No. 21-997

In The Supreme Court of the United States

MARK BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL.,

Petitioners,

v.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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INTRODUCTION

In this case, Respondents—criminal-defense attorneys and investigators—assert their own First Amendment rights to communicate with crime victims and their relatives. In the unpublished decision below, the court of appeals correctly declined to abstain under *Younger v. Harris* because Respondents assert their own independent constitutional rights, and federal relief would not interfere with any pending state court proceedings.

Certiorari is not appropriate for three reasons. First, there is no circuit split regarding *Younger*'s application to third parties. All circuits functionally apply the same standard, asking whether the federal claims are so closely related to the state court claims that federal relief would impermissibly interfere with state court proceedings.

Second, under any circuit's articulation of the standard, *Younger* abstention is plainly inapplicable here. Because Respondents assert independent constitutional rights, not rights derived from their clients, federal court relief would not interfere with any ongoing state court proceedings. Any purported difference between the circuits would have no material effect on the result in this case. Accordingly, this case is not an appropriate vehicle for resolving Petitioners' alleged circuit split.

Finally, certiorari is premature because there is no final judgment. The court of appeals merely reversed the grant of a motion to dismiss, the status quo

remains unaltered, and the case remains at the initial threshold. Certiorari should be denied.

STATEMENT OF THE CASE

I. Statutory and Factual Background.

In 1990, Arizona voters approved a Victims' Bill of Rights ("VBR") as a constitutional amendment to "preserve and protect victims' rights to justice and due process." Ariz. Const. art. 2, § 2.1(A). The VBR includes a right "[t]o refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant." *Id.* § 2.1(A)(5). This case does not challenge this state constitutional provision.

In 1991, Arizona enacted the Crime-Victims' Rights Implementation Act ("the Statute"). As relevant here, the Statute prohibits members of a defense team from speaking with crime victims or their families without the prosecutor's permission. The Statute, with no counterpart in federal law or any other state's law, provides:

> The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.

A.R.S. § 13-4433(B) ("Victim Contact Prohibition"). If the crime victim has been "killed or incapacitated," the Statute prohibits members of the defense team from contacting "the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person." A.R.S. §§ 13-4401(19), 13-4433(G).

A 1997 amendment to the Statute further provides that "[t]he prosecutor shall not be required to forward any correspondence from the defendant, the defendant's attorney or an agent of the defendant to the victim or the victim's representative." A.R.S. § 13-4433(C).

Violation of the Statute can trigger state bar disciplinary proceedings or similar professional disciplinary proceedings for investigators. *See* Second Amended Complaint ("SAC") ¶¶ 39-42, 44-47.

In practice, the Statute operates to prohibit criminal defense attorneys and anyone working with them from speaking with crime victims and their relatives, even in capital cases. *Id.* ¶ 38. "Experience has shown that Plaintiffs are most frequently thwarted in their attempts to speak with crime victims and their families when communications must be initiated through the prosecutor." *Id.* ¶ 79.

Contacting victims and their family members is a crucial component not only of effectively representing clients, but also of advancing systemic policy objectives. In particular, defense teams' communications

with victims' family members can lead victims' relatives to speak out against overly harsh penalties, including capital punishment, which may spur criminal law reform. *Id.* ¶ 76.[1]

II. District Court Proceedings.

In 2017, Respondents sued Attorney General Mark Brnovich, alleging that the Statute violated their First Amendment rights to speak with victims and their families.[2] The Complaint alleged that the Statute effectively prevented them from engaging in communications protected by the First Amendment, and therefore sought declaratory and preliminary injunctive relief preventing Brnovich from enforcing the Statute. Dkt. 19-9 at ER1949-63.

Brnovich filed a motion to dismiss contending, as relevant here, that Respondents lacked standing and that *Younger* abstention barred the suit. Dkt. 19-9 at ER1728–46. In March 2018, the district court dismissed the case for lack of standing because, while Respondents "sufficiently alleged an injury-in-fact," they failed to show "that their alleged injuries [were]

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[1] Since Respondents contact crime victims to pursue systemic policy objectives, Petitioners' contention that "Respondents admit that they only pursue victim contact in [their clients'] ongoing proceedings to further the representation of their clients" is inaccurate. *See* Pet. 8.

