No. 25-1327

In the Supreme Court of the United States

JANE ELIZABETH ROBERTS, *et al.*,
Petitioner,

v.

ROBERT W. FERGUSON,
GOVERNOR OF THE STATE OF WASHINGTON,
in his individual capacity, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION OF SHRINERS CHILDREN'S RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit erred in holding that Petitioners cannot advance a Supremacy Clause claim under 42 U.S.C. § 1983.

2. Whether the Ninth Circuit erred in holding that Petitioners' substantive due process claim failed because they identified no fundamental right to refuse administration of a drug they conceded was medically identical to a vaccine to which they had no constitutional objection.

3. Whether the Ninth Circuit erred in holding that Petitioners' procedural due process claim failed because they received any necessary procedural protections.

4. Whether the Ninth Circuit erred in holding that Petitioners' equal protection claim failed because the challenged vaccination policy was rationally related to the government interest in reducing the likelihood that healthcare workers would contract COVID and transmit it to their patients.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel state that Shriners Hospitals for Children is a non-profit corporation with no parent corporation. Although named as a separate defendant, Shriners Hospitals for Children – Spokane is not a separate entity, but is instead a component of Shriners Hospitals for Children. Shriners Hospital for Children has no stock ticker, and no publicly held company owns 10 percent or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

INTRODUCTION

Petitioners ask this Court to address an array of constitutional claims pertaining to a very specific time period during the COVID-19 pandemic in which the U.S. Food and Drug Administration (FDA) had both fully approved a COVID vaccine and issued an emergency use authorization for a medically identical version of that same vaccine. Petitioners insist that, because they purportedly could not obtain the FDA-approved version of this vaccine, a mandate requiring hospital workers' vaccination violated their constitutional rights. Yet this Court has repeatedly denied petitions for certiorari raising these same theories—including five in the last year.[1] Indeed, mere months ago, this Court denied a petition for certiorari stemming from the published Ninth Circuit decision, *Curtis v. Inslee*, 154 F.4th 678 (9th Cir. 2025), that Petitioners devote their petition to attacking because it controlled the outcome of this case. *Curtis v. Inslee*, --- S. Ct. ----, 2026 WL 1513282 (June 1, 2026).

Petitioners provide no reason for this Court to now change course and grant review. It remains the case that no circuit split exists: every court of appeals to consider Petitioners' contentions has emphatically rejected them. Nor have the questions presented somehow increased in importance since the last time the Court denied certiorari. To the contrary, if these questions ever had any significance at all, it has only

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[1] *Pearson v. Shriners Hosps. for Child., Inc.*, 146 S. Ct. 329 (2025); *Bridges v. Methodist Hosp.*, 146 S. Ct. 1467 (2026); *Sweeney v. Univ. of Colo. Hosp. Auth.*, --- S. Ct. ----, 2026 WL 1513328 (June 1, 2026); *Horsley v. Kaiser Found.*, --- S. Ct. ----, 2026 WL 1513301 (June 1, 2026).

dwindled as the peculiar circumstances that gave rise to them fall further in the past.

If that were not enough (and it is), Petitioners' claims also lack merit. Petitioners devote much of their petition to raising a host of purported statutory and regulatory violations, insisting they support a claim under the Supremacy Clause. But the Ninth Circuit, applying settled law, held this claim failed because the Supremacy Clause provides no individual rights enforceable in a Section 1983 action. Petitioners have no response. The Ninth Circuit also correctly rejected: (1) Petitioners' substantive due process claim because Petitioners have no fundamental right to their preferred version of the two vaccines the FDA deemed interchangeable; (2) Petitioners' procedural due process claim because Petitioners received all the process they were due; and (3) Petitioners' equal protection claim because the vaccine mandate plainly served the legitimate purpose of protecting patients (including Shriners Children's vulnerable pediatric patients) from a potentially deadly virus. To the extent Petitioners address the Ninth Circuit's reasoning at all, they provide little meaningful argument as to how the court erred.

