No. 25A322

**In The Supreme Court of the United States**

WE THE PATRIOTS USA, INC., JANE DOE, ON HER OWN BEHALF AND ON BEHALF OF CHILD 1;

*Applicants,*

v.

VENTURA UNIFIED SCHOOL DISTRICT; ANTONIO CASTRO, in his official capacity only; ERIK NASARENKO, in his official capacity only; SARA BRUCKER, in her official capacity only; TONY THURMOND, in his official capacity only; ERICA PAN, in her official capacity only

*Respondents*

To the Honorable Elena Kagan,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit

# OPPOSITION OF RESPONDENTS VENTURA UNIFIED SCHOOL DISTRICT AND ANTONIO CASTRO TO EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

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## PARTIES TO THE PROCEEDING

The Emergency Application for Injunction Pending Appeal ("Application") list of parties is correct. (Appl. ii.)

## DECISIONS BELOW

The United States Court of Appeals for the Ninth Circuit's decision denying an injunction pending appeal is entitled We The Patriots USA, Inc. et al. v. Ventura Unified School District, et al., No. 25-05239 (C.A.9 Sept. 9, 2025). (Applicants' Appendix ("App. Appx.") 2.) The United States District Court for the Central District of California's decision denying the Applicants' renewed emergency application for a temporary restraining order ("TRO") and a preliminary injunction is entitled We The Patriots USA, Inc. et al. v. Ventura Unified School District, et al., No. 2:25-cv-04659-AB-JC (C.D. Cal. Aug. 15, 2025). (App. Appx. 4-6.) The district court's order denying the Applicants' emergency application for an injunction pending appeal. (App. Appx. 8-9.) The district court's order granting Respondent Pan's motion to stay the underlying case. (App. Appx. 11-16.)

## JURISDICTION

### 1. District Court Jurisdiction

The district court had federal question jurisdiction under 28 U.S.C. § 1331.

### 2. Ninth Circuit Jurisdiction Is Lacking

Applicants contend that the "United States Court of Appeals for the Ninth Circuit had appellate jurisdiction over the district court's denial of the Applicants'

motion for a preliminary injunction under 28 U.S.C. § 1292(a)(1)." (Application iii.) That is incorrect.

On August 15, 2025, the district court did enter an in-chambers order captioned "Order Denying Renewed Application for a Temporary Restraining Order and Preliminary Injunction," but the court expressly treated the filing as an *ex parte* TRO request only, found non-compliance with C.D. Cal. L. R. 7-19.1 (requires the moving attorney to make reasonable, good-faith oral efforts to notify all known opposing counsel of the date and substance of the *ex parte* application, and to advise the court in writing, under oath, about those efforts and whether opposition is expected) and C.D. Cal. L.R. 65-1 (a preliminary-injunction request must be brought by noticed motion under L.R. 6-1, and proof of service must show notice to all adverse parties as Rule 65(a)(1) requires), declined to set an expedited preliminary injunction hearing, and denied the renewed TRO. (8/15/2025 Order, App. Appx. 4-6.) The court did not hold any hearing, did not evaluate the *Winter* factors, and did not adjudicate a noticed preliminary injunction motion on the merits. *Id.*; *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 22 (2008) ("*Winter*"). Thus, on this record, there was no preliminary injunction decision to appeal, and no full dress proceeding that could be called "tantamount" to one. *Babaria v. Blinken*, 87 F.4th 963, 975-976 (9th Cir. 2023) (orders deciding TRO motions are "typically not appealable" and a denial of a TRO is appealable only when it is "tantamount to the denial of a preliminary injunction."); *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803-804 (9th Cir. 2002) (an order labeled a TRO is treated like a preliminary injunction

only if it possesses PI-like qualities, such as an adversary hearing and extended duration).

The Ninth Circuit has been plain about this: orders resolving applications for temporary restraining orders are ordinarily not appealable, and a TRO does not qualify as an "injunction" for purposes of 28 U.S.C. § 1292(a)(1) because it is short lived and often rests on a truncated record. *Babaria, supra*, 87 F.4th at 975-976. That is why the Ninth Circuit recognizes only a narrow "tantamount" path to interlocutory review, reserved for the rare case where the district court has held a full adversary hearing and, absent immediate appeal, the movant would be effectively barred from pursuing further interlocutory relief. *Environmental Defense Fund, Inc. v. Andrus*, 625 F.2d 861, 862-863 (9th Cir. 1980) (denial of a TRO is appealable only when it followed a full adversary hearing and, absent review, the appellant would be effectively foreclosed from further interlocutory relief); *Religious Technology Center v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989) (restating *Andrus*' narrow "tantamount" pathway and applying it, explaining the two factors (full adversary hearing and effective foreclosure of further interlocutory relief) as the basis for appellate jurisdiction over a TRO denial); see also *Bennett, supra*, 285 F.3d at 803-804. The order at issue here does not fit that description. It shows no preliminary injunction ruling and no "full-dress" TRO proceeding that would be tantamount to one, and so, there is no Section 1292(a)(1) avenue for appeal under these authorities. That is the reason Respondents have moved to dismiss Applicants' appeal in the Ninth Circuit on that ground, and the matter is

currently pending. (Appellees' Motion to Dismiss Appeal, Doe v. Ventura Unified Sch. Dist., No. 25-5239 (9th Cir. September 19, 2025), Dkt 37.1; Respondents' Opposition Appendix ("Opp. Appx.") 108-133.)

