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27 July 2022

MEMORANDUM FOR LTG Stuart W. Risch, The Judge Advocate General, U.S. Army

SUBJECT: Petition for Review Pursuant to Article 69, Uniform Code of Military Justice - Court Martial Conviction 29Arpil2022 "U.S. v 1LT Mark C. Bashaw"

References: (a*) 29April2022 U.S. v 1LT Mark C. Bashaw Court Martial Findings*
(b) MG Robert Edmonson's "Initiation of Elimination"
(c) Transcript 39A Lawfulness Ruling, Judge Robert Cohen 28APRIL2022_U.S. v 1LT Bashaw

1. Purpose. I am writing this as request for the review of court martial conviction in U.S. v 1LT Mark Bashaw 28-29 April 2022, in accordance with Article 69 Uniform Code of Military Justice.

2. My military defense attorney informed me that I did not qualify for an appeal or automatic appeal, according to 10 U.S. Code § 866 - Art. 66. Courts of Criminal Appeals. Currently, my Commanding General, MG Robert Edmonson, has initiated elimination from service, based on the court martial conviction. However, my intent has been to appeal the judge's decision that the order was lawful in the 39A session, based on mistake of law.

3. I have the audio and transcript recordings of my court martial. I have attached the transcript from the Judge's 39A ruling on lawfulness. The conviction stems from his determination that these orders were lawful. However, if he determined that the orders were unlawful, I would not be in the position that I find myself in today, facing involuntary separation from service after 17 years of total active federal military service.

4. I have served honorably in the military for close to 17 years. I want to state up front, that I would not risk my entire career, my livelihood, and the well-being of my own family on an unsubstantiated, flimsy belief or an argument that anyone could easily refute. ADP 6-22 highlights our ethical imperative as a Soldier, and as a leader of Soldiers means: we have a moral obligation NOT to follow unlawful orders and a sworn duty to inform the chain of command when we as an Army are in direct violation of federal laws. When I listened to the recording of my court martial, I learned that the prosecution and judge misread and therefore misrepresented the law. I will specifically show you where and how in paragraph 5b. When I discovered this, I realized the only way a JAG can interpret coercing products (vaccines, test kits, masks) that are under emergency use authorization as being legal is by omitting and substituting key words in the law. The laws and the legally binding business agreements (EUA letters) support my argument that it is in fact unlawful to coerce on service members and American citizens products

that are under emergency use authorization, and therefore I have a moral obligation not to follow those unlawful orders and am informing my chain of command. As I discussed earlier, I understand the need for me to change my approach and delivery, because my old ineffective method has wasted a tremendous amount of time. I hope and pray that you read what I present to you today to make the righteous decision on behalf of the Army. (Encl 22)

5. My unit ordered me to test for COVID-19 and wear masks on multiple different occasions. I refused COVID-19 testing and masking requirements on the basis that the clinics do not have FDA approved (legally licensed) test kit and mask available, meaning that all test kits and masks available in the US market are under emergency use authorization (EUA) and are experimental in accordance with 21 U.S.C. § 360bbb-3. 21 U.S.C. § 360bbb-3(a)(2) states the HHS Secretary "may authorize an emergency use of a product that- (A) is not approved, licensed, or cleared for commercial distribution". Products (vaccines, test kits, and masks) that have Emergency Use Authorization (EUA) are UNAPPROVED products.

a. 21 U.S.C. § 360bbb-3(e) is "Conditions of authorization". 21 U.S.C. § 360bbb-3(e)(1) is titled "Unapproved product". 21 U.S.C. § 360bbb-3(e)(1)(A) is the next subordinate paragraph titled "**Required Conditions.**" It states that the Secretary "shall" "establish such conditions … **including** the following:" 21 U.S.C. § 360bbb-3(e)(1)(A)(ii) is "Appropriate conditions designed to ensure that individuals to whom the product is administered are informed"- 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) is "of the option to accept or refuse administration of the product." I have never been informed of the option to accept or refuse administration of any EUA product, to include the vaccines. When I refused COVID-19 testing, I simply exercised my legal option to refuse an unapproved (unlicensed) EUA product, in this particular case, an EUA test kit (device). (Encl 19a-d)

b. In my court martial 39A session, the Judge discussed that in the year 2020, the commander in chief declared a national emergency and "that declaration brings us to 21 U.S.C. § 360bbb-3 which covers the issue of authorization for emergency use. And under those section, though I'm not going to read the entire section, [sub]section e, conditions of authorization, for unapproved products, it outlines various conditions for the approval of an emergency use of an unapproved product. And it holds and states that the Secretary of HHS given the typical circumstances subscribed 'shall for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health' and then there is a list of what the secretary MAY include." The prosecution omitted reading the title of 21 U.S.C. § 360bbb-3(e)(1)(A) **"Required Conditions."** And he substituted "including the following" which means the following are minimum requirements to "there is a list of what the secretary MAY include." The following part lists the **"Required Conditions"** for all unapproved products that have emergency use authorization. (Encl 2)

c. 21 U.S.C. § 360bbb-3(e)(1)(A)(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed-

(I) that the Secretary has authorized the emergency use of the product;

(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks. (Encl 2)

The minimum requirement to administer a test kit or mask under emergency use authorization is that individuals (all individuals) are INFORMED that the product is under EUA, not FDA approved (means if it is not approved, it is not licensed and therefore cannot be sold in the US market until licensure). Any product under EUA means that an individual cannot sue the manufacturer directly because of an EUA product is under liability protections. If the FDA licensed (approved) a mask or test kit, then it would receive an approval letter with respective license number to diagnose or prevent COVID19. This means in the future; an individual COULD sue a manufacturer for damages if the product is fully licensed. Thus, individuals MUST be INFORMED of the benefits, risks, and the unknowns. I will demonstrate to you in paragraph 10 by demonstrating what the legally binding business agreement between the FDA and manufacturer, the Emergency Use Authorization Issuance letters, state for both the test kits and masks. In short, all EUA letters for masks and test kits must conspicuously state that these products are not FDA approved (licensed), that manufacturers are not allowed to advertise that their products are effective and that they are in fact ineffective in detecting and preventing COVID from spreading. The final and most important thing I am supposed to be informed of is (III), of the option to accept or refuse administration of the product. I have never been informed of any of these things or conditions prior to being administered these products (vaccine, test kits, or masks). I'm simply told I need to comply. (Encls 2, 19a-d)

c. The Judge stated that since these are conditions that the HHS Secretary *MAY* include, that if the Secretary specifically does not state that a product comes with the option to accept or refuse those individuals do not have that option. This statement is demonstrably false. Here is the problem. What if I was not informed of 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I) "that the Secretary has authorized the emergency use of the product." If I am not informed that the product has been granted emergency use authorization (EUA), does it mean that it's not under EUA anymore and all of the sudden has FDA approval? Absolutely not. Whether I am told that the product is authorized for emergency use or not, it doesn't change the emergency use authorization (aka not FDA approved) status of the product. And so in the same way, just because I am not informed of 360bbb-3(e)(1)(A)(ii)(III) "of the option to accept or refuse administration of the product", it doesn't change the fact that even if I am not informed of the option to accept or refuse administration of the product, I still have that inherent right to accept of refuse an EUA product

