No. 25-606

In the Supreme Court of the United States

JOHN STOCKTON, ET AL.,

PETITIONERS,

v.

NICK BROWN, ATTORNEY GENERAL OF WASHINGTON, 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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QUESTIONS PRESENTED

Petitioners are two physicians currently in proceedings before the Washington Medical Commission, a third physician who is not under investigation or in proceedings, and an individual and a membership organization who claim an interest in the physician petitioners' views on COVID-19. Collectively, they challenge the Commission's ongoing proceedings against the two physician plaintiffs, as well as any hypothetical future investigations against unidentified physicians, based on the First Amendment. The district court dismissed, finding, among other things, that Petitioners' efforts to terminate ongoing investigations and proceedings were barred by *Younger* abstention and that Petitioners' challenges to hypothetical future investigations were both constitutionally and prudentially unripe. A unanimous Ninth Circuit panel affirmed on the threshold questions of abstention and justiciability.

The questions presented are:

1. Whether Petitioners' attempt to enjoin ongoing Washington Medical Commission disciplinary proceedings is barred by *Younger* abstention.

2. Whether Petitioners can show an injury-in-fact based on hypothetical future investigations against unidentified physicians for conduct that may or may not occur.

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INTRODUCTION

Petitioners seek only fact-bound error correction where there is no error. The Court should deny certiorari.

In response to complaints from the public about doctors providing dangerous misinformation about COVID-19, the Washington Medical Commission initiated investigations into a handful of doctors, including Petitioners Eggleston and Siler. Both then sued the Commission in separate proceedings. Both also joined this lawsuit, together with: (1) Petitioner Moynihan, a retired doctor who is not under investigation by the Commission; (2) Petitioner Stockton, a former NBA player who claims an interest in hearing alternative theories about COVID-19; and (3) Petitioner Children's Health Defense (CHD), an anti-vaccine non-profit. Relevant here, Petitioners sought to enjoin the Commission from conducting further proceedings involving Drs. Eggleston and Siler, and from unspecified future investigations into other doctors.

The district court dismissed the case on multiple grounds, and the Ninth Circuit unanimously affirmed based on abstention and justiciability. The Court found that *Younger* abstention required dismissal of the attempt to block the ongoing proceedings involving Drs. Eggleston and Siler, and it found that the claim attempting to block future investigations into unspecified doctors was neither constitutionally nor prudentially ripe.

While Petitioners claim that the Ninth Circuit erred in these conclusions, they do not and cannot meaningfully allege that the Ninth Circuit's ruling creates any conflict amongst the lower courts. And the Ninth Circuit's ruling was correct in any event.

Petitioners' primary contention is that the Ninth Circuit should not have abstained because, in their view, there is no important state interest in the underlying investigations or proceedings given their First Amendment objections. But as the Ninth Circuit correctly held, in evaluating *Younger* abstention, courts do not look to the state interest in the specific proceeding challenged, but rather to the state interest in regulating the topic as a whole. Pet App. 14a-15a. Here, the State obviously has a strong interest in regulating the medical profession to protect the public, as courts have uniformly held. *Id.* Moreover, Petitioners' theory would mean that anytime a party sued in federal court to block a state proceeding on First Amendment grounds, the federal court would have to evaluate the merits of the First Amendment claim to assess the State's interest. That would defeat the whole purpose of *Younger* abstention in First Amendment cases, a particularly absurd result given that *Younger* itself involved a First Amendment claim. Pet. App. 15a.

As to Petitioners' other claim, the Ninth Circuit carefully explained that Petitioners could not show constitutional injury sufficient to enjoin the Commission from initiating unspecified future investigations into unspecified doctors based on unspecified conduct. The court also held that this

effort was prudentially unripe because it "involves hypothetical, future prosecutions, largely against unnamed and unknown doctors[,]" engaged in unknown conduct, subject to unknown discipline. Pet. App. 41a.

Not only does the petition fail all of this Court's criteria for granting certiorari, it is also a terrible vehicle to decide the issues it claims to present. Most critically, the Ninth Circuit did not reach the merits of Petitioners' First Amendment claims, so none of those issues would be presented. For the same reason, there is no basis to hold or GVR this case based on pending or recently decided First Amendment cases, such as *Chiles v. Salazar*, No. 24-539, because no First Amendment ruling would alter the abstention and justiciability rulings below. Moreover, Petitioners have waived multiple issues they seek to present here in their briefing below and have generally filed briefing so confusing that the lower courts have struggled to understand it. Pet. App. 44a (Bress, J., concurring) ("The lack of clear delineation between the different plaintiffs and claims has complicated the decisional process.").

In sum, Petitioners neither allege nor establish any confusion in the lower courts about the basis for the Ninth Circuit ruling. Instead, they simply object to the ruling on First Amendment grounds. But the Ninth Circuit decided no First Amendment questions, and if the doctor Petitioners are ever disciplined by the Commission, they can appeal on First Amendment grounds at that time, just as *Younger* contemplates. There is no basis for the Court to grant certiorari.

STATEMENT OF THE CASE

A. The Washington Medical Commission and COVID Misinformation

The Washington Medical Commission (the Commission) regulates physicians to protect patients and assure accountability and public confidence in the practice of medicine. As such, it has authority to investigate "all complaints or reports of unprofessional conduct" by physicians. Wash. Rev. Code § 18.130.050(2). This includes complaints alleging "moral turpitude, dishonesty, or corruption relating to the practice of" medicine, and "[m]isrepresentation or fraud in any aspect of" the practice of medicine. Wash. Rev. Code § 18.130.180(1), (13).

COVID-19 misinformation posed dramatic risks to patients and to public confidence in the medical profession. In 2021, the Federation of State Medical Boards (FSMB) observed "a dramatic increase in the dissemination of COVID-19 vaccine misinformation and disinformation by physicians and other health care professionals[.]" CA9.ER.134-35. As the FSMB explained, "[d]ue to their specialized knowledge and training," physicians "have an ethical and professional responsibility . . . [to] share information that is factual, scientifically grounded, and consensus-driven for the betterment of public health." CA9.ER.222-23 (citation modified). Spreading COVID-19 misinformation "contradicts that responsibility [and] threatens to further erode public trust in the medical profession[.]" CA9.ER.135. Thus, the FSMB explained, physicians "who generate

and spread COVID-19 vaccine misinformation or disinformation are risking disciplinary action by state medical boards[.]" CA9.ER.134.

