

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

TODD A. HANCHETT
STOEL RIVES LLP
760 SW Ninth Avenue
Suite 3000
Portland, OR 97205
(503) 294-9454

WHITNEY A. BROWN
Counsel of Record
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
(907) 277-1900
whitney.brown@stoel.com

*Counsel for Respondents PeaceHealth,
Liz Dunne, Doug Koekkoek, and Todd Salnas*

September 8, 2026

QUESTION PRESENTED

For more than a century, this Court has held that a governmental entity may require vaccination as a legitimate exercise of its power to protect public health, so long as the requirement bears a real and substantial relation to that objective and is not a plain, palpable invasion of a constitutionally protected right. *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905). Every court of appeals to consider the issue has held that such requirements are subject to rational-basis review and survive it. Applying this settled law and its own published decision in *Curtis v. Inslee*, 154 F.4th 678 (9th Cir. 2025), *cert. denied*, – S. Ct. –, 2026 WL 1513282 (2026), the Ninth Circuit issued an unpublished, nonprecedential decision affirming the dismissal of Petitioners’ claims against state officials and a private healthcare employer.

The question presented is whether the Due Process Clause of the Fourteenth Amendment prohibits a state (or a private healthcare employer) from requiring that healthcare workers be vaccinated against COVID-19 or obtain a medical or religious exemption as a condition of their employment, notwithstanding *Jacobson*’s pronouncement that vaccination requirements justified by public health do not offend the Constitution.

RULE 29.6 STATEMENT

Respondent PeaceHealth is a public benefit nonprofit corporation. Its parent corporation is PeaceHealth Networks, which is also a public benefit nonprofit corporation. No publicly held corporation owns 10% or more of PeaceHealth's stock.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES.....	v
INTRODUCTION.....	1
STATEMENT OF THE CASE	3
REASONS FOR DENYING THE PETITION	6
I. The decision below is unpublished and factbound, and creates no conflict warranting review.	6
A. Petitioners identify no conflict among the courts of appeals or with this Court's decisions.	6
B. The decision below is unpublished and nonprecedential, making it an especially poor candidate for this Court's review.....	8
II. The Court recently denied review of the published decision on which this case rests, as well as others that Petitioners concede raised materially similar factual and legal issues.....	9
III. This case is an exceptionally poor vehicle as to the PeaceHealth Respondents.....	11

TABLE OF CONTENTS—Continued

	Page
A. The court below did not decide whether the PeaceHealth Respondents were state actors or were entitled to qualified immunity, and both questions present independent, alternative grounds for affirmance.	12
B. The “conduct of which [Petitioners] complain” concerns PeaceHealth’s actions as an employer, not as an administrator of vaccines.	13
C. PeaceHealth Respondents are not state actors under any test this Court recognizes.	14
D. Even if the PeaceHealth Respondents were state actors, they are entitled to qualified immunity.	16
IV. Petitioners’ party-presentation argument is meritless and does not warrant review.	17
V. The decision is correct on the merits.	18
CONCLUSION	21

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Am. Mfrs. Mut. Ins. Co. v. Sullivan</i> , 526 U.S. 40 (1999).....	13
<i>Blum v. Yaretsky</i> , 457 U.S. 991 (1982).....	15
<i>Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n</i> , 531 U.S. 288 (2001).....	15
<i>Burton v. Wilmington Parking Auth.</i> , 365 U.S. 715 (1961).....	16
<i>Child.’s Health Def., Inc. v. Rutgers, the State Univ. of N.J.</i> , 93 F.4th 66 (3d Cir. 2024), <i>cert. denied</i> , 144 S. Ct. 2688 (2024).....	7
<i>Child.’s Health Def., Inc. v. Rutgers, the State Univ. of N.J.</i> , No. 23-1222 (<i>cert. denied</i> June 24, 2024).	11
<i>Clark v. Jackson</i> , No. 22-5553, 2023 WL 2787325 (6th Cir. Apr. 5, 2023).....	7
<i>Curtis v. Inslee</i> , 154 F.4th 678 (9th Cir. 2025), <i>cert. denied</i> , – S. Ct. –, 2026 WL 1513282 (2026).....	4, 5, 7-10, 12, 17, 18
<i>Curtis v. Inslee</i> , No. 25-1119 (<i>cert. denied</i> June 1, 2026).....	1, 10, 19
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022).....	6