Moreover, there is no precedent that supports Applicants' claim that the district court's refusal to expedite was an order "refusing" an injunction within the terms of Section 1292(a)(1). An order declining to expedite or set an early preliminary injunction hearing is not an order "granting, continuing, modifying, refusing or dissolving an injunction" under Section 1292(a)(1), and it fails *Carson*'s "effectually challengeable only by immediate appeal" prong. *Carson v. American Brands, Inc.*, 450 U.S. 79, 83-84 (1981) (practical effect path under § 1292(a)(1)) See *Powelson v. City of Sausalito*, No. 22-15455, at *1 (9th Cir. Apr. 22, 2022) (appeal dismissed because the district court did not hold a hearing before denying the request for a TRO, and it declined, at that time, to set a hearing date for a preliminary injunction).

Also, the record refutes Applicants' claim that the court denied a preliminary injunction by word and deed when it stayed the action. Respondents invoke *M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir. 2011), but the analogy fails. In *Dreyfus*, a motions panel treated an earlier TRO denial as reviewable only because the district court took the PI hearing off calendar, effectively foreclosing further interlocutory relief. *Id.*, 663 F.3d at 1103. Nothing like that happened here. The district court expressly treated Applicants' filing as an *ex parte* TRO, found it procedurally defective, and did not conduct a preliminary injunction adversary hearing. And, contrary to what

happened in *Dreyfus*, the district court did not foreclose Applicants from seeking a noticed preliminary injunction motion. In fact, it invited Respondents to file one. Applicants' claim that the subsequent stay "effectively converted" the TRO denial into a preliminary injunction denial. Applicants, however, noticed their appeal from the TRO denial on 8/18/25 at least a week before the stay issued on 8/29/25, so the stay cannot possibly supply the rationale for appellate jurisdiction. (Notice of Appeal, Opp. Appx. 135-141; App. Appx. 11-16.) An appeal from this TRO denial is not within § 1292(a)(1), and *Dreyfus* does not say otherwise.

In addition, Applicants cannot bootstrap jurisdiction by caption. Calling filings "TRO and PI" does not control. The filings undeniably sought an *ex parte* TRO application. If Applicants truly intended to press a noticed preliminary injunction, they needed to move for clarification or reconsideration and ask the court to calendar it, citing the portion of their filing they claimed was a noticed preliminary injunction request. See C.D. Cal. L.R. 7-18 (motion for reconsideration standard); Fed. R. Civ. P. 54(b), Fed. R. Civ. P. 59(e), Fed. R. Civ. P. 60(b). Indeed, the August 15, 2025, order from the district court told them exactly what was required. (8/15/2025 Order, App. Appx. 4-6.) If they wanted expedited relief, they had to comply with *ex parte* rules. Otherwise, they had to proceed by a regularly noticed motion. Instead, they "leapfrogged" into an interlocutory appeal to the Ninth Circuit from a TRO denial. *Id.*

If Applicants believed the district stay impeded access to preliminary injunction relief, they should have sought modification of the stay or an OSC setting

a preliminary injunction, and if denied, pursue relief under Fed. R. App. P. 8 after first seeking it below, rather than seeking an injunction pending appeal to obtain "the very injunction that the court previously denied twice," which "would be a wholesale reversal of the status quo," as the district held. (8/29/2025 Order, App. Appx. 8-9.) To the extent Applicants now complain about supposed mischaracterization or procedures they never squarely challenged below, those arguments are waived. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (court will not consider arguments that are raised for the first time on appeal)

3. Supreme Court Jurisdiction Is Lacking

Applicants argue that this "Court has jurisdiction over this application and petition under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651." That is also incorrect.

The All Writs Act "is no source of continuing jurisdiction." It authorizes writs only "in aid of" a court's existing or potential jurisdiction and "does not enlarge that jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999). If no lawful interlocutory appeal lies in the court of appeals, there is no "appeal" to protect.

The in-chambers standard underscores the same point. Extraordinary relief issues only when the applicant's legal right is "indisputably clear," a showing that cannot be made when the very appeal on which the request depends is jurisdictionally defective. *Brown v. Gilmore*, 533 U.S. 1301, 1303 (2001); *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (a stay under 28 U.S.C. § 2101(f) is limited to the "execution and enforcement" of final

judgments and therefore is unavailable where there is no such final judgment (i.e., where appellate jurisdiction is lacking).)

For all of the foregoing reasons, the Application should be denied for lack of jurisdiction.

TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Statutes

Rules



Regulations



Constitutional Provisions

## INTRODUCTION

The Emergency Application for a Writ of Injunction ("Application") by Jane Doe (the parent of "Child 1," a student at a Ventura County high school) and We The Patriots USA, Inc. (a 501(c)(3) nonprofit of which Jane Doe is a member) (together, "Applicants") arrives on an emergency record asking this Court to do something extraordinary: halt California's school entry immunization requirements, as stated in Section 120335 of the California Health and Safety Code, which State and federal courts have described as neutral, generally applicable, and constitutional, and recognize a new constitutional entitlement to attend VUSD and other schools without vaccination, not only for Child 1, but for an undefined set of "all similarly situated" association members, while also seeking an administrative stay and even certiorari before judgment. They press that suite of extraordinary remedies on a thin paper record, without an evidentiary hearing or a developed preliminary injunction ruling. That is the litigation equivalent of pulling the fire alarm and asking the building to be emptied before anyone has confirmed there is smoke. Both the district court and the Ninth Circuit correctly declined to grant that relief. (App. Appx. 2-9; June 15, 2025, Order denying TRO, Opp. Appx 104-106.)

That is not the only flaw with the Application. Applicants seek extraordinary relief without a jurisdictional basis to support it. The Ninth Circuit has no jurisdiction to review the district court's order denying Applicants' temporary restraining order, and the All Writs Act cannot manufacture jurisdiction that 28 U.S.C. § 1292(a)(1) denies. Respondents have already moved to dismiss the Ninth

Circuit appeal on that ground, and the matter is pending. (Motion to Dismiss, Opp. Appx. 108-133.)

If the Court looks ahead, Applicants have sued VUSD and Superintendent Antonio Castro (official capacity) in addition to the State Respondents. VUSD, however, is an arm of the State of California ("State"), shares Eleventh Amendment immunity, and is not a "person" under § 1983. And while *Ex Parte Young* permits prospective relief against a state officer, the defendant must have a concrete connection to enforcing the challenged law. There is no such connection here: enforcement rests with the State and public-health authorities, not with Superintendent Castro. Respondents have already asked the Ninth Circuit to dismiss them on those grounds, and the matter is pending in the Ninth Circuit. *Id.*

Further, VUSD and Superintendent Castro adopt and incorporate the State Respondents' constitutional arguments sustaining California Health & Safety Code § 120335.

In addition, the equities and public interest do not support an injunction on this sparse record. Applicants wave at the school calendar to unlock emergency relief, but the record shows that they delayed, declined to develop evidence, and have lawful, immediate educational alternatives that preserve continuity during litigation, all of which undercut any claim of imminent irreparable harm pending appeal. Moreover, upending settled rules on immunization requirements on an undeveloped emergency record would unsettle planning at California schools, their

staff and the families and students they serve, as well clinicians who rely on those standards to prevent avoidable closures and outbreaks.

Finally, Applicants not only seek an injunction, but they ask for certiorari before judgment, an even taller order. Jumping the queue here would mean endorsing a theory that recasts a necessity based medical exemption as secular favoritism, stretches the holding in *Mahmoud v. Taylor*, 606 U.S. __ , 145 S.Ct. 2332 (2025), a curriculum case, into the very different realm of health and safety prerequisites, and asks this Court to micromanage California's schools' health policy on an emergency clip, without a fully developed record.

For all of these reasons, this Court should deny both the injunction and the request for certiorari before judgment.

## STATEMENT OF THE CASE

According to Jane Doe, in 2015, she "received a 'personal beliefs exemption' from VUSD that exempted Child 1 from California's school immunization requirements." (Jane Doe Declaration, App. Appx. 18-24, at ¶ 9.) Doe sought this exemption because she understood that all of the school immunizations required by California law are researched, developed, tested, and/or produced using cell lines artificially developed from aborted fetuses and contain products that could result in harm to a human recipient. *Id.* Because Doe knew that the Respondents would accommodate her religious beliefs only until Child 1 began seventh grade, she obtained homeoprophylaxis immunizations for him, beginning in 2020, because they did not violate her religious beliefs. (*Id.* at ¶¶ 11-12.) She completed this process in

2021 and claims to have submitted proof of it to VUSD in August 2022. (*Id.* at ¶ 13.) She also claims that VUSD accepted the proof of immunization, admitted Child 1 to seventh grade, and did not raise an objection until December 2024. (*Id.* at ¶¶ 14-15.)

In August of 2022, however, VUSD did not have any policy or practice permitting homeoprophylaxis as a substitute for the immunizations required by the California Department of Public Health ("CDPH"). Consistent with Cal. Health & Safety Code § 120335 and CDPH regulations, the District does not treat homeopathic "nosodes"/homeoprophylaxis as satisfying school entry vaccination requirements. It has no discretion to disregard those enactments. (Declaration of Neil K. Virani, Opp. Appx. 2-10, at ¶¶ 10-11.) The issue with Child 1 surfaced during the November 2024 9th-grade new school admissions audit, when it was determined that he did not meet California's school entry immunization requirements. (*Id.*, at ¶¶ 4-5.)

On December 12, 2024, VUSD requested compliant documentation, either official vaccination records listing each required immunization or a medical exemption issued through the California Immunization Registry–Medical Exemptions (CAIR-ME) by a California-licensed M.D. or D.O. (*Id.* at ¶¶ 6-8.) The family instead submitted homeoprophylaxis entries, a foreign vaccination card, and records with missing provider details and questionable lot numbers. (*Id.* at ¶¶ 9-11.) After consulting Ventura County Public Health and the California Department of Public Health, VUSD advised Jane Doe that the submissions did not satisfy state standards and requested additional validation. (*Id.* at ¶¶ 12.) Since compliant

documentation was not provided by January 7, 2025, VUSD excluded the student, as required by law. (*Id.* at ¶ 13.)