The Commission subsequently adopted a position statement on COVID-19 misinformation expressing its commitment to regulate COVID-19 treatment and advice "in the same manner as any other disease." Washington Medical Commission, *Covid-19 Misinformation Position Statement*, https://wmc.wa.gov/news/covid-19-misinformation-position-statement (last visited Mar. 27, 2026). Along these lines, treatments and recommendations falling below the "standard of care as established by medical experts, federal authorities, and legitimate medical research" may be subject to disciplinary action. *Id.* The Commission cautioned that medical providers "who generate and spread COVID-19 misinformation, or disinformation, erode the public trust in the medical profession and endanger patients." *Id.*

The Commission has received numerous complaints from the public involving COVID-19 misinformation. CA9.ER.89. But it ultimately pursued charges against just five practitioners, including Drs. Eggleston and Siler. CA9.ER.89-90. In evaluating whether to charge a practitioner accused of spreading COVID-19 misinformation, the Commission only proceeded when two conditions were met: (1) the complained-of misinformation was demonstrably, factually untrue; and (2) the practitioner identified themselves as a licensed medical professional to give their misstatements the imprimatur of medical authority. CA9.ER.89.

As detailed in the district court's opinion, under Washington's Uniform Disciplinary Act (UDA), Wash. Rev. Code § 18.130 *et seq.*, the Commission responds to public complaints. Pet. App. 55a-56a; Wash. Rev. Code § 18.130.080. Each complaint is reviewed by a panel of three Commissioners, who decide whether to initiate an investigation. Pet. App. 56a; Wash. Rev. Code § 18.130.080(2). When the Commission authorizes an investigation, the complaint is assigned to an investigator, who prepares a report. Pet. App. 56a. That report is forwarded to another panel of Commissioners who decide whether to take disciplinary action, including whether to file a Statement of Charges. Pet. App. 56a.

The filing of a Statement of Charges is akin to filing a complaint in court: it begins an adjudicative process governed by the UDA, Washington's Administrative Procedure Act (Washington APA), Wash. Rev. Code § 34.05 *et seq.*, and Washington's Model Procedural Rules for Boards, Wash. Admin. Code § 246-11 *et seq*. *See* Pet. App. 56a; CA9.ER.88; Wash. Admin. Code §§ 246-11-270, -290. Parties may file motions, take discovery, and the like. *See, e.g.*, Wash. Admin. Code §§ 246-11-370, -380. A physician under investigation may request a hearing in front of yet another Commission panel (presided over by a health law judge), at which they can marshal evidence and legal arguments to show they did not engage in unprofessional conduct. Pet. App. 56a; Wash. Admin. Code §§ 246-11-270, -480. If the panel ultimately concludes that the physician violated standards of professional conduct, it may order a wide array of sanctions tailored to the conduct and designed to remedy it. Wash. Rev. Code § 18.130.160.

A physician who disagrees with a panel's order can seek reconsideration from the panel or seek direct judicial review in Washington state court under the Washington APA. Wash. Admin. Code §§ 246-11-560, -580, -600; Wash. Rev. Code § 34.05.510. The state court must grant relief from the disciplinary order if "[t]he order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied[.]" Wash. Rev. Code § 34.05.570(3)(a).

B. The Commission Investigates and Initiates Proceedings Against Drs. Eggleston and Siler

Following public complaints and an investigation, the Commission issued a Statement of Charges against Dr. Eggleston on August 3, 2022. Pet. App. 57a. Dr. Eggleston had publicly and repeatedly minimized deaths from the SARS-CoV-2 virus, incorrectly asserted that PCR tests for a COVID-19 diagnosis are inaccurate, and falsely stated that COVID-19 vaccines and mRNA vaccines are harmful or ineffective and that ivermectin is a safe and effective treatment for COVID-19. Pet. App. 57a. The Commission charged Dr. Eggleston with unprofessional conduct in violation of Wash. Rev. Code § 18.130.180(1), (13), and (21). Pet. App. 5a. A full hearing was originally scheduled for May 2023, though that hearing has been delayed while Dr. Eggleston filed multiple lawsuits in state and federal court attacking the validity of the investigation and proceedings. *Eggleston v. Wash. Med. Comm'n*, No. 23-2-00069-02 (Asotin Cnty. Super. Ct. 2023); *Wilkinson v. Rodgers*, 1:23-cv-03035-TOR (E.D. Wash. 2023). A final disciplinary hearing has

not been held in Dr. Eggleston's case, and the Commission has not imposed any penalties on him. Pet. App. 57a.

The Commission issued a Statement of Charges against Dr. Siler on October 25, 2023, after it received complaints about his public dissemination of COVID-19 misinformation, including false statements that COVID-19 is no more dangerous than the flu, that younger patients with COVID-19 should be treated with hydroxychloroquine and ivermectin, that children cannot spread COVID-19 to adults, and that COVID-19 vaccines were unsafe. Pet. App. 57a; CA9.ER.91. Dr. Siler was charged with unprofessional conduct in violation of Wash. Rev. Code § 18.130.180(1) and (13). Pet. App. 5a-6a. Dr. Siler's Commission proceedings have also been delayed by an ongoing collateral attack on them in state court. *Siler v. Wash. Med. Comm'n*, No. 25-2-08258-5 (Pierce Cnty. Super. Ct. 2025). A final disciplinary hearing has not been held in Dr. Siler's case, and the Commission has not imposed any penalties on him. Pet. App. 57a.

The third doctor-appellant, Dr. Daniel Moynihan, is not subject to any Commission investigation or disciplinary proceedings. Pet. App. 6a; CA9.ER.92.