> because the product does not have FDA approval, meaning it has not gone through the required clinical trials and rigors that FDA approved products must go through, and therefore has only been granted emergency use authorization because it is an experimental product. The assumption is that we as individuals own our own body. This assumption was recognized internationally during the Nuremburg Trials, after the atrocities of World War II whereby Germans performed experiments on humans without their consent. In the United States, we have codified this inherent right in 21 U.S.C. § 360bbb-3 – U.S. law. (Encl 2, 10)

6. There is a legal exception to the right to be notified of the right to accept or refuse a product, which specifically applies to service members. 10 U.S.C. § 1107a is titled "Emergency use products". In subsection (a), it states the following:

"(a) Waiver by the President.-(1) In the case of the administration of a product authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act to members of the armed forces, the condition described in section 564(e)(1)(A)(ii)(III) of such Act and required under paragraph (1)(A) or (2)(A) of such section 564(e), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived only by the President only if the President determines, in writing, that complying with such requirement is not in the interests of national security." (Encl 5,6)

a. Section 564(e)(1)(A)(ii)(III) of the Food, Drug, and Cosmetic Act (FDCA) was codified into 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III). As I mentioned above, section 564(e)(1)(A)(ii) and 21 U.S.C. § 360bbb-3(e)(1)(A)(ii) state that "Appropriate conditions designed to ensure that individuals to whom the product is administered are informed" - The key word here is "informed." Informed of what? Section 564(e)(1)(A)(ii)(III) and 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) state "of the option to accept or refuse administration of the product." So, the question is what can be waived by only the President in writing? "…that individuals are informed of an option to accept or refuse administration of a product" under emergency use authorization. There has been no written presidential waiver to date, which would waive the required condition to inform service members of the option to accept or refuse a product under emergency use. Contrary to legal requirements, Soldiers are not being informed of the option to accept or refuse administration of an unapproved product authorized under emergency use. (Encl 2)

b. Nowhere in the law does the express legal text ever give any governmental entity (to include the President) the authority to waive the *actual right* for any American or service member to refuse administration of an unapproved (unlicensed/experimental) product authorized under emergency use. As previously mentioned, just because I am not informed the product being administered to me is authorized for emergency use does not make the product approved or remove the legal requirements associated with an emergency use product. Just because I wasn't informed of the option to accept, or refuse doesn't mean I do not have the inherent right to assess the risk and determine for myself whether or not I will accept or refuse administration of an untested, investigational, experimental, unapproved product that is merely authorized for

emergency use. So even if the President waived (in writing) the required condition to INFORM service members of the option to accept or refuse a product under emergency use, it does not mean that I no longer have the actual right to accept or refuse. The legal language is unambiguously and purposefully stated this way because it is the United States' codification of the Nuremburg Code and embodies the internationally agreed upon concept that it is inherently wrong for a government to administer experimental drugs, devices, and procedures to human beings against their will or without their informed consent.
(Encls 2, 7)

c. The reason the laws in Title 21 and Title 10 (1107 and 1107a) are written this way is that products that are not FDA approved (approved=licensed). Unapproved products have not undergone the ethically and legally required clinical testing to confidently tell an individual what the long-term health implications are. For an example, subjecting myself to weekly or two-times-a-week testing means I am supposed to have an invasive instrument shoved up my nose between 52 to 104 times a year at a minimum. As required by 21 U.S.C. § 360bbb-3(e)(1)(A)(ii), no Army leader or medical professional ever explained to me the possible long-term side effects of having invasive devices shoved up my nose 52 to 104 times a year and there are no long-term clinical studies available. In fact, people have already been injured. There are several claims on the U.S. Health and Human Services Administration website under the Countermeasures Injury Compensation Program (CICP) for test kits. Some of the posted claims are for death due to the test kit and there are other claims due to test kits puncturing the brain and causing brain injury. Of course, the government makes it clear that $0 have been paid out for claims resulting from injury due to COVID-19 countermeasures (COVID-19 related EUA products. I will discuss more on countermeasures later). The primary reason is the adjudication official for all CICP claims is the same individual and organization (Secretary of HHS and the HHS writ large) that is 1) a covered person and 2) the same individual that declared the public health emergency granting all covered countermeasures/persons liability immunity for covered conditions through 42 U.S.C. § 247d-6d authorities. So, as an individual, I literally have no real legal recourse if I suffer severe health issues by blindly accepting EUA products. (Encl 2, 3, 6, 7, 10, 21)

7. 21 U.S.C. § 360bbb-3(a)(1) states the following: "Emergency Uses. Notwithstanding any provision of this chapter and section 351 of the Public Health Service Act [42 U.S.C. § 262], and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an "emergency use")."

a. The key here is that for the HHS Secretary to grant emergency authorization to products, the Secretary HHS must first declare a public health emergency. Let's look at the first notice from the HHS Secretary against COVID-19, which was published on

March 17th, 2020, in the Federal Register (the public health emergency was formally declared in early February 2020). In the summary, the Covid-19 emergency declaration states the following. “The Secretary is issuing this Declaration pursuant to section 319F-3 of the Public Health Service Act to provide liability immunity for activities related to medical countermeasures against COVID-19.” (Encl 9)

b. I initially thought the purpose of granting emergency use authorizations for unapproved product was to protect and safeguard the American people and ensure they are able to effectively fight COVID-19. However, based on the summary I have concluded that an individual’s health is not even an afterthought. The purpose of granting a Public Health Emergency is ultimately to provide liability immunity for unapproved (unlicensed/experimental) products to be granted emergency use authorization (EUA). These EUA products are also known as countermeasures (or covered medical countermeasures as defined in 42 U.S.C. § 247d-6d). What do they mean by liability immunity? (Encl 3)