In early February 2025, Jane Doe sought a religious exemption, which is unavailable under current California law, and on March 7, 2025, she provided an out-of-state "disability" waiver signed by physicians licensed outside California. (*Id.* at ¶¶ 14-16.) VUSD could not accept either submission because California law requires that any medical exemption be issued through CAIR-ME by a licensed California physician and conform to applicable standards. (*Id.* at ¶¶ 17-18.) VUSD therefore maintained the exclusion decision. As of the date of this filing, no valid proof of immunization has been provided, and Child 1 has not been readmitted to school.

After site level interventions failed and because the student's chronic absenteeism had already resulted in significant instructional loss, VUSD referred the family to a School Attendance Review Board (SARB), with prior notice being provided to Jane Doe and her attorney as to the reason for the referral. (*Id.* at ¶¶ 20, 22-23; Amended Complaint For Declaratory And Injunctive Relief, Opp. Appx. 12-94, at 24-26.) Consistent with statute and district practice, SARB's role is to provide intensive guidance and coordinated community services to resolve attendance problems and, if necessary, to refer cases to court. Cal. Educ. Code §§ 48320, 48291. Its members may include representatives from the district, law enforcement, probation, health and mental-health agencies, and the offices of the district attorney and public defender. Cal. Educ. Code § 48321(a)(2)-(3), (b). At the

outset of the conference, the chair explained the process and advised that failure to comply with SARB directives or services could lead to a criminal complaint under Education Code § 48291. (*Id.* at ¶¶ 20, 22-23; Amended Complaint For Declaratory And Injunctive Relief, Opp. Appx. at 24-26.) When the panel attempted to obtain information, Jane Doe, on advice of counsel, declined to answer questions and left the meeting. (*Id.* at ¶¶ 22-23; Amended Complaint For Declaratory And Injunctive Relief, Opp. Appx. at 24-26.) Jane Doe's continued failure to engage in the SARB process led county prosecutors to issue a citation to the parents, which was later dismissed. (App. 3)

## ARGUMENT

### 1. Applicants Are Unlikely To Succeed On The Merits

The Application attributes Applicants' alleged injuries to state statutes and CDPH's promulgated rules, not to any independent VUSD policy or any individual actions by Superintendent Castro. They are both improper parties and add nothing to this Court's ability to accord relief. Moreover, Section 120335 is a neutral law of general applicability and survives rational basis review. Even if this Court were to apply strict scrutiny, Section 120335 would still survive.

#### A. Respondent VUSD Is Entitled to 11th Amendment Immunity

The Ninth Circuit has consistently held that California school districts are "arms of the state" entitled to Eleventh Amendment immunity. See, e.g., *Belanger v. Madera Unified School District*, 963 F.2d 248, 254 (9th Cir. 1992) (California school districts are arms of the State; Eleventh Amendment immunity; not

"persons" under § 1983); *Sato v. Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 926 (9th Cir. 2017) ("School districts . . . in California remain arms of the state and cannot face suit."). When *Sato* and *Belanger* were decided, courts examined the five factors set forth in *Mitchell v. Los Angeles Community College District*, 861 F.2d 198 (9th Cir. 1988) to determine whether an entity was an "arm of the state." The Ninth Circuit has since refined that test. In 2023, the Ninth Circuit adopted the D.C. Circuit's (arguably more expansive) three-factor test in which courts consider: "(1) the state's intent as to the status of the entity, including the functions performed by the entity; (2) the state's control over the entity; and (3) the entity's overall effects on the state treasury." *Kohn v. State Bar of California*, 87 F.4th 1021, 1030 (9th Cir. 2023) ("The D.C. Circuit test does not overemphasize the treasury factor or rely on considerations that are minimally relevant to the immunity analysis, aspects of *Mitchell* that could erroneously lead to a conclusion of no immunity.") In doing so, the Ninth Circuit emphasized the *Kohn* "framework is unlikely to lead to different results in cases that previously applied the *Mitchell* factors and held an entity entitled to immunity." *Id.* at 1031; see also *id.* at 1032 (stating "we have no reason to believe that our decision today will substantially destabilize past decisions granting sovereign immunity to state entities within the Ninth Circuit). For good measure, it reaffirmed previous holdings under *Mitchell* holding the California State Bar is an "arm of the state." *Id.* at 1035.