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Health Freedom Def. Fund, Inc. v. Carvalho</i> , 148 F.4th 1020 (9th Cir. 2025), <i>cert.</i> <i>denied</i> , – S. Ct. –, 2026 WL 1377038 (2026).....	18
<i>Health Freedom Def. Fund, Inc. v. Carvalho</i> , No. 25-765 (cert. denied May 18, 2026) ...	19
<i>Horsley v. Kaiser Foundation</i> , No. 25-1203 (cert. denied June 1, 2026)...	10
<i>Jacobson v. Massachusetts</i> , 197 U.S. 11 (1905).....	1, 2, 6, 7, 10, 18-20
<i>Lugar v. Edmondson Oil Co.</i> , 457 U.S. 922 (1982).....	13, 14
<i>Lukaszczyk v. Cook County</i> , 47 F.4th 587 (7th Cir. 2022)	7
<i>Manhattan Cmty. Access Corp. v. Halleck</i> , 587 U.S. 802 (2019).....	14, 15
<i>Michael H. v. Gerald D.</i> , 491 U.S. 110 (1989).....	6
<i>Norris v. Stanley</i> , No. 23-996 (cert. denied Apr. 15, 2024) ...	19
<i>Sutton v. Providence St. Joseph Med. Ctr.</i> , 192 F.3d 826 (9th Cir. 1999).....	15
<i>Sweeney v. Univ. of Colo. Hosp. Auth.</i> , – S. Ct. –, 2026 WL 1513328 (2026)	7
<i>Sweeney v. Univ. of Colo. Hosp. Auth.</i> , No. 25-1055 (cert. denied June 1, 2026)...	10

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng'g, P.C., 467 U.S. 138 (1984).....</i>	17
<i>Timken v. S. Denver Cardiology Assocs., P.C., 155 F.4th 1227 (10th Cir. 2025)</i>	7
<i>Troogstad v. City of Chicago, 143 S. Ct. 734 (2023).....</i>	7
<i>United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001).....</i>	19
<i>United States v. Rutherford, 442 U.S. 544 (1979).....</i>	19
<i>United States v. Sineneng-Smith, 590 U.S. 371 (2020).....</i>	17, 18
<i>Washington v. Glucksberg, 521 U.S. 702 (1997).....</i>	6
<i>We The Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev., 76 F.4th 130 (2d Cir. 2023), cert. denied, 144 S. Ct. 2682 (2024).....</i>	7
<i>Yovino v. Rizo, 586 U.S. 181 (2019).....</i>	17
<i>Zivotofsky ex rel. Zivotofsky v. Clinton, 566 U.S. 189 (2012).....</i>	12
<i>Zucht v. King, 260 U.S. 174 (1922).....</i>	7, 18

CONSTITUTION

U.S. Const. art. I, § 8, cl. 1	5, 9, 20
--------------------------------------	----------

TABLE OF AUTHORITIES—Continued

	Page(s)
U.S. Const. art. VI, cl. 2	9
U.S. Const. amend. XIV	5, 6, 11-13, 16, 18
 STATUTES AND REGULATIONS	
10 U.S.C. § 980	9
21 U.S.C. § 355(a)	19
21 U.S.C. § 360bbb-3	3, 9
21 U.S.C. § 360bbb-3(e)(1)(A)(ii)	5
42 U.S.C. § 247d-6	9
42 U.S.C. § 247d-6(a)(1)	5
42 U.S.C. § 1983	1-5, 9-13, 16, 18, 20
45 C.F.R. Part 46	9
 INTERNATIONAL INSTRUMENTS	
International Covenant on Civil and Political Rights, art. VII (1966)	5, 9
 RULES	
Fed. R. Civ. P. 12(b)(6)	4
Ninth Circuit R. 36-3	8
Sup. Ct. R. 10	8
Sup. Ct. R. 10(a)	8
Sup. Ct. R. 14.1(a)	19
 COURT FILINGS	
Pet. for Writ of Cert., <i>Curtis v. Inslee</i> , No. 25-1119 (U.S. March 5, 2026)	10, 12

INTRODUCTION

This petition asks the Court to review an unpublished, nonprecedential opinion that applies settled law to undisputed facts. Petitioners are former employees of PeaceHealth, a private healthcare system. Pet. App. 6a–7a. During the COVID-19 pandemic, PeaceHealth adopted a policy requiring its employees to be vaccinated unless they obtained a medical or religious exemption, and the State of Oregon separately required licensed healthcare workers to be vaccinated or exempt. *Id.* 2a, 6a–7a. Petitioners refused to be vaccinated, declined to seek an exemption, and were terminated from their positions at PeaceHealth as a result. *Id.* 7a. They sued PeaceHealth, three of its executives, and two Oregon officials under 42 U.S.C. § 1983 and other authorities. *Id.* 2a. The district court dismissed their claims, and the Ninth Circuit affirmed.

This Court’s review is unwarranted. Petitioners identify no decision of this Court or any court of appeals that conflicts with the decision below. To the contrary, this Court held long ago that the liberty interests protected by the Constitution do not defeat a vaccination requirement necessary to protect public health. *See Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Every court of appeals to consider the question has concluded that COVID-19 vaccination requirements are subject to rational-basis review. The decision below comports with that uniform body of authority, and this Court has on multiple occasions declined to review materially identical issues, including most recently in *Curtis v. Inslee*, No. 25-1119 (cert. denied June 1, 2026), the published decision that the Ninth Circuit applied to dismiss Petitioners’ claims.