[2] Respondents also initially sued the Governor in his official capacity but agreed to dismiss him from the suit without prejudice. Order, *Ariz. Attorneys for Criminal Justice v. Ducey*, No. 17-cv-01422, Dkt. 21 (D. Ariz. May 30, 2017).

traceable to or redressable by the Attorney General." Dkt. 19-1 at ER47-57.[3] The court granted Respondents leave to amend their complaint. *Id.* at ER56.

In May 2018, Respondents filed their First Amended Complaint. Dkt. 19-4 at ER683-702. Brnovich again moved to dismiss on the same grounds. *Id.* at ER670-80. The district court again held that Respondents had established an injury-in-fact but not traceability or redressability, Dkt. 19-1 at ER36-42, and allowed Respondents to amend their complaint once again, *id.* at ER42-43.

In April 2019, Respondents filed their Second Amended Complaint, adding as defendants Maret Vessella, Chief Bar Counsel of the State Bar of Arizona, and Colonel Heston Silbert, Director of the Arizona Department of Public Safety.[4] Dkt. 19-3 at ER554-73. Petitioners moved to dismiss the complaint based on their previous grounds. Dkt. 19-2 at ER312-25. The district court again dismissed the case against Brnovich, App. 35-38, but held that Respondents had established standing as to Silbert and Vessella. App. 40-44, 46-47.

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[3] The district court did not address Petitioners' other grounds for dismissal, including failure to state a claim.

[4] Respondents named Colonel Frank Milstead in his official capacity, who was later replaced by Silbert. *See* Notice of Substitution of Def., *Ariz. Attorneys for Criminal Justice v. Ducey*, No. 17-cv-01422, Dkt. 203 (D. Ariz. Mar. 31, 2020). This brief refers to Silbert as the operative defendant.

The district court also rejected Vessella's argument that *Younger* required abstention. The court explained that *Younger* abstention is appropriate where:

> (1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4) the federal court action would enjoin the proceeding or have the practical effect of doing so, i.e., would interfere with the state proceeding in a way that *Younger* disapproves.

App. 34.

The court held that *Younger* did not require abstention here. There were no ongoing state-initiated proceedings—"Defendant Vessella ha[d] not pointed to any pending disciplinary proceedings against [Respondents] based on violation of [the Statute]." App 45. Rather, Vessella "relied on the fact that [Respondents] are currently representing some criminal defendants in pending state court proceedings." *Id.* This allegation was "not enough to meet the first requirement for *Younger* abstention" because "the fact that [Respondents] are currently representing criminal defendants in state court and that they might violate [the Statute], which might trigger disciplinary proceedings . . . involve[d] too many contingencies to satisfy the

state-initiated ongoing proceedings prong of the *Younger* inquiry." App. 45-46.[5]

Vessella and Silbert both moved for reconsideration of the district court's standing ruling. Dkt. 19-2 at ER113-23, 212-16. The district court granted the motion, holding that Respondents had failed to establish standing, and dismissed the case with prejudice. App. 15-24.

III. Court of Appeals Proceedings.

Respondents appealed to the Ninth Circuit. On August 24, 2021, a panel of the Ninth Circuit (Judges Mark Bennett, Michael Murphy, and Richard Paez) unanimously reversed the district court's decision. First, the court of appeals held that Respondents "established standing as to each defendant." App. 3-6. Petitioners do not seek review of that decision.

Second, the court "agree[d] with the district court that *Younger* abstention is not required." App. 6. The court held that "[c]ritically, the first *Younger* requirement—the presence of an ongoing state court proceeding—is not satisfied." *Id.* Respondents "are not parties to any pending proceeding in Arizona state court," such as "disciplinary proceedings for violations of [the Statute.]" *Id.* Further, because Respondents "assert their own First Amendment rights in this proceeding, not

[5] Since Vessella "failed to prove the first prong of the *Younger* doctrine and she [was] required to prove all four prongs, the Court d[id] not reach the remaining arguments that she raised under *Younger*." App. 46.

their clients' rights," Respondents' "interests are not 'so intertwined' with those of their clients in state court proceedings that 'interference with the state court proceeding is inevitable.'" *Id.* (quoting *Green v. City of Tucson*, 255 F.3d 1086, 1100 (9th Cir. 2001) (en banc), *overruled, in part, on other grounds by Gilbertson v. Albright*, 381 F.3d 965, 976-78 (9th Cir. 2004) (en banc)). Accordingly, the court held, *Younger* abstention was not warranted.

