. 156.

690. "A recent Institute of Medicine (IOM) study found that empirical evidence about the efficacy or effectiveness of inexpensive, disposable masks, and respirators against influenza is limited." *Id.*

691. "Interventions whose use is not recommended – Masks and other personal protective equipment for the general public: With the exception of some evidence from SARS, ***we did not find any published data that directly support the use of masks, respirators, or other personal protective equipment by the public***, or other steps such as disinfecting surfaces beyond usual practices." *Id.* (emphasis added).

692. "Concerns about supply, competency in mask and especially respirator fitting and use, adherence by the public, and social impact of mask-wearing all served to undermine the panel's confidence in the feasibility and acceptability of widespread use." *Id.*

693. **MASKS POSE SERIOUS HEALTH RISKS TO HUMANS FORCED TO WEAR THEM:** In addition to the science showing that masks have proven totally ineffective in reducing coronavirus spread and deaths, we must now turn to the serious health risks to human beings of forced muzzling. Dozens of scientific and medical studies illustrate the frightening number of negative health consequences of covering your face. A table succinctly summarizes the numerous "Physiological & Psychological Effects of Wearing Facemasks & Their Potential Health Consequences." Pl. Ex. 184.

694. The leading authority on this subject is a 42-page paper published April 20, 2021, by eight German doctors and scientists in the International Journal of Environmental Research & Public Health. They found: "Up until now, there has been no comprehensive investigation as to the adverse health effects masks can cause." The doctors reviewed 65 scientific papers on masks – and determined dozens of adverse health effects of covering your nose and mouth. Pl. Ex. 157.

695. These German doctors and scientists coined a new disease: Mask-Induced Exhaustion Syndrome ("MIES"). *Id.*

696. "Our review of the literature shows that both healthy and sick people can experience Mask-Induced Exhaustion Syndrome (MIES), with typical changes and symptoms that are often observed in combination, such as an increase in breathing dead space volume, increase in breathing resistance, increase in blood carbon dioxide, decrease in blood oxygen saturation, increase in heart rate, increase in blood pressure, decrease in cardiopulmonary capacity, increase in respiratory rate, shortness of breath and difficulty breathing, headache, dizziness, feeling hot and clammy, decreased ability to concentrate, decreased ability to think, drowsiness, decrease in empathy perception, impaired skin barrier function with itching, acne, skin lesions and irritation, overall perceived fatigue and exhaustion." *Id.*

697. "We not only found evidence in the reviewed mask literature of potential long-term effects, but also evidence of an increase in direct short-term effects with increased maskwearing time in

terms of cumulative effects for: carbon dioxide retention, drowsiness, headache, feeling of exhaustion, skin irritation (redness, itching) and microbiological contamination (germ colonization). In any case, ***the MIES potentially triggered by masks*** (Figures 3 and 4) ***contrasts with the WHO definition of health: 'health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity***.'" *Id*. (emphasis added).

698. "We objectified evaluation evidenced changes in respiratory physiology of mask wearers with significant correlation of O2 drop and fatigue, a clustered co-occurrence of respiratory impairment and O2 drop (67%), N95 mask and CO2 rise (82%), N95 mask and O2 drop (72%), N95 mask and headache (60%), respiratory impairment and temperature rise (88%), but also temperature rise and moisture (100%) under the masks. ***Extended mask-wearing by the general population could lead to relevant effects and consequences in many medical fields***." *Id.* (emphasis added).

699. "[T]here has been a controversial scientific discussion worldwide about the benefits and risks of masks in public spaces … we were able to demonstrate a statistically significant correlation in the quantitative analysis between the negative side effects of blood-oxygen depletion and fatigue in mask wearers …" *Id.*

700. "The literature review confirms that relevant, undesired medical, organ, and organ system-related phenomena accompanied by wearing masks occur in the fields of internal medicine (at least 11 publications, Section 3.2). The list covers neurology (seven publications, Section 3.3), psychology (more than 10 publications, Section 3.4), psychiatry (three publications, Section 3.5), gynecology (three publications, Section 3.6), dermatology (at least 10 publications, Section 3.7), ENT medicine (four publications, Section 3.8), dentistry (one publication, Section 3.8), sports medicine (four publications, Section 3.9), sociology (more than five publications, Section 3.10), occupational medicine (more than 14 publications, Section 3.11), microbiology (at least four publications, Section 3.12), epidemiology (more than 16 publications, Section 3.13), and pediatrics." *Id.*

701. "[W]earing surgical masks in healthy medical personnel (15 subjects, 18-40 years old) leads to measurable physical effects with elevated transcutaneous carbon dioxide values after 30 min. … ***According to the scientific data, mask wearers as a whole show a striking frequency of typical, measurable, physiological changes associated with masks***." *Id.* (emphasis added).

702. A "health-critical value of carbon dioxide concentration (CO2 Vol%) increased by a factor of 30 compared to normal room air was measured (ppm with mask versus 464 ppm without mask, statistically significant with $p < 0.001$) . These phenomena are responsible for a statistically significant increase in carbon dioxide (CO2) blood content in mask wearers …" *Id.*

703. "[A]nother consequence of masks that has often been experimentally proven is a statistically significant drop in blood oxygen saturation (SpO2) ($p < 0.05$). A drop in blood oxygen partial pressure (PaO2) with the effect of an accompanying increase in heart rate ($p < 0.05$) as well as an increase in respiratory rate ($p < 0.05$) have been proven." *Id.*

704. "In another experimental study (comparative study), surgical and N95 masks caused a significant increase in heart rate ($p < 0.01$) as well as a corresponding feeling of exhaustion." *Id.*

705. "The masked subjects showed statistically significant increases in heart rate ($p < 0.001$) and respiratory rate ($p < 0.02$) accompanied by a significant measurable increase in transcutaneous carbon dioxide PtcCO2 ($p < 0.0006$). They also complained of breathing difficulties during the exercise. The increased rebreathing of carbon dioxide (CO2) from the enlarged dead space volume in mask wearers can reflectively trigger increased respiratory activity with increased muscular work as well as the resulting additional oxygen demand and oxygen consumption." *Id.*

706. Wearing a face mask "may result in additional nonphysical effects such as confusion, decreased thinking ability and disorientation, including overall impaired cognitive abilities and decrease in psychomotoric abilities." *Id.*

707. “In an experimental setting with different mask types (community, surgical, N95), a significant increase in heart rate ($p < 0.04$), a decrease in oxygen saturation SpO2 ($p < 0.05$) with an increase in skin temperature under the mask (face), and difficulty of breathing ($p < 0.002$) were recorded in 12 healthy young subjects (students). In addition, the investigators observed dizziness ($p < 0.03$), listlessness ($p < 0.05$), impaired thinking ($p < 0.03$) and concentration problems ($p < 0.02$), which were also statistically significant when wearing masks. According to other researchers and their publications, masks also interfere with temperature regulation, impair the field of vision, and of non-verbal and verbal communication.” *Id.*

708. “The mask-induced adverse changes are relatively minor at first glance, but repeated exposure over longer periods in accordance with the above-mentioned pathogenetic principle is relevant***. Long-term disease-relevant consequences of masks are to be expected***.” *Id.* (emphasis added).

709. “For small increases in carbon dioxide in the inhaled air, this disease-promoting effect has been proven with the creation of headaches, irritation of the respiratory tract up to asthma, as well as an increase in blood pressure and heart rate with vascular damage, and, finally, neuropathological and cardiovascular consequences.” *Id.*

710. “Masks are responsible for the aforementioned physiological changes with rises in inhaled carbon dioxide, small sustained increases in heart rate and mild but sustained increases in respiratory rates.” *Id.*

711. “Therefore, the dead space amassed by the mask causes a relative reduction in the gas exchange volume available to the lungs per breath by 37%. This largely explains the impairment of respiratory physiology reported in our work and the resulting side effects of all types of masks in

everyday use in healthy and sick people (increase in respiratory rate, increase in heart rate, decrease in oxygen saturation, increase in carbon dioxide partial pressure, fatigue, headaches, dizziness, impaired thinking, etc.)."

712. In addition to the effect of increased dead space volume breathing, however, mask-related breathing resistance is also of exceptional importance (Figure 3). Experiments show an increase in airway resistance by a remarkable 126% on inhalation and 122% on exhalation with an N95 mask. Experimental studies have also shown that moisturization of the mask (N95) increases the breathing resistance by a further 3% and can, thus, increase the airway resistance up to 2.3 times the normal value. This clearly shows the importance of the airway resistance of a mask. Here, the mask acts as a disturbance factor in breathing and makes the observed compensatory reactions with an increase in breathing frequency and simultaneous feeling of breathlessness plausible (increased work of the respiratory muscles). This extra strain due to the amplified work of breathing against bigger resistance caused by the masks also leads to intensified exhaustion with a rise in heart rate and increased CO2 production. Fittingly, in our review of the studies on side effects of masks (Figure 2), we also found a percentage clustering of significant respiratory impairment and a significant drop in oxygen saturation …" *Id.*

713. "In an observational study of ten 20 to 50 year-old nurses wearing N95 masks during their shift work, side effects such as breathing difficulties ('I can't breathe'), feelings of exhaustion, headache ($p < 0.001$), drowsiness ($p < 0.001$), and a decrease in oxygen saturation SpO2 ($p < 0.05$) as well as an increase in heart rate ($p < 0.001$) were statistically significant in association with an increase in obesity (BMI)." *Id.*

714. "The researchers concluded from their findings that elderly or patients with reduced cardiopulmonary function have a higher risk of developing a severe respiratory failure while wearing a mask." *Id*.

715. "[N]eurologists from Israel, the UK, and the USA state that a mask is unsuitable for epileptics because it can trigger hyperventilation. The use of a mask significantly increases the respiratory rate by about plus 15 to 20%. However, an increase in breathing frequency leading to hyperventilation is known to be used for provocation in the diagnosis of epilepsy and causes seizure-equivalent EEG changes in 80% of patients with generalized epilepsy and in up to 28% of focal epileptics." *Id.*

716. "The scientists explain these neurological impairments with a mask-induced latent drop in blood gas oxygen levels O2 (towards hypoxia) or a latent increase in blood gas carbon dioxide levels CO2 (towards hypercapnia). In view of the scientific data, this connection also appears to be indisputable." *Id.*

717. "[W]earing surgical masks and N95 masks can also lead to a reduced quality of life owing to reduced cardiopulmonary capacity. Masks, along with causing physiological changes and discomfort with progressive length of use, can also lead to significant discomfort ($p < 0.03$ to $p < 0.0001$) and a feeling of exhaustion." *Id.*

718. "[M]asks also restrict the cognitive abilities of the individual (measured using a Likert scale survey) accompanied by a decline in psycho-motoric abilities and consequently a reduced responsiveness (measured using a linear position transducer) as well as an overall reduced performance capability …" *Id*.

719. "According to a questionnaire survey, ***masks also frequently cause anxiety and psychovegetative stress reactions in children – as well as in adults – with an increase in psychosomatic and stress-related illnesses and depressive self-experience***, reduced participation, social withdrawal, and lowered health-related self-care. Over 50% of the mask wearers studied had at least mild depressive feelings." *Id.* (emphasis added).

720. "***[C]hanges that lead to hypercapnia are known to trigger panic attacks***. This makes the significantly measurable increase in CO2 caused by wearing a mask clinically relevant. … The activation of the locus coeruleus by CO2 is used to generate panic reactions via respiratory gases." *Id.* (emphasis added).

721. "From the physiological, neurological, and psychological side effects and dangers described above (Sections 3.1, 3.3, and 3.4), ***additional problems can be derived for the use of masks in psychiatric cases***. People undergoing treatment for dementia, paranoid schizophrenia, ***personality disorders with anxiety and panic attacks***, but also panic disorders with claustrophobic components, ***are difficult to reconcile with a mask requirement, because even small increases in CO2 can cause and intensify panic attacks***." *Id.* (emphasis added).

722. "If CO2 is increasingly rebreathed under masks, this manifestation could, even with subliminal carbon dioxide increases, act as a disturbing variable of the fetal-maternal CO2 gradient increasing over time of exposure and, thus, develop clinical relevance, also with regard to a reduced compensation reserve of the expectant mothers." *Id*.

723. "[T]he exact effects of prolonged mask use in pregnant women remain unclear overall. Therefore, in pregnant women, extended use of surgical and N95 masks is viewed critically." *Id.*

724. "In addition, germs (bacteria, fungi and viruses) accumulate on the outside and inside of the masks due to the warm and moist environment. They can cause clinically relevant fungal, bacterial, or viral infections. … All in all, the above-mentioned facts cause the unfavorable dermatological effects with mask related adverse skin reactions like acne, rashes on the face, and itch symptoms." *Id.*

725. "Wearing the masks caused headache in 71.4% of participants, in addition to drowsiness in 23.6%, detectable skin damage in 51%, and acne in 53% of mask users." *Id.*

726. “[M]asks create an unnaturally moist and warm local skin environment. In fact, scientists were able to demonstrate a significant increase in humidity and temperature in the covered facial area in another study in which the test individuals wore masks for one hour.” *Id.*

727. “There are reports from dental communities about negative effects of masks and are accordingly titled ‘mask mouth.’ Provocation of gingivitis (inflammation of the gums), halitosis (bad breath), candidiasis (fungal infestation of the mucous membranes with Candida albicans), and cheilitis (inflammation of the lips), especially of the corners of the mouth, and even plaque and caries, are attributed to the excessive and improper use of masks. The main trigger of the oral diseases mentioned is an increased dry mouth due to a reduced saliva flow and increased breathing through the open mouth under the mask. … ***This clearly shows the disease-promoting reversal of the natural conditions caused by masks***.” *Id.* (emphasis added).

728. “In a study of 221 health care workers, ENT physicians objectified a voice disorder in 33% of mask users. … The mask not only acted as an acoustic filter, provoking excessively loud speech, it also seems to trigger impaired vocal cord coordination because the mask compromises the pressure gradients required for undisturbed speech. The researchers concluded from their findings that masks could pose a potential risk of triggering new voice disorders as well as exacerbating existing ones.” *Id.*

729. “The proven adaptation effect of the respiratory muscles in healthy athletes clearly suggests that masks have a disruptive effect on respiratory physiology. … Even at rest, the oxygen availability under the masks was 13% lower than without the masks and the carbon dioxide (CO2) concentration was 30 times higher.” *Id*.