The court's rationale in *Sato* applies under the *Kohn* framework to school districts and nothing in California law since *Sato* or *Belanger* has altered the

State's constitutional, statutory, and practical dominion over K-12 education. For example, the *Sato* court reaffirmed "California law treats public schooling as a statewide or central governmental function," which addresses the first *Kohn* factor regarding the state's intent. *Sato, supra*, 861 F.3d at 923 (quoting Belanger, supra, 963 F.2d at 253). Further, the *Sato* court observed "the state still exercises significant control over school districts," which suggests the state controls the ongoing operations of school districts - the second *Kohn* factor. *Id.*, 861 F.3d at 923. Moreover, the *Sato* court affirmed the "state's legal liability for judgments against school districts," which supports a finding the school district is an arm of the state under the third *Kohn* factor regarding the entity's effect on the state treasury. *Id* (quoting *Belanger, supra*, 963 F.2d at 252.) Moreover, Respondents do not identify any facts in their Application which, if true, would result in concluding a school district does not enjoy Eleventh Amendment immunity.

An arm of the State is not a "person" under 42 U.S.C. § 1983 and thus cannot be sued for damages or for retrospective relief under § 1983. *Will v. Michigan Department of State Police*, 491 U.S. 58, 64, 71 n.10 (1989) (neither a State nor its officials acting in their official capacities are "persons" under § 1983.) Nor may plaintiffs do an end run by naming the State entity to obtain injunctive or declaratory relief. Eleventh Amendment immunity applies to suits for all forms of relief against the State and its arms. *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (Eleventh Amendment immunity

bars suits against States and their arms for all forms of relief, including injunctive and declaratory relief.)

### B. *Ex Parte Young* Does Not Permit Applicants' Claims Against Respondent Superintendent Castro

The narrow path for prospective relief runs only through *Ex Parte Young*. It allows prospective relief against a state officer only when the officer has "some connection with the enforcement" of the challenged law. A general obligation to enforce state law is not enough. *Ex Parte Young, supra*, 209 U.S. at 157. This Court recently underscored that point: where a statute assigns no enforcement role to particular officials, those officials are not proper *Ex Parte Young* defendants, while officials with concrete licensing or prosecutorial duties may be sued. *Whole Woman's Health v. Jackson*, 595 U.S. 30, 44-46 (2021) (rejecting suit against the Texas Attorney General because SB 8 gave him no enforcement authority to enjoin, but allowing suit to proceed against executive licensing officials who "may or must take enforcement actions" under Texas law).

The Ninth Circuit applies the same rule. The connection must be fairly direct: "a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *L.A. County Bar Ass'n v. March Fong Eu*, 979 F.2d 697, 704 (9th Cir. 1992); see *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998) (holds that Ex Parte Young is not satisfied where defendants have no enforcement power over the challenged rule; general administrative responsibilities are insufficient); *Long v. Van de Kamp*,

961 F.2d 151, 152-54 (9th Cir. 1992) ("We doubt that the general supervisory powers of the California Attorney General are sufficient to establish the connection with enforcement required by Ex parte Young.") ; *S. Pac. Transp. Co. v. Brown*, 651 F.2d 613, 614-15 (9th Cir. 1980) (Attorney General's power to "direct and advise" local prosecutors does not make injury fairly traceable to him and "does not establish sufficient connection with enforcement to satisfy *Ex parte Young*.") By contrast, *Ex Parte Young* is satisfied where the officer has a specific, statutorily defined enforcement role, as when the Idaho Attorney General was expressly authorized to prosecute the challenged offense in *Matsumoto v. Labrador*, 122 F.4th 787, 799-804 (9th Cir. 2024) (modern articulation of the *Young* "connection to enforcement" requirement).

Respondent Superintendent Castro is not such an actor. He is a locally employed administrator who serves as the chief executive officer of the district's governing board and is hired by and answerable to that board. Cal. Educ. Code §§ 35026, 35161, 35035. The immunization statute at issue allocates duties to the school's "governing authority," defined as the district's governing board or the school principal or administrator, not to any state officer and not specifically to a district superintendent. Cal. Health and Safety Code §§ 120335(a) (defines "governing authority" as "the governing board of each school district … or the principal or administrator of each school or institution") and 120375(a)-(b) (requires the governing authority to obtain and record documentary proof of each entrant's immunization status). The implementing rule then directs that the "governing

authority shall exclude any pupil who does not meet the requirements for admission or continued attendance," again placing admission and exclusion decisions with the board or site administrators. Cal. Code Regs. Tit. 17 § 6055 ("The governing authority shall exclude *any* pupil who does not meet the requirements for admission or continued attendance…") That is local administration, not statewide enforcement. Therefore, Superintendent Castro is not a proper *Ex Parte Young* defendant for school entry vaccination enforcement.

Article III provides a second and independent bar. A plaintiff must show injury, traceability, and redressability as to each defendant and each form of relief. *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439-41 (2017) ("The plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought," and "for all relief sought, there must be a litigant with standing," whether plaintiff or intervenor." Apparently, Respondents believe that a preliminary injunction against Superintendent Castro will stop the enforcement of Section 120335 against Jane Doe within the VUSD. But an injunction against him would not change statewide immunization standards or create a religious exemption that the Legislature and the Department of Public Health have not provided. Instead, relief would depend on independent State actors, which defeats redressability. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-46 (1976) (No standing where injury is not "fairly … traced to the challenged action of the defendant, and not [to] the independent action of some third party not before the court," and redressability is speculative; plaintiffs failed to show a

favorable ruling would likely change hospitals' behavior); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (Article III requires injury in fact, causation "fairly traceable to the challenged action," and a likelihood (not mere speculation) of redressability by a favorable decision.) If statewide relief were ever warranted, an order directed to the proper State officials sued here would bind those "in active concert" with them, including local administrators, without the need to sue the superintendent. Fed. R. Civ. P. 65(d)(2) (injunction binds parties, officers, agents, and those in active concert).