8. 42 U.S.C. § 247d-6d’s title is “Targeted liability protections for pandemic and epidemic products and security countermeasures.” 42 U.S.C. § 247d-6d(a) discusses liability protections and states the following:

> “(1) In general
> Subject to the other provisions of this section, **a covered person shall be immune from suit and liability under Federal and State law with respect to** all claims for **loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure if a declaration** under subsection (b) has been issued with respect to such countermeasure. (Encl 3)
>
> (2) Scope of claims for loss
> (A) Loss
> For purposes of this section, the term "loss" means any type of loss, including-
> (i) death;
> (ii) physical, mental, or emotional injury, illness, disability, or condition;
> (iii) fear of physical, mental, or emotional injury, illness, disability, or condition, including any need for medical monitoring; and
> (iv) loss of or damage to property, including business interruption loss.” (Encl 3)

Each of clauses (i) through (iv) applies without regard to the date of the occurrence, presentation, or discovery of the loss described in the clause.

a. 42 U.S.C. § 247d-6d. What is a covered countermeasure? In subsection (i) it shows you.

> “(1) Covered countermeasure
> The term "covered countermeasure" means-
> (A) a qualified pandemic or epidemic product (as defined in paragraph (7));

(B) a security countermeasure (as defined in section 247d–6b(c)(1)(B) of this title);
(C) a **drug** (as such term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)), **biological product** (as such term is defined by section 262(i) of this title), or **device** (as such term is defined by section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h)) that is **authorized for emergency use** in accordance with section 564, 564A, or 564B of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb–3, 360bbb–3a, 360bbb–3b]; or
(D) a respiratory protective device that is approved by the National Institute for Occupational Safety and Health under part 84 of title 42, Code of Federal Regulations (or any successor regulations), and that the Secretary determines to be a priority for use during a public health emergency declared under section 247d of this title." (Encl 3)

b. In paragraph 6, I referenced unapproved emergency use products as defined in 21 U.S.C. § 360bbb-3. These same emergency use products are considered qualified pandemic countermeasures to prevent, treat, diagnose, or cure COVID19 (caused by SARS-COV-2 viral matter). Thus, EUA products for COVID19 received full liability protections and immunity from the Public Health Emergency Declaration and via any published amendments to the Secretary of Health and Human Service's declaration. The Secretary of HHS posted all the amendments to the COVID19 emergency health declaration and the original COVID19 Health Declaration to the *Federal Register* which the primary public record for US federal government actions/notices/rule updates. In short, the Secretary of HHS grants liability immunity to covered countermeasures through 42 U.S.C. § 247d-6d statutory authority, which also grants full liability immunity to covered persons and covered countermeasures until the emergency declaration ends or the US receives fully licensed products to treat, cure, prevent, or diagnose COVID19. (Encl 3, 9)

c. 42 U.S.C. § 247d-6d. Who is a legally considered a covered person?

"(2) Covered person
The term "covered person", when used with respect to the administration or use of a covered countermeasure, means-
(A) the **United States**; or
(B) a person or entity that is-
(i) a manufacturer of such countermeasure;
(ii) a distributor of such countermeasure;
(iii) a program planner of such countermeasure;
(iv) a qualified person who prescribed, administered, or dispensed such countermeasure; or
(v) an official, agent, or employee of a person or entity described in clause (i), (ii), (iii), or (iv)." [**This means all of our DoD senior leaders are covered persons**] (Encl 3, 9)

(1) Further down in subsection (i), it defines specifically what a manufacturer, distributor, program planner and other persons are by

law. Everyone on that list "shall" be immune from suit and liability with respect to all claims for loss (reference the paragraph that includes all injuries from death to mental anguish and headaches) from the administration of a covered countermeasure (EUA products, which by definition are unapproved or being used for and unapproved use). **As the individual, I assume ALL risk associated with accepting an EUA product. Because these legal restrictions are completely stacked against me. This means all Soldiers have one inherent right (to include myself): 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) "the option to accept or refuse administration of the product".** (Encl 1, 2, 3, 9)

(2) U.S.C. § 247d-6d(c)(2)(A) states the following "The Secretary, in consultation with the Attorney General, shall promulgate regulations, which may be promulgated through interim final rules, that further restrict the scope of actions or omissions by a covered person that may qualify as "willful misconduct" for purposes of subsection (d)." What do they mean by "willful misconduct"? Willful misconduct is the following according to U.S.C. § 247d-6d(c)(1)(A), "an act or omission that is taken-(i) intentionally to achieve a wrongful purpose; (ii) knowingly without legal or factual justification; and (iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit." I will come back to the concept of willful misconduct soon.

9. When the Secretary HHS issues an emergency use authorization for unapproved products (or for approved products used for an unapproved use), those products as well as the government (government officials JAG and medical personnel), the manufacturer, the prescriber, and administrators **all receive liability immunity**. The only way a manufacturer can sell an unlicensed EUA product in the US market is through the Public Health Declaration and EUA declarations. The only way the HHS Secretary can grant products emergency use authorization is if the Secretary HHS declares a public health emergency. In turn, the HHS grants manufacturers (and practically everyone by an American) liability immunity from any legal loss, which is simple terms is an immense moral hazard.

a. What incentive do the manufacturers of EUA products have to make products that effectively counter the very virus allowing the HHS Secretary to make an emergency declaration? What manufacturer in their right mind would not want full liability IMMUNITY? What medical personnel do you know that does not want liability immunity protection to take a medical action? What hospital would want to risk lawsuits for using products without targeted liability immunity?

b. A good example is if a commander did not have liability immunity protections and could be sued or imprisoned for any injuries Soldiers sustain from the use of EUA products, would he/she still press all of us to blindly follow these orders knowing that we have little to no future legal recourse for legal or health damages? Would he/she be

confident that he/she have all the information necessary to order Soldiers to give up their right to bodily autonomy to take an EUA labeled vaccine (since only EUA labeled shots are available throughout the country, to include all military medical facilities/clinics)? EUA labeled shots are still considered experimental by US federal law. Or, would he/she want to know more about the long-term safety and effectiveness continually left unaddressed, dismissed, and unanswered? It is not my opinion that no one possesses long-term safety data (data for 5-10 years) on negative health implications for unapproved EUA products and no medical provider I have asked can demonstrate they have seen studies either. That is simply a fact because all products (biological products-shots, devices-test kits/masks, drugs-pills/intravenous) available for public use are still unapproved (unlicensed) and have not undergone requisite long-term testing, licensure, and enhanced safety trials necessary for full approval/licensure.

c. I repeatedly asked medical providers, leaders, and commanders to help me ask these questions of our senior leadership. For example, I have asked about the long-term health implications of shoving the test kit far up my nose 52 to 104 times a year. I asked about the efficacy of long-term mask wear. Practically everyone I talked to refused to investigate it or hear me out (nor anyone else).

d. We are about 2.5 years into this COVID-19 pandemic, and we are no closer to answering the COVID-19 origin question. Is it really that big of a mystery or is the liability immunity too sweet to give up for everyone involved? With the liability immunity protection, what incentive does anyone really have to watch out for our welfare or our children's welfare? The legal reality is no test kit, mask, or shot are licensed to treat, cure, prevent, or diagnose COVID19 and this means they all come with immense risks.

