

No. 25-1280

IN THE
Supreme Court of the United States

SARA BOYSEN, ET AL.,

Petitioners,

v.

PEACEHEALTH, 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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QUESTION PRESENTED

1. Whether petitioners pleaded sufficient facts in their complaint to demonstrate a fundamental right to refuse to comply with a state vaccination requirement (or provide documentation of a medical or religious exemption), to support a substantive due process claim.

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INTRODUCTION

In 2021, in response to the COVID-19 global pandemic, the Governor of Oregon and the Director of the Oregon Health Authority required that state licensed healthcare workers be vaccinated against COVID-19 or provide proof of a medical or religious exemption. Petitioners, licensed private healthcare workers, refused to be vaccinated or to seek an exemption. Two years later they sued, asserting that state officials had violated their right to refuse an “investigational medical product,” relying on a myriad of statutes and international treaties. The district court dismissed the complaint, concluding that petitioners had failed to allege a violation of a fundamental right because the complaint alleged facts demonstrating that the COVID-19 vaccine was in fact an authorized vaccine. The court further concluded that the challenge to a vaccine mandate was foreclosed by this Court’s decision in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Alternatively, the court concluded that the state defendants would be entitled to qualified immunity. The Ninth Circuit affirmed in a nonprecedential memorandum disposition.

Petitioners now petition for a writ of certiorari, contending that the Due Process Clause prohibits a state from requiring that individuals be “injected with an investigational drug.” But the Ninth Circuit did not rule on that question. Rather, the Ninth Circuit affirmed the district court’s ruling that petitioners had affirmatively pleaded facts that the COVID-19 vaccine was an authorized *vaccine*, not an “investigational drug.” And petitioners cannot demonstrate that *that* opinion

conflicts with any controlling case law or law in other circuits. This court should deny the petition.

STATEMENT OF THE CASE

Between December 2020 and August 2021, in response to the COVID-19 global pandemic, the United States Food and Drug Administration (FDA) issued emergency use authorizations (EUA) for three vaccines against the virus, including the vaccine issued by Pfizer-BioNTech. Pet. App. 8a–9a. That authorization required those vaccines to “undergo a rigorous development process that includes tens of thousands of study participants.” Pet. App. 8a. By September 2021, the Pfizer vaccine had received full FDA approval.¹ Pet. App 9a–10a.

In August 2021, the former Governor of the State of Oregon and the former director of the Oregon Health Authority (hereafter “state defendants”) issued orders requiring all healthcare workers and state employees

¹ The district court took judicial notice under Fed. R. Evid. 201(b)(1) of the fact that the Pfizer vaccine was fully approved “[a]s of September 22, 2021.” But the Pfizer vaccine was formally approved on August 23, 2021. U.S. Food & Drug Press Release, *FDA Approves First COVID-19 Vaccine*, (Aug. 23, 2021) (available at <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>) (last visited Sep. 3, 2026); see also *Curtis v. Inslee*, 154 F.4th 678, 686 n.1 (9th Cir. 2025), cert. denied, __ S.Ct. __, 2026 WL 1513282 (Jun. 1, 2026) (noting that the Pfizer vaccine was approved on August 23, 2021). Regardless, the vaccines that were produced after approval had the same formula as the vaccines authorized by the EUA. Pet. App 9a–10a.

to receive the Pfizer COVID-19 vaccine, or to request a medical or religious exemption for doing so. Pet. App. 2a, 6a–7a. Peacehealth, a state-licensed hospital provider, issued a similar requirement for its employees. Pet. App. 6a–7a.

Petitioners are former Peacehealth employees who refused to be vaccinated or to request an exemption. Pet. App. 2a, 6a. In 2023, petitioners sued the state defendants and a variety of Peacehealth officials under 42 U.S.C. § 1983, alleging that the authorized vaccine was not, in fact, a vaccine. Rather, in petitioners’ view, it was an “investigational medical product,” and, by requiring petitioners to be vaccinated (or to request an exemption), defendants had violated petitioners’ rights protected by various sources of law including international treaties and federal statutes. Pet. App. 6a–7a, C.A. Dkt. 1 at 127–36.² As pertinent to the question presented here, petitioners alleged that defendants had violated a substantive due process right to refuse the purportedly investigational medical product, a right created by: “The CDC COVID Vaccination Program Provider Agreement, and the statutes and regulations found at 45 C.F.R. § 46, the Belmont Report, 21 U.S.C. § 360bbb-3, Article VII of the ICCPR [International Covenant on Civil and Political Rights] Treaty, Federal Wide Assurance, [and] the EUA Scope of

² Petitioners also alleged breach of contract and state law tort claims. Pet. App 7a, C.A. Dkt. 1 at 136–38. The district court dismissed those claims, and petitioner has never challenged those rulings on appeal. Pet. App. 4a, 32a–34a.