C. Appellants File Lawsuits to Halt the Commission's Ongoing Proceedings Involving Them

In 2023, Dr. Eggleston filed his first federal lawsuit seeking to halt the Commission's ongoing investigation and proceedings involving

him. *Wilkinson v. Rodgers*, No. 1:23-cv-3035-TOR, 2023 WL 2562387 (E.D. Wash. Mar. 17, 2023). In July 2023, the district court dismissed Dr. Eggleston's lawsuit, with prejudice, on *Younger* abstention grounds. *Id.* at *2-3. Dr. Eggleston did not appeal.

Instead, nine months later, he filed this substantively identical lawsuit—this time joined by Drs. Siler and Moynihan, non-profit organization Children's Health Defense (CHD), and former Utah Jazz point guard John Stockton—seeking the same relief the district court had already denied. *See* Pet. App. 4a-7a (describing plaintiffs and claims).

Their complaint brought four causes of action on behalf of all plaintiffs. Pet. App. 7a. All plaintiffs requested (1) a declaratory judgment that future investigations, prosecutions, and sanctioning of physicians for COVID-19-related speech violates the First Amendment (Claim I); (2) a declaratory judgment that current investigations, prosecutions, and sanctioning of physicians, including Drs. Eggleston and Siler, for COVID-19-related speech violates the First Amendment (Claim II); (3) a declaratory judgment that statutes authorizing the Commission's investigations and proceedings are facially overbroad or vague (Claim III); and (4) a declaratory judgment that the Commission's interpretation of law requiring exhaustion and compliance with the Washington APA violates their due process rights (Claim IV). Pet. App. 7a.

D. District Court Proceedings

Petitioners sought a preliminary injunction. Pet. App. 66a. In response, respondents moved to dismiss on numerous grounds, including

constitutional ripeness, prudential ripeness, *Younger* abstention, and Petitioners' failure to plead any plausible claims for relief. Pet. App. 58a-67a. The district court granted respondents' motion and dismissed the complaint with prejudice on several threshold justiciability issues. *Id.*

On *Younger* abstention, the court concluded that it was required to abstain because "caselaw directly on point[] . . . make[s] plain" that medical board proceedings meet all the elements for *Younger* abstention because "active state medical board investigations and hearings are ongoing state judicial proceedings; the regulation of medical practice is an important state issue; and federal constitutional challenges to medical board determinations may be raised on appeal in state court." Pet. App. 62a. The court further noted it had "already ruled that Dr. Eggleston's effort to terminate the Commission's investigation of him" was precluded under *Younger* and thus he was "collaterally estopped from arguing otherwise[.]" Pet. App. 63a.

On constitutional ripeness, the court explained that Petitioners "fail[ed] to allege a cognizable injury with concreteness and particularity." Pet. App. 60a. None of the physician plaintiffs had actually "been sanctioned for their speech by the Commission[,]" nor did any plaintiff concretely allege that their speech had actually been chilled or that "they are impeded from otherwise accessing" alternative narratives about COVID-19 by the Commission's ongoing investigations. Pet. App. 60a-61a.

The court also held that the Petitioners' claims failed on prudential ripeness grounds and on the merits. Pet. App. 61a, 64a-66a.

E. Ninth Circuit Opinion

The Ninth Circuit unanimously affirmed the district court's decision on abstention and justiciability grounds on Claims I and II, the only claims on which Petitioners seek review here. *See* Pet. 9 n.6 ("This Petition is limited to the First Amendment issues raised in the first two claims."). The Ninth Circuit did not address the merits of either of these claims because it lacked jurisdiction to do so. Pet. App. 2a (majority opinion); 44a (Bress, J., concurring in part and concurring in judgment).[1]

1. Claim II: current Commission proceedings

As to Claim II, which sought to halt *current* Commission proceedings, the Ninth Circuit unanimously held the district court properly abstained under *Younger*. Pet. App. 12a-21a, 45a-49a. The court's abstention analysis looked at four factors drawn from this Court's precedent and found that this case met all four: "*Younger* abstention is appropriate only when the state proceedings: (1) are ongoing, (2) are quasi-criminal enforcement actions . . ., (3) implicate an important state interest, and (4) allow

[1] In his concurring opinion, Judge Bress clarified that, with respect to Dr. Moynihan only, he would have reached the merits of Claims III and IV and dismissed them on the merits. Pet. App. 48a. Claims III and IV are not at issue here. Pet. 9 n.6.

litigants to raise federal challenges." Pet. App. 11a (quoting *Yelp Inc. v. Paxton*, 137 F.4th 944, 950 (9th Cir. 2025)).

The court concluded that the first two *Younger* factors were met because Claim II "clearly involves ongoing state civil proceedings" because it seeks to enjoin disciplinary proceedings against Dr. Eggleston, Dr. Siler, and any Doe Doctors, which "qualify as quasi-criminal state enforcement proceedings within the meaning of *Younger*." Pet. App. 13a-14a (citing *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 433-35 (1982)).

The court then held that the third *Younger* factor was met because "the State of Washinton's interest in regulating the practice of medicine to ensure that patients receive quality health care" is an "important state interest" implicated by the disciplinary proceedings. Pet. App. 14a. The court rejected Petitioners' argument that the relevant state interest under *Younger* was an interest in "regulating speech" on two bases. Pet. App. 14a-15a. First, it found Petitioners had waived the argument by not making it below. Pet. App. 14a. Second, it determined the argument was unavailing in any case because "such a cribbed view of the interest at issue would necessarily foreclose *Younger* abstention in all cases involving an alleged deprivation of free-speech rights." Pet. App. 14a-15a. As the court explained, the proper inquiry under the third *Younger* prong is "not whether the state has an interest in these specific disciplinary decisions[,]" but rather "whether it has a legitimate interest in medical disciplinary proceedings generally." Pet. App. 15a.

Finally, the court concluded that the fourth *Younger* factor applied because the disciplinary proceedings provided an avenue for judicial review because any constitutional challenges to a disciplinary order could be heard in state court. Pet. App. 15a-16a (citing Wash. Rev. Code § 34.05.570(3)(a)).