Petitioners sought panel rehearing and rehearing en banc, which the court of appeals denied, without a single dissent. App. 51-52.

REASONS FOR DENYING CERTIORARI

I. No Circuit Split Exists Regarding the Application of *Younger* Abstention to Third Parties.

Petitioners premise their request for certiorari on a circuit split that does not exist. They claim that the Ninth Circuit applies an "inevitable direct interference" test to determine *Younger*'s application to third parties, while the Second, Fourth, Sixth, Eighth, and Tenth Circuits consider whether the third party's federal claim is "derivative" of or "intertwined" with the state court claim. Pet. 4, 13, 19.[6] Petitioners misstate the Ninth Circuit's test, which no longer requires

[6] Respondents are "third parties" or "non-parties" for these purposes because they are not parties to any ongoing state court proceedings.

"direct interference." And there is no conflict among the circuits, all of which ask whether the claims pressed in the federal forum will impermissibly interfere with state court proceedings.

Petitioners assert that the Ninth Circuit requires "direct interference," while other circuits do not. Pet. 19 (citing *Green*, 255 F.3d at 1086, 1100). But the Ninth Circuit long ago expressly abandoned the "direct interference" requirement, holding that it "shall no longer require 'direct interference' as a condition or threshold element, of *Younger* abstention." *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004); *see also AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 n.9 (9th Cir. 2007) (acknowledging that *Gilbertson* overruled *Green*'s "direct interference" requirement). Rather, the court clarified, "*Younger* abstention involves only such interference as the Supreme Court described in *Samuels*—that which would have the same practical effect on the state proceeding as a formal injunction." *Gilbertson*, 381 F.3d at 977-78 (citing *Samuels v. Mackell*, 401 U.S. 66, 72 (1971)).

Accordingly, the court below did not apply a "direct interference" test. Rather, it stated that abstention is required where a federal plaintiff's interests are "so intertwined" with those of the state court party that "interference with the state court proceeding is inevitable." App. 6 (quoting *Green*, 255 F.3d at 1100 but excising "direct" in light of *Gilbertson*, 381 F.3d at 978).

All circuits apply this standard, and therefore this case presents no circuit split to resolve. The circuits "are in accord that the application of *Younger* to non-parties is proper only in certain limited, exceptional circumstances." *Massachusetts Delivery Ass'n v. Coakley*, 671 F.3d 33, 45-46 (1st Cir. 2012) (collecting cases from the Second, Fifth, Eighth, and Ninth Circuits). While courts have articulated this standard in slightly different ways, the standard they all apply is the same: each circuit abstains under *Younger* only when the federal claims are so closely related to the state court claims that federal relief would impermissibly interfere with the state court proceedings. Indeed, circuits cited by Petitioners as reflecting a "split" with the Ninth Circuit have approvingly cited each other's and the Ninth Circuit's articulations of the standard interchangeably, evincing a broad consensus.

For example, in *Spargo v. New York State Comm'n on Judicial Conduct*, a case Petitioners argue applies the correct standard, Pet. 4, 19, the Second Circuit approvingly cited the Ninth Circuit to explain that "'[c]ongruence of interests is not enough'" to warrant third-party *Younger* abstention. 351 F.3d 65, 82 (2d Cir. 2003) (citing *Green*, 255 F.3d at 1100). Instead, the Second Circuit held that *Younger* requires abstention only when the federal-court plaintiff's claims are "'entirely derivative' of whatever rights" the state court party may have so that the claims are "unavoidably intertwined and inseparable," *id.* at 83-84, a test almost

identical to that used by the Ninth Circuit.[7] *Spargo* approvingly cited both the Ninth and Eighth Circuit's articulations of the test, as supporting its approach. *See id.* at 82 (citing *Green*, 255 F.3d at 1100 and *Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 881-82 (8th Cir. 2002)).