Authorization letter.” C.A. Dkt. 12 at 134. Petitioners did not seek prospective relief—only damages. Pet. App. 12a.³

Both defendants moved to dismiss the complaint, arguing that it failed to state a claim; the state defendants also argued that they were entitled to qualified immunity. Pet. App. 7a.; C.A. Dkt. 12 at 89–132, 212–39. The district court granted the motions, concluding that petitioners had failed to allege facts to support their claims. Pet. App. 5a–34a. First, the court concluded that the complaint, as well as documents attached to the complaint, contained facts and links to judicially noticeable sources demonstrating that the Pfizer vaccine was in fact an authorized vaccine, rather than an “investigational medical product.” Pet. App. 13a–18a. As a result, as to the due process claim, the court concluded that petitioners had not demonstrated a violation of a fundamental right and that *Jacobson*, a case in which this Court concluded that a smallpox vaccine mandate did not violate due process, defeated their claim. Pet. App. 24a–25a. Second, the court concluded that the state defendants were entitled to qualified immunity for all § 1983 claims because, even if petitioners *had* alleged a plausible claim, any such right was not clearly established at the time of the

³ The executive order at issue here, No. 21-29, was formally rescinded in April 2022. Or. Exec. Order No. 22-03, *available at*: https://www.oregon.gov/gov/eo/eo_22-03.pdf (last visited Sep. 3, 2026). The Oregon Health Authority vaccine requirement was repealed in June 2023. C.A. Dkt. 24 at 3–5.

conduct at issue. Pet. App. 26a–27a.

Petitioners appealed, reasserting their arguments that the myriad of federal statutes and international treaties conferred a fundamental right to refuse an “experimental medical treatment.” Pet. App. 2a, C.A. Dkt. 11 at 11. As to the due process claim, petitioners argued that the district court erred by ruling that *Jacobson* foreclosed their argument. C.A. Dkt. 11 at 63. Petitioners also relied on the Ninth Circuit’s decision in *Health Freedom Defense Fund, Inc. v. Carvalho*, 104 F.4th 715, 725 (9th Cir. 2024), in which the plaintiffs had alleged that the COVID-19 vaccines did not sufficiently prevent the spread of COVID-19.⁴

The Ninth Circuit affirmed the district court’s dismissal in an unpublished memorandum disposition. The panel cited to an earlier Ninth Circuit decision that had rejected similar claims against Washington state officials and other Peacehealth defendants. Pet. App. 3a (citing *Curtis v. Inslee*, 154 F.4th 678 (9th Cir. 2025), *cert. denied*, __ S.Ct. __, 2026 WL 1513282 (Jun. 1, 2026)). The panel held that, under *Curtis*, “none of [petitioners’] statutory or constitutional sources of law create any specific and definite rights enforceable under Section 1983.” *Id.*

⁴ That decision was later reversed by the Ninth Circuit *en banc*, and this Court subsequently denied certiorari. *Carvalho*, 148 F.4th 020 (9th Cir. 2025), *cert. denied*, __ S.Ct. __, 2026 WL 1377038 (May 18, 2026).

REASONS FOR DENYING THE PETITION

Petitioners' question presented asks whether the Due Process Clause prohibits states from imposing requirements that individuals be "injected with an investigational drug and waiv[e] the right to seek judicial remedies for resulting injuries." Pet. i. But the Ninth Circuit never ruled on that question. Instead, the Ninth Circuit correctly concluded that petitioners' claims were foreclosed by *Jacobson* given that petitioners' own complaint established that the challenged pandemic countermeasures were authorized vaccines. Additionally, the decision below does not conflict with decisions from this Court or from other courts of appeals. The Court thus should deny the petition.

A. The Ninth Circuit correctly applied *Jacobson* to affirm the dismissal of petitioners' complaint in an unpublished memorandum disposition.