Applicants' organizational and associational theories fare no better. An organization must show resource diversion or frustration of mission caused by the defendant's conduct; abstract disagreement is not enough. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (organizational standing exists only with a "concrete and demonstrable injury to the organization's activities, with the consequent drain on the organization's resources," not a mere "setback to the organization's abstract social interests.") Associational standing fails where the relief is individualized and would require member participation. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977) (associational standing requires that "neither the claim asserted nor the relief requested requires the participation of individual members," so it fails where individualized, member-specific relief would be necessary). Applicants seek student specific remedies for Child 1 that underscore why an association wide suit against a local administrator cannot proceed.

In short, Superintendent Castro is neither a state officer nor a statutory enforcer of Section 120335. *Ex Parte Young*'s narrow path is closed, and Article III redressability is absent. There is no basis for injunctive relief against him in this Court.

### C. Joinder in State Respondents' Opposition

VUSD and Superintendent Castro adopt and incorporate the State Respondents' constitutional arguments sustaining California Health & Safety Code § 120335. The statute is neutral and generally applicable. *Goe v. Zucker*, 43 F.4th 19, 36-41 (2d Cir. 2022) (upholding school-entry scheme with medical but no religious exemption; medical exemptions do not defeat general applicability). The medical exemption is a narrowly drawn, safety valve strictly based on necessity, administered through California Immunization Registry-Medical Exemption (CAIR-ME) and objective Advisory Committee on Immunization Practices (ACIP)/CDC criteria. *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173 (9th Cir. 2021) (narrow, physician-certified medical exemption "serves the primary interest" and "does not undermine the District's interests as a religious exemption would"). It is not a favored secular comparator under *Fulton* and *Tandon*. *Spivack v. City of Philadelphia*, 109 F.4th 158 (3d Cir. 2024) (medical exemptions aligned with public health aims are not proper secular comparators under *Tandon*); *Fulton v. City of Philadelphia*, 593 U.S. 522, 532-35 (2021); *Tandon v. Newsom*, 593 U.S. 61, 63-66 (2021). *Mahmoud*, a curricular exposure case, does not govern neutral health prerequisites for shared, high contact classroom settings. See, e.g., *Milford*

*Christian Church v. Bye*, 2025 U.S. Dist. LEXIS 153122 (D. Conn. Aug. 8, 2025) ("Plaintiffs seek to extend Mahmoud and Yoder, not only from the realm of public education to private education, but also from educational "instruction" to public health. This Court declines to accept Plaintiffs' invitation to do so.") Even if strict scrutiny applied, the law is narrowly tailored to compelling interests in preventing school-based transmission and protecting children who cannot be safely vaccinated. In California, CAIR-ME oversight and data confirm the framework's precision and effectiveness (statewide and Ventura County kindergarten MMR at 96% and permanent medical exemptions at 0.1%), further underscoring why the State's analysis is correct. 2023-2024 Kindergarten Immunization Assessment, App. Appx. 257-273, at 258, 260.)

2. Applicants Have Not Shown Irreparable Harm Warranting Emergency Relief

A claim of First Amendment injury does not by itself unlock emergency relief. The presumption of irreparable harm follows only when a constitutional violation is likely, and the two most critical factors remain likelihood of success and likelihood of irreparable injury. *Nken v. Holder*, 556 U.S. 418, 434-435 (2009) (the first two factors of the traditional standard are the most critical," and more than a mere "possibility" of success/relief is required); *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (a preliminary injunction requires a likelihood of irreparable injury (rejecting a "possibility" standard)).

Applicants' own chronology belies any claim of "imminent injury." To the extent any urgency exists, they created it. After receiving an exclusion notice on December 12, 2024, Jane Doe and Child 1 sued a VUSD principal in the Eastern District on March 24, 2025, which they voluntarily dismissed on April 13, 2025. (Declaration of Virani, Opp. Appx. 2-10; Amended Complaint for an Injunction, Opp. Appx. 12-94; Notice of Dismissal, Opp. Appx. 95-96.) They then filed this case on May 22, 2025, and a TRO shortly thereafter, which was denied because they could not explain "either why they waited this long to seek relief, or, conversely, why they have an imminent need for relief now." (Order Denying TRO, Opp. Appx. 104-106.) Although Applicants were aware the new school year would start on August 13, 2025, Applicants waited nearly 2 months to seek redress, not by way of a preliminary injunction, but by seeking another TRO. (Declaration of Jane Doe; App. Appx. 18-24, at ¶ 47.) It was denied on August 15, 2025, on procedural grounds. (Order Denying TRO, App. Appx. 4-6.) Rather than accept the district court's invitation to file a properly noticed motion for a preliminary injunction, Applicants chose to pursue an interlocutory appeal from the denial of a temporary restraining order, an arguably improvident approach that undercuts their claim that time is of the essence. Their circuitous route to this Court is self-inflicted, and so is any alleged urgency. *Benisek v. Lamone*, 585 U.S. 155, (2018) (affirming denial of preliminary injunction where plaintiffs waited years and then sought emergency relief on the eve of election deadlines).