Because Respondents assert their own independent rights, not rights derived from their clients' rights, the result below is fully consistent with the Second Circuit's decision in *Spargo*. The court in *Spargo* abstained precisely because the federal plaintiffs asserted a *derivative* First Amendment claim, not their own independent First Amendment rights. 351 F.3d 65. Political supporters asserted First Amendment rights to receive speech from a judge embroiled in state misconduct proceedings. The court held that the political supporters "could have a protected interest in hearing [the judge] speak . . . only if [the judge] ha[d] an underlying First Amendment right to engage in such speech," making their claims "unavoidably intertwined and inseparable." *Id.* at 84.

Other circuits cited by Petitioners also employ essentially the same standard that the Ninth Circuit applied here. The Eighth Circuit abstains under *Younger* where plaintiffs' claims are "sufficiently related to, or

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[7] The First Circuit also approvingly cited to *Gilbertson* when evaluating whether federal court proceedings would enjoin or have the "practical effect" of enjoining an ongoing state court proceeding, thereby requiring federal court abstention. *Rio Grande Community Health Center, Inc. v. Rullan*, 397 F.3d 56, 70 (1st Cir. 2005) (citing 381 F.3d at 977-78).

inextricably intertwined with" those of a party to an ongoing state court proceeding, *Tony Alamo Christian Ministries v. Selig*, 664 F.3d 1245, 1253 (8th Cir. 2012), and "the federal action seeks to interfere with pending state proceedings," *Miller*, 280 F.3d at 881-82.

The Tenth Circuit similarly abstains "when in essence only one claim is at stake and the legally distinct party to the federal proceeding is merely an alter ego of a party in state court[.]" *D.L. v. Unified School Dist. No. 497*, 392 F.3d 1223, 1230 (10th Cir. 2004); *see also id.* at 1230-31 (citing *Spargo* to explain that "*Younger* applies to persons not parties in state proceedings when [the] free-speech right asserted is purely derivative of [the] free-speech rights of [the party] in state proceedings").

The Sixth Circuit applies the same inquiry—it finds *Younger* abstention "appropriate for non-parties to the state action when '[s]uccess on the merits . . . is entirely derivative' of the rights of the state action parties" and the non-parties seek to "directly interfere" with the pending state court proceedings. *Citizens for a Strong Ohio v. Marsh*, 123 F. App'x 630, 635 (6th Cir. 2005) (citing *Spargo*, 351 F.3d at 83).

And the Fourth Circuit also agrees. It abstains under *Younger* when "all of the claims" of the federal plaintiff "are intertwined" with those of the state party.

Clowdis v. Silverman, 666 F. App'x 267, 270 (4th Cir. 2016) (citing, *inter alia*, *Spargo*, 351 F.3d at 81-84).[8]

In short, there is no split among the circuits. Different panels have articulated the test with slightly different terms, both within and across circuits. But there is a broad consensus that *Younger* abstention is appropriate for third-party claims only where the claims are derivative of or so inextricably intertwined with those at issue in the state court proceeding that awarding relief to the third parties will impermissibly interfere with the state court proceeding.

II. Because *Younger* Abstention Would Not Apply Under any Circuit's Articulation of the Test, this Case Is Not an Appropriate Vehicle for Resolving Petitioners' Alleged Circuit Split.

Even if there were a circuit split, this case would not be an appropriate vehicle for resolving it, because *Younger* abstention would not be required here under *any* circuit's articulation of the standard. Respondents

[8] Other circuits, not cited by Petitioners, also apply materially indistinguishable standards. For example, the Fifth Circuit abstains under *Younger* when "the interests of the state defendant and the federal plaintiff are so 'intertwined' as to be considered identical." *United States v. Composite State Bd. of Medical Examiners, State of Ga.*, 656 F.2d 131, 137 (5th Cir. 1981); *see also Robinson v. Stovall*, 646 F.2d 1087, 1091-92 (5th Cir. 1981) (considering whether a federal plaintiff's claims are "sufficiently intertwined" to require abstention, while noting that "a common interest in the outcome of the federal litigation" or "a common effort in pressing it" is insufficient to require abstention).

assert their own independent First Amendment rights to speak to crime victims and their families, and those claims are in no way derivative of their clients' rights. Thus, relief afforded to them will not interfere with any ongoing state court proceeding.