The Court should deny the petition because the Ninth Circuit's unpublished memorandum disposition was correct. The opinion below concluded that petitioners' claims failed because, although they asserted a violation of a fundamental right to refuse an investigational drug, they pleaded facts asserting that they were required to obtain an authorized *vaccine*—not an investigational drug—a claim defeated by *Jacobson*.

In *Jacobson*, this Court rejected a constitutional challenge to statutes that imposed a fine for refusing the smallpox vaccine. 197 U.S. at 12–13. The statute at

issue, which required residents to obtain the vaccine or to pay a fine, was adopted after the local health board determined that vaccination was “necessary for the public health and safety.” *Id.* at 12. The plaintiff asserted that the requirement violated his right to “bodily integrity.” *Id.* 25–26; *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 24 (2020) (Gorsuch, J. concurring) (characterizing the plaintiff’s claim in *Jacobson* as “an implied ‘substantive due process’ right to ‘bodily integrity’ that emanated from the Fourteenth Amendment”). This Court concluded that there was no fundamental right to be free from vaccine requirements that were imposed for public health and safety. *Jacobson*, 197 U.S. at 26–27.

In *Curtis*, the Ninth Circuit applied *Jacobson* to conclude that a challenge to another vaccine requirement failed where the requirement was rationally related to the state interest in protecting public health. 154 F.4th at 691–92. There, several plaintiffs raised claims identical to those at issue here, asserting that the COVID-19 vaccine was an experimental drug and arguing that a requirement that healthcare workers obtain the COVID-19 vaccine was unlawful, including that such a requirement violated due process. *Id.* But, as here, those plaintiffs had alleged facts demonstrating the COVID-19 vaccine was authorized for use as a vaccine, and the court concluded that, as in *Jacobson*, “legitimate” public health concerns justified the imposition of the COVID-19 vaccine mandates. *Id.* at 691–92

Here, the Ninth Circuit correctly applied *Curtis* to affirm the dismissal of petitioners' complaint. Although petitioners asserted constitutional challenges to an "investigational drug," their complaint, which spans more than 100 pages, is replete with references and citations to authorities demonstrating that the COVID-19 vaccine was (and remains) an authorized vaccine rather than an investigational drug. Pet. App. 16a–18a. Thus, because petitioners' claims reduced to a challenge to a vaccine requirement, the Ninth Circuit correctly affirmed dismissal under *Jacobson*.

In their petition, petitioners skirt the reasoning of the courts below. Petitioners do *not* argue that *Jacobson* would not defeat their claims if the COVID-19 vaccine was an authorized vaccine or that the Ninth Circuit misinterpreted *Jacobson* in so holding. Indeed, petitioners expressly disclaimed that argument in the district court. See C.A. Dkt. 12 at 14 (petitioners' complaint disclaiming an assertion that a licensed vaccine mandate was lawful).

Rather, petitioners contend that the Ninth Circuit violated the principles of party presentation, which precludes courts from deciding issues that are not presented by the parties, by citing and applying its recent decision in *Curtis* in this case. Pet. 9–10. As an initial matter, petitioners misread *Curtis*. They contend that *Curtis* "foreclose[d]" a due process "right to refuse investigational drugs." Pet. 9. But *Curtis* concluded that *Jacobson* defeats a challenge to a *vaccine* requirement. 154 F.4th at 691–92. That was the same conclusion

that the district court reached in this case, which is precisely why the Ninth Circuit cited *Curtis* as squarely resolving petitioners' claims. Pet. App. 24a–25a.

More fundamentally, even if the Ninth Circuit had ruled on a different basis, the principles of party presentation are not offended here. That doctrine does not preclude courts from applying binding decisions. See *Kamen v. Kemper Financial Servs., Inc.*, 500 U.S. 90, 99 (1991) (“When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.”). Here, the claims and arguments in this case and in *Curtis* were almost identical. Compare C.A. Dkt. 11 with *Brief for Appellant, Curtis v. Inslee*, No. 24-1869 (9th Cir. 2024).

B. The Ninth Circuit did not rule on the question presented by petitioners.

Furthermore, and contrary to petitioners' contention, this case does not present an opportunity for this Court to review whether a state may condition a license on an individual “being injected with an investigational drug and waiving the right to seek judicial remedies for resulting injuries.” Pet. i. As discussed above, the Ninth Circuit affirmed dismissal of petitioners' complaint because they alleged facts demonstrating that the COVID-19 vaccine was a vaccine, *not* an investigational medical product or drug.