Nor have Applicants shown that any educational harm is inevitable or incapable of remedy during appellate review. Applicants claim that "[w]ithout injunctive relief, [Jane Doe] faces the prospect that her son will reach adulthood without a high school education." (Appl. 3.) Although Child 1 is presently barred from in person attendance at VUSD, California law preserves access for unvaccinated students to schooling through options that do not involve classroom instruction. Students enrolled in an independent study program, for example, who do not receive classroom-based instruction, are not subject to the immunization requirement. See Cal. Health and Safety Code § 120335(f). The Ventura Office of Education lists several charter schools in Ventura County that are free of charge and offer independent study programs.[1] See Ventura County of Education, Charter Schools in Ventura https://www.vcoe.org/Charter-Schools/Charter-Schools-in-Ventura-County, Opp. Appx. 98-102. While accessibility to independent study programs does not defeat Applicants' claim, it does undercut their assertion that only an emergency injunction can avert certain and immediate educational harm.

Finally, the balance of equities and the public interest point to the same destination. Schools are high contact environments, and communicable disease exploits that fact. California's neutral and generally applicable immunization rules are the quiet infrastructure that keeps VUSD's classrooms open and protects students who cannot be vaccinated. Rewriting that infrastructure on a thin record

[1] Eligibility under Cal. Health & Safety Code § 120335(f) is student specific: it turns on whether the particular student receives any classroom-based instruction. Many of these schools also offer optional onsite classes, but the statute looks to the student's program, not the school's menu of offerings.

in the middle of an academic term would unsettle settled expectations for California schools in general, and VUSD in particular, its staff, and the families and students it serves, with predictable confusion and elevated risk. The public interest does not favor an improvised and untested exemption scheme on an emergency record. It favors holding the neutral baseline in place while the merits proceed in the ordinary way. See *Winter, supra*, 555 U.S. at 24 (public interest and balance of equities weighed heavily against an injunction on a limited record).

Irreparable harm is about imminence and inevitability tethered to a likely constitutional violation. Applicants show neither. Their repeated delays belie urgency, their merits are weak, and the equities favor stability rather than improvisation.

3. The Scope Of Relief Applicants Seek Is Radically Overbroad

Applicants do not stop at relief for Jane Doe and Child 1. They ask this Court to enjoin VUSD and its superintendent on behalf of "all similarly situated members" of Respondent We The Patriots USA, a national association. (Appl. 2.) That request disregards principles of equitable tailoring and Article III.

First, Applicants have already sued the state officials who administer the statewide immunization framework. That fact should drive the remedy. If any interim order were warranted against those state officials, it would bind local actors such as VUSD that are required by law to follow their directives on the issue of required school entry vaccinations. See Fed. R. Civ. P. 65(d)(2) (order binds other persons in active concert or participation with the parties). A duplicative injunction

directed specifically at VUSD and Superintendent Castro adds no remedial value and invites the very confusion equity is meant to avoid.

Second, an injunction must be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Remedies must redress the plaintiffs' own injuries, not operate as organization-wide edicts untethered to the parties and record. *Trump v. CASA, Inc.*, 606 U.S. __ (2025) (June 27, 2025) (cautioning against universal injunctions that extend beyond parties); *Gill v. Whitford*, 585 U.S. 48, 72-73 (2018) ("standing is not dispensed in gross: a plaintiff's remedy must be tailored to redress the plaintiff's particular injury.") Here, Applicants identify a single student in a single district as the operative plaintiff, and they have sued the state officials responsible for the policy. Any necessary remedy can be crafted at the level where the policy originates and will run to local actors, including VUSD and Superintendent Castro, through Fed. R. Civ. P. 65, without redundant commands aimed at them.

Thus, if the Court were to consider interim relief, it should be narrow and focused on the individual Respondents: limited to Respondent Doe and directed, if at all, to the Respondent state officials with authority to administer the statewide framework.

4. Respondents' Alternative Request Under 28 U.S.C. § 2101(e) Also Fails

Applicants ask the Court to treat their filing as a request for certiorari before judgment, pursuant to 28 U.S.C. § 2101(e), and to stay enforcement, pursuant to 28 U.S.C. § 2101(f), in the meantime. That is two extraordinary asks wrapped into one.

A stay pending certiorari under 28 U.S.C. § 2101(e) is granted "only" if the case is of "imperative public importance" requiring immediate determination. Under 28 U.S.C. § 2101(f), a stay will be granted if there is (1) a reasonable probability that at least four Justices will vote to grant certiorari, (2) a fair prospect that a majority will reverse, and (3) a likelihood of irreparable harm without a stay, with the equities balanced in close cases. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) ("*Hollingsworth*"). On this record, Applicants flunk each prong.