Respondents do not assert any derivative constitutional claims, such as ineffective assistance of counsel. Nor do they assert any derivative statutory claims, such as access to discovery, which derive from the rights of their clients as criminal defendants. Rather, Respondents assert their own First Amendment rights to speak with crime victims and their families rather than having to approach them through a state intermediary. Nothing about the right to talk to another person derives from the attorneys' clients. Just as a journalist, pollster, or social worker would have their own First Amendment rights to speak to crime victims, so, too, do Respondents. And as noted above, contrary to Petitioners' assertion, Respondents assert speech interests that extend beyond their representation of specific clients. *See* SAC ¶ 76 (ECF No. 150) (asserting systemic interest in contacting crime victims in capital cases which is "critical to lobbying for the passive repeal of the death penalty").

Because no circuit requires abstention unless a non-party's claims are derivative of those in a state court proceeding, this case would not trigger abstention in any circuit. Accordingly, if there were any material difference between the circuits' tests—and there is not—this would be an inappropriate vehicle to

resolve it, because Petitioners would lose under all versions of the test.

III. Certiorari Is Premature as the Ninth Circuit Only Reversed the District Court's Granting of a Motion to Dismiss.

Certiorari would also be premature because there is no final judgment. The court of appeals merely reversed the grant of a motion to dismiss. Had the district court denied the motion to dismiss in the first instance, the case would not even have been appealable. *See Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 497-500 (1989); 28 U.S.C. § 1291. This Court should not intervene at such a premature stage, where no proceedings on the merits have even begun, there is no injunction in place, and any number of outcomes might resolve this matter without necessitating this Court's intervention.

While "there is no absolute bar to review of nonfinal judgments," the Court is "ordinarily reluctant to exercise [its] certiorari jurisdiction" when a case "comes to [the Court] prior to the entry of a final judgment in the lower courts." *Mazurek v. Armstrong*, 520 U.S. 968, 975 (1997); *see also Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916) ("except in extraordinary cases, the writ is not issued until final decree"); *City and County of Denver v. New York Trust Co.*, 229 U.S. 123, 133 (1913) ("The exceptional power to review, upon certiorari, . . . an appeal from an interlocutory order, is intended to be and is sparingly

exercised."). The fact that a certiorari petition involves an interlocutory appeal "alone furnishe[s] sufficient ground for denial of the application." *Hamilton-Brown Shoe*, 240 U.S. at 258.

The Court has articulated limited exceptions to this rule. The Court reviews interlocutory orders where:

> [T]here is some important and clear-cut issue of law that is fundamental to the further conduct of the case and that would otherwise qualify as a basis for certiorari . . . particularly if the lower court's decision is patently incorrect and the interlocutory decision, such as a preliminary injunction, will have immediate consequences for the petitioner.

R. Stern, E. Gressman, S. Shapiro, & K. Geller, Supreme Court Practice § 4.18 (11th ed. 2019) (collecting cases) ("Stern"). For example, in *Mazurek v. Armstrong*, the Court reviewed a preliminary injunction against an abortion restriction because "the Court of Appeals' decision [was] clearly erroneous under [the Supreme Court's] precedents" and "produced immediate consequences . . . in the form of a Rule 62(c) injunction" and "created a real threat of such consequences" for six other states with similar laws. 520 U.S. at 975.

Here, none of these exceptions apply. First, there is no clear-cut and important legal question that would otherwise qualify as a basis for certiorari. As discussed, *supra* Sections I and II, there is no circuit split regarding *Younger*'s application to non-parties and, under

any circuit's articulation of the standard, *Younger* abstention is inapplicable in this case.

Second, the Ninth Circuit's decision is not "patently incorrect." *See* Stern § 4.18. To the contrary, the court correctly declined to abstain under *Younger* because there is no pending state court proceeding with which a federal injunction would interfere, and Respondents assert their own independent constitutional rights, not derivative rights, a conclusion the District Court reached as well. *See infra* Section IV.