Although petitioners point to various statutory schemes adopted to regulate medical research and pharmaceuticals to argue that there is a fundamental right to refuse investigational drugs, Pet. 11–15, that was not the reasoning of the Ninth Circuit or the district court below. Neither the Ninth Circuit’s nor the district court’s decisions contravened *that* proposition, and petitioners’ question presented is not actually presented here.⁵

Petitioners also argue that the Ninth Circuit’s decision in *Curtis* is incorrect. They assert that the Ninth Circuit created an exception to statutes governing the use of investigational drugs and contend that the court’s decision constitutes a violation of the Supremacy Clause. Pet. 16–18, 20–25. Petitioners also argue that *Curtis* “authorizes the coerced waiver of Constitutional rights.” Pet. 25. And they argue that the opinion in *Curtis* deprives them of property interests. Pet. 30–31. Those challenges, to a different case—in which this Court denied certiorari—are not presented in this case because the Ninth Circuit’s decision did not rest on any of those bases.

At bottom, petitioners’ arguments rest on the premise that a myriad of statutes and international treaties create a fundamental right to refuse an

⁵ Amicus New Civil Liberties Alliance (NCLA) argues that the Ninth Circuit—and other courts—have misapplied *Jacobson*, resulting in a “nesting dolls” problem that warrants this Court’s review. NCLA Am. Br. 4–5. Those arguments were not briefed, argued, or decided below.

“investigational drug.” Pet. 31. Even assuming that those authorities create that right, petitioners ignore the actual holdings below, which is that petitioners pleaded facts demonstrating that the COVID-19 vaccine was *not* an investigational drug, but a vaccine. Because petitioners do not challenge the core holding in *Jacobson* (that a government can compel vaccination) and fail dispute the actual reasoning of the Ninth Circuit, their petition asks this Court to grant certiorari on a question that the Ninth Circuit never answered.

Finally, even if the Ninth Circuit had ruled on the question presented, this case is a poor vehicle to address it. If this Court were to grant certiorari and reverse, state defendants would be entitled to qualified immunity. The district court concluded that, even if petitioners had pleaded sufficient facts to demonstrate a fundamental right to refuse the COVID-19 vaccination, state defendants would be entitled to qualified immunity. Pet. App. 26a. Although the Ninth Circuit declined to reach that issue, Pet. App. 4a, that issue was fully briefed and litigated and would be dispositive if the case returned to the Ninth Circuit. Petitioners do not address that ruling or explain how they would be entitled to relief even if they prevail in this Court.

C. The Ninth Circuit’s unpublished decision does not conflict with decisions of this Court, and no circuit split exists.

Ignoring the fact that the opinion below did not reach the question presented, petitioners contend that the opinion below conflicts with several cases from this

Court. But no such conflict exists and, importantly, no circuit split exists on whether petitioners' claims are foreclosed by *Jacobson*.

In the question presented, petitioners cite to three cases that, in their view, support the conclusion that a state may not impose a requirement that individuals be injected with an "investigational drug." In addition to *Jacobson*, petitioners cite *Berghuis v. Thompson*, 560 U.S. 370 (2010), and *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972). Pet. i. But petitioners do not develop a cogent argument to explain *how* those additional cases inform the question presented or conflict with the opinion below.

Berghuis was a habeas corpus case involving whether a criminal defendant knowingly and voluntarily waived his *Miranda* right to remain silent. 560 U.S. at 380–91. Petitioners never explain how that decision even implicates the question presented, much less conflicts with the decision below. Instead, petitioners cite *Berghuis* to assert that a valid waiver of a constitutional right must be voluntary. Pet. 28. But, as discussed above, the Ninth Circuit did not conclude that petitioners had waived a constitutional right. Rather, the Ninth Circuit concluded that petitioners had alleged facts that they refused a vaccine, a claim foreclosed by *Curtis* and *Jacobson*, which petitioners' do not challenge.