The court observed that Claim II expressly sought injunctive relief against ongoing state proceedings and then rejected Petitioners' arguments that one or more exceptions to *Younger* applied. Pet. App. 16a-21a. Specifically, the court held that "a mere allegation of bad faith or unconstitutionality is not a get-out-of-abstention-free card." Pet. App. 17a. The court further concluded that "there is no free-speech exception to *Younger* abstention." Pet. App. 20a. (citing *Yelp Inc.*, 137 F.4th at 953 ("Many cases applying *Younger*—and *Younger* itself—abstained from enjoining state court proceedings in the face of arguments that applying a state statute would be unconstitutional, including under the First Amendment." (collecting cases))).

2. Claim I: future Commission proceedings

The Ninth Circuit also unanimously affirmed the district court's dismissal of Claim I, which seeks to halt *future* Commission proceedings. Pet. App. 21a-42a, 45a-49a. As to Drs. Eggleston and Siler, the court concluded that Claim I was barred by *Younger* abstention, noting "[it] takes little imagination to see that such an order would have the practical effect of enjoining Dr. Eggleston's and Dr. Siler's own ongoing state proceedings." Pet. App. 21a-22a.

As to Dr. Moynihan, Mr. Stockton, and CHD, the Ninth Circuit affirmed the dismissal of Claim I based on their failure to demonstrate that their claim seeking to enjoin unspecified future Commission proceedings was constitutionally ripe. Pet. App. 24a-38a, 45a-49a.

The court rejected Dr. Moynihan's argument that his speech was chilled based on a fear that he would be investigated and disciplined by the Commission. Pet. App. 27a-32a. First, the court noted that Dr. Moynihan specifically raised this argument for Claims II and III but did not make this argument as to Claim I until oral argument. Pet. App. 28a. On that basis, the court determined he had waived it. Pet. App. 27a-28a. Moreover, the court found these arguments unconvincing, noting that Petitioners' "barebones briefing" on the pre-enforcement standing issue, which "barely mention[ed] th[e pre-enforcement standing] rubric and d[id] not even attempt to explain how the purported chilling injury to Dr. Moynihan satisfie[d] it" came "dangerously close to waiving the issue." Pet. App. 29a. In short, Dr. Moynihan "failed to bear [his] burden to show the requisite injury-in-fact to confer subject-matter jurisdiction" based on this theory. *Id*. Judge Bress agreed, observing that Dr. Moynihan's pre-enforcement allegations were "not sufficiently presented" and that the court's attempt to analyze this issue was "complicated by the plaintiffs' presentation of the issues, which involve overlapping claims by various plaintiffs." Pet. App. 46a.

The court then unanimously rejected Petitioners' theory that Dr. Moynihan, Mr. Stockton, and CHD each had listener standing to enjoin future Commission proceedings based on their asserted right

to hear information from physicians with dissenting views about COVID-19. Pet. App. 32a-38a, 48a-49a. The court concluded this theory was "too speculative and non-concrete to satisfy the injury-in-fact requirement[,]" as it asserted "an injury to [Petitioners'] right to listen to discourse about COVID-19 from hypothetical future speakers" who "may or may not speak, who may or may not be disciplined, who may or may not have their speech chilled, and who may or may not be connected with the Plaintiffs." Pet. App. 38a; *see also* Pet. App. 48a (Bress, J., concurring) (agreeing there is no standing because the "claims are too hypothetical, given that they concern unidentified doctors and unidentified speech").

Specifically, the court held that Mr. Stockton's "avid interest in, and affection for, Dr. Eggleston and his work" by itself was insufficient to establish standing. Pet. App. 34a. The court noted that accepting Petitioners' theory "would seemingly give any listener who has an interest in a speaker's work standing to challenge laws that purportedly restrict the speaker's speech[,]" which would be a "startlingly broad" theory of injury. Pet. App. 34a (quoting *Murthy v. Missouri*, 603 U.S. 43, 75 (2024)).

Moreover, the court held that CHD's professed injury based on its right to hear from Dr. Moynihan "failed to show a concrete injury to Dr. Moynihan's right to speak" and, in any event, provided "no details" showing a connection to the speaker or harm that would result from his alleged censorship. Pet. App. 35a-36a.

The court also rejected Petitioners' argument that all relevant plaintiffs had standing to enjoin future Commission proceedings based on "an interest in consuming information about COVID-19," relying on this Court's express rejection of "the argument that it is sufficient for standing to 'claim an interest in' another's speech." Pet. App. 37a (quoting *Murthy*, 603 U.S. at 74). As the court noted, Petitioners' "sweeping theory that an interest in consuming content can form the basis for an injury-in-fact . . . would water down the injury-in-fact requirement in First Amendment cases beyond recognition." Pet. App. 37a.

Finally, the court held that Claim I as asserted by Dr. Moynihan, Mr. Stockton, and CHD was properly dismissed for the additional reason that the claims were not prudentially ripe. Pet. App. 38a-42a.[2] The court pointed to "strong indicators that the claim is not ripe," including that it "involves hypothetical, future prosecutions, largely against unnamed and unknown doctors" engaged in unknown speech and subject to unknown discipline. Pet. App. 41a. Accordingly, "by its nature, Claim I involved future proceedings that have not yet concluded—or even begun." Pet. App. 42a. Under those circumstances, the Ninth Circuit noted that "further factual development would not just be helpful; it would be necessary" given the lack of specificity in the complaint. Pet. App. 41a.

[2] Judge Bress's concurrence clarified that he was not reaching the issue of prudential ripeness, as there were "other valid bases for dismissal." Pet. App. 48a n.1.

3. Pre-petition proceedings before this court

While this case was being briefed in the lower courts, this Court twice denied an "Application for Injunction" filed by Petitioners asking the Court to issue an injunction in their favor or, alternatively, to stay all proceedings and grant certiorari. *Stockton v. Ferguson*, No. 24A440, 2024 WL 4844201 (U.S. Nov. 20, 2024); *Stockton v. Ferguson*, 145 S. Ct. 1039 (2025). The Ninth Circuit, too, rejected their request for an injunction while their appeal was pending. Pet. App. 50a-51a.