10. Emergency Use Authorized versus Approved (Licensed). There are so many people confused with the difference between an FDA approved product and a product under emergency use authorization. First and foremost, to know with all certainty whether a product has FDA approval or have been issued Emergency Use Authorization is to go to the FDA website and find the legally binding contract or business agreement for the specific product, and that legally binding document will state on it what the terms and conditions exist for either the FDA approval or the issuance of the authorization for emergency use (a product cannot have both FDA approval and have Emergency use authorization for the same purpose and this is stated in 21 U.S.C. § 360bbb-3). For a test kit or a mask, there will either be a business agreement giving a product FDA approval, or a business agreement issuing a product emergency use authorization so that legally binding agreement is a very important document that we need to read prior to making any claims on whether a product has FDA approval or emergency use authorization. Furthermore, 21 U.S.C. § 360bbb-3(c) is titled "Criteria for issuance of authorization". Subsection (c)(3) states that the one of the criteria for granting emergency use authorization of a product is "that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition" This means that if there is a FDA approved test kit, that means all the other test kits that have EUA status must not be used anymore since there is a "safe" FDA approved test kit. And of course, that means all the liability

protections that comes with the EUA status is gone, so if someone gets injured from being administered the FDA approved test kit, that individual can sue the manufacturer of the FDA approved test kit for making a product that hurt the individual the test kit was administered on. This same concept applies to masks. There are still over a 47 active EUA issuance letters for various COVID-19 test kits and masks. This means that there are NO FDA approved (licensed) test kits or masks to diagnose or prevent COVID19, not to mention you will not find an FDA approval letter for any test kit or mask anywhere on the FDA website. In this paragraph, I want to walk you through the information in these legally binding agreements between FDA, a covered person, and the manufacturer, another covered person. (Encl 2, 3, 9, 10, 19a-d)

a. Test Kits. The primary test kits medical providers administer to Soldiers, and that I refused to take, are In-vitro Antigen Diagnostic Test Kits. I will focus on several as an illustrative example. All EUA in-vitro test kits can be found at the following FDA link: https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/in-vitro-diagnostics-euas-antigen-diagnostic-tests-sars-cov-2. BLUF: These test kits are under EUA and possess the legally binding agreement guided statutory authority through 21 U.S.C. § 360bbb-3. They are unlicensed and thus legally come with the REQUIRED condition to accept or refuse. I will explain why we have the inherent right to refuse by first acknowledging that each EUA product comes with full liability immunity as does anyone that makes or administers the product and secondly, I will show key conditions within the EUA letter. The EUA letters are the legally binding agreement between two covered persons, the FDA and the EUA product manufacturer. So, from the start of the formal authorization agreement, both parties lack the incentive to produce a product that is fully safe for those that take it. (Encl 2, 19a)

(1) Enclosure 19a BinaxNow Rapid Antigen Test Kit and the QuickVue Rapid Antigen In-vitro Diagnostic Test Kits. I provided the front side and back side of the product box. Right up front on the box, this test kit states, “for use under Emergency Use Authorization.” Page 9 of the EUA letter directs the manufacturer to state: “All descriptive printed matter, advertising, and promotional materials relating to the use of your product shall clearly and conspicuously state that: This product **has not been FDA cleared or approved**; but has been authorized by FDA under an EUA for use by authorized laboratories.” Therefore, legally, all REQUIRED conditions within 21 U.S.C. § 360bbb-3(e)(1)(A) fully apply for our protection because right there on the box and in the letter, both parties acknowledge this product is unlicensed and could not be sold in the US otherwise. Hence, we MUST be informed of all inherent risks, known, and unknown of accepting an unlicensed product. Instead, we are all coerced, bullied, or “ordered” to give up our inherent rights that we have little to no legal/medical recourse against harm. None of these letters state we do or do not have the right to refuse because ALL UNAPPROVED products legally come with REQUIRED conditions and the inherent right to refuse and to have informed consent (Encl 2, 9,10, 19a)

A. Waiver of Following Good Manufacturing Practices. The FDA doubles down applies an additional condition to waive Abbott to follow good manufacturing practices on Page 5. The FDA letter states: “Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of your product, but excluding Subpart H (Acceptance Activities, 21 CFR 820.80 and 21 CFR 820.86), Subpart I (Nonconforming Product, 21 CFR 820.90), and Subpart O (Statistical Techniques, 21 CFR 820.250). Absurdly enough, each test kit and mask EUA letter waives the manufacturers requirement to follow good manufacturing practices. You couple this with both parties being “covered persons” and now you have the moral hazard to produce an even less safe product, which further demonstrates why we MUST be informed and have a right to REFUSE unlicensed products. Of note, all other rapid antigen EUA letters waive this same requirement for manufacturers. I bet you would not be comfortable with someone shoving things up your nose fully knowing that the product going into your nose never had to follow strict scrutiny to ensure it did not cause long-term harm, would you? (Encl 19a)

B. Stated Efficacy. Page 9 tells the manufacturer that it may not advertise that their product is “safe or effective” in the diagnosis of COVID19. I find this remarkable since our leaders are forcing us to use these tests as if they are the gold standard of testing and that they are always correct. Adding to this absurdity, is another curious statement in the FDA’s own words on Page 4 regarding negative and positive results: “Negative results should be treated as presumptive and confirmation with a molecular assay, if necessary, for patient management, may be performed. Negative results do not rule out SARSCoV-2 infection and should not be used as the sole basis for treatment or patient management decisions, including infection control decisions. Negative results should be considered in the context of a patient’s recent exposures, history and presence of clinical signs and symptoms consistent with COVID-19.” I am no licensed doctor, but imagine if other tests such as pregnancy, breathalyzers, and cancer tests worked the same way? For example, if a patient tests negative for cancer do, we still administer Chemo therapy anyways because they could in fact be positive? So, negative results do not rule out infection? And positive results still "May" need to be double-checked? I wish you could tell me this is all my opinion, but this is all in the FDA’s own words, in their own documents. This bodes a very disturbing prospect about efficacy and safety for that matter. (Encl 19a)