730. “Social and Sociological Side Effects & Dangers of Masks: The results of a Chilean study with health care workers show that masks act like an acoustic filter and provoke excessively loud

speech. This causes a voice disorder. The increased volume of speech also contributes to increased aerosol production by the mask wearer. These experimental data measured with the Aerodynamic Particle Sizer … are highly relevant. Moreover, mask wearers are prevented from interacting normally in everyday life due to impaired clarity of speech, which tempts them to get closer to each other. This results in a distorted prioritization in the general public, which counteracts the recommended measures associated with the COVID-19 pandemic." *Id.*

731. "WHO prioritizes social distancing and hand hygiene with moderate evidence and recommends wearing a mask with weak evidence, especially in situations where individuals are unable to maintain a physical distance of at least 1 m[eter]. The disruption of non-verbal communication due to the loss of facial expression recognition under the mask can increase feelings of insecurity, discouragement, and numbness as well as isolation, which can be extremely stressful for the mentally and hearing impaired. Experts point out that masks disrupt the basics of human communication (verbal and nonverbal). The limited facial recognition caused by masks leads to a suppression of emotional signals. Masks, therefore, disrupt social interaction, erasing the positive effect of smiles and laughter but at the same time greatly increasing the likelihood of misunderstandings because negative emotions are also less evident under masks." *Id.*

732. "Poor filtration performance and incorrect use of surgical masks and community masks, as well as their frequent reuse, imply an increased risk of infection." *Id.*

733. Masks are an "ideal growth and breeding ground for various pathogens such as bacteria and fungi and also allows viruses to accumulate. The warm and humid mask microclimate favors the accumulation of various germs on and underneath the masks, and the germ density is measurably proportional to the length of time the mask is worn. After only 2 h[ours] of wearing the mask, the

pathogen density increases almost tenfold in experimental observation studies. From a microbiological and epidemiological point of view, masks in everyday use pose a risk of contamination." *Id.*

734. "Since masks are constantly penetrated by germ-containing breath and the pathogen reproduction rate is higher outside mucous membranes, potential infectious pathogens accumulate excessively on the outside and inside of masks. ***On and in the masks, there are quite serious, potentially disease-causing bacteria and fungi*** such as E. coli (54% of all germs detected), Staphylococcus aureus (25% of all germs detected), Candida (6%), Klebsiella (5%), Enterococci (4%), Pseudomonads (3%), Enterobacter (2%), and Micrococcus (1%) even detectable in large quantities." *Id.* (emphasis added).

735. "It was shown that all mask-wearing subjects released significantly more smaller particles of size 0.3–0.5 um into the air than mask-less people, both when breathing, speaking and coughing …" *Id.*

736. "Epidemiological Side Effects & Dangers of Masks: A major risk of mask use in the general public is the creation of a false sense of security with regard to protection against viral infections, especially in the sense of a falsely assumed strong self-protection. Disregarding infection risks may not only neglect aspects of source control, but also result in other disadvantages. Although there are quite a few professional positive accounts of the widespread use of masks in the general populace, most of the serious and evident scientific reports conclude that the general obligation to wear masks conveys a false sense of security. However, this leads to a neglect of those measures that, according to the WHO, have a higher level of effectiveness than maskwearing: social distancing and hand hygiene. Researchers were able to provide statistically significant evidence of a false sense of security and more risky behavior when wearing masks in an experimental setting." *Id.*

737. "Germany pointed out that ***wearers of certain types of masks such as the common fabric masks (community masks) cannot rely on them to protect them or others from transmission of SARS-CoV-2***. … A Swiss textile lab test of various masks available on the market to the general public recently confirmed that most mask types filter aerosols insufficiently." *Id.* (emphasis added).

738. "A recent experimental study even demonstrated that all mask-wearing people (surgical, N95, fabric masks) release significantly and proportionately smaller particles of size 0.3 to 0.5 um into the air than maskless people, both when breathing, speaking, and coughing. According to this, the masks act like nebulizers and contribute to the production of very fine aerosols. Smaller particles, however, spread faster and further than large ones for physical reasons. Of particular interest in this experimental reference study was the finding that a test subject wearing a single-layer fabric mask was also able to release a total of 384% more particles (of various sizes) when breathing than a person without." *Id.*

739. "[M]asks are even considered a general risk for infection in the general population, which does not come close to imitating the strict hygiene rules of hospitals and doctors' offices: ***the supposed safety, thus, becomes a safety risk itself***." *Id*. (emphasis added).

740. "[T]here are clear, scientifically recorded adverse effects for the mask wearer, both on a psychological and on a social and physical level. Neither higher level institutions such as the WHO or the European Centre for Disease Prevention & Control (ECDC) nor national ones, such as the Centers for Disease Control and Prevention, GA, USA (CDC) or the German RKI, substantiate with sound scientific data a positive effect of masks in the public (in terms of a reduced rate of spread of COVID-19 in the population). ***Contrary to the scientifically established standard of evidence-***

based medicine, national and international health authorities have issued their theoretical assessments on the masks in public places, even though the compulsory wearing of masks gives a deceptive feeling of safety." *Id.* (emphasis added).

741. "It should not go unmentioned that very recent data suggest that the detection of SARS-CoV-2 infection does not seem to be directly related to popular mask use. The groups examined in a retrospective comparative study (infected with SARS-CoV-2 and not infected) did not differ in their habit of using masks: approximately 70% of the subjects in both groups always wore masks …" *Id.*

742. "[W]e have identified scientifically validated and numerous statistically significant adverse effects of masks in various fields of medicine, especially with regard to a disruptive influence on the highly complex process of breathing and negative effects on the respiratory physiology and gas metabolism of the body (see Figures 2 and 3). The respiratory physiology and gas exchange play a key role in maintaining a health-sustaining balance in the human body." *Id.*

743. "In panic-prone individuals, stress-inducing noradrenergic sympathetic activation can be partly directly mediated via the carbon dioxide (CO2) mechanism at the locus coeruleus in the brainstem, but also in the usual way via chemo-sensitive neurons of the nucleus solitarius in the medulla. The nucleus solitarius is located in the deepest part of the brainstem, a gateway to neuronal respiratory and circulatory control. A decreased oxygen (O2) blood level there causes the activation of the sympathetic axis via chemoreceptors in the carotids … Masks, therefore, trigger direct reactions in important control centers of the affected brain via the slightest changes in oxygen and carbon dioxide in the blood of the wearer." *Id.*

744. "Clinical effects of prolonged mask-wearing would, thus, be a conceivable intensification of chronic stress reactions and negative influences on the metabolism leading towards a metabolic syndrome." *Id.*

745. "***Since masks impede the wearer's breathing and accelerate it, they work completely against the principles of health-promoting breathing*** used in holistic medicine and yoga. According to recent research, ***undisturbed breathing is essential for happiness and healthy drive, but masks work against this***. The result of significant changes in blood gases in the direction of hypoxia (drop in oxygen saturation) and hypercapnia (increase in carbon dioxide concentration) through masks, thus, has the potential to have a clinically relevant influence on the human organism …" *Id.*

746. "According to the scientific results and findings, masks have measurably harmful effects not only on healthy people, but also on sick people and their relevance is likely to increase with the duration of use. … negative physical and psychological changes caused by masks could be objectified even in younger and healthy individuals." *Id*.

747. "From a doctor's viewpoint, it may also be difficult to advise children and adults who, due to social pressure (to wear a mask) and the desire to feel they belong, suppress their own needs and concerns until the effects of masks have a noticeable negative impact on their health." *Id.*

748. "[T]he use of masks by pregnant women for more than 1 h[our], as well as under physical stress, should be avoided in order to protect the unborn child.." *Id.*

749. "The study concluded that '***the advocacy of an extended mask requirement remains predominantly theoretical … On the other hand, the side effects of masks are clinically relevant***.'" *Id.* (emphasis added).

750. "In addition to protecting the health of their patients, doctors should also base their actions on the guiding principle of the 1948 Geneva Declaration, as revised in 2017. According to this, every doctor vows to put the health and dignity of his patient first and, even under threat, not to use his medical knowledge to violate human rights and civil liberties. Within the framework of these findings, we, therefore, propagate an explicitly medically judicious, legally compliant action

in consideration of scientific factual reality ***against a predominantly assumption-led claim to a general effectiveness of masks, always taking into account possible unwanted individual effects for the patient and mask wearer concerned, entirely in accordance with the principles of evidence-based medicine and the ethical guidelines of a physician***." *Id.* (emphasis added).

751. "The described mask-related changes in respiratory physiology can have an adverse effect on the wearer's blood gases sub-clinically and in some cases also clinically manifest and, therefore, have a negative effect on the basis of all aerobic life, external, and internal respiration, with an influence on a wide variety of organ systems and metabolic processes with physical, psychological and social consequences for the individual human being." *Id.*

752. Numerous other medical and scientific studies warn us of the dangers of wearing face masks: "A recent study in the journal Cancer Discovery found that inhalation of harmful microbes can contribute to advanced stage lung cancer in adults***. Long-term use of face masks may help breed these dangerous pathogens***. Microbiologists agree that frequent mask wearing creates a moist environment in which microbes are allowed to grow and proliferate before entering the lungs." Pl. Ex. 158 (emphasis added).

753. "As more evidence emerges pertaining to the long-term effects of mask mandates and lockdowns, doctors and scientists are beginning to reconsider whether these authoritarian measures really are doing more harm than good." *Id.*

754. "Since forced mask wearing began, dermatologists have coined the term 'maskne' to describe an onset of pimples near the mouth caused by masks clogging up pores with oil and bacteria. This can be caused by either disposable or cloth masks." *Id.*

755. "Dentists have also been warning about a phenomenon known as 'mask mouth' in which patients are arriving back to the dental office with an increase in gingivitis and tooth decay as high

as 50% in a period of just a few months since mask mandates began. ***This discovery sheds light on the growing evidence of harm caused by long-term mask wearing***." *Id.* (emphasis added).

756. Even voluntary long-term mask wearers acknowledge the face coverings are "uncomfortable and inconvenient." Pl. Ex. 197.

757. "Wearing a mask, let alone two, potentially simulates COPD/chronic obstructive pulmonary disease, akin to what smokers commonly get. Masks can make it difficult for one to breathe out, especially during stressful situations." Pl. Ex. 137.

758. "***[M]asking appears to carry substantial risks to the user***. And we reiterate that our conclusions are not based on the absence of evidence for ineffectiveness alone, but actual evidence of ineffectiveness." *Id.* (emphasis added).

759. "Prolonged mask use (>4 hours per day) promotes facial alkalization and inadvertently encourages dehydration, which in turn can enhance barrier breakdown and bacterial infection risk. British clinicians have reported masks to increase headaches and sweating and decrease cognitive precision." Pl. Ex. 115.

760. "One small study looked at 39 volunteers who had end stage renal disease and received dialysis during the SARS pandemic in 2003. The researchers found that 70% of participants who wore an N95 respirator for 4 hours during treatment experienced a fall in oxygen levels." Pl. Ex. 119.

761. "Hypercapnia, or hypercarbia, occurs when a person has too much carbon dioxide in their blood. Hyperventilation and some lung conditions can lead to hypercapnia. It can manifest as dizziness and headaches at the mild end of the spectrum, and confusion, seizures, and coma at the severe end." *Id.*

762. "The WHO acknowledges that people living with asthma, chronic respiratory conditions, or breathing problems may experience difficulties when wearing face masks. The CDC recommend that anyone who has trouble breathing should not wear a face covering." *Id.*

763. “In some situations, wearing a cloth face covering may exacerbate a physical or mental health condition, lead to a medical emergency, or introduce significant safety concerns, the Center[s] for Disease Control explains.” Pl. Ex. 122.

764. “Importantly, we found evidence for significant respiratory compromise in patients with severe obstructive pulmonary disease, secondary to the development of hypercapnia. This could also happen in patients with lung infections …” Pl. Ex. 125.

765. “[T]here are also potential risks and side effects that require attention. This specifically applies to the use in the general population. From a medical standpoint, there is a theoretical possibility of an airflow obstruction when wearing a mask.” *Id*.

766. “Depending on the design, masks can increase the lung’s dead space. In extreme cases, carbon dioxide retention (hypercapnia) can occur with side effects. Only few investigations are available and addressing this medical problem.” *Id.*

767. “***Although scientific evidence supporting facemasks’ efficacy is lacking, adverse physiological, psychological and health effects are established***. Is has been hypothesized that facemasks have compromised safety and efficacy profile and should be avoided from use.” *Id.* (emphasis added).

768. “1) [T]he practice of wearing facemasks has compromised safety and efficacy profile, 2) Both medical and non-medical facemasks are ineffective to reduce human-to-human transmission and infectivity of SARS-CoV-2 and COVID-19, 3) Wearing facemasks has adverse physiological and psychological effects, 4) ***Long-term consequences of wearing facemasks on health are detrimental***.” Pl. Ex. 128 (emphasis added).

769. “***Breathing is one of the most important physiological functions to sustain life and health. Human body requires a continuous and adequate oxygen (O2) supply to all organs and cells for normal function and survival***. … chronic mild or moderate hypoxemia and hypercapnia such as

from wearing facemasks resulting in shifting to higher contribution of anaerobic energy metabolism, decrease in pH levels and increase in cells and blood acidity, toxicity, oxidative stress, chronic inflammation, immunosuppression, and health deterioration. … ***Long-term practice of wearing facemasks has strong potential for devastating health consequences***." *Id.* (emphasis added).

770. "Vulnerable populations such as people with mental health disorders, developmental disabilities, hearing problems, those living in hot and humid environments, children, and patients with respiratory conditions are at significant health risk for complications and harm [from wearing face coverings]. … Wearing [a] facemask mechanically restricts breathing by increasing the resistance of air movement during both inhalation and exhalation process. … ***prolonged and continues effect of wearing facemask is maladaptive and could be detrimental for health***." *Id.* (emphasis added).

771. "A trapped air remaining between the mouth, nose, and the facemask is rebreathed repeatedly in and out of the body, containing low O2 and high CO2 concentrations, causing hypoxemia and hypercapnia." *Id.*

772. "Low oxygen content in the arterial blood can cause myocardial ischemia, serious arrhythmias, right or left ventricular dysfunction, dizziness, hypotension, syncope, and pulmonary hypertension. Chronic low-grade hypoxemia and hypercapnia as result of using facemask can cause exacerbation of existing cardiopulmonary, metabolic, vascular, and neurological conditions." *Id.*

773. "In addition to hypoxia and hypercapnia, breathing through facemasks residues bacterial and germs components on the inner and outside layer of the facemask. These toxic components are repeatedly rebreathed back into the body, causing self-contamination. Breathing through facemasks also increases temperature and humidity in the space between the mouth and the mask, resulting a release of toxic particles from the mask's materials." *Id.*

774. “Rebreathing contaminated air with high bacterial and toxic particle concentrations along with low O2 and high CO2 levels continuously challenge the body homeostasis, causing self-toxicity and immunosuppression.” *Id.*

775. “Psychological effects of wearing facemasks: Psychologically, wearing [a] facemask fundamentally has negative effects on the wearer and the nearby person. Basic human-to-human connectivity through face expression is compromised and self-identity is somewhat eliminated. These dehumanizing movements partially delete the uniqueness and individuality of person who wearing the facemask as well as the connected person.” *Id.*

776. “Encountering people wearing facemasks activates innate stress-fear emotion, which is fundamental to all humans in danger or life threating situations, such as death or unknown, unpredictable outcome. While acute stress response (seconds to minutes) is adaptive reaction to challenges and part of the survival mechanism, chronic and prolonged state of stress-fear is maladaptive and has detrimental effects on physical and mental health.” *Id.*

777. “Wearing facemasks has been demonstrated to have substantial adverse physiological and psychological effects. These include hypoxia, hypercapnia, shortness of breath, increased acidity and toxicity, activation of fear and stress response, rise in stress hormones, immunosuppression, fatigue, headaches, decline in cognitive performance, predisposition for viral and infectious illnesses, chronic stress, anxiety, and depression.” *Id.*

778. “***Long-term consequences of wearing facemask can cause health deterioration***, developing and progression of chronic diseases and premature death.” *Id.* (emphasis added).