Even if the question presented otherwise warranted this Court's review, this case is an exceptionally poor vehicle, particularly as to the PeaceHealth Respondents. By its own terms, the question presented is directed at a *state's* conduct. *See* Pet. i. But PeaceHealth is a private employer that neither licenses healthcare workers nor administered any vaccine to Petitioners. Pet. App. 28a, 31a. Moreover, before it could reach the constitutional question, the Court would have to resolve two logically antecedent issues that the Ninth Circuit expressly declined to decide: whether the PeaceHealth Respondents acted under color of state law, and whether they are entitled to qualified immunity. *See id.* 4a n.3. Each independently defeats Petitioners' claims and would interfere with the Court's resolution of the merits.

Regardless, the decision below is correct. The Ninth Circuit applied binding circuit precedent to hold that none of the statutory or constitutional sources of law Petitioners invoke creates a specific and definite right enforceable under Section 1983. That precedent, in turn, faithfully applied this Court's decision in *Jacobson* and other cases establishing that vaccination requirements supported by public-health justifications are permissible and reviewed deferentially. Petitioners' remaining theories—separation of powers, an implied statutory exception, necessity, preemption, and equal protection—are not fairly included in the question presented and, in any event, lack merit. And as to the PeaceHealth Respondents in particular, all of Petitioners' claims independently fail for the antecedent reasons that they are not state actors and would be entitled to qualified immunity even if they were. The petition should be denied.

STATEMENT OF THE CASE

1. PeaceHealth is a private, nonprofit healthcare system that operates throughout the Pacific Northwest, including Oregon. *Id.* 6a–7a. During the height of the COVID-19 pandemic, hospitalization rates soared. *Id.* 7a. To protect the health and safety of its patients and staff (called “caregivers”), on August 5, 2021, PeaceHealth implemented a policy requiring caregivers to be vaccinated against COVID-19 unless they received a medical or religious exemption. *Id.* Subsequently, the Oregon Health Authority issued a rule requiring that all state-licensed healthcare workers either receive a COVID-19 vaccine or obtain an approved medical or religious exemption. *Id.*

Petitioners are former at-will PeaceHealth caregivers. *Id.* They refused to be vaccinated and did not submit a medical or religious exemption. *Id.* In accordance with PeaceHealth’s policy, PeaceHealth terminated their employment. *Id.*

2. Petitioners filed an action against PeaceHealth and three of its executives (Liz Dunne, Doug Koekkoek, and Todd Salnas) (collectively, the “PeaceHealth Respondents”), along with (former) Oregon State Governor Kate Brown and (former) Director of Oregon Health Authority Patrick Allen (collectively, “State Respondents”) in the U.S. District Court for the District of Oregon. *Id.* 5a–6a. Petitioners asserted eight claims against the PeaceHealth Respondents: five claims under 42 U.S.C. § 1983, a breach of contract claim, an intentional infliction of emotional distress claim, and an “Implied Private Right of Action” claim under 21 U.S.C. § 360bbb-3. *Id.* 11a. Petitioners brought the same claims, except the breach of contract claim, against the State Respondents. *Id.*

The PeaceHealth Respondents moved to dismiss the action in its entirety under Rule 12(b)(6) because PeaceHealth is not a state actor under Section 1983, *id.* 27a–32a; Petitioners’ Section 1983 and “Implied Private Right of Action” claims invoked nonexistent rights and sources of law not amenable to private enforcement, *id.* 13a–26a; and Petitioners’ remaining claims were flawed for other reasons, *id.* 32a–34a. The State Respondents filed their own motion to dismiss. *Id.* 5a.

The district court granted both motions. *Id.* 34a. The district court concluded that (1) PeaceHealth Respondents are not state actors and are thus not amenable to suit under Section 1983, *id.* 27a–32a; (2) the sources of law Petitioners invoked did not contain private rights of action and thus were not enforceable through Section 1983 or otherwise, *id.* 13a–26a; (3) the federal rights Petitioners invoked did not apply to the PeaceHealth Respondents’ conduct as a private employer implementing a workplace policy, *id.* 28a; (4) Petitioners were not third-party beneficiaries of the CDC COVID-19 Vaccination Program Provider Agreement on which Petitioners’ breach of contract claim relied, and Petitioners therefore lacked standing to assert any such claim, *id.* 32a–33a; and (5) Petitioners failed to allege that the PeaceHealth Respondents committed a qualifying act to establish an intentional infliction of emotional distress claim, *id.* 33a–34a. The district court dismissed all claims with prejudice. *Id.* 34a.