C. Tying it together. The legally binding document is the EUA letter between the FDA and the product manufacturer. This agreement can only occur if a product is unlicensed, is granted an EUA as a “covered countermeasure” under the 42 U.S.C. § 247d-6d declaration and liability immunity for use. In short, the simple fact that ALL test kits are unapproved means they come with a lot of inherent risks. Individuals do not receive any real liability protection or mechanism of recompense. The FDA grants immense leeway to the manufacturer at producing a less safe product that already has full liability protection. For all of these reasons, and many more, we as individuals accept all of the risk by accepting EUA products which is why we have an inherent right to refuse or to be forced/coerced into taking EUA products with full liability protection we do not have. (Encl 19a)

b. Masks (Enclosures 19b and 19c). All mask EUA letters can be found at the following FDA link: https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergencyuse-authorizations-medical-devices/personal-protective-equipment-euas#respirators. Sadly, all masks designed to prevent the spread of COVID19 are also under blanket EUAs. I attached two EUA letters showing N95 and Surgical Masks received an EUA from the FDA and therefore are unlicensed, unapproved products to prevent the spread of COVID19. This means if they are unapproved, masks too come with "REQUIRED" conditions outlined in § 360bbb-3(e)(1)(A). It also means that ALL manufacturers (and covered persons) receive liability immunity from losses suffered from mask usage. This alone is why the CDC advocates its guidance with utter disregard for our health or our children's long-term health…because they are covered persons recommending the use of covered countermeasures. (Encl 19b,19c)

(1) Waiver of Following Good Manufacturing Practices. Just like test kits, the FDA waives the condition for manufacturers of surgical masks, cloth masks (through a general EUA letter), and N95 masks to follow good manufacturing practices. This means mask makers are a covered person and now can produce a product without following good manufacturing practices. In short, masks now bear more risk to you and further illustrate why we all have the right to refuse these products and blindly follow another covered person's (CDC's) recommendation to use masks with liability shields through their covered person immunity. Interestingly enough, if a mask maker does not receive an FDA authorization to use their mask under the EUA umbrella letters, then their product (e.g., NFL cloth mask) will state somewhere it is "not a medical device intended to prevent a disease." Either way, you as an individual have no recourse for health damages. (Encl 19b,19c)

(2) Safety/Efficacy as Stated in EUA Letters. On page 5, manufacturers are directed to state: "Surgical masks are not intended to provide protection against pathogenic biological airborne particulates and are not recommended for use in aerosol generating procedures and any clinical conditions where there is significant risk of infection through inhalation exposure." In short, this statement alone means that surgical masks do not even stop pathogenic spread from aerosols, which is the primary method COVID19 spreads (aerosol particulates). So, I will say this another way, the manufacturer must state these masks do not work to stop COVID19 from spreading and yet our leadership blindly tells all of us to wear things that do not work by the FDA's own legally binding document. Page 8 states that the manufacturer cannot advertise that their product is safe or effective at preventing the spread of COVID19. And again, these facts do not stop our governmental leaders (covered persons) from blatantly coercing others (service member/Americans) to wear masks that the manufacturer cannot even advertise works. (Encl 19b,19c)

(3) Tying it all Together for Masks. Page 8 of Enclosure 19b also clearly states that surgical masks are not "FDA approved, or FDA cleared." In short, this means this product is unlicensed, does not possess long-term clinical safety data for continued use, provides liability immunity we do not have and is inherently less safe because manufacturers do not have to follow good manufacturing practices. Good thing we

outsourced mask production to China during this pandemic. So again, the legally binding document is the EUA letter between the FDA and the product manufacturer. This agreement can only occur if a product is unlicensed, is granted an EUA as a "covered countermeasure" under the 42 U.S.C. § 247d-6d declaration and liability immunity for use. (Encl 19b,19c)

11. As if the realities of test kits and masks are not enough to demonstrate that we have an inherent right to refuse EUA products, we turn to the issue of the DoD continuing to push EUA shots on all of us through a series of lies I never imagined possible. The lies about having "licensed" COVID19 shots available are the first item I will address. I recently received a Defense Health Agency FOIA request response inquiring about BioNTech's licensed "Comirnaty" shots in the DoD inventory by service (DHS Initial Case No: 21-00359 Requester's Tracking No 256601). The request stated the following:

> "[How many COVID19 Vaccines under the name COMIRNATY (not under the name Pfizer BioNTech COVID-19 Vaccine) the DoD ordered, received, has on stock, has available, administered to service members, by service branches (Army, Navy, Marine Corps, Air Force, and Coast Guard) and when. How many COVID19 Vaccines under the name COMIRNATY (not under the name Pfizer BioNTech COVID-19 Vaccine) is scheduled to receive in the future by service branches.]"

a. The response given was as follows: "After conducting a search, it was determined that the DHA **does not have records in response to your request**. Although this does not constitute a denial because no records were found or withheld, you may appeal to the appellate authority if you are not satisfied with this response." This response is dated April 20, 2022. (Encl 20)

b. The FDA approved (licensed) "Comirnaty" (which is not the Pfizer-BioNTech COVID-19 mRNA vaccine with an EUA label -- the only product currently available) on August 23rd, 2021. If the DHA took almost 8 months to respond that they cannot provide the contract for the Comirnaty requisition, that means that the DoD did not have Comirnaty available anywhere in its inventory, because there was no order put in for the FDA approved Comirnaty vaccine. But Soldiers at the unit level were assured, scoffed at, scolded, and plainly lied to through omission of facts or directly by leaders and medical providers that the immunization department had the FDA approved vaccine (Comirnaty). The 24 August 2021 Secretary of Defense memo on the COVID-19 vaccine says the following: "Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance. Service members voluntarily immunized with a COVID-19 vaccine under FDA Emergency Use Authorization". It's almost as if the SECDEF understood that you cannot legally mandate an unapproved product because the original wording was very carefully crafted. The medical personnel and JAGs who told us the DoD had the approved vaccines lied to us. Given the DHA FOIA request response, it appears they are still lying about the legal status of available shots, test kits, and masks. Eight months after

approval, there are still no vials of the FDA approved Comirnaty vaccines available. (Encl 11, 12)