779. “The statements supporting mask mandates all assume no negative side-effects from mask wearing. The logic here is inescapable: if wearing a mask can mitigate harm, it can also cause harm.” Pl. Ex. 129.

780. “Air inside the mask is definitely stale. In filtering particles, the mask makes it harder to breathe. Stanford engineers estimated that N95 masks cause a 5% to 20% reduction in O2 intake. This can cause dizziness and lightheadedness. This can be life-threatening for someone with lung disease or with respiratory distress,” according to the Association of American Physicians & Surgeons. Pl. Ex. 131.

781. “Reuse of cloth masks, frequency and effectiveness of cleaning, and poor filtration may result in increased risk of infection. Observations during SARS suggested double-masking and other practices increased the risk of infection because of moisture, liquid diffusion.” *Id.*

782. “Dentists have reported ‘Wearing masks increases dryness, which leads to decrease in saliva. It is the saliva that fights bacteria. Result is decaying teeth, receding gum lines, and seriously sour breath. Gum disease – or periodontal disease – will eventually lead to strokes and an increased risk of heart attacks.’” *Id.*

783. “The Hamburg Environmental Institute (July 2020) warned of the inhalation of chlorine compounds in polyester masks as well as problems in connection with face mask disposal.” *Id.*

784. A “group of doctors in Oklahoma is suing the Tulsa mayor and the Tulsa Health Department over the city’s mask mandate, asserting ***masks cause healthy people to become sick***. … Dr. James Meehan, MD, said he has seen an increase in patients with facial rashes, as well as fungal and bacterial infections, and has heard from colleagues around the globe that bacterial pneumonia is on the rise. He asserts this increase stems directly from mask wearing.” *Id.* (emphasis added).

785. “New research is showing that cloth masks may be increasing the aerosolization of the SARSCOV-2 virus into the environment causing an increased transmission of the disease,” he added. *Id.*

786. “We’re seeing inflammation in people’s gums that have been healthy forever, and cavities in people who have never had them before,” said Dr. Rob Ramondi, a dentist and co-founder of One

Manhattan Dental. “About 50% of our patients are being impacted by this, [so] we decided to name it ‘mask mouth’ — after ‘meth mouth.’” *Id.*

787. “Wearing a mask reduces the oxygen we breathe in and increases the CO2 intake***. Masks are muzzling suffocation devices that science says are causing great harm***.” Pl. Ex. 135 (emphasis added).

788. Wearing masks “creates more cases of dry eye. The Center for Ocular Research & Education (CORE) at the University of Waterloo, Ontario, Canada, is advising eye care professionals on how to recognize and mitigate mask-associated dry eye.” Pl. Ex. 159.

789. “The mechanism of the development of dry eye is tied to the outward spread of air that the mask creates. As the experts at CORE explained, exhaled air still needs to disperse; when a mask sits loosely against the face the likely route is upwards. This forces a stream of air over the surface of the eye, creating conditions that accelerate tear film evaporation, leading to dry spots on the ocular surface and discomfort.” *Id.*

790. “In addition, individual may rub their eyes to relieve the symptoms, which can help spread the virus to the face.” *Id.*

791. “There is no biological history of mass masking until the current era. … if even a small portion of mask fibers is detachable by inspiratory airflow, or if there is debris in mask manufacture or packaging or handling, then there is the possibility of not only entry of foreign material to the airways, but also entry to deep lung tissue, and potential pathological consequences of foreign bodies in the lungs.” Pl. Ex. 160.

792. “The nose and mouth are the gateways to the lungs for land vertebrates. There is no known history of a species that has begun to voluntarily or involuntarily obstruct, partially obstruct, or filter the orifices to their airways and lungs. We have no biological history of such a species or how they would have adapted to or possibly survived such a novel practice.” *Id*.

793. "***Prior research has overwhelmingly shown that there is no significant evidence of benefits of masks, particularly regarding transmission of viral infections, and that there are well-established risks***." *Id.* (emphasis added).

794. The U.S. Occupational Health & Safety Administration "require[s] that any human-occupied airspace where oxygen measured less than 19.5% to be labelled as 'not safe for workers.' The percentage of oxygen inside a masked airspace generally measures 17.4% within several seconds of wearing." *Id.*

795. "Because oxygen is so essential to life, and in adequate amounts, humans and animals have developed the ability to sense changes in oxygen concentration, and to adapt to such challenges quickly. The medulla oblongata and carotid bodies are sensitive to such changes. Both lower ambient oxygen and increased ambient carbon dioxide stimulates ventilation, as the body quickly and steadfastly attempts to acquire more oxygen. As a compensatory mechanism, inspiratory flow is measurably higher in mask-wearers than in controls." *Id.*

796. "Research on synthetic fibers [such as those from masks] has shown a correlation between the inhalation of synthetic fibers and various bronchopulmonary diseases, such as asthma, alveolitis, chronic bronchitis, bronchiectasis, fibrosis, spontaneous pneumothorax, and chronic pneumonia." *Id.*

797. "When partial airway obstruction, i.e. masking, is added, deeper and more forceful breathing occurs. When this phenomenon is combined with the particles found herein on microscopic examination of the face side of newly unpackaged, never worn masks, there can arise the risk of a dangerous level of foreign material entering lung tissue. Furthermore, worn masks can only either lose these particles to lodge in the lungs of the wearer, or they would accumulate during use, to the burden (both biological and debris) of non-mask material carried on the inside of the mask." *Id.*

798. "***If widespread masking continues, then the potential for inhaling mask fibers and environmental and biological debris continues on a daily basis for hundreds of millions of people***. This should be alarming for physicians and epidemiologists knowledgeable in occupational hazards." *Id.* (emphasis added).

799. "Limited airflow through cloth materials can contribute to breathing difficulties and particle leakage. … The materials with the greatest filtration efficacy (vacuum bag and tea towel) were countered by very low airflow, which made breathing difficult and limits use of these materials." Pl. Ex. 142.

800. "Some data also suggest a potential harm to health care clinicians using cloth masks for extended periods in the clinical setting. … Overall, we conclude that cloth masks lack evidence for adequate protection of health care clinicians against viral respiratory infections, and health care clinicians should use caution when deciding whether to use cloth masks for extended clinical work." *Id.*

801. "***Cloth masks actually risk your health rather than protect it***. The moisture caught in these masks will become mildew-ridden in 30 minutes. Dry coughing, enhanced allergies, sore throat are all symptoms of a micro-mold in your mask." Pl. Ex. 147 (emphasis added).

802. "***Scores of dermatologists, dentists, immunologists, virologists, [and] pediatricians all over the world have been sounding the alarm for months over the continued use of face masks***." *Id.* (emphasis added).

803. "Masks dehumanize us, and ironically serve as a constant reminder that we should be afraid. People can now be spotted wearing masks while camping by themselves in the woods or on a solo sailing trip. … ***Face coverings are causing real harm to the American psyche, provide little to no medical benefit, and distract us from more important health policy issues***." *Id.* (emphasis added).

804. “More support for health concerns with wearing masks has been uncovered. … This study confirms our reporting from yesterday that masks aren’t just a nuisance but can cause serious health problems. The article recently uncovered was published by the CDC and it states in black and white the side-effects of wearing a mask, specifically related to the masks trapping carbon dioxide or CO2.” Pl. Ex. 161.

805. “[M]asks cause breathing resistance that could result in a reduction in the frequency and depth of breathing, known as hypoventilation, in as little as an hour of wearing a mask. The article further went on to elaborate on the side-effects of increased CO2 concentrations in the mask wearer that include 1. Headache; 2. Increased pressure inside the skull; 3. Nervous system changes (e.g., increased pain threshold, reduction in cognition – altered judgement, decreased situational awareness, difficulty coordinating sensory or cognitive abilities and motor activity, decreased visual acuity, widespread activation of the sympathetic nervous system that can oppose the direct effects of CO2 on the heart and blood vessels); 4. Increased breathing frequency; 5. Increased “work of breathing,” which is [the] result of breathing through a filter medium; 6. Cardiovascular effects (e.g., diminished cardiac contractility, vasodilation of peripheral blood vessels); 7. Reduced tolerance to lighter workloads.” Pl. Ex. 161.

806. “When bacteria from your mouth enter your lungs, it's linked to advanced-stage lung cancer and tumor progression, a finding that raises serious questions about the long-term use of face masks, which could potentially accelerate this process.” Pl. Ex. 162.

807. “The team of researchers, from New York University (NYU) Grossman School of Medicine, revealed that when lungs were ‘enriched’ with oral commensals, or microorganisms from your mouth, advanced-stage lung cancer was more likely, and it was linked with worse prognosis and tumor progression as well. The use of masks – also known to colonize bacteria – could accelerate the inhalation of oral microbes into your lungs, potentially affecting cancer risk.” *Id.*

808. “If the public are advised to wear face masks, we must be certain that this will not adversely affect the bacterial flora of the upper respiratory tract. I am not aware of research in adults relevant to this question but there is quite extensive evidence from another field of study in which viral infection interacts with bacterial pathogens to cause sudden death.” *Id.*

809. “[By] wearing a face mask you're still going to be re-breathing bacteria and other pathogens and, likely, concentrating the amount of oral commensals that enter your lungs, with potentially devastating consequences.” *Id.*

810. “But aside from not being as effective against the coronavirus as so-called health experts claim, masks may even pose a risk to human health. For instance, a recently published review of studies on mask-related adverse health effects suggested that ***mask-wearing may seriously harm people without any notable benefit***.” Pl. Ex. 151 (emphasis added).

811. “Pathogenic viruses and bacteria can also rapidly accumulate on the surface of improperly used face masks. In such cases, masks may actually increase the risk of spreading viruses …” *Id.*

812. “Scientists have found evidence that some face masks which are on sale and being used by members of the general public are laced with toxic chemicals. Preliminary tests have revealed traces of a variety of compounds which are heavily restricted for both health and environmental reasons. This includes formaldehyde, a chemical known to cause watery eyes; a burning sensations in the eyes, nose, and throat; coughing; wheezing; and nausea. Experts are concerned that the presence of these chemicals in masks which are being worn for prolonged periods of time could cause unintended health issues.” Pl. Ex. 163.

813. “[F]ace coverings designed for use by the general public are not regulated and fail to meet the same standards as medical grade PPE. … Experts are concerned that the presence of these chemicals in masks which are being worn for prolonged periods of time could cause unintended health issues.” *Id.*

814. “Professor Michael Braungart, director at the Hamburg Environmental Institute, conducted tests on masks which had caused people to break out in rashes. ‘What we are breathing through our mouth and nose is actually hazardous waste,’ Professor Braungart said. These used masks were found to contain formaldehyde and other chemicals. … ‘All in all, we have a chemical cocktail in front of our nose and mouth that has never been tested for either toxicity or any long-term effects on health.’” *Id.*

815. “The boom in demand for such products has led to concerns that masks are being recklessly made … Canada last week recalled millions of masks that were distributed to schools, transport workers, and daycares by the government. Health Canada has warned they may be toxic to the lungs after being urged to inspect the safety of the coverings.” *Id.*

816. “Analysis found evidence of graphene nanoparticles shed by the masks. If graphene gets into the lungs it can be dangerous as it is highly abrasive and durable …” *Id*.

817. “Health chiefs in Belgium are concerned that 15 million fabric masks given to pharmacists may be toxic and cause pneumonia. According to a preliminary report carried out by Sciensano, the Belgian Institute for Public Health, the masks contain nanoparticles of silver and titanium dioxide that when inhaled could damage the respiratory tract.” *Id.*

818. Adverse health effects of wearing masks include “1. Cavities: New York dentists are reporting that half their patients are suffering decaying teeth, receding gum lines, and seriously sour breath from wearing masks. ‘We’re seeing inflammation in people’s gums that have been healthy for-ever, and cavities in people who have never had them before,’ Dr. Rob Ramondi told Fox News. 2. Facial Deformities: Masking children triggers mouth breathing which has been shown to cause ‘long, narrow faces, narrow mouths, high palatal vaults, dental malocclusion, gummy smiles, and many other unattractive facial features,’ according to the Journal of General Dentistry. 3. Acne Vulgaris: Moisture and germs collecting in the mask cause ‘facial skin lesions, irritant dermatitis…

or worsening acne' (according to Public Health Ontario) which stresses the immune system, can lead to permanent scarring, and has been linked to depression and suicidal thoughts (according to the Journal of Dermatologic Clinics). Children also develop impetigo, a bacterial infection that produces red sores and can lead to kidney damage (according to the Mayo Clinic)," according to an article published Jan. 23, 2021 in Canada's Global Research. Pl. Ex. 154.

819. "Mask use by the general public could be associated with a theoretical elevated risk of COVID-19 through … self-contamination," states Public Health Ontario in "Wearing Masks in Public and COVID-19." "By wearing a mask, the exhaled viruses will not be able to escape and will concentrate in the nasal passages, enter the olfactory nerves, and travel into the brain," theorizes nationally recognized board-certified neurosurgeon, Dr. Russell Blaylock, MD (in an article at The Center for Research on Globalization)." *Id.*

820. In the 2015 study of healthcare workers in Vietnam, "Adverse events associated with facemask use were reported in 40.4% (227/562) of [healthcare workers] in the medical mask arm and 42.6% (242/568) in the cloth mask arm." Pl. Ex. 155.

821. "The physical properties of a cloth mask, reuse, the frequency and effectiveness of cleaning, and increased moisture retention may potentially increase the infection risk for HCWs. The virus may survive on the surface of the facemasks, and modelling studies have quantified the contamination levels of masks. Self-contamination through repeated use and improper doffing is possible. For example, a contaminated cloth mask may transfer pathogen from the mask to the bare hands of the wearer. We also showed that filtration was extremely poor (almost 0%) for the cloth masks. Observations during SARS suggested double-masking and other practices increased the risk of infection because of moisture, liquid diffusion, and pathogen retention. These effects may be associated with cloth masks." *Id.*

822. “[T]he results of this study could be interpreted as partly being explained by a detrimental effect of cloth masks [and] raises the possibility that cloth masks cause an increase in infection risk in HCWs.” *Id.*

823. “The social conventions and personal meanings of face mask use have received relatively little attention. Its use is deeply connected to social and cultural practices, as well as political, ethical, and health-related concerns, personal, and social meanings,” according to research published Jan. 13, 2021, by European scientists in the journal Frontiers & Public Health. Pl. Ex. 175.