Finally, this case would also be a poor vehicle in which to resolve these questions even if they otherwise merited review. Petitioners forfeited many of the arguments they now make by failing to raise them before the court of appeals. And even if Petitioners' arguments were correct, that would have no effect on the result here: the Shriners Children's Respondents are not state actors who could be held liable for any purported constitutional violations (and if they were, they would be entitled to qualified immunity). Thus, even assuming this Court's answers to the questions

presented might matter in another case, they do not ultimately matter here.

The petition should be denied.

STATEMENT

I. FACTUAL BACKGROUND

A. The FDA's COVID Vaccine Approvals

In December 2020, the FDA, acting pursuant to its authority under 21 U.S.C. § 360bbb-3, provided the first emergency use authorization for a COVID vaccine, authorizing Pfizer-BioNTech's vaccine to be distributed in the United States for use by individuals 16 and older. 3-ER-0409.[2] Over the next two months, the FDA subsequently issued emergency use authorization for vaccines developed by Moderna and Janssen. 3-ER-0409–10.

On August 23, 2021, the FDA then provided full approval to Pfizer-BioNTech's COVID vaccine for use by individuals 16 and older. 3-ER-0411. The vaccine was to be marketed as "Comirnaty" going forward. *Id*.

The FDA emphasized that Comirnaty and the Pfizer-BioNTech vaccine for which the agency had previously provided emergency use authorization had the "same formulation" and were to be administered in the same two-dose series. 3-ER-0383. Thus, while the two versions of this vaccine bore different labels and were therefore "legally distinct," they could "be

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[2] Citations to "ER" are to Appellants' Excerpts of Record filed with the Ninth Circuit below. 9th Cir. No. 24-1949, Dkt. 14 (filed June 14, 2024). Citations to "SER" are to Appellees' Supplemental Excerpts of Record filed with the Ninth Circuit below. *Id.*, Dkt. 22 (Aug. 14, 2024).

used interchangeably to provide the vaccination series[.]" *Id.*

At the same time it approved Comirnaty, the FDA reissued its emergency use authorization for the Pfizer-BioNTech vaccine, which now allowed for use by individuals 12 to 15 years old and as a third dose for certain immunocompromised individuals. 3-ER-0383. The FDA explained that this emergency use authorization served two purposes. First, although the FDA had now approved Comirnaty, "there are no products that are approved to prevent COVID-19 in individuals age 12 through 15, or that are approved to provide an additional dose to th[is] immunocompromised population." 3-ER-0386 n.9. Second, the FDA explained, there was not yet sufficient Comirnaty "available for distribution to th[e] population" for which it was approved "in its entirety." *Id.* But because "the formulation was the same and both products are made by the same manufacturer under current good manufacturing practice requirements," healthcare providers could use either Comirnaty or the emergency-use-authorization version of the Pfizer-BioNTech vaccine, which were "interchangeabl[e]." SER-007–08. Addressing the legal distinction between the labels of Comirnaty and its emergency-use-authorization counterpart, the FDA "excercis[ed] its enforcement discretion," deeming these preexisting Pfizer-BioNTech vaccine "lots to be manufactured in compliance with" their now-approved license application. SER-009–10.

B. Governor Inslee's Proclamation

On August 20, 2021—three days before the FDA approved the Pfizer-BioNTech vaccine, and with the highly contagious Delta variant surging—then-Washington Governor Jay Inslee expanded on an earlier

executive order and issued a Proclamation requiring all healthcare workers in Washington State to be vaccinated against COVID by October 18, 2021. 3-ER-0583–84, 3-ER-0591. Governor Inslee emphasized that "widespread vaccination is the primary means we have as a state to protect everyone, including . . . youth who are not eligible to receive a vaccine . . . and vulnerable persons including persons in health care facilities." 3-ER-0580.

C. Shriners Children's Compliance With Governor Inslee's Proclamation

Shriners Hospitals for Children is a private nonprofit 501(c)(3) corporation that operates Shriners Children's Spokane, a 30-bed hospital that treats thousands of pediatric patients annually. 3-ER-0407. The individual defendants are national Shriners Children's officials (Beverly Bokovitz, Dr. Frances Farley, Jerry Gantt, John McCabe, and Phillip Grady), along with the administrator of Shriners Children's Spokane (Peter Brewer). 3-ER-0408–09.[3]

In August and September 2021, in conformance with Governor Inslee's Proclamation, Shriners Children's instituted local and system-wide COVID vaccination policies for employees at its pediatric hospitals, including in Spokane. 3-ER-0601–10. Shriners Children's policy required its Spokane employees to be vaccinated by October 18, 2021, or face potential termination. 3-ER-0608.