Petitioners later filed this petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION

A. The Decision Below Creates No Conflict with this Court's Precedent or Among Circuit Courts on *Younger* Abstention

The Ninth Circuit correctly held that abstention was required as to all Petitioners under Claim II, which seeks to enjoin current Commission proceedings. With respect to Claim I, which seeks to enjoin future proceedings, the court also held that abstention was required as to the physician Petitioners currently in Commission proceedings. Pet. App. 13a-24a. This ruling creates no conflict with this Court's decisions or other circuit courts. Petitioners' disagreement with the Ninth Circuit's conclusions amounts to no more than a claim that the lower court misapplied a properly stated rule of law, which is no basis for granting certiorari. Rule 10.

The *Younger* abstention doctrine requires federal courts to abstain from hearing federal claims for relief from state civil enforcement proceedings. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (citation omitted). These principles reflect comity and federalism interests, ensuring that federal courts do not interfere with ongoing state proceedings. *See Middlesex*, 457 U.S. at 431 (explaining that *Younger* "and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances").

In determining whether a federal court should abstain from interfering in a state civil enforcement proceeding, this Court looks to whether the state proceeding in question (1) "constitute[s] an ongoing state judicial proceeding;" (2) "implicate[s] important state interests;" and (3) provides "an adequate opportunity . . . to raise constitutional challenges." *Middlesex*, 457 U.S. at 432. Whether the state proceeding implicates important state interests does not depend on the specific outcome in a particular case, but instead on whether the state proceeding at issue falls within a general class of state enforcement actions in which the state has a substantial interest. *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans* (*NOPSI*), 491 U.S. 350, 365 (1989), *abrogated on other grounds by Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711 (1996).

The petition barely even addresses the Ninth Circuit's thorough *Younger* analysis. To the extent it does, Petitioners apparently concede the correctness of the lower court's general analytical framework, its conclusions that Claims I and II (at least with respect

to certain plaintiffs) involve ongoing, quasi-criminal enforcement actions to which litigants can raise federal constitutional challenges in front of a state court, and that neither claim falls under any exception to *Younger*. *Compare* Pet. 14-17 *with* Pet. App. 13a-24a. Instead, Petitioners narrowly focus on whether the lower court appropriately defined the "state interest" implicated by the Commission proceedings, and they argue that a recent Washington state appellate court decision should alter the *Younger* analysis. Pet. 14-17. Neither argument is correct as a matter of law and neither supports granting certiorari here.

Petitioners argue the Ninth Circuit erred by defining the state interest implicated by the Commission proceedings as an "interest in regulating the practice of medicine." Pet. 15-17; Pet. App. 14a.[3] But the Ninth Circuit's analysis was squarely in line with what this Court has said:

> [W]hen we inquire into the substantiality of the State's interest in its proceedings *we do not look narrowly to its interest in the outcome of the particular case*. . . . Rather, *what we look to is the importance of the generic proceedings to the State*. In *Younger*, for example, we did not consult California's interest in prohibiting John Harris from distributing

[3] Petitioners also complain about the Ninth Circuit's conclusion that they waived this argument, Pet. 14-15 n.7, but, despite that (reasonable) waiver finding, the court proceeded to consider—and reject—their argument. Pet. App. 14a-15a.

> handbills, but rather its interest in 'carrying out the important and necessary task' of enforcing its criminal laws.

NOPSI, 491 U.S. at 365 (emphases added) (quoting *Younger v. Harris*, 401 U.S. 37, 51-52 (1971)); *see also id.* (defining the relevant state interest as "regulating intrastate retail rates" of utilities); *Middlesex*, 457 U.S. at 434 (holding attorney disciplinary proceedings implicated important state interest "in maintaining and assuring the professional conduct of the attorneys it licenses"). The Ninth Circuit's focus on whether the state "has a legitimate interest in medical disciplinary proceedings generally" rather than "whether the state has an interest in these specific disciplinary decisions[,]" Pet. App. 15a, faithfully applied this Court's *Younger* jurisprudence.

By contrast, Petitioners cite *no decision* by this Court (or any other) to support their "cribbed view of the interest at issue[.]" Pet. App. 14a. *Contra* Pet. 14-17. The only case they cite in support of their novel take on *Younger*—*Harper v. Public Service Commission of West Virginia*, 396 F.3d 348 (4th Cir. 2005)—undermines their position. *Contra* Pet. 17. There, the Fourth Circuit specifically pointed to "the regulation and licensing of health care professionals[,]" effectively the same interest described *in this case*, as an example of a potentially "important interest" that could rightly "bear on the abstention decision." *Harper*, 396 F.3d at 353 (citing examples of abstention applied to disciplinary proceedings of medical professionals). Countless lower

courts have similarly concluded that the general regulation of medical professionals is an important state interest under *Younger*.[4]

Relying on their flawed premise that the potential outcome of a particular case cabins the state interest analysis under *Younger*, Petitioners argue that the Washington Court of Appeals' decision in *Wilkinson v. Washington Medical Commission* should dictate the *Younger* analysis here (and require this Court's intervention). *See* Pet. 14-16 (discussing *Wilkinson v. Wash. Med. Comm'n*, 576 P.3d 1191 (Wash. Ct. App. 2025)). Not so. If anything, the *Wilkinson* case bolsters the aptness of *Younger* abstention here, as it demonstrates that Washington state courts are capable of adjudicating constitutional issues related to medical licensing proceedings. *See Middlesex*, 457 U.S. at 437 & n.16 (observing that "an adequate state forum for all relevant issues" supported *Younger* abstention).[5]

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[4] *See, e.g.*, *Wassef v. Tibben*, 68 F.4th 1083, 1088 (8th Cir. 2023); *Okorie v. Miss. Bd. of Med. Licensure*, 739 F. App'x 301, 302 (5th Cir. 2018); *Buckwalter v. Nev. Bd. of Med. Exam'rs*, 678 F.3d 737, 747 (9th Cir. 2012); *Zahl v. Harper*, 282 F.3d 204, 209 (3d Cir. 2002); *Amanatullah v. Colo. Bd. of Med. Exam'rs*, 187 F.3d 1160, 1164-65 (10th Cir. 1999); *Doe v. State of Conn., Dep't of Health Servs.*, 75 F.3d 81, 85 (2d Cir. 1996); *Bettencourt v. Bd. of Registration In Med. of Commonwealth of Mass.*, 904 F.2d 772, 778 (1st Cir. 1990); *Watts v. Burkhart*, 854 F.2d 839, 846-47 (6th Cir. 1988). In the face of this remarkable harmony among the Circuits, Petitioners' claim of a conflict is risible, all the more so because they cite *no* contrary authority.