824. “The health risks of incorrectly wearing a facemask represent an important argument against the use of face masks as a public health measure.” *Id.*

825. “The Face Mask: A New Barrier Affecting Social Relations? If we assume that in the near future we will be used to living with the pandemic, or even a series of pandemics, we are currently developing new norms for social interaction. Being with other people and enjoying their company are essential for our mental and physical well-being. How do these interactions include face mask usage? What will socializing look like in the era of physical distancing (i.e., ‘keeping a safe space between yourself and other people who are not from your household’)? These issues are being recognized as particularly challenging.” *Id.*

826. “Wearing a face mask, in fact, makes it hard to recognize if someone is smiling at you and to acknowledge non-verbal communication and emotions shared with facial expressions. This limitation has been noticed in the interactions with older, fragile, and cognitively impaired persons/patients, communication with whom strongly relies on body language.” *Id.*

827. “Counterfeit masks: The third-party market was still inundated with a deluge of counterfeit masks in February 2021, one year into the pandemic. Federal agents seized over 10 million fake 3M-branded masks in early 2021.” Pl. Ex. 63.

828. **MANY EXPERTS CONSIDER FORCING KIDS TO WEAR MASKS CHILD ABUSE:** "***They have become a cruel device on young children everywhere***, kindergarten students covered by masks and isolated by Plexiglas, struggling to understand the social expressions of their peers." Pl. Ex. 150 (emphasis added).

829. "A first-of-its-kind study, involving over 25,000 children, reveals that masks are harming schoolchildren in many physical and psychological ways and have a negative effect on their behavior, focus, and interest in learning." Pl. Ex. 164.

830. "The health issues were exhaustive and included irritability (60%), headache (53%), difficulty concentrating (50%), less happiness (49%), reluctance to go to school/kindergarten (44%), malaise (42%), impaired learning (38%), and drowsiness or fatigue (37%). … (29.7%) had shortness of breath, (26.4%) experienced dizziness, and hundreds of children suffered from feelings of weakness, a feeling of disease, accelerated respiration, tightness in the chest, and short-term impairment of consciousness. ***Universal mask wearing is destroying the health of children, making their immune system more susceptible to disease***." *Id.* (emphasis added).

831. "Pediatric Side Effects & Hazards of Masks: Children are particularly vulnerable and may be more likely to receive inappropriate treatment or additional harm. It can be assumed that the potential adverse mask effects described for adults are all the more valid for children …" Pl. Ex. 157.

832. "Special attention must be paid to the respiration of children, which represents a critical and vulnerable physiological variable due to higher oxygen demand, increased hypoxia susceptibility of the CNS, lower respiratory reserve, smaller airways with a stronger increase in resistance when the lumen is narrowed." *Id.*

833. "The masks currently used for children are exclusively adult masks manufactured in smaller geometric dimensions and had neither been specially tested nor approved for this purpose." *Id*.

834. A "disturbed respiratory physiology in children can have long-term disease relevant consequences. Slightly elevated CO2 levels are known to increase heart rate, blood pressure, headache, fatigue, and concentration disorders." *Id.*

835. "A recent observational study of tens of thousands of mask-wearing children in Germany helped the investigators objectify complaints of headaches (53%), difficulty concentrating (50%), joylessness (49%), learning difficulties (38%), and fatigue in 37% of the 25,930 children evaluated. Of the children observed, 25% had new onset anxiety and even nightmares. … 60% of mask wearers showed stress levels of the highest grade 10 on a scale of 1 to a maximum of 10." *Id.*

836. "[M]asks block the foundation of human communication and the exchange of emotions and not only hinder learning but deprive children of the positive effects of smiling, laughing, and emotional mimicry. ***The effectiveness of masks in children as a viral protection is controversial, and there is a lack of evidence for their widespread use in children*** …" *Id.* (emphasis added).

837. Kids aren't at risk for developing or spreading severe cases of COVID-19, therefore there's no reason for them to be forced to wear face coverings: "[C]hildren 'are infected less often, they become ill less often, the lethality is close to zero, and they also pass on the infection less often,' according to the Thesis Paper 2.0 of the German University of Bremen on page 6. Studies conducted under real-life conditions with outcome endpoints showing hardly any infections, hardly any morbidity, hardly any mortality, and only low contagiousness in children are clearly in the majority …" *Id.*

838. The large German study of kids wearing masks described "the results of 17,854 parent submitted reports on health complaints or impairments experienced as a result of wearing masks by their 25,930 children." Pl. Ex. 165.

839. The German research "reveals that major negative impacts on the physical, psychological, and behavioral health of children may be far more widespread than reported in the media and by

government officials – affecting approximately 68% and contributing to 24 distinct health complaints, according to parent submitted observations." *Id.*

840. "[D]ue to the unknown materials used, there are no findings on the potential protective effects or side effects of the often home-made 'everyday masks' worn by the majority of children. In view of the ongoing measures to contain the COVID-19 pandemic, and in particular the varying obligations for children and adolescents to wear masks in school over a longer period of time, there is an urgent need for research." *Id.*

841. Parents participating in the study of their children's mask use also reported their own poor health effects of muzzling: "impairments [were] reported at nearly the same rate by the children (67.7%) as the parents (66.1%). …" *Id.*

842. "[S]everal thousand children ... seem to suffer from wearing the mask or … may experience health problems from the mask. Our study provides the basis for a representative survey on which a precise benefit-risk analysis of mask wearing in children can be built." *Id.*

843. There have been numerous media reports of student athletes collapsing after being required to wear masks during athletic competitions. One example: "A high school track coach in Oregon is calling for an end to rules mandating mask-wearing during competition after one of his athletes collapsed from 'complete oxygen debt.' After a nearly two-year break from track meets, high schools in Oregon once again began competing, but the state added a new rule, requiring students to wear masks at all times, even when competing in sports." Pl. Ex. 196.

844. "[I]n the 800-meter race … student Maggie Williams collapsed on the track just meters short of the finish line even as she was on the verge of achieving a school record." *Id.*

845. "'You get a kid running the 800 with a mask on, it is actually dangerous. They don't get the oxygen that they need. This rule needs to change,' her coach said." *Id.*

846. "***Requiring children wear masks does more harm than good***, Dr. Jay Bhattacharya told The Epoch Times. Bhattacharya advised Florida Gov. Ron DeSantis not to make children don face coverings. Bhattacharya is a professor of medicine at Stanford University. … 'In the case of masks, the evidence [of how] children spread the disease even without a mask is that they're much less efficient spreaders.'" Pl. Ex. 166 (emphasis added).

847. Gov. DeSantis followed Dr. Bhattacharya's advice when he issued Executive Order 21-102 on May 3, 2021. The order prohibits any governmental agency in Florida from requiring any person to wear a face covering. Pl. Ex. 55.

848. "[T]here are serious repercussions to child development when they and others around them are wearing masks," Dr. Bhattacharya said. "Children have developmental needs that require them to see other people's faces. Learning to speak, for instance, requires seeing lips move. For slightly older children, they need to see people, the body, they learn body language, how to interact socially, by watching people. And when you ask them to wear a mask, you sort of cut that out. So you have harms on one side, and very little benefit on the other." Pl. Ex. 166.

849. "The information that is accumulating involves mask wearers within a Covid-19 environment and raises many concerns especially regarding psychological damage and especially to infants and children, ***with potential catastrophic impacts on the cognitive development of children***. This is even more critical in relation to children with special needs or who are on the autism spectrum who need to be able to recognize facial expressions as part of their ongoing development." *Id.* (emphasis added).

850. "The accumulating evidence also suggests that prolonged mask use in children or adults can cause harms: i) difficulty with breathing; ii) inhalation of toxic substances such as microplastics and chlorine compounds located in the masks (these are potentially serious risks); iii) CO2 intoxication; iv) sudden cardiac arrest seen in children; v) a reduction in blood oxygenation (hypoxia) or

an elevation in blood CO2 (hypercapnia); vi) psychological damage; viii) dizziness and light-headedness, headaches especially among healthcare workers; ix) bacterial and mold buildup in children's masks that can then be inhaled; x) anxiety and sleep problems, behavioral disorders, and fear of contamination in children; xi) deoxygenation during surgery; [and] xii) potentially life-threatening damage to the lungs (e.g. Stanford engineers report that masks can make it much more difficult to breathe, estimating that N95 masks as an example, reduce oxygen intake from 5% to 20% and if worn for a prolonged period)." *Id.*

851. "There have been several studies which chronicle the alarming rise in severe mental health issues, including a spike in youth suicide, as a result of various public health policies, including mask mandates and lockdowns." Pl. Ex. 113.

852. "[T]he US government's Substance Abuse and Mental Health Service (SAMHSA) reported an incredible 890% increase in call volume to its nationwide suicide hotline last April." *Id.*

853. "By obscuring nonverbal communication, masks interfere with social learning in children. Likewise, masks can distort verbal speech and remove visual cues to the detriment of individuals with hearing loss; clear face-shields improve visual integration, but there is a corresponding loss of sound quality. Future research is necessary to better understand the risks of long-term daily mask use." Pl. Ex. 115.

854. "For some people, such as small children and people with breathing problems, wearing a mask is not practical or possible." Pl. Ex. 119.

855. 70 Belgian doctors begged for cancellation of mask mandates at schools: "In recent months, the general well-being of children and young people has come under severe pressure. We see in our practices an increasing number of children and young people with complaints due to the rules of conduct that have been imposed on them. We diagnose anxiety and sleep problems, behavioral disorders, and fear of contamination. We are seeing an increase in domestic violence, isolation,

and deprivation. Many lack physical and emotional contact; attachment problems and addiction are obvious. The mandatory mouth mask in schools is a major threat to their development. It ignores the essential needs of the growing child. The well-being of children and young people is highly dependent on the emotional connection with others." Pl. Ex. 131.

856. **MASKS HAVE CONTRIBUTED TO A SURGE IN SERIOUS CRIME:** "Masks are often worn by criminals trying to hide their identity while perpetuating an offence (theft, violence, rape, murder, etc.)." Pl. Ex. 154. With universal community masking, including in the nation's entire transportation system, criminals wearing masks now easily blend in with the general public.

857. While most of the nation's attention during the past 15 months has been on the COVID-19 pandemic, "there was another, quieter public-health menace that killed an alarming number of Americans last year: gun violence." Pl. Ex. 167.

858. "The United States has experienced the largest single one-year increase in homicides since the country started keeping such records in the 20th century, according to crime data and criminologists. We only have data for the first nine months of 2020, but according to the FBI there was a 20.9% increase in murders compared to the same period in 2019 …" *Id.*

859. "Chicago saw a 37% year-over-year increase between the first halves of 2019 and 2020. And in New York City, by December 20, 2020, there had been a 40% increase over the 2019 numbers." *Id.*

860. "Reports are surfacing of crimes pulled off because criminals are taking advantage of face coverings, like medical masks, becoming common." Pl. Ex. 168.

861. "[A] troubling new reality for law enforcement: Masks that have made criminals stand apart long before bandanna-wearing robbers knocked over stagecoaches in the Old West and ski-masked bandits held up banks now allow them to blend in like concerned accountants, nurses,

and store clerks trying to avoid a deadly virus. … people with masks — as well as latex gloves — have found their way into more and more crime reports." *Id.*

862. "With everyone basically incognito, would-be witnesses might not notice someone acting differently, and that would make it harder to get a good description or identification of the suspect …" *Id.*

863. Many states, including Florida, have laws enhancing criminal penalties for criminals who cover their faces while perpetrating an offense. But those enhanced penalties are coming under scrutiny due to universal community masking, Click Orlando reported: "Wearing masks during crimes usually increases penalties. Criminal defendants accused of breaking the law while wearing masks could seek reduced charges or sentences by arguing they covered their faces to abide by government mask mandates or health-related guidelines, legal experts predict." Pl. Ex. 169.

864. "Under Florida law, wearing a mask during the commission of a crime to conceal one's identity can increase the potential punishment, in some cases doubling or tripling the maximum prison sentence. … If someone commits a felony or misdemeanor while wearing a hood, mask, or other device to conceal his or her identity, the offense 'shall be reclassified to the next higher degree,' according to Florida statute." *Id.*

865. "Amid the ongoing COVID-19 pandemic, it's become the norm to wear facial coverings in public to lower the odds of spreading the virus. However, until recently, wearing masks that concealed a person's identity was a misdemeanor offense in Georgia." Pl. Ex. 171.

866. "As some continue to don surgical masks, N95 respirators, or homemade face protection when they leave home, people on the wrong side of the law are taking full advantage of the opportunity to blend in. That in and of itself has created a secondary problem and challenge for law enforcement to identify those people who may be in the process of committing crimes and identifying them at a later date." *Id*.

867. “When a person wears a face mask during the pandemic, as advised by the Centers for Disease Control and Prevention (CDC), it makes it more difficult for a victim, whether an individual or a business owner, to lock into what that person looks like …” *Id.*

868. “Last year saw the largest single year-over-year spike in homicide rates since criminologists began collecting data,” Rice University reported. Pl. Ex. 170.

869. “The Houston Chronicle reported at the end of the year that more than 400 people were murdered in the city in 2020 — a stark increase from the 281 deaths in 2019. But Houston wasn’t alone. Cities across the country were reporting unexpected increases in violent crime.” *Id.*

870. “[H]omicide rates in big cities grew by 30% in 2020. This far exceeds the previous largest single-year increase of 12.7% in 1968.” *Id.*

871. “[T]here are consistent signs across the country that certain crimes have seen jumps during the global pandemic. The biggest increases have been in violent crimes, particularly murder, aggravated assault, and shooting incidents.” Pl. Ex. 172.

872. “Car thefts and break-ins have been on the rise during the pandemic. The FBI shows a 6% climb in vehicle thefts between January and June 2020, compared to the same time in 2019. Cities like Los Angeles; Denver; and Scarsdale, New York, have broken records for the number of cars stolen so far in 2020.” *Id.*

873. “[C]riminals are using face masks to their advantage. … More people are staying at home amid the pandemic, but according to Honolulu Police, crime has not stopped and now it is even more challenging to get wanted criminals off the streets.” Pl. Ex. 173.

874. Face masks are “now giving thieves the perfect cover. … The King County Sheriff’s Office said more crimes are being committed by people wearing face masks. While it may have been a red flag before the pandemic, face covering inside businesses is the ‘new normal,’ and Sgt. Ryan Abbott says criminals are taking advantage.” Pl. Ex. 174.

875. “An increase in the use of surgical masks amid the novel coronavirus health crisis is proving to be a unique challenge for law enforcement nationwide,” Newsweek reported. “Recommended by health officials to limit the spread of COVID-19, face coverings are now making life difficult for police tasked with identifying and apprehending crooks. They warn criminals are taking advantage of the situation to blend in with the public. Police say investigations involving the cheap and now-common item have spiked in recent weeks, popping up in armed robberies across the country.” Pl. Ex. 176.