Such a policy was particularly important at that time because Shriners Children's youngest pediatric patients were unable to receive any COVID vaccine themselves. 3-ER-0413–14. The FDA did not

[3] These Respondents are referred to collectively here as either "Shriners Children's" or the "Shriners Children's Respondents."

authorize emergency use of the Pfizer-BioNTech vaccine in children 5 to 11 years old until October 29, 2021. *Id.* And the Delta variant had caused COVID infections in children to rise to their highest levels of the pandemic to that point, totaling some 250,000 infections nationally a week by September 2021. 3-ER-0414.

Shriners Children's policy allowed employees to receive vaccination from any available provider. 3-ER-0604. It also permitted employees to seek medical or religious exceptions. 3-ER-0602–04.

II. PROCEDURAL BACKGROUND

A. Petitioners' Complaint

Petitioners here are 12 former employees of Shriners Children's Spokane. None of them claims to have sought a medical or religious exception to Shriners Children's vaccine policy. Nevertheless, they refused to comply with the policy and were discharged as a result. 3-ER-0408.

In response, Petitioners filed a 104-page complaint against Shriners Children's and Governor Inslee. As relevant here, Petitioners asserted six constitutional and statutory claims under 42 U.S.C. § 1983 and a claim under 21 U.S.C. § 360bbb-3 itself. 3-ER-0455–58.

In their complaint, Petitioners expressly disclaimed any challenge to the authority of Shriners Children's or Governor Inslee to require them to receive an FDA-approved vaccine. 3-ER-0463. Instead, they grounded their claims in the allegation that they had been forced to accept the administration of an emergency-use-authorization drug. *Id.* In fact, however, the FDA had approved the Comirnaty vaccine nearly two months before Petitioners were required to

comply with Shriners' Children's vaccination policy. 3-ER-0411. Although the basis for Petitioners' claims was not entirely clear, they appeared to allege that vaccines bearing the Comirnaty label were not "introduced into commerce for general commercial marketing" during the relevant time period. 3-ER-0507.

B. The District Court's Dismissal Orders

The district court dismissed Petitioners' claims against Shriners Children's with prejudice. With respect to Petitioners' Section 1983 claims, the court concluded these claims failed because Shriners Children's is not a state actor. App. 35a. As the court explained, "a private employer's compliance with a government mandate does not constitute state action." App. 38a. As for Petitioners' claim under 21 U.S.C. § 360bbb-3, the court concluded that this statute does not provide an implied right of action. App. 45a.

The district court then dismissed Petitioners' claims against Governor Inslee in a separate order. *See* App. 5a. With respect to Petitioners' Section 1983 claims, the court concluded that Governor Inslee was "immune from suit in his official capacity and entitled to qualified immunity in his individual capacity." App. 9a.

C. The Ninth Circuit's *Curtis* Decision

This case was by no means the only lawsuit that Petitioners' counsel filed premised on the same basic theories. The Ninth Circuit consolidated for argument appeals from three separate cases in which the district courts had dismissed such claims. *See* Pet. 7 n.1.

The Ninth Circuit issued a published decision in one of these three appeals, *Curtis v. Inslee*, 154 F.4th

678. App. 51a-86a. The court assumed, for purposes of its decision, both that the emergency-use-authorization version of the Pfizer-BioNTech vaccine remained "'investigational'" and that the fully FDA-approved version of that vaccine was "not available before the relevant vaccination deadlines." App. 55a-56a n.1. Even with these assumptions, the court held, "none of [the plaintiffs'] wide-ranging sources of purported rights supports their federal claims." App. 55a.

The court of appeals began by addressing the plaintiffs' invocation of Section 1983 to advance various non-constitutional claims. App. 57a–66a. As the court explained, because a "statutory right enforceable under Section 1983 is not created 'as a matter of course,'" the plaintiffs were required to demonstrate that the various sources of law they cited "'secure[] an enforceable right, privilege, or immunity.'" App. 57a (quoting *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183 (2023) and *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 368 (2025)). Surveying the "eclectic collection" of statutes and other sources on which the plaintiffs based their claims, the court concluded none of them creates "a specific and definite right enforceable by [the plaintiffs] under Section 1983." App. 58a.