[5] Petitioners make matters worse by misrepresenting *Wilkinson*'s holding. Pet. 11. In *Wilkinson*, the Washington Court of Appeals rejected the plaintiff's facial challenges to Wash. Rev. Code § 18.130.180—the same statute challenged here—but

Petitioners' further assertion that "*Wilkinson* eliminates the very justification of the Ninth Circuit's abstention holding," Pet. 16, is also wrong. The Ninth Circuit's abstention analysis did not weigh the merits of Claims I and II *at all*. *See* Pet. App. 2a ("We appreciate that the Plaintiffs vigorously disagree with [the Commission's] practices and actions. For several reasons, though, we cannot reach the merits of the Plaintiffs' constitutional challenges.").[6] Nor does the outcome of one disciplinary proceeding "eliminate" the state's interest in regulating the medical professions generally.

Indeed, as the Ninth Circuit recognized below, Petitioners' arguments here "would necessarily foreclose *Younger* abstention in all cases involving an alleged deprivation of free-speech rights." Pet. App. 14a-15a. This is because federal courts would always have to examine the merits of a plaintiff's First Amendment claim to determine whether the

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found that the law was unconstitutional as applied to the plaintiff. *Wilkinson*, 576 P.3d at 1210. The court did not hold that any Commission "policy" violated the First Amendment. *See id.* at 1212 ("The statement warns Washington physicians that [the Commission] will hold them to the standard of care when recommending treatment to patients but does not prohibit physicians from publicly declaring their disagreement with official COVID-19 policy statements.").

[6] Petitioners fail to mention that the plaintiff in *Wilkinson* previously brought a similar lawsuit to this one, which was also dismissed on *Younger* grounds. *Wilkinson v. Rodgers*, No. 1:23-cv-3035-TOR, 2023 WL 4410936, at *2 (E.D. Wash. July 7, 2023). Dr. Eggleston was a plaintiff in that suit too, which is why the district court determined his claim in this case was collaterally estopped to boot. Pet. App. 63a.

state interests at issue were sufficiently important to warrant abstention, which would entirely defeat the purpose of abstention. Pet. App. 14a-15a. This position is plainly inconsistent with this Court's *Younger* jurisprudence, including *Younger* itself. *See, e.g.*, *Middlesex*, 457 U.S. at 429, 437 (upholding federal court abstention on First Amendment challenge to lawyer disciplinary rules); *Younger*, 401 U.S. at 50-53 (rejecting argument that a chilling effect of speech can, alone, be sufficient to justify federal intervention into a state proceeding); *see also* Pet. App. 20a ("free-speech rights are treated like other constitutional rights in the *Younger* analysis").

The Ninth Circuit faithfully applied this Court's *Younger* precedent and created no conflict with interpretations of *Younger* by other lower courts. Petitioners provide no persuasive reason to grant certiorari.

B. The Decision Below Creates No Conflict with this Court's Precedent or Among Circuit Courts on Ripeness and Standing

The Ninth Circuit concluded that Petitioners Moynihan, Stockton, and CHD lacked constitutionally ripe claims because they failed to allege facts demonstrating any injury under this Court's well-established precedent. Pet. App. 24a-38a. Petitioners disagree. But their arguments boil down to assertions that the Ninth Circuit correctly stated the legal principles established by this Court and simply erred in applying them. Their invitation to engage in fact-bound error correction is no basis for certiorari.

1. Dr. Moynihan

With respect to Dr. Moynihan, the Ninth Circuit held two things. First, it held that he waived a "chilling effect" argument as to the future prosecutions claim (Claim I). Second, it concluded that even where he alleged chill with respect to the current prosecutions claim (Claim II), his "arguments do not persuade" because Petitioners' brief "barely mentions" the standard for pre-enforcement standing "and does not even attempt to explain how the purported chilling injury to Dr. Moynihan satisfies it." Pet. App. 28a-29a. In seeking certiorari, Petitioners merely ask this Court to re-apply the law to the facts or re-weigh the facts weighed by the lower courts. This does not merit certiorari.

As an initial matter, the Ninth Circuit's conclusion that Dr. Moynihan waived his chilling argument with respect to Claim I is immaterial because even though the court found waiver, it still reviewed his allegations of chill with respect to Claim II and found them insufficient to demonstrate standing. Pet. App. 29a-31a. In other words, even if he had not waived his chilling argument with respect to Claim I, he still would have lost. This argument is doubly unavailing because the Ninth Circuit also held that Petitioners' Claim I was prudentially unripe, Pet. App. 38a-42a, a holding that Petitioners do not meaningfully challenge in their petition. *See* Rule 14.1 ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court.").

Moreover, second guessing the Ninth Circuit's accurate conclusion that Dr. Moynihan waived this

argument as to one of his claims is not a basis for granting certiorari. Dr. Moynihan's petition does nothing more than disagree with how the Ninth Circuit interpreted the facts and asks this Court to engage in error correction regarding the sufficiency of his briefing. Pet. 25-26. Dr. Moynihan does not contend the Ninth Circuit misstated the law of waiver, created a circuit split, or decided a novel question of law that this Court should answer; he merely contends that the Ninth Circuit's finding of waiver "is contradicted by the record[.]" Pet. 25. But there is no reason to grant certiorari "when the asserted error consists of [allegedly] erroneous factual findings[.]" Rule 10.