Finally, the Ninth Circuit's interlocutory opinion does not "have immediate consequences for the petitioner[s]." *See* Stern § 4.18. In fact, it has no consequences beyond the reversal of a motion to dismiss. The court of appeals did not grant Respondents any relief on the merits or impose any burdens on Petitioners. The status quo stands—Respondents cannot directly contact crime victims.

Since no exception to the rule against considering interlocutory orders is present here, the Court should deny certiorari.

IV. The Ninth Circuit's Decision Was Correct.

The decision below applied well-established precedent to reach the unsurprising conclusion that individuals may assert their own independent First Amendment rights in federal court. The decision is a straightforward application of *Younger* principles.

The court below applied the test this Court articulated in *Samuels v. Mackell*, 401 U.S. 66, 72 (1971) and in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) as "refined" by *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350 (1989). *See Gilbertson*, 381 F.3d at 977-78. Petitioners concede that this is the correct test. Pet. 3, 14-15. But this Court does not grant certiorari merely to review the application of settled law. Sup. Ct. Rule 10.

As the court below correctly held, "the first *Younger* requirement—the presence of ongoing state proceedings—is not satisfied." App. 6. The court explained, "[Respondents] in this case are not parties to any pending proceedings in Arizona state court" and "no [Respondents] are currently parties in disciplinary proceedings for violations of § 13-4433(B)." *Id.* And because Respondents "assert their own First Amendment rights in this proceeding, not their clients' rights," Respondents' "interests are not 'so intertwined' with those of their clients in state court proceedings that 'interference with the state court proceeding is inevitable.'" *Id.* (quoting *Green*, 255 F.3d at 1100). Accordingly, the court correctly held *Younger* abstention was inappropriate.

Petitioners' claim that the decision below will "encourage creative pleading in federal court" to undermine *Younger* principles, Pet. 23, is unfounded. The decision below merely provides that defendants cannot avoid review of a substantial First Amendment challenge by adverting to *Younger* where there is no

pending state court proceeding and plaintiffs assert their own independent rights.[9]

Younger abstention prevents "undue interference with state proceedings" to uphold principles of federalism, "equity" and "'comity.'" *Sprint Commc'ns v. Jacobs*, 571 U.S. 69, 72, 77 (2013) (quoting *New Orleans Public Serv.*, 491 U.S. at 364). Where federal relief will not "interfere[] with and disrupt[] [] state proceedings," such principles do not require abstention. *Samuels*, 401 U.S. at 72.

Here, there is no risk of interference with state court proceedings. If Respondents succeed on the merits, relief would not interfere with current or future state criminal prosecutions. *Cf. Younger v. Harris*, 401 U.S. 37, 49 (1971) (abstaining where plaintiff sought to enjoin his state court prosecution); *Spargo*, 351 F.3d at 85 (abstaining where plaintiffs sought to "permanently enjoin defendants from pursuing the [state court]

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[9] Petitioners' suggestion that attorneys will be unleashed to file federal court challenges to "state court page limitations, discovery limitations, [and] evidentiary rulings" is meritless. Pet. 25. Every person has a presumptive First Amendment right to speak to others. There is no independent First Amendment right to civil or criminal discovery, a particular evidentiary ruling, or to exceed page limits. And here, the federal court relief will not interfere in any way with a state court proceeding, while all the examples Petitioners conjure up would appear to directly interfere, and thus would likely be barred by *Younger*. *See*, *e.g.*, *Perez v. Ledesma*, 401 U.S. 82, 84 (1971) (explaining "the admissibility of evidence in state criminal prosecutions [is] ordinarily [a] matter[] to be resolved by state tribunals" and reversing lower court's orders suppressing evidence in the federal plaintiff's pending state prosecution).

disciplinary proceeding"). Relief would simply permit defense counsel to contact victims and their family members themselves instead of being compelled to use a state official as an intermediary. Respondents' ability to speak to victims and their family members directly will in no way interfere with state criminal proceedings. Accordingly, the court below correctly declined to abstain under *Younger*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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