Next, the court of appeals addressed and rejected each of the plaintiffs' constitutional claims. As is most relevant here, the court first dismissed the plaintiffs' attempt to plead a claim under the Supremacy Clause. The court explained that "[t]he Supremacy Clause itself 'is not a source of any federal rights' enforceable under Section 1983.'" App. 66a (quoting *Golden State Transit Corp. v. City of L.A.*, 493 U.S. 103, 107 (1989)). Rather, to the extent that the plaintiffs alleged that federal statutes preempted the Proclamation, their

Section 1983 claims depended on showing that those statutes themselves "create enforceable rights"—which the plaintiffs had failed to do. App. 66a-67a.

Turning to the plaintiffs' substantive due process claim, the court of appeals explained that the plaintiffs claimed a fundamental right to "refus[e] administration of an investigational drug that is clinically identical to a vaccine." App. 68a. This articulation of a purported fundamental right was not, the court held, sufficient to distinguish *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), which had held that a "vaccine mandate that has a 'real or substantial relation to the protection of public health' is not 'in palpable conflict with the Constitution.'" App. 69a (quoting *Jacobson*, 197 U.S. at 27, 31).

The court of appeals likewise rejected the plaintiffs' procedural due process claim. As the court detailed, the plaintiffs were at-will employees, so they had no cognizable property interest in their employment protected by the Fourteenth Amendment. App. 70a, 72a. In any event, the court continued, even assuming the plaintiffs had identified a protected liberty interest, they failed to alleged "that they have not received all the process that was due." App. 71a. Indeed, the court observed, it was "difficult to characterize" the plaintiffs' claim as a procedural due process claim, as they challenged not the process they were provided but rather the "legitimacy of a standard." App. 71a-72a. And the "Governor was under no obligation to hold a town hall for [the plaintiffs] to make known their various complaints regarding the Proclamation." App. 72a.

Finally, the court of appeals rejected the plaintiffs' equal protection claim. Because the plaintiffs were not part of any suspect class, the court explained that

the Proclamation was at most subject to rational basis review. App. 72a-73a. The Proclamation readily satisfied that standard, as "'a COVID-19 vaccine mandate will substantially reduce the likelihood that healthcare workers will contract the virus and transmit it to their patients.'" App. 74a (quoting *Biden v. Missouri*, 595 U.S. 87, 93 (2022)). The court of appeals reiterated that its analysis did not depend on the availability of the FDA-approved vaccine, as the emergency-use version "had the same medical formulation and effectiveness." App. 75a.

D. The Ninth Circuit's Memorandum Disposition

The Ninth Circuit then affirmed the district court's decision in this case in an unpublished memorandum disposition. The court held that *Curtis* "forecloses each of [Petitioners'] federal claims." App. 3a.

REASONS FOR DENYING THE PETITION

I. THE QUESTIONS PRESENTED DO NOT WARRANT THIS COURT'S REVIEW

Petitioners provide no reason for the Court to grant review. Two months ago, the Court addressed a petition for certiorari from the Ninth Circuit's *Curtis* decision. Just like Petitioners here, the *Curtis* petitioners—represented by the same counsel—challenged *Curtis*' holdings rejecting their constitutional claims premised on the contention that they were required to receive a supposed investigational vaccine. *See* Pet. for a Writ of Cert., *Curtis v. Inslee*, No. 25-1119, 2026 WL 860068 (U.S. Mar. 5, 2026). The Court denied certiorari. *Curtis,* 2026 WL 1513282, at *1.

It should do so again here. The Ninth Circuit's rejection of Petitioners' claims in this case was—as Petitioners acknowledge—based entirely on its prior

decision in *Curtis*. App. 3a; *see* Pet. 7 ("[T]he Ninth Circuit panel affirmed the district court solely on the grounds that its decision in *Curtis v. Inslee*, 154 F.4th 678 (9th Cir. 2025) foreclosed this case[.]"). But as this Court's denial of certiorari in *Curtis* reflects, that decision does not implicate any important question of law that could warrant this Court's intervention. Nothing has changed in the months since the Court declined review.