This is all the more so because the Ninth Circuit's finding that Dr. Moynihan did not argue chill with respect to future prosecutions is correct. In Petitioners' opening brief, their arguments regarding Dr. Moynihan's allegedly chilled speech explicitly left out Claim I related to future prosecutions: their arguments came in a section headed "Appellant Moynihan has Standing on the Second and Third Claims[.]" *Stockton v. Ferguson,* No. 24-3777, 2024 WL 6466875, at *40 (9th Cir. Aug. 28, 2024); *see also id.* at *40-41("[T]he clear and specific facts alleged in the Complaint plus the facts set out in the declaration of the parties establish the requisite injury-in-fact . . . which will be remedied by the Court's granting of the relief requested in the preliminary injunction motion and in this appeal *on the latter three claims in the Complaint*." (Emphasis added)). Instead, Petitioners' opening brief only argued a theory of listener standing with respect to Claim I. *Id.* at *41 (section heading arguing that all Petitioners had "demonstrated

standing on the right to hear information asserted *in the first two claims*" (emphasis added) (capitalization omitted)). In finding waiver, the Ninth Circuit simply held Petitioners to their own arguments. Petitioners may now want a mulligan, but that does not mean the Ninth Circuit erred. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 38 (1989) ("We decline to address this argument because respondent failed to raise it below and because the question it poses has not been adequately briefed and argued.").

Certiorari is also not warranted to review the Ninth Circuit's determination that Dr. Moynihan lacks standing with respect to Claim I because he failed to adequately allege pre-enforcement standing. Here again, Petitioners do not claim that the Ninth Circuit misstated the law or otherwise committed legal error requiring this Court's review. They merely claim the Ninth Circuit made "factual errors." Pet. 23; *see also* Pet. 21 ("The Ninth Circuit ignored pleaded and sworn facts[.]" (some capitalization omitted)).

And even this is inaccurate. As the Ninth Circuit found, Petitioners' briefing below "barely mention[ed]" this Court's test for pre-enforcement standing "and d[id] not even attempt to explain how the purported chilling injury to Dr. Moynihan satisfies it." Pet. App. 29a. Indeed, Dr. Moynihan's argument on pre-enforcement standing in his opening brief was limited to two conclusory sentences that never even cited the relevant standard. *Stockton*, 2024 WL 6466875, at *40; *see also* Pet. App. 29a ("Such barebones briefing, which requires the court to perform all of the analytical heavy lifting and fill in the blanks left empty by the appellant, comes dangerously close to waiving the issue.");

Pet. App. 46a (Bress, J., concurring) ("A more particularized pre-enforcement challenge may lie in this area, but the one before us is not sufficiently presented[.]").

His petition for certiorari is really the first time Dr. Moynihan attempts to explain the basis for pre-enforcement standing. And even now, he offers little more than "[a]llegations of a subjective chill [that] are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm[.]" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 418 (2013) (first alteration in original) (quoting *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972)). Under this Court's precedent, he must allege "[1] an intention to engage in a course of conduct arguably affected with a constitutional interest, but [2] proscribed by a statute, and [3] there exists a credible threat of prosecution thereunder." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbit v. Farm Workers*, 442 U.S. 289, 298 (1979)). He cannot make this showing.

First, as the Ninth Circuit found, the operative complaint "contains no details about Dr. Moynihan's speech except for it falling outside the 'mainstream COVID narrative.'" Pet. App. 30a. In his petition, Dr. Moynihan tries to add some meat to the bones, but the Ninth Circuit correctly found that his statements of belief fail to satisfy the first prong of pre-enforcement standing because he cannot allege with any specificity what he "wishes to say on those topics, whom he wants to speak to, and under what circumstances he intends to speak." Pet. App. 30a-31a.

Second, Dr. Moynihan cannot show a credible threat of prosecution. Importantly, the Washington Medical Commission is not a roving enforcement body with authority to go after any physician it wants. Instead, it can only investigate "complaints or reports of unprofessional conduct" from members of the public. Wash. Rev. Code § 18.130.050(2). Because the Commission can only investigate if it receives a complaint or report from a third party, his assertion that "[h]e is on the Commission's radar screen[,]" Pet. 22, and thus more likely to be disciplined, makes no sense.

Making matters worse for Dr. Moynihan, he was indeed subject to a complaint in 2021 "from the wife of a patient [to] who[m] [he] had given informed consent about the Covid vaccines," as he describes it, but the Commission *dismissed* the complaint. CA9.ER.128. Given that the only complaint against him—nearly five years ago—resulted in the Commission taking no action, he cannot credibly articulate any "actual and well-founded fear that the law will be enforced against [hi]m," *Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988), nor that any injury is "certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List*, 573 U.S. at 158 (citation modified).

Ultimately, Dr. Moynihan offers nothing more than bare assertions of subjective chill based on his misunderstanding of how the Commission operates. The Ninth Circuit rejected his arguments—such as they were—under this Court's well-established standing principles. Although Petitioners disagree with how the Ninth Circuit applied the law to the facts

of this case, they cannot show the Ninth Circuit erred. More to the point, they cannot show that second-guessing the Ninth Circuit's conclusions about the adequacy of the Petitioners' arguments below or simply re-weighing the facts under the same legal tests applied below merit this Court's intervention.

2. Listener Standing

Petitioners' arguments about listener standing suffer the same essential flaws: they merely take issue with how the lower courts applied the facts to the law, without identifying any conflicts with this Court's precedent or precedent of other courts, or unsettled important issues of federal law that would merit a grant of certiorari. And they fail to show error in any event. *Contra* Pet. 27-29.

The Ninth Circuit applied this Court's decisions in *Murthy v. Missouri*, *Kleindienst v. Mandel*, and *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* to conclude that Petitioners had failed to adequately allege a "concrete, specific connection" to any speaker whose speech had actually been chilled. *See Murthy*, 603 U.S. at 75; *see also* Pet. App. 32a-38a. As the Ninth Circuit put it, Petitioner Stockton demonstrated nothing more than "an avid interest in, and affection for, Dr. Eggleston and his work," and thus his "theory of injury would seemingly give any listener who has an interest in a speaker's work standing to challenge laws that purportedly restrict the speaker's speech." Pet. App. 33a-34a. "Furthermore," the Ninth Circuit explained, even if Mr. Stockton could establish a sufficient connection with Dr. Eggleston, "it would still not help establish a sufficient injury-in-fact for purposes of Claim I"

relating to future investigations of hypothetical doctors. Pet. App. 34a. And "any purported injury to Stockton from the regulation of . . . other doctors is, as the district court said, 'based on speculation and conjecture.'" *Id.*; *see also* Pet. App. 48a (Bress, J., concurring) ("[A]s to Claim 1, these plaintiffs lack standing because their claims are too hypothetical, given that they concern unidentified doctors and unidentified speech.").