12. When the Department of Defense lied (as they still are), stating Comirnaty is fully available and that all clinics and treatment facilities had the FDA approved product since August 24th, 2021, some individuals such as myself knew better. When I tried to stand up for what was right and tell medical personnel and JAGs the legal and medical reality, they told us "The Approved COMIRNATY and the Authorized Pfizer-BioNTech COVID-19 Vaccines are to be used ***interchangeably*** as if the Authorized Pfizer-BioNTech COVID-19 Vaccines are the licensed shots". That statement and claim is certifiably and demonstrably false. For one, no one in the DoD possesses the delegated statutory authority to declare any shot (or product) interchangeable with another shot. Yet, that did not stop Terry Adirim from sending out her preposterous Assistant Secretary of Defense Health Affairs memo in September 2021 stating that the Pfizer-BioNTech COVID19 mRNA shots (EUA) could be used interchangeably "as if" they were the licensed shot ("Comirnaty"…which is still unavailable in the US market 11 months after approval). (Encl 11-15)

a. 42 U.S.C. § 262(k) is titled "Licensure of biological products as biosimilar or interchangeable". 42 U.S.C. § 262(k)(1) states that "Any person may submit an application for licensure of a biological product under this subsection". In order for anyone to legally assert the Pfizer-BioNTech COVID-19 vaccines are to be used interchangeably with Comirnaty, they must have referenced the approved interchangeability application. (Encl 4)

b. A simple query in the publicly available FDA Purple Book, which is the FDA's legally required public database to maintain records of all licensed shots, reveals that neither Comirnaty nor Moderna's Spikevax have an approved interchangeable product or biosimilar product available for use. For a biological product to be legally considered "approved" as either biosimilar or interchangeable with a reference product (e.g. Comirnaty/Spikevax), they must also be approved/legally licensed and NOT an unapproved EUA product. (Encl 4, 15)

c. When you search for Comirnaty in the FDA Purple Book, under "Interchangeable(s)" it states the following: "No interchangeable data at this time." That's how we know we've been lied to again. 42 U.S.C. § 262(k)(4) is "Safety standards for determining interchangeability". 42 U.S.C. § 262(k)(4)(ii) states "can be expected to produce the same clinical result as the reference product in any given patient". The reference product in this case is the FDA approved Comirnaty. The Comirnaty licensed shot does not exist in the US market, so how can anyone demonstrate that another product like the EUA Pfizer-BioNTech COVID-19 Vaccines can be expected to produce the same clinical results? No clinical studies have been conducted on Comirnaty, the reference product, because it still is not available in the U.S. market, to include within the DoD inventory. We were lied to again. (Encl 4, 15)

13. Almost 11 months after receiving FDA approval, the DoD is claiming they have the "COMIRNATY labeled" vials. These "COMIRNATY labeled" vials however do not match

the official FDA approved COMIRNATY vials as shown in the FDA Purple book database. Also, it doesn't have all the required information on the vials as required according to 42 U.S.C. § 262, but that's not what I want to get into right now. What I want to draw attention to is this. 21 U.S.C. § 360bbb-3(c) is titled "Criteria for issuance of authorization". Subsection (c)(3) states that the one of the criteria for granting emergency use authorization of a product is "that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition". If it is in fact true that the DoD has the FDA approved COMIRNATY vaccines, then why does the DoD still have so many vaccines with the EUA labels? And why is it that when I call or go to any pharmacy in the local area, are there no pharmacy that carries the FDA approved COMIRNATY or the FDA approved Spikevax? Let's look at the Vaccine Adverse Event Reporting System (VAERS) database on the CDC website. Although the media has spoken poorly of the VAERS database, per the FDA's Letter of Authorization to vaccine companies such as Pfizer, all adverse reactions are required to be entered into VAERS. Healthcare workers who administer the product are also required to input any adverse events into VAERS. If an individual fraudulently inputs an adverse event report, they are subject to federal punishment. A Harvard study on the efficacy of the VAERS system, titled "Electronic Support for Public Health–Vaccine Adverse Event Reporting System (ESP: VAERS)", Grant ID: R18 HS 017045, found fewer than 1% of vaccine adverse events are reported in VAERS. (Encl 16)

a. A search in VAERS allows you to filter the data by vaccine type. If you query it by death, the most severe adverse event, the COVID19 Vaccine has 29,273 reported deaths to date. The vaccine with the next highest number of reported deaths is the Hemophilus B Conjugate Vaccine (HIBV) with 1,794 reported deaths. After that is the Hepatitis B Vaccine (HEP) with 1,380 reported deaths. Keep in mind that the other vaccines have many years of data. The COVID19 Vaccine data is just from about 1.5 years of use, and still, it's responsible for 82.34% of all reported deaths produced by 94 other vaccines combined. Without liability immunity, especially considering the COVID-19 vaccines are deadly by a factor of at least 10 compared to all other vaccines, someone is going to go bankrupt. (Encl 16)

b. On 16 September 2021, the Public Health and Medical Professionals for Transparency sued the Food and Drug Administration, demanding all the data the FDA had available to "approve (legally license)" Comirnaty in only 108 days -- the fastest vaccine approval in U.S. history. The plaintiff "seeks to obtain the data and information relied upon by the FDA to license the Pfizer Vaccine." The FDA originally asked the court for permission to produce just 500 pages per month (the FDA estimated it would need to produce 329,000 pages), which would have taken ***55 years*** to produce, but then later told the court the total page count was at least 451,000 and asked for ***75 years*** to disclose the information fully to the public. I wish I were joking; however, this is not a joke or a hyperbole. Believe it or not, this is an actual federal case and provides further evidence that the FDA and vaccine manufacturers are attempting to hide information, which may be related to potential harm caused by the products. And yet ironically, my integrity is under question. (Encl 17)

c. Why is the FDA covering for the vaccine manufacturers? Why isn't anyone challenging testing and masking which are also unapproved (unlicensed) products under an EUA which legally comes with the required conditions to accept or refuse? I know I'm not the only one in the DoD or even in the Department of the Army to bring these concerns up. Why isn't the DoD asking any questions on our behalf? Why isn't my chain of command looking into these concerns when a medical officer is raising the alarm like he is charged to do? The FDA is a government agency. Employees in the FDA are covered persons. The CDC is a covered person. The NIH is a covered person. The DoD is a covered person. Why isn't Congress raising the alarm? That's right, they are covered persons. (Encl 1, 2,3,15,16)

d. My leaders and the Army's senior leadership have lied to us all about the vaccines. This is not the first time I am bringing up legal issues regarding testing. I brought these concerns up through an informal complaint to my chain of command, only to have these concerns immediately dismissed. When my chain of command disregarded my informal Article 138, I submitted a formal Article 138 redresses. The response I received back did not address any of the points I raised. I'm always "refuted" by being told that there is an order out there requiring unvaccinated Soldiers to test and that it's a "lawful order." The laws I cite are never addressed or even considered. Service members are not obligated to follow unlawful orders. Why would the same covered person with liability immunity that lied to us this whole time, suddenly be honest about an unlawful testing and masking order being unlawful?