Indeed, Petitioners make no attempt to identify any circuit split. They could not if they tried. The courts of appeals have uniformly rejected the many similar constitutional challenges brought by Petitioners' counsel premised on the supposed investigational nature of available COVID vaccines during the fall of 2021. *See, e.g.*, *Pearson v. Shriners Hosps. for Child., Inc.*, 133 F.4th 433 (5th Cir. 2025); *Timken v. S. Denver Cardiology Assocs., P.C.*, 155 F.4th 1227 (10th Cir. 2025); *Boyd v. Shriners Hosps. for Child.*, 2026 WL 1005549 (3d Cir. Apr. 14, 2026). There is no division among the courts of appeals that could merit this Court's attention.[4]

Nor do Petitioners identify any other pressing need for this Court to address their claims regarding

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[4] Petitioners do not seek review of the Ninth Circuit's holding that they cannot seek damages for any of their statutory claims. *Compare* Pet. i, 8-38, *with* App. 57a-66a. Even if they had, their petition would likewise implicate no circuit split, as other courts of appeals have consistently reached the same conclusions. *See, e.g.*, *Akerlund v. Atlas Air, Inc.*, 181 F.4th 1200, 1206 (11th Cir. 2026) ("only the federal government can bring enforcement actions" under the Federal Food, Drug, and Cosmetic Act); *Svendsen v. Pritzker*, 91 F.4th 876, 877 (7th Cir. 2024) (21 U.S.C. § 360bbb-3 "does not provide a private right of action"); *Timken*, 155 F.4th at 1235-36 (PREP Act "prescribes a specific enforcement mechanism that precludes a § 1983 claim").

the supposed constitutional issues arising from the purported distinction between the FDA-authorized Comirnaty vaccine and the emergency-use-authorized version of the Pfizer-BioNTech vaccine during this brief time period. *See* Pet. 8-38. The peculiar circumstances specific to that particular time in the pandemic are unlikely to recur.

It is thus unsurprising that, in addition to *Curtis*, this Court has rejected numerous petitions (most filed by Petitioners' counsel) raising these esoteric theories. *See Horsley*, 2026 WL 1513301, at *1; *Sweeney*, 2026 WL 1513328, at *1; *Bridges*, 146 S. Ct. at 1467; *Pearson*, 146 S. Ct. at 329; *Johnson v. Kotek*, 145 S. Ct. 378, *reh'g denied*, 145 S. Ct. 998 (2024).[5] Simply put, the questions presented were not sufficiently important to warrant this Court's review in any of those prior cases. That remains true here.

II. THE NINTH CIRCUIT'S DECISION WAS CORRECT

Petitioners devote their attention to arguing that the Ninth Circuit's decision in *Curtis* was in error.

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[5] This Court has also denied a number of petitions in cases challenging vaccine mandates that raised questions of far broader legal significance. *See, e.g.*, *Health Freedom Def. Fund, Inc. v. Carvalho*, --- S. Ct. ----, 2026 WL 1377038 (May 18, 2026); *Child.'s Health Def. v. Rutgers, the State Univ. of N.J.*, 144 S. Ct. 2688 (2024); *Norris v. Stanley*, 144 S. Ct. 1353 (2024). And this Court held in *Biden v. Missouri* that the Health & Human Services Secretary did not exceed his statutory authority in requiring that healthcare workers at facilities receiving Medicare and Medicaid funding be vaccinated against COVID. 595 U.S. at 93-96 (recognizing "[v]accination requirements are a common feature of the provision of healthcare in America" and are "consistent with the fundamental principle of the medical profession: first, do no harm").

This Court does not, of course, generally grant review to correct a purported "misapplication of a properly stated rule of law." Sup. Ct. R. 10. Regardless, Petitioners identify no error in the Ninth Circuit's rejection of their constitutional claims. To the contrary, the bulk of Petitioners' arguments are not even responsive to the Ninth Circuit's grounds for holding that Petitioners could not press their claims.