876. “People wearing face masks have always been prohibited from entering banks. But, now in the coronavirus-era, bank robbers appear to be taking advantage of mask requirements ...” Pl. Ex. 177.

877. “You're almost inviting somebody to come in and attempt a bank robbery.” *Id.*

878. And it’s not just masked bank robbers causing mayhem in America: “At the end of 2020, Chicago police reported more than 750 murders, a jump of more than 50% compared with 2019. By mid-December, Los Angeles saw a 30% increase over the previous year with 322 homicides. There were 437 homicides in New York City by Dec. 20, nearly 40% more than the previous year.” Pl. Ex. 181.

879. “A string of robberies that have featured suspects wearing medical masks have taken place across the country in recent weeks,” The Hill reported. Pl. Ex. 178.

880. “Armed robberies have spiked in Santa Ana, California, as criminals take advantage of the acceptance and even requirement of face masks due to the coronavirus. … Experts say that wearing masks anonymized people, emboldening them to criminal and deviant behavior. … Across the United States crimes are being pulled off in no small part because so many of us are now wearing masks …” Pl. Ex. 179.

881. A "side effect of the widespread wearing of masks to protect against COVID-19 would be more deviant behavior in society. She told WTOP News, based in Washington D.C., that studies have found 'people who wear masks feel more enabled and empowered to do things that they normally wouldn't have done if their face was seen in public.' Being anonymized has always been associated with more deviant and criminal behavior, ranging from bank robberies to the Ku Klux Klan, she said. With the social acceptance of masks, people could be tempted to commit crimes for the first time, while hardened criminals would become even more emboldened …" *Id*.

882. "Carjackings have shot up 537% in Minneapolis this year. … [In Chicago,] in all of 2019, there were 501 incidents of that crime. So far that number has more than doubled to 1,125 this year, according to the latest Chicago police statistics. … Carjacking calls to 911 in New Orleans are up 126%. Oakland police cite an increase of 38%." Pl. Ex. 180.

883. "[T]he pandemic, which has normalized mask-wearing, makes these thefts easier. 'If we were-n't in a pandemic and you saw a guy coming up to your car with a mask on, you probably would freak out and hit the gas pedal,' he explained. 'But nowadays, everyone's wearing masks. So there's this anonymity part of the pandemic that I think a lot of criminals are taking advantage of.'" *Id.*

884. **MASKS CONTRIBUTE TO THE HUGE PROBLEM OF RACISM IN AMERICA:** Forced mask wearing in public, including the nation's entire transportation system, is "basically telling people to look dangerous given racial stereotypes that are out there. This is in the larger context of black men fitting the description of a suspect who has a hood on, who has a face covering on. It looks like almost every criminal sketch of any garden-variety black suspect." Pl. Ex. 150.

885. "[M]ask mandates might also have unintended negative consequences. By creating more op-portunities for encounters between law enforcement and the citizenry, mask mandates create

yet one more way for authorities to harass the relatively powerless. We've already seen that mandates are disproportionately enforced against people and communities of color." *Id.*

886. On July 12, 2020, Surgeon General Adams questioned if a national mask mandate could be reasonably enforced without "having a situation where you're giving people one more reason to arrest a black man." Pl. Ex. 63.

887. "Concerns were raised by African Americans that the wearing of masks may encourage racial profiling due to their association with their use by criminals to conceal identity, such as an officer shown handcuffing a black doctor wearing a mask steps from his home, and a police officer in Illinois following two black men wearing surgical masks as they exited a Walmart, and falsely claiming that the city prohibited the wearing of masks. There have also been incidents of bullying, discrimination, and ethnic violence against Asian Americans who wear masks, as part of ongoing anti-Asian sentiment tied to the pandemic due to its Mainland Chinese origin." *Id.*

888. "Someone wearing a mask might be protecting themselves from the virus — or they could be preparing to commit a crime," The Washington Post reported. Pl. Ex. 182.

889. "For Black men, taking off the mask means being less likely to be seen as criminals … Black men wearing masks were being treated as criminal suspects, in keeping with long-standing stereotypes connecting Blackness and criminality. Alarmingly, that meant Black men faced a dilemma that Whites likely did not. [Covering one's face might] have increased the likelihood that police and others treated them as criminals." *Id.*

890. "Our experiment turned up a disturbing pattern. Americans who saw photos of a Black man wearing either a bandanna or homemade cloth mask perceived him as less trustworthy and more threatening than when he was not wearing his mask." *Id.*

891. **MASKS ARE DAMAGING THE ENVIRONMENT:** Due to the FTMM and other requirements to wear face masks to supposedly combat COVID-19, "it's estimated that 129 billion face masks are

used worldwide each month, which works out to about 3 million masks a minute. Most of these are the disposable variety, made from plastic microfibers." Pl. Ex. 135.

892. "Three million face masks are discarded every minute as a result of mass adoption during the coronavirus pandemic, and experts warn it could soon lead to environmental catastrophe." Pl. Ex. 183.

893. "[T]here is no way to safely decontaminate and recycle them. In an article published by the University of Southern Denmark, experts call the huge amount of face masks being worn and thrown away a 'ticking time bomb.' They add that littering is causing masks to break down into dangerous microfibers and they may also be carrying harmful chemicals into the environment." *Id.*

894. "[T]he conundrum of what to do with the recent deluge of masks truly is a new frontier for scientists, who have never before been faced with such a rapid explosion of a product for which there is no established responsible disposal method. 'With increasing reports on inappropriate disposal of masks, it is urgent to recognize this potential environmental threat and prevent it from becoming the next plastic problem,' the researchers warn." *Id.*

895. "Production of face masks is now on par with plastic bottles, at around 43 billion items a month. … If recklessly thrown away into nature, masks break down into micro and nanoplastic fibers in a matter of weeks. ***These tiny fibers, less than 5mm and 1mm in size, respectively, pose a huge risk to animal and human health***." *Id.* (emphasis added).

896. "Protective items such as gloves and face masks are found on almost a third of all British beaches following a spike in use due to the coronavirus pandemic. The Marine Conservation Society's annual beach clean-up in September discovered the shocking increase in PPE litter." *Id.*

897. "Due to the composition of, e.g., disposable surgical masks with polymers such as polypropylene, polyurethane, polyacrylonitrile, polystyrene, polycarbonate, polyethylene and polyester, an

increasing global challenge, also from an environmental point of view, can be expected, especially outside Europe, in the absence of recycling and disposal strategies. The aforementioned single use polymers have been identified as a significant source of plastic and plastic particles for the pollution of all water cycles up to the marine environment. A significant health hazard factor is contributed by mask waste in the form of microplastics after decomposition into the food chain. Likewise, contaminated macroscopic disposable mask waste – especially before microscopic decay – represents a widespread medium for microbes (protozoa, bacteria, viruses, fungi) in terms of invasive pathogens. Proper disposal of bio-contaminated everyday mask material is insufficiently regulated even in western countries." Pl. Ex. 157.

898. **UNLIKE MASKS, VACCINES ARE EXTREMELY EFFECTIVE IN REDUCING INFECTIONS & DEATHS:** There is no scientific justification for applying the FTMM and ITTR to fully vaccinated travelers such as myself as the inoculations have proven to be super effective in reducing COVID-19 infections and transmission – a fact even Defendant CDC touts: "Breakthrough infections are defined by the CDC as those that occur 14 or more days after a person has completed vaccination … These cases are rare. As of April 26, [2021,] the CDC had documented just 9,245 among 95 million vaccinated Americans …" Pl. Ex. 85.

899. "If you are vaccinated and you do get a breakthrough infection, it is very likely that you will be without symptoms, and it is unlikely that you will transfer it to anybody else," Dr. Fauci told The Washington Post. *Id.*

900. Defendant CDC summarized recent changes to its vaccine information May 27, 2021: "Data were added from studies published since the last update that further demonstrate currently authorized COVID-19 vaccines are effective against SARS-CoV-2 infection, symptomatic and severe disease, and hospitalization with COVID-19. Data were added suggesting that currently authorized mRNA vaccines provide protection against variants of concern, including the B.1.1.7 strain that is

predominant in the United States. Data were added from studies published since the last update that further demonstrate people who are fully vaccinated with a currently authorized mRNA vaccine are protected against asymptomatic infection and, if infected, have a lower viral load than unvaccinated people." Pl. Ex. 185.

901. "All COVID-19 vaccines currently authorized in the United States are effective against COVID-19, including serious outcomes like severe disease, hospitalization, and death. Available evidence suggests the currently authorized mRNA COVID-19 vaccines (Pfizer-BioNTech and Moderna) provide protection against a variety of strains, including B.1.1.7 (originally identified in the United Kingdom) and B.1.351 (originally identified in South Africa)." *Id.*

902. "A growing body of evidence indicates that people fully vaccinated with an mRNA vaccine (Pfizer-BioNTech and Moderna) are less likely to have asymptomatic infection or to transmit SARS-CoV-2 to others." *Id.*

903. "This updated science brief synthesizes the scientific evidence supporting CDC's guidance for fully vaccinated people …" *Id.*

904. "COVID-19 vaccination is a critical prevention measure to help end the COVID-19 pandemic. COVID-19 vaccines are now more widely accessible in the United States, and all people 12 years and older are recommended to be vaccinated against COVID-19." *Id.*

905. "Accumulating evidence indicates that fully vaccinated people without immunocompromising conditions are able to engage in most activities with very low risk of acquiring or transmitting SARSCoV-2." *Id.*

906. "Evidence demonstrates that the authorized COVID-19 vaccines are both efficacious and effective against symptomatic, laboratory-confirmed COVID-19, including severe forms of the disease. In addition, a growing body of evidence suggests that mRNA COVID-19 vaccines also reduce asymptomatic infection and transmission." *Id.*

907. "Multiple studies from the United States and other countries demonstrate that a two-dose COVID-19 vaccination series is highly effective against SARS-CoV-2 infection (including both symptomatic and asymptomatic infections) and sequelae including severe disease, hospitalization, and death. Early evidence for the Johnson & Johnson/Janssen vaccine also demonstrates effectiveness against COVID-19 in real-world conditions." *Id.*

908. "[T]hese variants currently have limited prevalence or expansion in the United States or other countries and still lack clear evidence of increased transmission, disease severity, or impact on available vaccines, therapeutics, or diagnostic tests." *Id.*

909. "A recent study from Qatar demonstrated high effectiveness after ≥14 days for the Pfizer-BioNTech vaccine against any documented infection caused by B.1.1.7 (90%) and B.1.351 (75%); importantly, the vaccine was 100% effective against severe, critical, or fatal disease, regardless of strain." *Id.*

910. "***[I]n the context of rapid vaccine implementation, the benefit of non-pharmaceutical interventions [i.e. mask wearing] decreases*** …" *Id.* (emphasis added).

911. "Preliminary data suggest that increasing vaccination rates may allow for the phasing out of some prevention measures as coverage increases. With high vaccine effectiveness and increasing vaccination coverage, preliminary modeling studies predict that ***vaccinated people returning to normal activities will have minimal impact on the course of the pandemic***." *Id.* (emphasis added).

912. "As vaccination coverage increases, phasing out prevention measures for fully vaccinated people, ideally those measures that are the most disruptive to individuals and society [such as forced face covering], will be increasingly feasible." *Id.*

913. "Conclusions: COVID-19 vaccines currently authorized in the United States have been shown to be efficacious and effective against SARS-CoV-2 infections, including asymptomatic infection, symptomatic disease, severe disease, and death. These findings, along with the early evidence for

reduced viral load in vaccinated people who develop COVID-19, suggest that any associated transmission risk is likely to be substantially reduced in vaccinated people. While vaccine effectiveness against emerging SARSCoV-2 variants remains under investigation, available evidence suggests that ***the COVID-19 vaccines presently authorized in the United States offer protection against known emerging variants***." *Id.* (emphasis added).

914. "[M]odeling data predict reduced benefits of nonpharmaceutical prevention measures [such as mask wearing] and minimal impact on the course of the pandemic of fully vaccinated people returning to normal activities." *Id.*

915. "Taken together, ***the evidence supports phasing out prevention measures for fully vaccinated people as an increasingly large proportion of the United States population receives COVID-19 vaccines***." *Id.* However, Defendant CDC has not repealed the FTMM or ITTR.

916. "A new CDC study adds to the growing body of real-world evidence (outside of a clinical trial setting) showing that COVID-19 mRNA vaccines authorized by the Food and Drug Administration (FDA) protect health care personnel (HCP) against COVID-19. mRNA vaccines (Pfizer-BioNTech and Moderna) reduced the risk of getting sick with COVID-19 by 94% among HCP who were fully vaccinated." Pl. Ex. 186.

917. "This report provided the most compelling information to date that COVID-19 vaccines were performing as expected in the real world," said CDC Director Rochelle Walensky. "This study, added to the many studies that preceded it, was pivotal to CDC changing its recommendations for those who are fully vaccinated against COVID-19." *Id.*

918. "The assessment found that COVID-19 symptomatic illness was reduced by 94% among HCP who were fully vaccinated … and by 82% among those who were partially vaccinated …" *Id*.

919. **THE FTMM & ITTR IGNORE EVIDENCE THAT PEOPLE WHO HAVE RECOVERED FROM COVID-19 HAVE LONG-LASTING IMMUNITY:** In addition to the many millions of Americans who are inoculated against coronavirus, a huge segment of the population has natural immunity after recovering from the virus: "Natural immunity is better than vaccinated immunity. It lasts longer, and it is evidence of the divine design of our immune systems and our resiliency." Ex. 148. Yet the Federal Defendants still require the fully vaccinated and those with natural immunity to wear masks in the transportation sector and get tested before flying into the United States.

920. "A study posted May 24, 2021, by Nature found overall that 'SARS-CoV-2 infection induces a robust antigen-specific, long-lived humoral immune response in humans.'" Pl. Ex. 187.

921. A 52-page study posted May 9, 2021, by bioRxiv found "The data suggest that immunity in convalescent individuals will be very long lasting and that convalescent individuals who receive available mRNA vaccines will produce antibodies and memory B cells that should be protective against circulating SARS-CoV-2 variants." Pl. Ex. 188.

922. "In the absence of vaccination antibody reactivity to the receptor binding domain (RBD) of SARS-CoV-2, neutralizing activity and the number of RBD-specific memory B cells remain relatively stable from 6 to 12 months." *Id.*

923. "When a person has 'immunity,' in general, that means they have protection against a disease," CNN reported. "Active immunity can be acquired either through vaccination or infection. Your immune system develops antibodies either induced by the vaccination or in response to the infection – and either immune response can maintain a 'memory.'" Pl. Ex. 189.