e. I have sacrificed a lot for my country. You can look at my service record; it will attest to that assertion. After over a decade of serving as an enlisted Airman, I wanted to be an officer in the Army because I thought I was serving in an organization full of people with honor and integrity. I believed all service members swore an oath to support and defend the Constitution and by extension, the federal laws of this country… not the President or any other leader. Yet here we are, my judgement and integrity are in question by a group of people that are protected by liability immunity and are ordering me to take a series of unapproved EUA products with utter disregard for the federal laws being violated or even for the long-term damage these products are causing. (Encl 1, 2, 3, 6, 8,10, 17)

f. When I joined the military, I generally understood that I could die one day in combat or in a deployment situation due to the chaos and fog of war. I joined accepting that risk. I did not, however, join thinking that I would be coerced to use experimental, untested, unapproved products that no one has the long-term health studies for under the guise that it's "a lawful order" by people that have all the liability immunity protection anyone could ever want, and potentially risk death due to that product. I never signed a form (and none of us did contrary to popular myths we tell ourselves about signing on the fabled dotted line) that said under an emergency situation, that I understood the government could put whatever the government deems appropriate (untested, unapproved, experimental products, with no to minimal clinical studies, "authorized for emergency use") in my body with no form of consent whatsoever. The DD-4 is the Enlistment/Reenlistment Document – Armed Forces of the United States. This is obviously a form I'm familiar with as I was formerly an enlisted airman. On page 3, it

states that the number (1) thing I will do "as a member of the Armed Forces of the United States, I will be: (1) Required to obey all lawful orders and perform all assigned duties." Nowhere in the DD-4 or any commissioned officer service contract does it state that I am expected to allow the government to inject and shove into my body any experimental product under emergency authorization during an emergency pandemic situation. If that was a legal requirement, it would say so clearly in my contract with the DoD; however, it does not so that is not one of the terms and conditions of my service contract. During my 16 years of service, there were plenty of ethics classes I had to sit through where I was told to always bring up the chain of command unlawful, unethical actions. I did exactly that, and I'm now the one facing punishment for it. In fact, our own Army Doctrine Publication 6-22 chapters 1 and 2 highlight this fact in multiple paragraphs. It clearly states we are NOT obligated to follow unlawful orders and are compelled to bring violations of the law up to our chain of command.

14. I want to bring up 18 U.S.C. § 1038 titled "False information and Hoaxes". 18 U.S.C. § 1038(a) is titled "Criminal Violation". 18 U.S.C. § 1038(a)(1) states the following. "In general.-Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter…113B of this title…shall- (A) be fined under this title or imprisoned not more than 5 years, or both; (B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and (C) if death results, be fined under this title or imprisoned for any number of years up to life, or both." I have stated many times through many different mediums that none of the vaccines, test kit or masks have FDA approval, and that because they are unapproved products and have only been issued emergency use authorization, that we are supposed to be informed that the products being administered to us are in fact under emergency use and that we all have the option to accept or refuse the experimental product authorized for emergency use. I've shown much legal evidence that support my claims (mainly 21 U.S.C. § 360bbb-3), yet the Department of Army continues to ignore the facts and truth I am telling and continues to "convey false or misleading information". Chapter 113B of Title 18 is titled "Terrorism". 18 U.S.C. § 2331 is the definition portion of chapter 113B of Title 18. 18 U.S.C. § 2331(5) states the following "the term 'domestic terrorism' means activities that-(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended-(i) to intimidate or coerce a civilian population." To be clear, the false misleading information, that there are FDA approved vaccines, test kits or masks, is being used to intimidate and coerce both civilians and service members to being administer EUA products with full liability immunity.

a. A lot of service members have been seriously hurt due to being coerced these unapproved products only issued authorization for emergency use because they were told that these products were FDA approved and therefore the military can mandate these products on service members and that these orders conveying false misleading information is "lawful". Some service members died as a result of these products under EUA. As a medical officer I see these data in the Defense Medical Epidemiological Database (DMED) that show these products are clearly deadly and dangerous, so I

have tried to raise the alarm many times. I refuse to engage in criminal activity. As an Army Officer, I am trying to prevent a fellow Army Officer and fellow human being from engaging in criminal activity as well. (Encl 8)

15. With everything I covered with all evidentiary enclosures I am providing you; I humbly and respectfully request that review this matter and set aside in whole the findings and conviction of U.S. v 1LT Mark Bashaw court martial.

a. Based on all the evidence within this rebuttal, I must ask: Do you honestly think I would risk my entire career, my livelihood, and the well-being of my own family on an unsubstantiated, flimsy belief or an argument that anyone could easily refute? If I am being this “obstinate”, contrary to my history of outstanding performance, I hope you would seriously consider why I would place myself in this position and sustain such a significant career risk. Why is my integrity under question for directly pointing out the negative incentives many covered persons have (and likely do not even realize they have) and the blatant violations of individual rights and our own federal laws? Should our Army or any branch of service be allowed to operate outside of our own laws? Is this truly the Army we are shaping for the present and the future, where those that are actually adhering to the basic principles of the Army’s professional ethics and the profession of Arms outlined in Chapters 1-2 of ADP 6-22 are considered outcasts and punished for not going along with “lawful orders” even when I can clearly demonstrate that we as an Army are in direct violation of multiple federal laws? ADP 6-22 highlights our ethical imperative as a Soldier and as a leader of Soldiers means that we have a moral obligation NOT to follow unlawful orders and a sworn duty to inform the chain of command when we as an Army are in direct violation of federal laws. Sir, I can assert that I would not risk this much for something flimsy and unsubstantiated. At this stage, I am trying to exercise my sworn responsibility as an Officer in the United States Army to advise leaders.