3. The U.S. Court of Appeals for the Ninth Circuit affirmed. The court observed that its recent decision in *Curtis v. Inslee*, 154 F.4th 678 (9th Cir. 2025), *cert. denied*, – S. Ct. –, 2026 WL 1513282 (2026), foreclosed Petitioners’ Section 1983 claims as well as

their “Implied Private Right of Action” claim. Pet. App. 3a & n.1. More specifically, *Curtis* “affirmed the district court judgment dismissing claims by similarly situated ‘vaccine refusers’ for relief under the Emergency Use Authorization statute, 21 U.S.C. § 360bbb-3(e)(1)(A)(ii), the Spending Clause Doctrine, the Public Readiness and Emergency Preparedness (PREP) Act, 42 U.S.C. § 247d-6(a)(1), the ‘Federal Wide Assurance Agreement,’ the COVID-19 Vaccination Program Provider Agreement, the Belmont Report, Article VII of the International [Covenant] on Civil and Political Rights, and the Fourteenth Amendment.” *Id.* 3a. Thus, none of Petitioners’ “statutory or constitutional sources of law create any specific and definite rights enforceable under Section 1983.” *Id.* Accordingly, the Ninth Circuit affirmed the dismissal of the complaint. *Id.* 4a.¹ The panel expressly declined to decide whether PeaceHealth is a state actor or whether the defendants were entitled to qualified immunity. *Id.* 4a n.5.

¹ The court also noted that Petitioners did not challenge the district court’s dismissal of their breach-of-contract or intentional-infliction-of-emotional-distress claims. Pet. App. 4a. Accordingly, those claims were forfeited. *Id.*

REASONS FOR DENYING THE PETITION**I. The decision below is unpublished and factbound, and creates no conflict warranting review.****A. Petitioners identify no conflict among the courts of appeals or with this Court's decisions.**

The question presented is narrow. It asks whether the Due Process Clause of the Fourteenth Amendment “prohibits a State from conditioning an individual’s right to work . . . upon being injected with an investigational drug and waiving the right to seek judicial remedies for resulting injuries.” Pet. i. Under this Court’s precedents and the case law of other circuits that have decided nearly identical issues, the answer is a resounding “no.”

Petitioners have not identified a single decision of this Court or any court with which the Ninth Circuit’s decision below conflicts. That is because no conflict exists. This Court has made clear that only those aspects of liberty that are “‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty’” fall within the Due Process Clause’s substantive protection. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)); see also *Michael H. v. Gerald D.*, 491 U.S. 110, 122 (1989) (plurality opinion). In *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), this Court rejected a claim that the liberty interest guaranteed by the Constitution defeated a state’s judgment that mandatory vaccination was required to protect the public against an epidemic. *Id.* at 25–30. In the Court’s view, a state’s decision to require its residents

to be vaccinated was a “reasonable and proper exercise of the police power.” *Id.* at 35 (citation omitted). The Court has subsequently reaffirmed this principle. See *Zucht v. King*, 260 U.S. 174, 176 (1922) (explaining that *Jacobson* “settled that it is within the police power of a state to provide for compulsory vaccination”).

Lower courts have uniformly held that because the right to refuse a vaccine is not a fundamental right, the standard of review for vaccine requirements is rational basis. See, e.g., *We The Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev.*, 76 F.4th 130, 156–58 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2682 (2024); *Child.’s Health Def., Inc. v. Rutgers, the State Univ. of N.J.*, 93 F.4th 66, 78, 81 (3d Cir. 2024), *cert. denied*, 144 S. Ct. 2688 (2024); *Lukaszczyk v. Cook County*, 47 F.4th 587, 599–602 (7th Cir. 2022), *cert. denied sub nom. Troogstad v. City of Chicago*, 143 S. Ct. 734 (2023); *Timken v. S. Denver Cardiology Assocs., P.C.*, 155 F.4th 1227, 1238 (10th Cir. 2025), *cert. denied sub nom. Sweeney v. Univ. of Colo. Hosp. Auth.*, – S. Ct. –, 2026 WL 1513328 (2026); *Clark v. Jackson*, No. 22-5553, 2023 WL 2787325, at *5 (6th Cir. Apr. 5, 2023). The same courts have concluded that COVID-19 vaccination requirements survive rational-basis review. *Curtis*, 154 F.4th at 692; *We The Patriots*, 76 F.4th at 157; *Child.’s Health Def.*, 93 F.4th at 78; *Lukaszczyk*, 47 F.4th at 603; *Timken*, 155 F.4th at 1239; *Clark*, 2023 WL 2787325, at *7.

In an effort to sidestep this well-settled law, Petitioners recast the question as a factual one: whether the COVID-19 vaccines at issue were “vaccines” or were instead “investigational new drugs.” Pet. 2. The courts below squarely rejected that theory. See Pet. App. 18a (“The record flatly contradicts and renders implausible Plaintiffs['] theory that the Pfizer Vaccine

was investigational only, and not really a vaccine. . . . Accordingly, the Court finds that Plaintiffs have not plausibly alleged that the Pfizer Vaccine is anything other than a vaccine.”); *see also Curtis*, 154 F.4th at 685 (“We . . . note that our analysis holds even if the drug in question was deemed ‘investigational,’ as Employees assert[.]”); *id.* at 691.² Either conclusion independently forecloses Petitioners’ contrary theory: *Curtis* held that any error on the investigational-drug question would be harmless regardless, and the district court here found the record affirmatively contradicted the premise. Petitioners offer no authority contradicting the lower court’s conclusion. Granting certiorari on this fact-specific question would amount to error-correction. *Cf.* S. Ct. R. 10.