924. "Two new studies this week add to the growing body of evidence that suggests natural immunity to the coronavirus after someone recovers from Covid-19 can be long lasting – possibly at least a year." *Id.*

925. “One study, published in the journal Nature on Monday, found that immune cells in the bone marrow of people who were infected with coronavirus have a ‘memory’ of the infection that can be long-lived. The other research, published in the journal EClinicalMedicine on Monday, found that Covid-19 antibodies remained detectable some 10 months after infection among people who had recovered. Bone marrow cells may maintain a memory of Covid-19 for at least 11 months after someone is infected. These cells are an ‘essential’ source of protective antibodies, according to the new study published in Nature.” *Id.*

926. “The papers are consistent with the growing body of literature that suggests that immunity elicited by infection and vaccination for SARS-CoV-2 appears to be long-lived,” said Scott Hensley, an immunologist at the University of Pennsylvania, The New York Times reported May 26, 2021. Pl. Ex. 190.

927. “In fact, memory B cells produced in response to infection with SARS-CoV-2 and enhanced with vaccination are so potent that they thwart even variants of the virus, negating the need for boosters, according to Michel Nussenzweig, an immunologist at Rockefeller University in New York who led the study on memory maturation.” *Id.*

928. “The immune systems of more than 95% of people who recovered from COVID-19 had durable memories of the virus up to eight months after infection. After people recover from infection with a virus, the immune system retains a memory of it. Immune cells and proteins that circulate in the body can recognize and kill the pathogen if it’s encountered again, protecting against disease and reducing illness severity,” the National Institutes of Health published Jan. 26, 2021.

929. “To better understand immune memory of SARS-CoV-2, researchers led by Drs. Daniela Weiskopf, Alessandro Sette, and Shane Crotty from the La Jolla Institute for Immunology analyzed immune cells and antibodies from almost 200 people who had been exposed to SARS-CoV-2 and recovered.” *Id.*

930. “The researchers found durable immune responses in the majority of people studied. Antibodies against the spike protein of SARS-CoV-2, which the virus uses to get inside cells, were found in 98% of participants one month after symptom onset. As seen in previous studies, the number of antibodies ranged widely between individuals. But, promisingly, their levels remained fairly stable over time, declining only modestly at 6 to 8 months after infection.” *Id.*

931. A study by Labcorp published May 21, 2021, in the journal EClinicalMedicine suggests COVID-19 antibodies remain at least 10 months after someone was infected with the virus. Nearly 87% of naturally infected COVID-19 patients maintained antibodies to SARS-CoV-2 proteins for at least 10 months, according to the Labcorp analysis of specimens from 39,086 individuals. Pl. Ex. 192.

932. The study offers real-world evidence of the body’s response to the virus and the possibility of protection against future infection. It is the largest known COVID-19-related study by specimen volume of its kind. *Id.*

933. While sample sizes varied each day after a positive COVID-19 test, the antibody positivity rate to the SARS-CoV-2 spike protein remained mostly stable for the U.S. population through 300 days after the initial test. *Id.*

934. “This is good news for naturally infected individuals, and potentially for those who have been vaccinated,” said Dr. Brian Caveney, chief medical officer and president of Labcorp Diagnostics. “More research must be done to understand what type and level of antibodies suggest protection from reinfection. But the prolonged presence of certain antibodies is a promising sign as we continue thinking about safely emerging from the pandemic.”

935. **WE ARE UNLIKELY TO ACHIEVE “HERD IMMUNITY” FROM CORONAVIRUS:** Because the United States – and Earth at large – is not likely to ever achieve “herd immunity,” COVID-19 is unlikely to ever be wiped out. This raises troubling concerns that the Federal Defendants could

extend the state of emergency indefinitely, meaning the FTMM and the ITTR would also be continued forever.

936. "The end of this pandemic sometimes gets boiled down to two words: herd immunity. But now, as an academic debate swirls over when or even if America can get to a high enough percentage of people with immunity to reach that goal, some scientists say it's time for the public to stop worrying about it," National Public Radio reported May 18, 2021. Pl Ex. 193.

937. "[T]he herd immunity threshold has become a commonly used term in epidemiology to refer to the mathematical tipping point of an infectious disease outbreak. When a certain percentage of people are immune, either through infection or vaccination, a virus runs out of places to spread. The … pandemic fades, and life goes back to normal. The threshold for herd immunity can vary widely from disease to disease. And with so many unknowns about the coronavirus, it's been a topic of much discussion. Over the course of the pandemic, estimates for the threshold needed to reach herd immunity have fluctuated from as low as 20% to as high as 90% or more of population." *Id.*

938. "The appeal of this notion is clear. Achieving herd immunity sounds like a simple goal that spells the end of the coronavirus. It feels concrete – something to grab onto in a time filled with so much uncertainty, a finish line for which to strive. But the problem with framing the goal that way, say the scientists who actually build the models, is that the herd immunity threshold is far harder to calculate reliably than many in the public realize." *Id.*

939. "Lipsitch says he believes as much as 90% to 100% of adults would need to get vaccinated to cross the threshold. 'Based on the best calculations I know how to do, ***it will be impossible or very difficult to reach [herd immunity] in many parts of the United States***,' he says." *Id.* (emphasis added).

940. "Although health experts who spoke with The New York Times said that they were optimistic, ***they cautioned that [COVID-19] won't be eradicated in the United States*** but would likely instead become a manageable threat, like influenza." Pl. Ex. 86 (emphasis added).

941. "Infectious-disease experts have downplayed the significance of "herd immunity," the threshold at which new infections are unlikely to lead to protracted chains of transmission. No one knows precisely where that threshold is and it is unlikely that every place in the country would achieve it." Pl. Ex. 85.

942. **AIRPLANE CABINS POSE LITTLE RISK FOR CORONAVIRUS SPREAD:** Ample evidence for the lack of a need for the FTMM comes from the aviation industry itself. U.S. air carriers commissioned a lengthy report "Assessment of Risks of SARS-CoV-2 Transmission During Air Travel & Non-Pharmaceutical Interventions to Reduce Risk" by the Harvard T.H. Chan School of Public Health as part of the Aviation Public Health Initiative ("APHI"). Pl. Ex. 194. This is yet another scientific/medical study Defendant CDC ignored when promulgating the FTMM without any public notice or comment period.

943. "Ventilation Systems on Aircraft: These sophisticated systems deliver high amounts of clean air to the cabin that rapidly disperses exhaled air, with displacement in the downward direction, reducing the risk of passenger-to-passenger spread of respiratory pathogens. Aircraft ventilation offers enhanced protection for diluting and removing airborne contagions in comparison to other indoor spaces with conventional mechanical ventilation and is substantially better than residential situations. This level of ventilation effectively counters the proximity travelers will be subject to during flights. The level of ventilation provided onboard aircraft would substantially reduce the opportunity for person-to-person transmission of infectious particles …" *Id.*

944. "***Particular emphasis is placed on the effectiveness of aircraft ventilation systems, which are able to filter 99.97% of SARS-CoV-2 particles out of air found on aircraft***." *Id.* (emphasis added).

945. The study confirms what the airlines themselves have been promoting to customers: There is little-to-no risk of contracting COVID-19 aboard an aircraft. "After detailed analysis of these reports***, it is the view of APHI that there have been a very low number of infections that could be attributed to exposure on aircraft during travel***." *Id.* (emphasis added).

946. Defendant CDC itself has admitted "***the risk of getting a contagious disease on an airplane is low."*** *Id.* (emphasis added).

947. "Based on the available scientific evidence, it is the view of APHI that ***there have been a very low number of infections that could be attributed to exposure on aircraft during travel***." *Id.* (emphasis added).

948. "A significant finding from the evaluation of these evacuation flight procedures [from China early in the pandemic] was that there was no COVID-19 infection among any of the air medical crews, despite the exposure to numerous positive cases." *Id.*

949. "Given the volume of commercial flights daily, carrying millions of passengers and crew worldwide***, the number of documented incidents of infectious disease transmission occurring on board an aircraft remains infrequent***." *Id.* (emphasis added).

950. "Based on the investigations of outbreaks of other respiratory diseases on aircraft, it appears that transmission on aircraft is relatively infrequent." *Id.*

951. "The airlines' disinfection processes have changed significantly in order to reduce any contaminated surfaces or fomites inside the cabin. All airlines have added additional cleaning, prioritizing between flights highly touched areas, and adding additional disinfection overnight or when there is enough time between flights or 'turns.' Between turns, most disinfection activities require wiping down the high touch areas, lavatories, and galleys. Deeper cleaning is done mostly overnight and often includes use of electrostatic spraying." *Id.*

952. “An aircraft cabin has inherently a high airflow volume and high-quality air filtration during cruising, which are managed through the environmental control system (ECS) that also controls the temperature and cabin pressurization. All nine airlines mentioned having high air exchange rates of approximately every 2 to 3 minutes (20 to 30 ACH) while cruising, a rate that is similar to, or even higher than the recommended air exchange rates for an operating room in a hospital.” *Id.*

953. “Air recirculation happens mostly when cruising, where about 40% to 50% of the cabin air is recirculated and filtered through a high-efficiency particulate air filter, also known as a HEPA filter. All the airlines interviewed have aircraft that are equipped with HEPA filters, and one of the airlines has increased the replacement frequency of their HEPA filters.” *Id.*

954. “One of the airlines noted that the ground pre-conditioned air is not recirculated, so it is 100% fresh air from outside the aircraft that comes into the cabin.” *Id.*

955. “Specific industry guidance, Federal Aviation Regulations, and international regulations are in place to help ensure acceptable conditions of cabin safety, air quality, and thermal comfort are always maintained inside the aircraft. This includes the need to provide adequate control of potential airborne transmission of infectious diseases, including SARS-CoV-2 virus within the aircraft environment.” *Id.*

956. “With these regulations and standards, the cabin is supplied with outside air and highly filtered ‘clean air’ providing air exchange rates significantly in excess to those found in well-ventilated offices and retail spaces (see Table 4.2). The high air exchange rates utilized in aircraft ventilation systems mean that any contaminant introduced into the cabin should be flushed out much faster than would occur in other types of spaces, i.e., in the order of two to five minutes. The HEPA filters remove, at a minimum, 99.97% of the particulate matter from the return air. This high level of filtration ensures that the air supplied to the cabin is virtually free of particulate matter, including bacteria and viruses.” *Id.*

957. "Aircraft meeting current ventilation standards with 50% recirculation HEPA-filtered air will supply passengers with a clean air delivery rate of 19 cfm/person, which is essentially free of any virus particles." *Id.*

958. "This analysis shows that aircraft will have a significantly lower age of air, resulting in a very short residence time for particles, and possibility of exposure to infectious particles than any other commonly encountered environment, which will help offset the counteracting effect of being in a smaller volume and in closer proximity to other passengers. For episodic releases, such as from a cough or a sneeze, the very high air exchange rates in aircraft cabins assume that contaminants released in such events are fully flushed from the cabin in as little as two to five minutes, as opposed to some six hours in a commercial or retail space complying with current codes and standards where these particles will be mixed into the large volume of the space." *Id.*

959. "***[T]he risk of SARS-CoV-2 transmission onboard aircraft will be below that found in other routine activities during the pandemic, such as grocery shopping or eating out***." *Id.* (emphasis added).

960. "[T]he aircraft's environmental control systems effectively diluting and removing pathogens significantly reduce the risk of passengers and crewmembers from acquiring COVID-19 during the cruise segment of their journey." *Id.*

V. CAUSES OF ACTION

Count 1: Violation of the Administrative Procedure Act against Defendants CDC & HHS: CDC failed to observe the notice and comment procedure required by law before ordering the Federal Transportation Mask Mandate.

961. For this and all other causes of action, I reallege and incorporate by reference the allegations and facts contained in all of the preceding paragraphs as though set forth fully herein.

962. The FTMM is an "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. It represents the consummation of CDC's decision-making process with respect to requiring masks in the entire U.S. transportation sector. And it affects my legal rights and obligations because it prevents me from flying and using any other mode of public transportation because I can't and won't wear a mask.

963. A court must "hold unlawful and set aside agency action … found to be … without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

964. The APA requires agencies to issue rules through a notice-and-comment process. 5 U.S.C. § 553.

965. The FTMM is a rule within the meaning of the APA because it is "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4).

966. CDC issued the FTMM without engaging in the notice-and-comment process. 5 U.S.C. § 553.

967. Good cause does not excuse CDC's failure to comply with the notice-and-comment process. 5 U.S.C. § 553(b)(3)(B).

968. This Court should hold unlawful and set aside the FTMM because it violates the APA's notice-and-comment requirement. 5 U.S.C. § 706(2)(D). Defendants CDC and its parent agency, HHS, issued the FTMM with zero input from the public as required by law.

Count 2: Violation of the Administrative Procedure Act against Defendants CDC & HHS: The FTMM does not comply with the Regulatory Flexibility Act.

969. A court must "hold unlawful and set aside agency action … found to be … without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

970. The Regulatory Flexibility Act requires agencies, in promulgating rules subject to the APA's notice-and-comment requirement, to "prepare a final regulatory flexibility analysis." 5 U.S.C. § 604(a).

971. The FTMM is a "rule" for purposes of the Regulatory Flexibility Act. 5 U.S.C. § 601(2).

972. CDC did not prepare a regulatory flexibility analysis as required by the Regulatory Flexibility Act.

973. This Court should hold unlawful and set aside the FTMM because it violates the Regulatory Flexibility Act. 5 U.S.C. 706(2)(D).

Count 3: Violation of the Administrative Procedure Act against Defendants CDC & HHS: arbitrary and capricious agency action in ordering the FTMM.

974. A court must "hold unlawful and set aside agency action … found to be … arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A).

975. Defendant CDC's FTMM is arbitrary and capricious because it fails to comply with the agency's own regulations. CDC's regulation requires it to find "that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession." 42 C.F.R. § 70.2. CDC failed to reasonably explain how the FTMM satisfies this regulatory requirement.

976. Defendant CDC's FTMM is arbitrary and capricious because it fails to comply with the agency's own scientific guidance regarding the lack of need for fully vaccinated Americans to wear face masks.

977. Defendant CDC's FTMM is arbitrary and capricious because it violates the intent of Congress, which has declined numerous times to enact a federal mask mandate.

978. Defendant CDC's FTMM is arbitrary and capricious because it ignores better options than imposing a mask requirement including requiring COVID-19 test providers to report all positive results to the agency so those infected could be placed on the "Do Not Board" and "Lookout" lists, prohibiting them from flying for two weeks while they capable of transmitting the virus to others.

979. Defendant CDC's FTMM is arbitrary and capricious because it contradicts the mask policies of 46 of the 50 states, usurping state's traditional role in regulating public health.

980. Defendant CDC's FTMM is arbitrary and capricious because the agency ignores its own data showing that COVID-19 infections and deaths have been plummeting in recent months since widespread vaccine distribution began.