Petitioners first contend that the Ninth Circuit erred in rejecting their claim under the Supremacy Clause, citing a slew of federal statutes and regulations that purportedly preempted Governor Inslee's Proclamation. *See* Pet. 7-18. Yet Petitioners never even address the Ninth Circuit's grounds for rejecting this claim: the Supremacy Clause does not grant private parties rights enforceable in a Section 1983 damages action. App. 66a. That holding follows from well-established law: "the Supremacy Clause, of its own force, does not create rights enforceable under § 1983." *Golden Gate Transit*, 493 U.S. at 107 (internal footnote omitted). Rather, a plaintiff seeking damages must demonstrate that the specific federal law they claim preempts state action creates the sort of rights that an individual may enforce through a Section 1983 action. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 280-81 (2002). And Petitioners do not challenge the Ninth Circuit's holding that none of the statutes or regulations they invoke confer such individual rights. App. 57a-66a. Thus, even if Petitioners were correct that the Proclamation violated any of these

federal laws—and to be clear, they are not[6]—the Ninth Circuit correctly rejected their claims.

Petitioners next argue that the Ninth Circuit erred in rejecting their substantive due process claim. Pet. 18-25. But Petitioners have conceded that they have no viable constitutional objection to be being required to take the FDA-approved Comirnaty vaccine. *E.g.*, 3-ER-0463. Rightly so, given this Court's longstanding precedent upholding the constitutionality of such vaccine mandates generally, coupled with its more recent recognition of the justifications for compelling healthcare workers to be vaccinated against COVID during the pandemic. *See Jacobson*, 197 U.S. at 27, 31; *Biden*, 595 U.S. at 95-96. Petitioners have also conceded, as they must, both that the FDA approved the Comirnaty vaccine well before Shriners Children's vaccination deadline and that Comirnaty and the emergency-use Pfizer-BioNTech vaccine were "medically interchangeable." Dkt. 13, Appellants' Ninth Cir. Opening Br. 14. Thus, at bottom, Petitioners' challenge is simply to a *labeling* distinction: they claim they could not be subjected to a

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[6] Because the FDA had in fact *approved* the Comirnaty vaccine at the relevant time, all Petitioners' statutory claims about the investigational nature of the vaccine would fail even if they could properly be advanced under Section 1983. *See, e.g.*, *Boyd*, 2026 WL 1005549, at *1 n.1 ("We therefore will not distinguish between 'investigational drugs' and vaccines and instead refer to publicly available COVID-19 immunizations as vaccines."); *Legaretta v. Macias*, 603 F. Supp. 3d 1050, 1059-60 (D.N.M. 2022) ("FDA has now given its *full approval*—not just emergency use authorization—to the Pfizer vaccine" and the emergency use authorization statute accordingly "is not applicable to the administration of the Pfizer vaccine to Plaintiffs"); *Burcham v. City of L.A.*, 562 F. Supp. 3d 694, 707 (C.D. Cal. 2022) ("The Pfizer vaccine has received full FDA approval, and is no longer merely authorized under the [emergency use authorization] statute.").

vaccine mandate if the only version of the vaccine allegedly available bore the label of its emergency-use-authorization version rather than the label of the medically indistinguishable version the FDA had fully approved. *See* Pet. 24; SER-007–08 (explaining the interchangeability of these vaccines). The Ninth Circuit committed no error in concluding that Petitioners' asserted interest in correct labeling did not amount to the sort of fundamental liberty interest that could support a substantive due process challenge. App. 67a-68a.

Petitioners also appear to challenge the Ninth Circuit's affirmance of the dismissal of their procedural due process claims, invoking a host of purported property and liberty interests that the Proclamation allegedly implicates. *See* Pet. 27-38. But even assuming Petitioners were deprived of any such interests, they fail to respond to the Ninth Circuit's independent basis for rejecting their claims: they received the process they were due. *See* App. 71a. Specifically, the Proclamation (and Shriners Children's policy) gave Petitioners notice of the vaccination requirement and the opportunity to demonstrate they were exempt from it. App. 71a. That provided any procedure constitutionally necessary to determine whether Petitioners were subject to these requirements. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). To the extent Petitioners instead challenge the substance of these requirements, that is a substantive due process claim, which fails for the reasons set forth above. *See* App. 72a; *see also* App. 3a n.1 (explaining that any unconstitutional conditions claim was derivative of Petitioners' substantive due process claim, as it depended on Petitioners' contention that the mandate was itself unconstitutional).