b. Secondly, my refusal to accept an unapproved product is an exercise of my inalienable legal right to refuse unapproved products legally considered experimental by federal laws that comes with a **required condition** to refuse and to be informed of the right to refuse (unless my right to be informed is waived by the POTUS). At one point in history, we as a human species said it is a bad thing to experiment on other human beings against their will and without their informed consent. The argument that “I was just following orders” was also deemed as not a tenable excuse for wantonly violating the human rights of others. I am again referencing the end of World War II and the Nuremburg Trials, which generated the Nuremburg Code. Our congressional leaders codified the tenants of the Nuremburg Code into federal laws, which are directly reflected in 21 U.S.C. § 360bbb-3 and even 10 U.S.C. § 1107/1107a. My command lacks any legal standing to force or coerce me to give up my right to refuse and my right to informed consent. In fact, ALL Soldiers still have this inherent right to refuse. At no point have has my chain of command, or any medical providers I dealt with ever adhered to the legal requirements of informing me (and all Soldiers) of the required conditions that 1) we are receiving an unapproved EUA product, 2) of the inherent risks and potential long-term health issues I may suffer, and 3) of the inherent right to refuse this product. If any of us suffers health issues stemming from accepting any number of

EUA unapproved products (masks, test kits, and vaccines), then we as individuals have next to no legal recourse or recompense due to the immense liability protections countermeasures/persons receive. (Enclosure 9, 18, 19, 20, and 22)

c. Third, I have heard multiple leaders state “well the orders are lawful unless the courts say otherwise.” Statements like these are indicative of a moral bankruptcy currently within our armed services and they are not anecdotal nor are they isolated comments/beliefs. The idea of these statements is essentially, we (military) can do whatever we want to our people whenever we want because “you signed the dotted line”, even though nowhere above, below, or even in the fine print does any contract ever overtly state we lose all rights and become serial numbered, conscripted items belonging to the state. I am honestly and faithfully trying to alert senior leaders of these serious concerns, specifically that we as an institution are in direct violation of multiple federal laws. ADP 6-22 provides two full chapters on the professional ethic and the Army profession and explicitly explains all Soldiers that we must NOT follow unlawful orders and that we are obligated to bring unlawful orders to the immediate attention of our chain of command. When we do so, then we end up being the ones threatened. Not one of you ever really checked to see if the orders you blindly follow are in fact unlawful. When was the last time you even went to a treatment facility yourself Sir to check the actual labels on any shot or to look at the inserts of test kits/masks? If you have never done this, why you have never done this? I thought one of the monikers of leadership is to trust but verify. Why do leaders seem hellbent on refusing to check and just assume their SJAs and medical people (“experts”) are correct? Why we any of use risk so much to bring this up? Even Article 92 states: “*Inference of lawfulness. An order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.”* I have demonstrated ad-nauseum that all mandates directing service members to succumb to taking EUA products are patently illegal. These mandate orders directly violate 21 U.S.C. § 360bbb-3, 10 U.S.C. § 1107/1107a, all using 42 U.S.C § 247d-6d “covered person” liability immunity and the legal precedence of governmental “sovereign immunity” as a means to commit fraud and coercion as defined in 18 U.S.C. § 1038 and § 2331 to threaten our careers, livelihoods, our safety, and our duty as service members to report unlawful orders to our chain of command. I submitted informal Article 138s and even formal Article 138s that were immediately dismissed. My questions/areas of concern remained unaddressed. Instead, the answer I receive even after exhaustive discussions and presenting evidence seems to remain, “the order is lawful” (no matter what because “higher” said so) or to shut up and just do what we tell you. For an order to be lawful, it cannot usurp or violate federal laws. These orders most certainly do Sir. (See Enclosure 18, our enlisted are directed that they must follow all lawful orders, page 3 of DD-4)

d. Sir, I again I humbly and respectfully request that review this matter and set aside in whole the findings and conviction of U.S. v 1LT Mark Bashaw court martial. I can assure you that I would not risk this much if I did not have serious concerns or if I could not present solid evidence to you or my chain of command. I am not simply disobeying an order for the sake of being difficult or going against the Army values or the profession. In fact, it is exactly the opposite. I am exercising my rights and

advocating on my Soldiers' behalf because we are being forced and coerced to take experimental, unapproved EUA products. I understand the Army comes with a lot of sacrifice and selfless service. But one thing I will not sacrifice is our sworn oath and adherence to upholding, supporting, and defending our nation's laws and the rights of its people and servicemembers.

16. The point of contact for this request is the undersigned at (410)-436-5436 or mark.c.bashaw.mil@mail.mil.

MARK C. BASHAW
1LT, MS
Preventive Medicine/Entomologist

Encls
Encl. 1- ADP 6-22 Excerpts from Ch. 1 and 2
Encl. 2- 21 U.S.C. § 360bbb-3 Emergency Use Authorization
Encl. 3- 42 U.S.C. § 247d-6d Targeted Liability Immunity
Encl. 4- 42 U.S.C. § 262 Biological Products/Licensing/Interchangeability
Encl. 5- 10 U.S.C. § 1107 Investigational New Drug
Encl. 6- 10 U.S.C. § 1107a. Emergency Use Products
Encl. 7- 21 C.F.R. Part 50-Protection of Human Subjects
Encl. 8- 18 U.S.C. § 1038 Fraud and §2331 Coercion under Domestic Terrorism
Encl. 9- Sec. HHS Covid-19 Emergency Health Declaration
Encl. 10- Nuremburg Code
Encl. 11- "Comirnaty Labels/Biologic License Application Approval Letter
Encl. 12- Pfizer-BioNTech Covid19 mRNA Vaccine EUA Label/EUA Letter
Encl. 13- Moderna Spikevax Label/BLA Approval Letter
Encl. 14- Moderna EUA Labels/Current EUA Letter
Encl. 15- FDA Purple Book, accessed 19 May 2022
Encl. 16- VAERS Printout, accessed 19 May 2022, current data from 6 May 2022
Encl. 17- FDA Case Review, 75 Years
Encl. 18- DD4 Enlistment/Re-enlistment Document-Armed Forces of the U.S.
Encl. 19a- Test Kit (BinaxNOW Test Kit) EUA Letter/Labeling
Encl. 19b- Surgical Mask EUA Letter/Labeling
Encl. 19c- N95 EUA Letter
Encl. 19d- 17 June re-released Pfizer-BioNTech EUA Letter
Encl. 20- Defense Health Agency FOIA Response (Redacted)
Encl. 21- Countermeasure Injury Compensation Program (CICP) Summary
Encl. 22- *Transcript 39A Lawfulness Ruling, Judge Robert Cohen 28APRIL2022_U.S. v 1LT Bashaw*
Encl. 23- 29Apr2022 Court Martial Findings
Encl. 24- MG Edmonson's Initiation of Elimination_Bashaw

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