B. The decision below is unpublished and nonprecedential, making it an especially poor candidate for this Court’s review.

The Ninth Circuit’s decision below is unpublished and nonprecedential. *See* Ninth Circuit R. 36-3. Even if the decision below were incorrect or in tension with this Court’s precedents (and it is not), this Court rarely grants review to correct alleged errors in unpublished, case-specific dispositions. *See* S. Ct. R. 10(a). Petitioners offer no reason to depart from that practice here.

² Moreover, the Pfizer vaccine received full FDA approval before the compliance deadline for PeaceHealth’s vaccination policy. Pet. App. 9a–10a.

II. The Court recently denied review of the published decision on which this case rests, as well as others that Petitioners concede raised materially similar factual and legal issues.

The Ninth Circuit resolved this case by applying its earlier decision in *Curtis*. Pet. App. 3a; *see* Pet. 33 (conceding that the panel’s decision rests entirely on *Curtis*). *Curtis* involved facts that are materially identical to the facts at issue in this case. In *Curtis*, former PeaceHealth employees (represented by the same counsel who represents Petitioners here) were terminated after refusing to comply with PeaceHealth’s COVID-19 vaccination policy. *Curtis*, 154 F.4th at 685. The former employees brought a suite of statutory and constitutional claims against PeaceHealth, PeaceHealth executives, and Jay Robert Inslee, the former governor of the State of Washington, under 42 U.S.C. § 1983. The former employees, like Petitioners here, invoked 21 U.S.C. § 360bbb-3 (the Emergency Use Authorization (EUA) statute), 10 U.S.C. § 980 (concerning funds appropriated to the Department of Defense for human subjects), 42 U.S.C. § 247d-6 (the PREP Act), the International Covenant on Civil and Political Rights, 45 C.F.R. Part 46 (concerning the protection of human subjects in research), the Belmont Report, the “Federal Wide Assurance Agreement,” and the COVID-19 Vaccination Program Provider Agreement. *Curtis*, 154 F.4th at 686–91. They also asserted that defendants’ actions violated various provisions of the Constitution, including the Spending Clause, the Supremacy Clause, and their rights to due process and equal protection. *Id.* at 690–95; *compare with* Pet. App. 3a, 18a–26a (describing Petitioners’ claims).

In a published opinion, the Ninth Circuit affirmed the district court's dismissal of all of the claims on the merits. More specifically, the Curtis panel concluded that none of the sources of law the former employees cited "allege[d] a specific and definite right enforceable . . . under Section 1983." *Curtis*, 154 F.4th at 687; see *id.* at 686–95. With respect to the substantive due process claim, the court explained that "[u]nder long-standing Supreme Court precedent, the right to refuse a vaccine is not inviolate," and penalties justified by public health concerns are legitimate. *Id.* at 691 (citing *Jacobson*, 197 U.S. at 21, 26–27, 31). The court therefore concluded that "Employees have not stated a substantive due process claim based on the right to refuse the COVID-19 vaccine at issue." *Id.* at 692.

The former employees in *Curtis* sought certiorari, and this Court denied their petition. See Docket in No. 25-1119 (June 1, 2026). Indeed, the *Curtis* petitioners raised the same party-presentation theory Petitioners repeat here—that the panel *sua sponte* invoked *Jacobson* to foreclose a right to refuse investigational drugs that no party had briefed—and this Court denied review notwithstanding that argument. See *Curtis* Pet. for Writ of Cert., No. 25-1119, at 33–34. The Court likewise denied certiorari in *Sweeney v. University of Colorado Hospital Authority*, No. 25-1055 (cert. denied June 1, 2026), and *Horsley v. Kaiser Foundation*, No. 25-1203 (cert. denied June 1, 2026), two cases that Petitioners concede "present a materially similar factual and legal backdrop and identical procedural errors by both the district and circuit courts." Pet. 33. Petitioners offer no reason the Court should grant review of issues it so recently denied. That other petitions raising similar issues remain pending is no reason to grant this one: if anything, it confirms that the Court can—and should—await a

vehicle untainted by the antecedent state-action and qualified-immunity problems described below.³

III. This case is an exceptionally poor vehicle as to the PeaceHealth Respondents.

The question presented, as Petitioners frame it, is addressed to *the state's* conduct, not the conduct of the PeaceHealth Respondents. *See* Pet. i (“Whether the Due Process Clause of the Fourteenth Amendment . . . prohibits *a State* from conditioning an individual’s right to work in a licensed profession upon being injected with an investigational drug and waiving the right to seek judicial remedies for resulting injuries.” (emphasis added)). PeaceHealth neither licenses healthcare workers nor administered any product to Petitioners, who conceded that they received no vaccine from PeaceHealth. *See* Pet. App. 31a. Accordingly, it is not clear that the question presented implicates PeaceHealth at all.