Finally, although Petitioners briefly reference their equal protection claim (Pet. 31, 38), they offer no answer to the Ninth Circuit's reasoning for rejecting it. As the court of appeals correctly concluded, because the Proclamation does not discriminate against any suspect class, it is subject to rational basis review at most. App. 72a-73a; *see Harrah Indep. Sch. Dist. v. Martin*, 440 U.S. 194, 199 (1979). And Petitioners could not possibly show that the Proclamation fails such review: among other things, this Court has expressly recognized the public-health justification that supports such COVID vaccine mandates for healthcare workers. *Biden*, 595 U.S. at 93.[7] As the Ninth Circuit correctly explained, any labeling distinction between the emergency-use-authorization Pfizer-BioNTech vaccine and Comirnaty "does not negate the obvious inference that the available COVID-19 vaccine would be rationally related to the protection of public health," especially given Petitioners' concessions that the vaccines had the same "formulation and effectiveness." App. 75a.

Rather than meaningfully address the Ninth Circuit's holdings, Petitioners advance two overarching arguments. *First*, Petitioners repeatedly insist that because the Proclamation purportedly violated federal statutory law, it was for that reason unconstitutional. *E.g.*, Pet. 18-19, 22-24, 28-29. But even if Petitioners' premise were correct (and it is not), their conclusion does not follow. Petitioners cite no authority for the proposition that they can transform these alleged violations of federal law into violations of the

[7] The district court also noted that "[i]n the context of challenges brought by former healthcare workers employed by a children's hospital, the rationale behind [the Proclamation] is even more acute." App. 16a.

Fourteenth Amendment. *But see, e.g.*, *Dalton v. Specter*, 511 U.S. 462, 472 (1994) ("[W]e have often distinguished between claims of constitutional violations and claims that an official has acted in excess of his statutory authority."). That would upend this Court's jurisprudence holding that violations of provisions that confer no individual rights cannot be the basis of a Section 1983 claim. *See, e.g.*, *Vega v. Tekoh*, 597 U.S. 134, 141, 150-51 (2022) (holding that although a *Miranda* violation may contravene federal law, it is not a constitutional violation that can support a Section 1983 claim).

Second, and relatedly, Petitioners contend that the Ninth Circuit's rejection of their constitutional claims will somehow disrupt the federal government's ability to adhere to and enforce the statutory scheme for drug regulation. Pet. 15-16, 22, 26-27, 38. Petitioners ignore the FDA's role in approving Comirnaty and providing guidance regarding the interchangeable use of the two vaccines. 3-ER-0567, 0570; SER-007–11. Regardless, nothing in the court of appeals' decision imposes any limit on the federal government's authority to enforce federal law. The Ninth Circuit did not even entirely foreclose private parties' ability to enforce the various statutes and regulations Petitioners invoke. If, in fact, some state action violates these provisions—which, again, the Proclamation here did not, *see supra* p. 14 n.6—parties can attempt to seek injunctive relief. *See Green v. Mansour*, 474 U.S. 64, 68 (1985) ("[T]he availability of prospective relief . . . gives life to the Supremacy Clause."). The Ninth Circuit simply applied established law and held that Petitioners could not invoke Section 1983 to bring their statutory claims directly, nor could they convert those purported statutory violations into constitutional claims. It did not err in reaching those conclusions.

III. THIS CASE IS A POOR VEHICLE FOR RESOLVING THE QUESTIONS PRESENTED

Even if the questions presented here were otherwise worthy of this Court's review, this case would be a poor vehicle for resolving them. That is for two reasons: (1) Petitioners forfeited many of the arguments they now press; and (2) Petitioners' claims against Shriners Children's would fail for other, independent reasons regardless.