981. Defendant CDC's FTMM is arbitrary and capricious because the agency failed to consider numerous problems associated with mask wearing including: (1) data showing states without mask mandates suffered fewer deaths than states that imposed such requirements; (2) the FTMM is out of step with the current policies of numerous private businesses who no longer require their customers cover their faces; (3) requiring masks in the transportation sector leads to widespread chaos in the skies and on the ground, endangering aviation and transit safety; (4) the FTMM unlawfully discriminates against travelers such as myself who can't wear face covering due to a disability; (5) the gargantuan amount of scientific and medical evidence showing that masks have proven to be totally ineffective in reducing COVID-19 spread and deaths; (6) scientists have known for a long time that masks aren't effective in reducing transmission of respiratory viruses; (7) masks pose serious health risks to humans forced to wear them; (8) many experts consider forcing kids to wear masks child abuse; (9) masks have contributed to a surge in serious crime; (10) masks contribute to the huge problem of racism in America; (11) masks are damaging the environment; (12) unlike masks, vaccines are extremely effective in reducing COVID-19 infections and deaths; (13) people who have recovered from COVID-19 have long-lasting immunity; and (14) airplane

cabins pose little risk for coronavirus spread and there have been few, if any, reports of wide-spread coronavirus spread on aircraft. These problems could have come to light if Defendant CDC followed the APA's notice-and-comment requirements prior to ordering the FTMM.

982. This Court should hold unlawful and set aside the FTMM because it is arbitrary and capricious. 5 U.S.C. § 706(2)(A)

Count 4: Violation of the Administrative Procedure Act against Defendants CDC & HHS: The FTMM exceeds CDC's statutory authority under the Public Health Service Act.

983. A court must "hold unlawful and set aside agency action … found to be … in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. 706(2)(C).

984. The FTMM exceeds Defendant CDC's authority under § 361 of the Public Health Service Act. 42 U.S.C. § 264. Section 361 does not authorize Defendant CDC to make a decision of such economic and political significance. CDC's interpretation of § 361 as authorizing the FTMM is not entitled to *Chevron* deference.

985. This Court should hold unlawful and set aside the FTMM because CDC acted "in excess of" its statutory authority. 5 U.S.C. § 706(2)(C).

Count 5: Violation of the separation of powers against all Federal Defendants: The FTMM is an improper delegation of legislative power.

986. A court must "hold unlawful and set aside agency action … found to be … contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

987. The U.S. Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. Art. I, § 1. Under the nondelegation doctrine, Congress cannot transfer legislative power to the Executive Branch. Acts of Congress must supply an intelligible principle to guide the Executive Branch's enforcement discretion.

988. If the Court finds it does authorize the FTMM, § 361 of the Public Health Service Act (42 U.S.C. § 264) violates Article I's Vesting Clause and the separation of powers because Congress delegated legislative power to CDC with no intelligible principle to guide its discretion. That section authorizes CDC "to make and enforce such regulations as in [its] judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases . . . from one State or possession into any other State or possession." 42 U.S.C. § 264(a). The statute further provides that CDC may take certain specific measures as well as "other measures, as in [its] judgment may be necessary." *Id.*

989. If § 361 is so broad as to authorize the FTMM, then Congress provided no intelligible principle to guide CDC's discretion to take actions that "are" or "may be necessary" to "prevent the introduction, transmission, or spread of communicable diseases." *Id.* Vesting CDC with such broad authority and discretion without an intelligible principle violates the nondelegation doctrine.

990. Notably Congress has declined numerous times during the 15-month COVID-19 pandemic to enact into law any mask requirement.

991. This Court should declare that § 361 of the Public Health Service Act is unconstitutional because it violates Article I and the separation of powers.

Count 6: Violation of the 10th Amendment against all Federal Defendants: The FTMM applies to intrastate transportation in direct conflict with the mask policies of 46 states.

992. A court must "hold unlawful and set aside agency action … found to be … contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

993. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. 10.

994. The 10th Amendment precludes the Federal Defendants from applying any national mask mandate to intrastate transportation. The federal government only has constitutional authority

to regulate interstate commerce. Most modes of transportation affected by the FTMM such as city buses, school buses, subways, light rail, commuter trains, and rideshare cars never cross state lines.

995. In addition to 46 states not requiring masks for fully vaccinated people, several states (including Florida) prohibit any public agency such as an airport or transit authority from requiring face coverings. The Federal Government may not commandeer state authority when it comes to regulating public health.

996. This Court should hold unlawful and set aside the FTMM as "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

Count 7: Violation of the Fifth Amendment against all Federal Defendants: deprivation of due process by assigning FTMM enforcement and exemption powers to private companies as well as state, regional, and local agencies with no ability to appeal to a federal decisionmaker.

997. A court must "hold unlawful and set aside agency action … found to be … contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

998. The Due Process Clause states: "No person shall … be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. 5. Where a government action deprives an individual of a protected life, liberty, or property interest, the Due Process Clause requires, at minimum, fair notice and an opportunity to be heard.

999. Travelers hold constitutionally protected liberty interests in being able to breath without the obstruction a face mask, to make their own medical decisions without government interference, and to not have a policy imposed on them that results in numerous adverse health effects.

1000. Travelers hold constitutionally protected property interests in their purchased airline and other transportation tickets that can't be infringed upon by government mandates made contrary to the Constitution, laws, and regulations.

1001. The FTMM deprives travelers of their liberty and property rights without satisfying the requirements of due process. The Federal Defendants have improperly delegated to private businesses as well as state, regional, and local transportation authorities the enforcement power to determine whether a disabled traveler meets the mask exemption requirement. There is no right to a hearing before a neutral federal decisonmaker to challenge a denial of an exemption.

1002. This Court should hold unlawful and set aside the FTMM as "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

Count 8: Violation of the constitutional right to freedom of travel against all Federal Defendants: The FTMM blocks Americans who can't or won't wear a face mask from traveling.

1003. A court must "hold unlawful and set aside agency action … found to be … contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

1004. Ever since adoption of the Articles of Confederation, Americans have had a fundamental right to travel to other states and territories.

1005. Although the Constitution does not expressly mention the freedom to travel, the Supreme Court has long interpreted rights reserved to the people as including the freedom to move about the nation without unnecessary government restrictions.

1006. This Court should hold unlawful and set aside the FTMM as "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

Count 9: Violation of the Administrative Procedure Act against Defendants TSA & DHS: TSA failed to observe the notice and comment procedure required by law before ordering security directives and an emergency amendment to enforce the Federal Transportation Mask Mandate.

1007. The FTMM is an "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. It represents the consummation of Defendant TSA's decision-making process with respect to enforcing mask wearing in the

entire U.S. transportation sector. And it affects my legal rights and obligations because it prevents me from flying and using any other mode of public transportation.

1008. A court must "hold unlawful and set aside agency action … found to be .. without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

1009. The APA requires agencies to issue rules through a notice-and-comment process. 5 U.S.C. § 553.

1010. TSA's security directives and emergency amendment are rules within the meaning of the APA because they are "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4).

1011. TSA issued the FTMM's security directives and emergency amendment without engaging in the notice-and-comment process. 5 U.S.C. § 553.

1012. Good cause does not excuse TSA's failure to comply with the notice-and-comment process. 5 U.S.C. § 553(b)(3)(B).

1013. This Court should hold unlawful and set aside Defendant TSA's security directives and emergency amendment because they violate the APA's notice-and-comment requirement. 5 U.S.C. § 706(2)(D). Defendants TSA and its parent agency, DHS, issued the FTMM directives with zero input from the public as required by law.

Count 10: Violation of the Administrative Procedure Act against Defendants TSA & DHS: The FTMM's security directives and emergency amendment do not comply with the Regulatory Flexibility Act.

1014. A court must "hold unlawful and set aside agency action … found to be … without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

1015. The Regulatory Flexibility Act requires agencies, in promulgating rules subject to the APA's notice-and-comment requirement, to "prepare a final regulatory flexibility analysis." 5 U.S.C. § 604(a).

1016. Defendant TSA's security directives and emergency amendment enforcing the FTMM are a "rule" for purposes of the Regulatory Flexibility Act. 5 U.S.C. § 601(2).

1017. Defendant TSA did not prepare a regulatory flexibility analysis as required by the Regulatory Flexibility Act.

1018. This Court should hold unlawful and set aside the three security directives and one emergency amendment because they violate the Regulatory Flexibility Act. 5 U.S.C. 706(2)(D).

Count 11: Violation of the Administrative Procedure Act against Defendants TSA & DHS: arbitrary and capricious agency action in ordering the FTMM's security directives and emergency amendment.

1019. A court must "hold unlawful and set aside agency action … found to be … arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A).

1020. Defendant TSA's FTMM security directives and emergency amendment are arbitrary and capricious because they fail to comply with the federal government's own scientific guidance regarding the lack of need for fully vaccinated Americans to wear face masks.

1021. Defendant TSA's FTMM security directives and emergency amendment are arbitrary and capricious because they violate the intent of Congress, which has declined numerous times to enact a federal mask mandate.

1022. Defendant TSA's FTMM security directives and emergency amendment are arbitrary and capricious because they ignore better options than imposing a mask requirement including requiring COVID-19 test providers to report all positive results to Defendant CDC so those infected could be placed on the "Do Not Board" (enforced by TSA) and "Lookout" lists, prohibiting them from flying for two weeks while capable of transmitting the virus to others.

1023. Defendant TSA's FTMM security directives and emergency amendment are arbitrary and capricious because they contradict the mask policies of 46 of the 50 states, usurping state's traditional role in regulating public health.

1024. Defendant TSA's FTMM security directives and emergency amendment are arbitrary and capricious because the agency ignores the federal government's own data showing that COVID-19 infections and deaths have been plummeting in recent months since widespread vaccine distribution began.

1025. Defendant TSA's FTMM security directives and emergency amendment are arbitrary and capricious because the agency failed to consider numerous problems associated with mask wearing including: (1) data showing states without mask mandates suffered fewer deaths than states that imposed such requirements; (2) the FTMM is out of step with the current policies of numerous private businesses who no longer require their customers cover their faces; (3) requiring masks in the transportation sector leads to widespread chaos in the skies and on the ground, endangering aviation and transit safety; (4) the FTMM unlawfully discriminates against travelers such as myself who can't wear face covering due to a disability; (5) the gargantuan amount of scientific and medical evidence showing that masks have proven to be totally ineffective in reducing COVID-19 spread and deaths; (6) scientists have known for a long time that masks aren't effective in reducing transmission of respiratory viruses; (7) masks pose serious health risks to humans forced to wear them; (8) many experts consider forcing kids to wear masks child abuse; (9) masks have contributed to a surge in serious crime; (10) masks contribute to the huge problem of racism in America; (11) masks are damaging the environment; (12) unlike masks, vaccines are extremely effective in reducing COVID-19 infections and deaths; (13) people who have recovered from COVID-19 have long-lasting immunity; and (14) airplane cabins pose little risk for coronavirus spread and there have been few, if any, reports of widespread coronavirus spread on aircraft. These problems could have come to light if Defendant TSA followed the APA's notice-and-comment requirements prior to ordering the FTMM.

1026. This Court should hold unlawful and set aside the Defendant TSA's security directives and emergency amendment because they are arbitrary and capricious. 5 U.S.C. § 706(2)(A)

Count 12: Violation of the Administrative Procedure Act against Defendants TSA & DHS: The FTMM's security directives and emergency amendment exceed TSA's statutory authority to ensure transportation security.

1027. A court must "hold unlawful and set aside agency action … found to be … in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. 706(2)(C).

1028. The FTMM exceeds Defendant TSA's authority under its enabling statute, 49 USC § 114. Section 114 does not authorize Defendant TSA to enforce public-health measures enacted by other agencies. TSA's sole mission as assigned by Congress is to ensure transportation security, i.e. to prevent planes, trains, buses, subways, and ferries from being blown up or hijacked. TSA's interpretation of § 114 as authorizing the FTMM security directives and emergency amendment is not entitled to *Chevron* deference.

1029. This Court should hold unlawful and set aside Defendant TSA's FTMM security directives and emergency amendment because TSA acted "in excess of" its statutory authority. 5 USC § 706(2)(C).

Count 13: Violation of the separation of powers against Defendant DOT: The Federal Transit Administration's withholding of funds from state, regional, and local authorities that fail to enforce the FTMM is an impermissible breach of Congress' constitutional power of the purse.

1030. A court must "hold unlawful and set aside agency action … found to be … contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

1031. The U.S. Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. Art. I, § 1. Under the nondelegation doctrine, Congress cannot transfer legislative power to the Executive Branch.

1032. Notably, Article I, Section 9, Clause 7 (the Appropriations Clause) and Article I, Section 8, Clause 1 (the Taxing and Spending Clause) grant Congress the sole power to appropriate federal funds and place conditions on recipients of those monies.

1033. Congress has not authorized the FTMM nor any provision of law to deny funding to transportation authorities who fail to comply with the mandate.

1034. Vesting Defendant DOT and its FTA agency with such broad authority and discretion without an intelligible principle violates the nondelegation doctrine and Congress' power of the purse.

1035. This Court should hold unlawful and set aside FTA's action withholding funds from grantees who refuse to enforce the FTMM as "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

Count 14: Violation of the Air Carrier Access Act against all Federal Defendants: The FTMM does not comply with Defendant DOT's regulations concerning how to treat passengers with a known communicable disease.

1036. A court must "hold unlawful and set aside agency action … found to be … in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. 706(2)(C).

1037. The ACCA, 49 USC § 41705, and its accompanying regulations promulgated by Defendant DOT, 14 CFR § 382, spell out specific procedures for dealing with airline passengers who might have a communicable disease. The FTMM violates these regulations.

1038. Airlines are prohibited from requiring a passenger to wear a face covering or refuse him/her transportation unless they determine that the passenger has a communicable disease and poses a "direct threat" to other passengers and the flight crew. 14 CFR § 382.21.

1039. The FTMM illegally assumes every single traveler is infected with COVID-19, even those who are fully vaccinated and/or have natural immunity. This violates the regulation that "In determining whether an individual poses a direct threat, you must make an individualized assessment." 14 CFR § 382.19(c)(1).

1040. The FTMM does not provide for making an "individualized assessment" of whether someone is known to have COVID-19 or another communicable disease. It instead imposes a blanket policy that every single traveler must wear a face covering, even those passengers for whom it is ***impossible*** to be infected due to vaccination and/or natural immunity.

1041. This Court should hold unlawful and set aside the FTMM because it violates the ACCA and its regulations concerning transportation of passengers with confirmed diseases. 5 USC § 706(2)(C).

Count 15: Failure to enforce the Air Carrier Access Act against Defendant DOT: DOT has allowed airlines to prohibit all passengers with disabilities who can't wear face masks from flying and/or impose numerous onerous requirements to obtain an exemption that violate the ACAA and its accompanying regulations.

1042. Defendant DOT has neglected its statutory duty to enforce the ACCA, 49 USC § 41705, which prohibits discrimination against individuals with disabilities. This includes travelers who can't wear face masks.

1043. Defendant DOT has allowed airlines and other transportation providers to illegally refuse transport to any disabled customer unable to don a face covering.

1044. Defendant DOT has allowed airlines and other transportation providers to violate the ACCA's regulations (14 CFR § 382) by requiring advance notice by customers with disabilities seeking a mask exemption and imposing unauthorized requirements including obtaining mandatory COVID-19 testing (even for fully vaccinated and naturally immune travelers) and medical certificates, among others.