Even if the question presented were directed at the PeaceHealth Respondents or otherwise warranted review, this case would be an unsuitable vehicle for deciding it. This Court cannot reach the merits of the question presented without first resolving two logically antecedent legal questions: (1) whether the PeaceHealth Respondents acted under color of state law and were state actors for purposes of 42 U.S.C. § 1983; and/or (2) whether they are entitled to qualified immunity. Each issue is independently capable of disposing of Petitioners’ claim. And because the Ninth Circuit expressly declined to consider these questions, this Court would be required to do so in the first instance.

³ The Court has recently denied other petitions raising similar questions. *See, e.g., Child’s Health Def. v. Rutgers, the State Univ. of N.J.*, No. 23-1222 (cert. denied June 24, 2024).

Cf. Zivotofsky ex rel. Zivotofsky v. Clinton, 566 U.S. 189, 201 (2012) (observing that the Court is one of “final review and not first view” and ordinarily does “not decide in the first instance issues not decided below” (citations omitted)). This posture, standing alone, counsels in favor of denial.

Petitioners themselves recognize that the panel below left these issues unresolved, Pet. 7–8, but they never explain why this Court should nevertheless decide them. Moreover, this vehicle problem is not new: the *Curtis* petitioners raised the identical concession—that “[t]he panel made clear that it was not addressing whether PeaceHealth qualified as a state actor or whether qualified immunity applied to any Respondent”—and this Court denied certiorari anyway. *Curtis* Pet. for Writ of Cert., No. 25-1119, at 8.

A. The court below did not decide whether the PeaceHealth Respondents were state actors or were entitled to qualified immunity, and both questions present independent, alternative grounds for affirmance.

The Ninth Circuit resolved Petitioners’ Fourteenth Amendment due-process claim, along with their statutory claims, on the merits. *See* Pet. App. 3a (explaining that under *Curtis*, “none of Plaintiffs’ statutory or constitutional sources of law create any specific and definite rights enforceable under Section 1983”). The panel expressly declined to reach whether the PeaceHealth Respondents were state actors or were entitled to qualified immunity—arguments that the PeaceHealth Respondents and the State Respondents preserved and pressed below. *Id.* 4a n.3 (“In light of our determination, we do not reach the parties’ arguments concerning qualified immunity or

whether PeaceHealth is a state actor.”); *id.* 26a–32a (district court decision analyzing these issues).

Both questions provide independent, alternative grounds for affirmance. A defendant is liable under Section 1983 only if it deprived the plaintiff of a federal right while acting “under color of” state law; state action is therefore a predicate to any due process claim. 42 U.S.C. § 1983; *see Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (explaining that “the under-color-of-state-law element of § 1983 excludes from its reach ‘merely private conduct’” (citation omitted)); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 929 (1982) (“[T]he statutory requirement of action ‘under color of state law’ and the ‘state action’ requirement of the Fourteenth Amendment are identical.”). For the reasons that follow, the PeaceHealth Respondents are not state actors. Thus, they are categorically not liable under Section 1983 or the Fourteenth Amendment, rendering the question presented a dead letter. And even if the PeaceHealth Respondents were state actors, they (like the State Respondents) would be entitled to qualified immunity because they violated no clearly established constitutional right.

B. The “conduct of which [Petitioners] complain” concerns PeaceHealth’s actions as an employer, not as an administrator of vaccines.

This Court’s precedents make clear that as a threshold consideration to the state-actor inquiry, a court must identify the “specific conduct of which the plaintiff complains.” *Am. Mfrs. Mut. Ins. Co.*, 526 U.S. at 51 (citation omitted). Here, Petitioners complained about PeaceHealth’s implementation of its private employment policy. More specifically, they took issue with PeaceHealth’s decision to terminate Petitioners’

employment after Petitioners refused to be vaccinated pursuant to PeaceHealth’s COVID-19 policy. Pet. App. 7a. But their allegations—and the sources of law they invoke—at most impose responsibilities on PeaceHealth’s *administration of* COVID-19 vaccinations, not its *implementation of employment policies*. Having concededly never received a COVID-19 vaccination themselves, Petitioners cannot demonstrate that they suffered any damages as a result of PeaceHealth’s administration of vaccines. *Id.* 28a, 31a. Moreover, the authorities Petitioners cite do not impose any restrictions on private employers’ hiring or firing decisions pursuant to a written policy. This Court would need to decide otherwise before reaching the state-action question and the merits of the question presented.