In his petition, Mr. Stockton offers nothing more than a conclusory, one-paragraph argument that his "connection" with Dr. Eggleston "is stronger" than that between the professors and their invited speaker in *Mandel*. This is insufficient. However much Mr. Stockton might be interested in reading what Dr. Eggleston might write, his interest in future, hypothetical speech is certainly no greater than the interests of the "scientists, pundits, and activists" whose claims this Court rejected in *Murthy*. 603 U.S. at 75; *see also Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 386 (2024) ("[G]eneral legal, moral, ideological, and policy concerns do not suffice on their own to confer Article III standing to sue in federal court.").

With respect to the other Petitioners, the Ninth Circuit rejected their "sweeping theory that an interest in consuming content can form the basis for an injury-in-fact," because "[a]ccepting that argument would water down the injury-in-fact requirement in First Amendment cases beyond recognition[,]" and "it would be at odds with the thrust of *Murthy*, which rejected a similarly broad theory of listener standing." Pet. App. 37a (citing *Murthy*, 603 U.S. at 75).

Petitioners' primary response seems to be that Dr. Moynihan is a member of Petitioner CHD, and therefore CHD has an interest in his speech. Pet. 28. But even leaving aside that Dr. Moynihan has not credibly alleged chilled speech on his own behalf, Petitioners make no effort to explain how the Ninth Circuit supposedly erred as a legal matter in finding that CHD failed to allege a concrete connection between itself and any speaker subject to hypothetical future discipline. Because they have not identified a concrete, identifiable harm, their claims are not constitutionally ripe. There is no basis for certiorari here.

C. This Case Is a Poor Vehicle to Address the Merits Issues the Petition Attempts to Raise

This case is also a remarkably poor vehicle to address the issues Petitioners try to raise. Most notably, it does not squarely present the merits of Petitioners' First Amendment claims. Petitioners make no real attempt to explain the suitability of this case for certiorari, instead spending the bulk of their argument disagreeing with the lower courts' factual findings on justiciability issues and complaining about arguments and issues the Ninth Circuit never reached. This omission is telling and elides several glaring ways in which this case presents a poor vehicle for review on the merits.

First, Petitioners ask this Court to weigh in on merits issues that the Ninth Circuit never reached and that would require this Court to assume hypothetical facts. Even if the Court determined that *Younger* did not apply and that Petitioners'

hypothetical injuries were sufficient to establish Article III standing, those claims still lack factual context. Neither Claim I nor Claim II involves a completed disciplinary proceeding in which any penalty has issued. Thus, the Court would have to consider whether the Commission's hypothetical application of Wash. Rev. Code § 18.130.180[7] in unfinished disciplinary proceedings—or those that have not even begun—against unknown doctors for unspecified speech is lawful. But the First Amendment analysis for the as-applied challenges raised by the two claims in the petition should be heavily fact-dependent. It makes no sense for this Court to upend its abstention and justiciability jurisprudence for the sake of assessing those as-applied claims in a vacuum, particularly where the Washington state courts are well able to do so on a developed record.

Second, Petitioners' claims and arguments are not clearly presented on the record. As Judge Bress

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[7] In a bit of revisionist history, the petition repeatedly states that Petitioners are challenging the Commission's "Covid policy statement" or "Covid enforcement policy." Pet. 19-20, 25-26. But Petitioners specifically disavowed this argument before the district court and Ninth Circuit. *See, e.g.*, Corrected Plaintiffs' Reply on Their Motion for a Preliminary Injunction and Response to Defendants' Motion to Dismiss at 17, *Stockton v. Ferguson*, No. 2:24-cv-00071-TOR (E.D. Wash. May 9, 2024), ECF No. 21 ("The statutory justification for the unconstitutional acts is RCW 18.130.180(1) and (13). . . . Nowhere in the FAC is it asserted that the Commission's position [statement] is unconstitutional."); *Stockton*, 2024 WL 6466875, at *56 (distinguishing this case from "a direct constitutional challenge to the Commission's policy statement").

noted in his concurrence below, "[p]art of the difficulty in this case is that the plaintiffs are not all similarly situated, yet all plaintiffs are purporting to bring roughly the same claims. The lack of clear delineation between the different plaintiffs and claims has complicated the decisional process." Pet. App. 44a. Even setting aside the straightforward justiciability issues these claims present, any merits assessment by this Court would be hindered by the same difficulties noted by Judge Bress. Untangling a thorny record below is not this Court's usual role. The petition's various requests for this Court to review arguments that the Ninth Circuit found waived or inadequately supported amply demonstrates the challenges this Court would need to navigate to consider the issues the petition is urging. *See, e.g.*, Pet. 14 n.7, 21-22.

Third, and relatedly, Petitioners' attempt to seek a preliminary injunction through their petition is improper and further illustrates the practical issues described above. *See* Pet. 20 (requesting the Court "order the lower courts to issue a preliminary injunction"); *contra* Rule 21(1). Again, Petitioners are asking this Court to perform an analysis in the first instance that the Ninth Circuit did not do—because it had no need to—in its ultimate opinion. This request is symptomatic of a greater ailment: Petitioners' continuing quest to short-circuit justiciability requirements and request advisory rulings on hypothetical scenarios. That is no basis for certiorari.

Finally, that *Chiles v. Salazar*, No. 24-539, was recently decided and *Kory v. Bonta*, No. 24-932, remains pending does not give this Court any additional reason to grant certiorari here or to hold

this petition pending the outcome of either case. Neither *Chiles* nor a hypothetical ruling in *Kory* changes the outcome of this case because this case was resolved on threshold abstention and justiciability grounds. Broad gestures towards professional speech are not enough to create an issue of national importance or transform what issues were actually dispositive here.

The Court should decline Petitioners' invitation to address issues not presented by the facts of this case and the Ninth Circuit's analysis.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

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April 3, 2026