1045. This Court has the authority to issue a writ of mandamus compelling Defendant DOT to enforce the ACCA. 28 USC § 1361.

Count 16: Violation of the Administrative Procedure Act against Defendant DOT: arbitrary and capricious agency action by the Federal Railroad Administration and the Federal Motor Carrier Safety Administration in ordering enforcement of the FTMM.

1046. A court must "hold unlawful and set aside agency action … found to be … arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A).

1047. Defendant DOT has allowed two of its agencies, FRA and FMCSA, to issue orders and directives requiring railroads and school buses, among other modes of transportation, enforce the FTMM.

1048. Because the FTMM is contrary to statutory authority and unconstitutional, it is arbitrary and capricious for FTA and FMCSA to order its enforcement.

1049. This Court should hold unlawful and set aside Defendant DOT agencies' orders and directives requiring enforcement of the FTMM by railroads, school buses, and other transportation modes because they are arbitrary and capricious. 5 U.S.C. § 706(2)(A)

Count 17: Violation of Florida law against Defendant Greater Orlando Aviation Authority: Requiring passengers and employees to wear face coverings in defiance of Executive Order 21-102.

1050. Defendant GOAA's enforcement of a mask mandate violates Florida Executive Order 21-102, which made clear the "policy of Florida is that no person should ever be required to cover their face, acknowledging the health dangers masking creates: '[O]n April 29, 2021 , Surgeon General Dr. Scott Rivkees issued a Public Health Advisory … stating that continuing COVID-19 restrictions on individuals, including long-term use of face coverings and withdrawal from social and recreational gatherings, pose a risk of adverse and unintended consequences …" Fla. E.O. 21-102.

1051. Defendant GOAA's enforcement of a mask mandate goes against Gov. DeSantis' order that "in no uncertain terms … the policy of the State of Florida will favor a presumption of commercial operation and individual liberty with no toleration for unending and unjustified impediments to that liberty." *Id.*

1052. Defendant GOAA's enforcement of a mask mandate defies state policy that "it is necessary for the State of Florida to enhance its rapid and orderly restoration and recovery from the COVID-19 emergency by preempting and suspending all remaining local emergency restrictions on individuals and businesses and to return day-to-day life back to normal everywhere in the State. … all local COVID-19 restrictions and mandates on individuals and businesses are hereby suspended." *Id.*

1053. This Court should hold unlawful and set aside GOAA's enforcement of a mask mandate because it violates Florida law.

Count 18: Violation of Florida law against Defendant Central Florida Regional Transportation Authority ("LYNX"): Requiring passengers and employees to wear face coverings in defiance of Executive Order 21-102.

1054. Defendant LYNX's enforcement of a mask mandate violates Florida Executive Order 21-102, which made clear the "policy of Florida is that no person should ever be required to cover their face, acknowledging the health dangers masking creates: '[O]n April 29, 2021 , Surgeon General Dr. Scott Rivkees issued a Public Health Advisory … stating that continuing COVID-19 restrictions on individuals, including long-term use of face coverings and withdrawal from social and recreational gatherings, pose a risk of adverse and unintended consequences …" Fla. E.O. 21-102.

1055. Defendant LYNX's enforcement of a mask mandate goes against Gov. DeSantis' order that "in no uncertain terms that the policy of the State of Florida will favor a presumption of commercial operation and individual liberty with no toleration for unending and unjustified impediments to that liberty." *Id.*

1056. Defendant LYNX's enforcement of a mask mandate defies state policy that "it is necessary for the State of Florida to enhance its rapid and orderly restoration and recovery from the COVID-19 emergency by preempting and suspending all remaining local emergency restrictions on individuals and businesses and to return day-to-day life back to normal everywhere in the State. … all

local COVID-19 restrictions and mandates on individuals and businesses are hereby suspended." *Id.*

1057. This Court should hold unlawful and set aside LYNX's enforcement of a mask mandate because it violates Florida law.

Count 19: Violation of Administrative Procedure Act against Defendants CDC & HHS: CDC failed to observe the notice and comment procedure required by law before ordering the International Traveler Testing Requirement.

1058. The ITTR is an "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. It represents the consummation of CDC's decision-making process with respect to requiring testing for anyone flying into the United States. And it affects my legal rights and obligations because it prevents me from flying into the U.S. without obtaining an expensive, time-consuming, and unnecessary COVID-19 test when I am already fully vaccinated.

1059. A court must "hold unlawful and set aside agency action … found to be .. without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

1060. The APA requires agencies to issue rules through a notice-and-comment process. 5 U.S.C. § 553.

1061. The ITTR is a rule within the meaning of the APA because it is "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4).

1062. CDC issued the ITTR without engaging in the notice-and-comment process. 5 U.S.C. § 553.

1063. Good cause does not excuse CDC's failure to comply with the notice-and-comment process. 5 U.S.C. § 553(b)(3)(B).

1064. This Court should hold unlawful and set aside the ITTR because it violates the APA's notice-and-comment requirement. 5 U.S.C. § 706(2)(D). Defendants CDC and its parent agency, HHS, issued the ITTR with zero input from the public as required by law.

Count 20: Violation of Administrative Procedure Act against Defendants CDC & HHS: The ITTR does not comply with the Regulatory Flexibility Act.

1065. A court must "hold unlawful and set aside agency action … found to be … without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

1066. The Regulatory Flexibility Act requires agencies, in promulgating rules subject to the APA's notice-and-comment requirement, to "prepare a final regulatory flexibility analysis." 5 U.S.C. § 604(a).

1067. The ITTR is a "rule" for purposes of the Regulatory Flexibility Act. 5 U.S.C. § 601(2).

1068. CDC did not prepare a regulatory flexibility analysis as required by the Regulatory Flexibility Act.

1069. This Court should hold unlawful and set aside the ITTR because it violates the Regulatory Flexibility Act. 5 U.S.C. 706(2)(D).

Count 21: Violation of Administrative Procedure Act against Defendants CDC & HHS: arbitrary and capricious agency action in ordering the ITTR.

1070. A court must "hold unlawful and set aside agency action … found to be … arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A).

1071. Defendant CDC's ITTR is arbitrary and capricious because it fails to comply with the agency's own regulations. CDC's regulation requires it to find "that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State

or possession." 42 C.F.R. § 70.2. CDC failed to reasonably explain how the ITTR satisfies this regulatory requirement.

1072. Defendant CDC's FTMM is arbitrary and capricious because it fails to comply with the agency's own scientific guidance regarding fully vaccinated individuals.

1073. Defendant CDC's ITTR is arbitrary and capricious because it violates the intent of Congress, who has declined numerous times to enact a traveler testing requirement.

1074. Defendant CDC's ITTR is arbitrary and capricious because it ignores better options than imposing a mask requirement including requiring COVID-19 test providers to report all positive results to the agency so those infected could be placed on the "Do Not Board" and "Lookout" lists, prohibiting them from flying for two weeks while capable of transmitting the virus to others.

1075. Defendant CDC's ITTR is arbitrary and capricious because the agency ignores its own data showing that COVID-19 infections and deaths have been plummeting in recent months since widespread vaccine distribution began.

1076. This Court should hold unlawful and set aside the ITTR because it is arbitrary and capricious. 5 U.S.C. § 706(2)(A)

Count 22: Violation of Administrative Procedure Act against Defendants CDC & HHS: The ITTR exceeds CDC's statutory authority under the Public Health Service Act.

1077. A court must "hold unlawful and set aside agency action … found to be … in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. 706(2)(C).

1078. The ITTR exceeds Defendant CDC's authority under § 361 of the Public Health Service Act. 42 U.S.C. § 264. Section 361 does not authorize Defendant CDC to make a decision of such economic and political significance. Section 361 does not include any authority to test all international flyers for a communicable disease. CDC's interpretation of Section 361 as authorizing the ITTR is not entitled to *Chevron* deference.

1079. This Court should hold unlawful and set aside the ITTR because CDC acted "in excess of" its statutory authority. 5 U.S.C. § 706(2)(C).

Count 23: Violation of the separation of powers against all Defendants Biden, CDC, & HHS: The ITTR is an improper delegation of legislative power.

1080. A court must "hold unlawful and set aside agency action … found to be … contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

1081. The U.S. Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. Art. I, § 1. Under the nondelegation doctrine, Congress cannot transfer legislative power to the Executive Branch. Acts of Congress must supply an intelligible principle to guide the Executive Branch's enforcement discretion.

1082. If the Court finds it does authorize the ITTR, § 361 of the Public Health Service Act (42 U.S.C. § 264) violates Article I's Vesting Clause and the separation of powers because Congress delegated legislative power to CDC with no intelligible principle to guide its discretion. That section authorizes CDC "to make and enforce such regulations as in [its] judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases … from one State or possession into any other State or possession." 42 U.S.C. § 264(a). The statute further provides that CDC may take certain specific measures as well as "other measures, as in [its] judgment may be necessary." *Id.*

1083. If § 361 is so broad as to authorize the ITTR, then Congress provided no intelligible principle to guide CDC's discretion to take actions that "are" or "may be necessary" to "prevent the introduction, transmission, or spread of communicable diseases." *Id.* Vesting CDC with such broad authority and discretion without an intelligible principle violates the nondelegation doctrine.

1084. Notably Congress has declined numerous times during the 15-month COVID-19 pandemic to enact into law any traveler testing requirement.

1085. This Court should declare that § 361 of the Public Health Service Act is unconstitutional because it violates Article I and the separation of powers.

VI. PRAYER FOR RELIEF

WHEREFORE, I request this Court grant the following relief:

A. Declare Defendant Biden's "Executive Order Promoting COVID-19 Safety in Domestic & International Travel" signed Jan. 21, 2021 unconstitutional, vacate the order, and permanently enjoin its enforcement. E.O. 13998, 86 Fed. Reg. 7205 (Jan. 26, 2021).

B. Declare Defendant CDC's "Requirement for Negative Pre-Departure COVID–19 Test Result or Documentation of Recovery From COVID–19 for all Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country" order contrary to statute and unconstitutional, vacate the order, and permanently enjoin its enforcement. 86 Fed. Reg. 7,387 (Jan. 28, 2021).

C. Declare Defendant DHS' Determination 21-130 issued Jan. 27, 2021, "Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System" contrary to statute and unconstitutional, vacate the determination, and permanently enjoin its enforcement.

D. Declare Defendant CDC's Feb. 1, 2021, "Requirement for Persons To Wear Masks While on Conveyances & at Transportation Hubs" order contrary to statute and unconstitutional, vacate the order, and permanently enjoin its enforcement. 86 Fed. Reg. 8,025 (Feb. 3, 2021).

E. Declare Defendant TSA's May 12, 2021, Security Directive 1542-21-01A "Security Measures – Mask Requirements" contrary to statute and unconstitutional, vacate the directive, and permanently enjoin its enforcement.

F. Declare Defendant TSA's May 12, 2021, Security Directive 1544-21-02A "Security Measures – Mask Requirements" contrary to statute and unconstitutional, vacate the directive, and permanently enjoin its enforcement.

G. Declare Defendant TSA's May 12, 2021, Emergency Amendment 1546-21-01A "Security Measures – Mask Requirements" contrary to statute and unconstitutional, vacate the emergency amendment, and permanently enjoin its enforcement.

H. Declare Defendant TSA's May 12, 2021, Security Directive 1582/84-21-01A "Security Measures – Mask Requirements" contrary to statute and unconstitutional, vacate the directive, and permanently enjoin its enforcement.

I. Issue a writ of mandamus immediately ordering Defendant TSA to remove all signs informing passengers of the requirement to wear a mask from all of its security checkpoints and other locations nationwide as well as to remove from its website and in all of its publications any references to face masks.

J. Declare Defendant DOT's "Mask Up" campaign contrary to statute and unconstitutional, and permanently enjoin its use – including immediate removal of all references to masks on DOT's website and in all of its publications. Also permanently enjoin DOT from using any e-mail address with the words "mask" or "maskup" in it.

K. Declare that Defendant DOT has failed its statutory obligation to enforce the Air Carrier Access Act; issue a writ of mandamus ordering DOT to immediately fine all airlines who require passengers to wear masks without making an individual assessment as required by the ACCA's regulations; issue a writ of mandamus ordering DOT to immediately fine all airlines who require advance notice of accommodation by passengers with disabilities, COVID-19 testing, and medical certificates in violation of the ACCA's regulations; and issue a writ of mandamus ordering DOT to immediately inform all air carriers that they may not impose upon any customer who is not known to

have a communicable disease a requirement to wear a face mask pursuant to the ACCA's regulations.

L. Declare that Defendant DOT's agency Federal Transit Administration's amendment of its "Master Agreement" to withhold federal funding from transportation operators who fail to enforce the FTMM contrary to statute and unconstitutional, vacate the amendment, and permanently enjoin its enforcement.

M. Declare that Defendant DOT's agency Federal Railroad Administration's emergency order that railroad passengers and employees wear masks contrary to statute and unconstitutional, vacate the order, and permanently enjoin its enforcement.

N. Declare that Defendant DOT's agency Federal Motor Carrier Safety Administration's directive to school systems that all drivers and passengers on school buses wear masks contrary to statute and unconstitutional, vacate the directive, and permanently enjoin its enforcement.

O. Declare that Defendant GOAA's policy requiring masks be worn by all passengers and employees on airport property violates Florida Executive Order 21-102, vacate the policy, and permanently enjoin its enforcement.

P. Declare that Defendant LYNX's policy requiring masks be worn by all passengers and employees violates Florida Executive Order 21-102, vacate the policy, and permanently enjoin its enforcement.

Q. Issue a permanent injunction prohibiting all Federal Defendants from promulgating and/or enforcing any future rules, regulations, orders, security directives, emergency amendments, and other policies putting in place any requirement that any traveler or transportation employee cover their face unless the person is known to be infected by a communicable disease.

R. Issue a permanent injunction prohibiting all Federal Defendants from promulgating and/or enforcing any future rules, regulations, orders, security directives, emergency amendments, and

other policies putting in place any requirement that any international traveler present a negative COVID-19 test before transportation to/from the United States.

S. Award me all costs and attorneys' fees (if I later hire an attorney to represent me in this lawsuit) pursuant to any applicable statute or authority; or, if I elect to continue proceeding *pro se*, an award of all costs and fees to me in lieu of an attorney for the time I have spent litigating this matter.

T. Grant other declaratory and injunctive relief as may be necessary to ensure that all Defendants comply with the Constitution as well as valid applicable federal laws and regulations governing transportation and public health.

U. Grant such other and further relief as the Court may deem just and proper under the circumstances.

Certification: Under F.R.Civ.P. 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Respectfully submitted this 7th day of June 2021.

Lucas Wall

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CERTIFICATE OF SERVICE

In addition to formal service of process, due to the emergency nature of this action, I hereby certify that on June 7, 2021, I e-mailed this Complaint and all accompanying exhibits and documents to the defendants' counsel and executives whom I have been communicating with prior to filing this lawsuit:

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