A. Petitioners Forfeited Many Of Their Arguments

Many of the arguments Petitioners advance here bear little resemblance to those they made in the court of appeals. In particular, Petitioners invoke a host of supposed property and liberty rights that the Proclamation purportedly deprived them of without due process. *See* Pet. 27-38. Petitioners did not, however, make these arguments in their briefing before the Ninth Circuit; indeed, they never clearly addressed their procedural due process claim at all. *See* Dkt 13, Appellants' Opening Br. 43-47; Dkt. 31, Appellants' Reply Br. 8-32. This Court "normally decline[s] to entertain" arguments a party failed to raise below. *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 173 (2016). Petitioners offer no reason for this Court to deviate from that practice here.

B. Even If The Questions Presented Were Resolved In Petitioners' Favor, Shriners Children's Would Prevail

The case also presents a poor vehicle for addressing the questions presented because their resolution would not matter here. Petitioners' claims fail regardless because Shriners Children's (1) is not a state actor

and (2) would be entitled to qualified immunity if it were.

1. Shriners Children's Is Not A State Actor

Petitioners can advance their constitutional claims against Shriners Children's only if it "may fairly be said to be a state actor." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). Yet Shriners Children's is a private entity, *not* a state actor. And as the district court here correctly recognized, the mere fact that Shriners Children's was seeking to comply with a general state law (i.e., the Proclamation) does not convert it into a state actor. App. 38a-39a. Otherwise, "every employer [would be deemed] a governmental actor every time it complies with a presumptively valid, generally applicable law[.]" *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 838 (9th Cir. 1999). The courts to have considered the question in this context have thus consistently held that the private entities that comply with state vaccine mandates do not engage in state action. *See*, *e.g.*, *Pearson*, 133 F.4th at 444; *Boyd*, 2026 WL 1005549, at *3; *Bridges v. Methodist Hosp.*, 2025 WL 1693074, *4 (5th Cir. June 17, 2025), *cert. denied*, 146 S. Ct. 1467 (2026).

Petitioners' sole argument in attempting to evade that straightforward conclusion is that Shriners Children's engaged in state action by agreeing to perform "federal functions" by *administering* COVID vaccines to the public. Pet. 5-6; *see* Dkt. 13, Appellants' Opening Br. 29. Yet that has nothing to do with Petitioners' claims, which instead concern Shriners Children's actions as an employer requiring its workers to be vaccinated—whether by Shriners Children's or by any other healthcare provider. As the Third Circuit has put it, Petitioners' argument "mistakenly conflates

Shriners' alleged participation in the state's public vaccination effort with the hospital's imposition of an internal vaccine mandate for employees, which are separate and unrelated actions." *Boyd*, 2026 WL 1005549, at *3; *accord*, *e.g., Pearson*, 133 F.4th at 444; App. 38a. Petitioners' inability to identify any basis for concluding that Shriners Children's acted as a governmental entity in imposing and enforcing a vaccine mandate for its employees forecloses their constitutional claims.

2. The Shriners Children's Respondents Have Qualified Immunity

Finally, even if the Shriners Children's Respondents were acting as state officials on behalf of the State of Washington, they would then be entitled to qualified immunity. *See Filarsky v. Delia*, 566 U.S. 377, 390 (2012) ("Affording immunity not only to public employees but also to others acting on behalf of the government similarly serves to ensure that talented candidates [are] not deterred by the threat of damages suits from entering public service.") (internal quotation marks omitted). Petitioners' sole requested remedy is damages. And state officials are shielded from such damages liability "so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (internal quotation marks omitted). "[A] clearly established . . . right [is one that is] sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012).

Petitioners cannot surmount that high bar. Even if any of Petitioners' constitutional claims had merit—and for the reasons explained above, they do not (*see*

supra pp. 12-17)—it cannot be said that the validity of those claims was "sufficiently clear" that the Shriners Children's Respondents should have *known* that their actions violated Petitioners' constitutional rights. *Reichle*, 566 U.S. at 664. To the contrary, no court has accepted any of Petitioners' arguments. The Shriners Children's Respondents therefore could not possibly have violated "clearly established" law. *Mullenix*, 577 U.S. at 11; *see Johnson v. Kotek*, 2024 WL 747022, *3 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 378 (2024) (rejecting parallel claims on qualified-immunity grounds). For that reason as well, Petitioners' claims necessarily fail.

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

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