Similarly, petitioners cite *Roth* and argue that this case implicates "enforceable property interests." Pet. 26, 30–31. *Roth* involved a procedural due process

claim in an employment termination case. 408 U.S. at 567–69. To the extent petitioners assert that this case presents a procedural due process issue, they do not explain how the Ninth Circuit’s reasoning below, or in *Curtis*, conflicts with *Roth*. In *Curtis*, the Ninth Circuit concluded that the plaintiffs’ procedural due process claims amounted to a challenge to the legitimacy of the vaccine mandates, rather than a challenge “to the process by which the state determines whether the Employee meets” the mandate and thus did not present a cognizable procedural due process claim. 154 F.4th at 693. Petitioners do not challenge that reasoning or explain how that decision is erroneous. Rather, they merely reassert that their “option to refuse investigational products constitutes a protected property interest” and conclude that they have “the right to refuse investigational medical products.” Pet. 31. That is a challenge to the legitimacy of the mandate, rather than the process, implicating substantive, rather than procedural, due process rights.

Petitioners further contend that the decision below conflicts with *United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483 (2001). Pet. 18–19. But that case, cited for the first time in their petition, involved whether the Controlled Substances Act’s prohibition on manufacturing and distributing marijuana contained a medical necessity exception. 532 U.S. at 491. Petitioners do not explain how that case informs the question presented here.

Moreover, petitioners point to no circuit court that has concluded that a plaintiff states a claim upon which relief may be granted where the plaintiff alleges that a COVID-19 vaccine is an “investigational medical product,” and no such circuit split exists. Indeed, *every* circuit that has weighed in on such claims has concluded that those arguments are meritless. *See, e.g., Timken v. South Denver Cardiology Ass’n.*, 155 F.4th 1227 (10th Cir. 2025), *cert. denied*, __ S.Ct. __, 2026 WL 1513328 (Jun. 1, 2026) (affirming dismissal of complaint alleging similar claims); *Pearson v. Shriners Hosp. for Children*, 133 F.4th 433 (5th Cir.), *cert. denied*, 146 S.Ct. 329 (2025) (same); *Bridges v. Methodist Hosp.*, No. 24-20483, 2025 WL 1693074, (5th Cir. 2025), *cert. denied*, 146 S.Ct. 1467 (2026) (same); *Brock v. Bellingham*, No. 25-1070, 2026 WL 1470574 (9th Cir. May 26, 2026), *petition for cert. filed*, No. 26-268 (Aug. 24, 2026) (same); *Boyd v. Shriners Hosp. for Children*, No. 25-1183, 2026 WL 1005549 (3rd Cir. Apr. 14, 2026), *petition for cert. filed*, No. 26-220 (Aug. 19, 2026) (same); *Horsely v. Kaiser Found. Hosps.*, No. 24-5812, 2025 WL 3205857 (9th Cir. Nov. 17, 2025), *cert. denied*, __ S.Ct. __, 2026 WL 1513301 (Jun. 1, 2026) (same).⁶

⁶ To the extent that this Court is concerned about the application and interpretation of *Jacobson*, there is no circuit split on that issue either. *See, e.g., Children’s Health Def., Inc. v. Rutgers Univ.*, 93 F.4th 66, 78 (3rd Cir.), *cert. denied*, 144 S.Ct. 2688 (2024) (“there is no fundamental right to refuse vaccination”); *Lukaszczyk v. Cook County*, 47 F.4th 587, 602 (7th Cir. 2022), *cert. denied*, 143 S.Ct. 734 (2023) (vaccine mandates did not “abridge a fundamental right”); *Norris v. Stanley*, 73 F.4th 431, 437 (6th Cir.

At bottom, petitioners ask this court to grant certiorari to review an unpublished decision affirming the district court’s dismissal of petitioners’ complaint challenging since-repealed vaccine mandates, even though the opinion below did not reach the question presented and they have failed to address the fatal flaws in their complaint in every court. This Court should decline that invitation.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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2023), *cert. denied*, 144 S.Ct. 1353 (2024) (“plaintiffs do not adequately explain how receiving a vaccine violates a fundamental right”) (emphasis in original).

Nor does this case involve vaccine mandates that omit religious exemptions, which raises other constitutional and statutory issues. *See Does 1-2 v. Hochul*, 609 U.S. __, 146 S.Ct. 2351, 2353–54 (2026) (Gorsuch, J., dissenting from the denial of certiorari) (observing that firing a healthcare worker for exercising a religious belief and abstaining from vaccines may violate Title VII of the Civil Rights Act of 1964).