C. PeaceHealth Respondents are not state actors under any test this Court recognizes.

Setting aside the fact that legal authorities they cite have no bearing on the “specific conduct of which [Petitioners] complain,” the PeaceHealth Respondents are not state actors under any recognized test, as the district court correctly concluded. *See id.* 27a–32a; *Lugar*, 457 U.S. at 939 (recognizing the “public function” test, the “state compulsion” test, the “nexus” test, and the “joint action” test). Under each of these tests, the same defect exists: Petitioners’ allegations describe PeaceHealth’s conduct as a vaccine administrator, not as their employer, and it is actions only in the latter capacity that caused their alleged injury.

- **Public function.** The “relevant function” in which PeaceHealth was engaged was the private enforcement of a private workplace policy. *Manhattan Cmty. Access Corp. v. Halleck*,

587 U.S. 802, 810 (2019). That function is not one “traditionally and exclusively performed” by the State. *Id.* at 809; *see id.* (emphasizing that “very few functions fall into that category” (internal quotation marks and citation omitted)).

- ***State compulsion.*** Government compulsion or coercion may exist where a state “has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). Here, PeaceHealth implemented its vaccination policy *before* the State issued its own mandate, a timing sequence the district court found “belied” any claim of joint action. Pet. App. 7a, 31a. Accordingly, Petitioners did not and could not allege that PeaceHealth was coerced to terminate Petitioners’ employment. *See also Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 841 (9th Cir. 1999) (“Supreme Court precedent does not suggest that governmental compulsion in the form of a generally applicable law, without more, is sufficient to deem a private entity a governmental actor.”).
- ***Nexus.*** The nexus test asks whether “there is such a ‘close nexus between the State and the challenged action’ that seemingly private behavior ‘may be fairly treated as that of the State itself.’” *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001) (citation omitted). Petitioners’ alleged nexus rests entirely on PeaceHealth’s role as a vaccine administrator, not as an employer. Pet. App. 30a. The sources of law they invoke, including the COVID-19 Vaccination Program

Provider Agreement and the EUA statute, say nothing about a private employer's workplace vaccination policy.

- ***Joint action.*** The joint action inquiry considers whether a state has “so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so ‘purely private’ as to fall without the scope of the Fourteenth Amendment.” *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725 (1961). The same defect exists: the only “joint action” Petitioners alleged concerns PeaceHealth's vaccine-administrator role, not its conduct as an employer. Pet. App. 30a.

Because the PeaceHealth Respondents are not state actors under any test this Court recognizes, they cannot be liable under Section 1983 or the Fourteenth Amendment. The Court should deny review.

D. Even if the PeaceHealth Respondents were state actors, they are entitled to qualified immunity.

Qualified immunity is antecedent in the same practical sense as state action: if the Respondents did not violate clearly established law, they prevail regardless of whether the Court agrees with Petitioners on the due-process question raised in the petition. Even if the PeaceHealth Respondents were “state actors” for purposes of Section 1983, they (like the State Respondents) would be entitled to qualified immunity. Accordingly, deciding the constitutional question presented would be unnecessary. This Court has long adhered to the “fundamental rule of judicial restraint”

that it will “not reach constitutional questions in advance of the necessity of deciding them.” *Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng’g, P.C.*, 467 U.S. 138, 157 (1984). Because qualified immunity supplies a fully dispositive, nonconstitutional ground of decision, the Court should decline Petitioners’ invitation to opine on the scope of the underlying constitutional right.

IV. Petitioners’ party-presentation argument is meritless and does not warrant review.

Circuit courts are generally bound by their own precedent. *See Yovino v. Rizo*, 586 U.S. 181, 183 (2019) (recognizing that “the Ninth Circuit takes the position that a panel decision . . . can be overruled only by a decision of the en banc court or this Court”). The Ninth Circuit’s application of controlling circuit precedent (*Curtis*) was not a party-presentation violation. It was an application of binding Ninth Circuit precedent involving the same legal questions, sources of law, and even the same defendants. Petitioners identify no intervening decision from this Court that might have permitted the court below to revisit *Curtis*, because no such decision exists. Indeed, as set forth above, this Court has repeatedly declined to review petitions raising the same issues at stake here.

Petitioners’ invocation of *United States v. Sineneng-Smith*, 590 U.S. 371 (2020), is unavailing. In that case, the respondent appealed his criminal conviction to the Ninth Circuit, the parties briefed the issues and participated in oral argument, and while the appeal was poised for decision “based upon the parties’ presentations,” the panel requested briefing from three amici it named for that purpose. *Id.* at 378. This Court concluded that the panel’s “radical transformation of th[e] case” was unjustified and remanded the case

for reconsideration “bearing a fair resemblance to the case shaped by the parties.” *Id.* at 380.