With respect to certiorari before judgment, Supreme Court Rule 11 provides that "a petition 'will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.'" Sup. Ct. R. 11. That extraordinary step is 'rarely warranted' and reserved for issues that truly cannot await ordinary review. This case presents no split, no new principle, and no emergency that the appellate process cannot accommodate.

As shown below, contrary to Applicants' assertion, there is no split and no emergency. *Tandon* and *Fulton* supply a single, workable rule. Strict scrutiny applies only if the government favors comparable secular conduct, which is measured by whether the secular activity undermines the stated interest in a similar way, or if the regime creates individualized exemptions. *Tandon, supra,* 593 U.S. at 63-64; *Fulton, supra,* 593 U.S. at 532-35. When neither condition is present, the policy is neutral and generally applicable and is reviewed under *Smith. Emp.' Div., Dept. of Human Resources of Or. v. Smith*, 494 U.S. 872, 879-82 (1990); see

also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993).

The Second, Third, and Ninth Circuit decisions Applicants cite simply apply that rule to narrow, objective medical exemptions tied to clinical contraindications and administered without discretion. The Second Circuit held New York's school-immunization law neutral and generally applicable because its ACIP-guided medical exemption is specific and time limited. A religious exemption would increase the very risk, i.e., unvaccinated clustering, the State sought to reduce. *Miller v. McDonald*, 130 F.4th 258, 266-69 (2d Cir. 2025). The Ninth Circuit denied emergency relief after San Diego Unified School District removed a broad pregnancy deferral. The remaining limited medical and short administrative deferrals did not treat comparable secular conduct more favorably. *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177-78 (9th Cir. 2021). The Third Circuit rejected any categorical rule that medical exemptions defeat general applicability and focused, as *Tandon* requires, on comparability and on any individualized discretion proscribed by *Fulton*. *Spivack, supra,* 109 F.4th at 172-73.

By contrast, strict scrutiny is applied where secular allowances match or exceed the risk to the asserted interest, or where case by case discretion exists: closing schools while allowing gyms, a casino, and other venues to remain open - secular activities the court deemed comparable for transmission risk (*Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep't*, 984 F.3d 477, 482 (6th Cir. 2020)); permitting private clubs while excluding houses of worship when the secular

use undercut the town's interest (retail "synergy") at least as much (*Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1232, 1234-35 (11th Cir. 2004)); or riddling a road safety ordinance with secular exceptions that were inconsistent with the county's asserted road-protection interest (*Mitchell Cnty. v. Zimmerman*, 810 N.W.2d 1, 16, 23-24 (Iowa 2012)). At the pleading stage, courts may allow claims to proceed where it is plausible that medical exemptions could create comparable risk. *Lowe v. Mills*, 68 F.4th 706, 714-19 (1st Cir. 2023).

These decisions do not conflict. They apply the same test to different records. Narrow, clinically defined, non-discretionary medical exemptions ordinarily do not defeat general applicability, while broad, inconsistent, or discretionary secular allowances do.

Moreover, Applicants' urgency showing is case specific (Child's 1 exclusion) plus a generalized assertion that "thousands" in several states would benefit, without data or an adequate showing that immediate Supreme Court intervention (before any Ninth Circuit merits decision) is necessary to resolve nationwide confusion. Meanwhile, the district court itself stayed proceedings to await two Ninth Circuit decisions in related cases, underscoring that ordinary appellate review is already in motion[2]. (App. iii-iv.)

[2] Beyond this application, a petition for a Writ of Certiorari in Miller v. McDonald, No. 25-133 is currently pending before this Court and squarely presents the same Free Exercise issue in the K-12 vaccination context (medical exemptions retained; religious exemptions eliminated). The petition alleges the same "split" in authority as Applicants' and asks whether a law that categorically disallows religious exemptions while permitting secular exemptions violates the Free Exercise Clause.

Finally, on the *Hollingsworth* factors, the same deficits reappear. There is no reasonable probability of certiorari. There is no square, developed circuit conflict to resolve, and the limited record here does not create a fair prospect that the Court will upset settled doctrine on neutrality, general applicability, and risk-based comparators.

## CONCLUSION

For all the foregoing reasons, the Court should deny the Application.

Respectfully submitted,

Law Office Of David Adida, APC

\David Adida\

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David Adida, Esq.
Attorney for Respondents Ventura Unified School District.
and Antonio Castro

## CERTIFICATE OF SERVICE

We The Patriots Usa, Inc., et al No. 25A322

v.

Ventura Unified School District, et al.

I certify under Supreme Court Rule 29.5 that all parties required to be served have been served with the following document: OPPOSITION OF RESPONDENTS VENTURA UNIFIED SCHOOL DISTRICT AND ANTONIO CASTRO TO EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

On September 30, 2025, I submitted the foregoing document through the Supreme Court's electronic filing system. Consistent with Rule 29.3 and the Court's Electronic Filing Guidelines, submission to the electronic filing system does not itself constitute service; accordingly, on the same date I transmitted an electronic version by email to each counsel of record listed below, who have consented to electronic service. No paper service is being affected in light of that consent.

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This certificate is submitted in compliance with Rule 29.5 (separate proof of service) and Rule 29.3 (electronic transmission to other parties contemporaneous with filing).

Dated: September 29, 2025

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