Nothing remotely similar occurred here. The panel below decided the issues the parties raised and litigated (state action, enforceable rights, and Petitioners’ due-process/equal-protection theories) and resolved them by reference to binding precedent. This case presents no recurring, outcome-determinative question of federal law or procedure. It is at most a case-specific complaint about how one panel applied its own precedent.

V. The decision is correct on the merits.

Even setting the vehicle problems aside, the decision below is correct. On the sole issue raised in the question presented (a substantive-due-process claim under the Fourteenth Amendment), the Ninth Circuit properly relied on *Curtis*—binding circuit precedent—to hold that “none of [Petitioners’] statutory or constitutional sources of law create any specific and definitive rights enforceable under Section 1983.” Pet. App. 3a. *Curtis*, in turn, correctly applied this Court’s precedents, including *Jacobson* and *Zucht*, which establish that vaccination requirements backed by public-health justifications are permissible and reviewed deferentially. *See id.* 52a; *see also Health Freedom Def. Fund, Inc. v. Carvalho*, 148 F.4th 1020, 1029 (9th Cir. 2025) (holding, “[l]ike all our sister circuits that have considered substantive due process challenges to COVID-19 vaccine mandates,” that *Jacobson* controls and rational-basis review applies), *cert. denied*, – S. Ct. –, 2026 WL 1377038 (2026).

Petitioners’ amicus argues that in *Jacobson*, this Court did not require rational-basis review for all state vaccine mandates. Amicus Brief at 11. In amicus’s view, *Jacobson* “at a minimum” requires that the

government “articulate a ‘substantial relation’ (rather than merely a ‘rational’ one) between the Covid vaccine mandate and ‘protection of the public health and the public safety.’” *Id.* But every circuit that has addressed this issue has disagreed, and this Court has repeatedly denied certiorari in cases raising similar questions. *See, e.g., Carvalho*, No. 25-765 (cert. denied May 18, 2026); *Norris v. Stanley*, No. 23-996 (cert. denied Apr. 15, 2024); *Curtis*, No. 25-1119 (cert. denied June 1, 2026).

Even if “*Jacobson* did not vindicate every subsequent vaccine mandate” and only applied “to vaccines that prevent the *transmission* of a particularly deadly contagious disease,” Amicus Brief at 12, 14, Petitioners would lose. As the district court recognized, “the record is replete with judicially noticeable facts that Pfizer-BioNTech COVID-19 vaccine” prevents transmission. Pet. App. 16a; *see id.* 16a–18a. Thus, even under amicus’s strained interpretation of *Jacobson*, the COVID-19 vaccine mandates issued by the PeaceHealth Respondents and the State of Oregon bore a “real or substantial relation” to the protection of public health.

Petitioners’ remaining contentions do not warrant review. Under this Court’s Rule 14.1(a), “[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court.” Apart from the substantive-due-process question actually presented, Petitioners advance a series of additional theories—including separation of powers, an implied exception to 21 U.S.C. § 355(a), necessity under *United States v. Oakland Cannabis Buyers’ Coop.*, 532 U.S. 483 (2001), and *United States v. Rutherford*, 442 U.S. 544 (1979), and the contention that their cited authorities are not “precatory”—that are not fairly included in the

question presented. *See* Pet. 16–20. These issues only underscore Petitioners’ failure to articulate a consistent legal theory throughout the litigation, which would complicate this Court’s review and risk obscuring, rather than clarifying, the issues presented.

To the extent Petitioners’ unconstitutional-conditions and property-interest theories can be considered encompassed by the question presented, they fail on the merits. As explained above, the sources of law Petitioners invoke create no “specific and definite right[]” enforceable under Section 1983, Pet. App. 3a, and the Ninth Circuit correctly resolved their theories under the PREP Act, the EUA statute, the Spending Clause, and other authorities on that basis, *id.*

Petitioners’ preemption and equal-protection arguments fare no better. Petitioners argue that the vaccine requirements are preempted by federal law, that a preempted policy can supply no “legitimate State interest,” and that a court therefore may not apply rational-basis review at all. Pet. 21. That argument is misplaced. Under *Jacobson* and the uniform decisions of the courts of appeals, protecting public health during a pandemic is a legitimate interest and the challenged vaccination requirements are rationally related to it. Because those requirements independently satisfy rational-basis review, the Court need not address Petitioners’ preemption theory to resolve their equal-protection and due-process claims. Regardless, each of Petitioners’ theories fails as to the PeaceHealth Respondents for the independent, antecedent reasons set out above—they are not state actors and would, if they were, be entitled to qualified immunity.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

TODD A. HANCHETT
STOEL RIVES LLP
760 SW Ninth Avenue
Suite 3000
Portland, OR 97205
(503) 294-9454

WHITNEY A. BROWN
Counsel of Record
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
(907) 277-1900
whitney.brown@stoel.com

*Counsel for Respondents PeaceHealth,
Liz Dunne, Doug Koekkoek, and Todd Salnas*

September 8, 2026