No. 18-1299

IN THE

Supreme Court of the United States

MARIE GILLISPIE,

Petitioner,

v.

REGIONALCARE HOSPITAL PARTNERS, INC; ESSENT HEALTHCARE WAYNESBURG LLC, D/B/A SOUTHWEST REGIONAL MEDICAL CENTER; ESSENT HEALTHCARE PENNSYLVANIA INC.; ESSENT HEALTHCARE, INC.; ESSENT HEALTHCARE; SOUTHWEST REGIONAL MEDICAL CENTER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

This case presents two questions. The first arises out of the Third Circuit's interpretation of federal law and the second arises out of the Third Circuit's application of Pennsylvania state law:

The Emergency Medical Treatment and Active Labor Act (EMTALA) is a federal law that, among other things, provides whistleblower protection to a covered employee who "reports a violation" of the Act. 42 U.S.C. § 1395dd(i). The question presented is whether an employee "reports" an EMTALA violation by disagreeing with an employer's decision not to disclose an already-established EMTALA violation to State authorities.

Pennsylvania law does not recognize a common-law claim for wrongful discharge if a statutory remedy exists for the harm alleged. The Third Circuit held that, under the record before it, Petitioner's wrongful-discharge claim could have been brought under a Pennsylvania statute, the Medical Care Availability and Reduction of Error (MCARE) Act, 40 Pa. Cons. Stat. § 1303.101 *et seq.* The question presented is whether the Third Circuit's decision so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

RULE 29.6 STATEMENT

In accordance with Sup. Ct. R. 29.6, Respondents, RegionalCare Hospital Partners, Inc.; Essent Healthcare Waynesburg, LLC d/b/a Southwest Regional Medical Center; Essent Healthcare Pennsylvania Inc.; Essent Healthcare Inc.; Essent Healthcare; and Southwest Regional Medical Center, state:

1. RegionalCare Hospital Partners, Inc. is a Delaware corporation and a wholly-owned subsidiary of RCHP, LLC. No publicly held company owns stock in RegionalCare Hospital Partners, Inc.

2. Essent Healthcare-Waynesburg, LLC d/b/a Southwest Regional Medical Center is a limited liability company formed under the Delaware Limited Liability Act. It is a wholly owned subsidiary of Essent Healthcare-Pennsylvania, Inc. No publicly held company owns stock in Essent Healthcare-Waynesburg, LLC.

3. Essent Healthcare-Pennsylvania, Inc. is a Delaware corporation and wholly owned subsidiary of EHCO, LLC, which is a wholly owned subsidiary of Essent Healthcare, Inc. No publicly held company owns stock in Essent Healthcare-Pennsylvania, Inc.

4. Essent Healthcare, Inc. is a wholly owned subsidiary of RegionalCare Hospital Partners, Inc. No publicly held company owns stock in Essent Healthcare, Inc.

5. Essent Healthcare is a non-entity.

6. Southwest Regional Medical Center is a fictitious name under which Respondent Essent Healthcare-Waynesburg, LLC did business. No publicly held company owns stock in Southwest Regional Medical Center.

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INTRODUCTION

Petitioner Marie Gillispie asks this Court to resolve two questions. The first concerns the Third Circuit's interpretation of a federal law, the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd. The second involves the intersection of Pennsylvania common and statutory law. Neither question merits this Court's review.

Gillispie's first question centers on EMTALA's whistleblower provision. Congress passed EMTALA to ensure that covered medical facilities do not prematurely discharge patients from their emergency departments. Under the statute's narrow whistleblower provision, a hospital may not take "adverse action" against an employee for "report[ing] a violation" of EMTALA. 42 U.S.C. § 1395dd(i). The Third Circuit below held that Gillispie did not make a "report" within the meaning of this provision simply by disagreeing with her employer's decision not to disclose an EMTALA violation that had already been established to State authorities.

That holding does not warrant review for three reasons. First, contrary to Gillispie's assertion, the Third Circuit correctly applied this Court's precedents in interpreting the word "report" under EMTALA. Second, there is no circuit conflict for this Court to revolve because the Third Circuit is the first and only court of appeals to construe the word "report" in EMTALA's whistleblower provision. Finally, the Third Circuit reached a result that was both logically sound and consistent with the normal tools of statutory interpretation.

Gillispie's second question similarly fails to state adequate grounds for review. Gillispie asks this Court to invoke its supervisory power to reverse the Third Circuit's application of Pennsylvania state substantive law. To be sure, Gillispie concedes that the Third Circuit correctly stated the law: in Pennsylvania, an employee may not bring a common-law wrongful-discharge claim if a statutory remedy exists for the harm alleged. But she contends that the unanimous panel misapplied that rule in holding that her wrongful-discharge claim was superseded by the Pennsylvania Medical Care Availability and Reduction of Error (MCARE) Act, 40 Pa. Cons. Stat. § 1303.101 *et seq.*

Gillispie's mere disagreement with the Third Circuit's application of a properly stated rule of law is not a compelling reason for this Court to grant review. And in any event, Gillispie has not identified any basis for this Court to use its extraordinary supervisory power to make a fact-specific ruling that would have no effect beyond the parties here. For these reasons, too, the petition should be denied.

OPINIONS BELOW

The Third Circuit's opinion (Pet. App. 1-28) is reported at 892 F.3d 585. The District Court's Order adopting the Magistrate Judge's Report and Recommendation on Respondents' motion for summary judgment (Pet. App. 29-33) is not reported but is available at 2016 U.S. Dist. LEXIS 157050. The Magistrate Judge's Report and Recommendation on Respondents' motion for summary judgment (Pet. App. 34-51) is also not reported but is available at 2016 U.S. Dist. LEXIS 157810. The Third

Circuit's order denying rehearing (Pet. App. 52-53) is not reported.

JURISDICTION

The Third Circuit entered judgment on June 12, 2018. A petition for rehearing was denied on August 1, 2018. On November 5, 2018, Justice Alito extended the time for filing a petition for a writ of certiorari to December 29, 2018. *See* No. 18A471. The petition for a writ of certiorari was filed on December 28, 2018. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATEMENT

A. Statutory Background

"It is a hard fact in today's world that patients without the ability to pay sometimes rely on hospital emergency rooms not just for emergencies but to treat their routine and chronic medical problems." *Genova v. Banner Health*, 734 F.3d 1095, 1097 (10th Cir. 2013). As emergency rooms have "morphed into little more than primary care facilities," hospitals have encountered "grave financial challenge[s]" in providing care. Pet. App. 3 (citations omitted).

In response to these challenges, some hospitals began engaging in a practice known as "patient dumping." Pet. App. 3. Patient dumping occurs when a hospital "refus[es] to offer emergency room treatment to indigent patients" or prematurely transfers those patients to other medical facilities. *Id.* at 3-4.

Congress responded to the problem of patient dumping by enacting EMTALA, 42 U.S.C. § 1395dd. EMTALA imposes certain requirements on hospitals that operate emergency departments. First, hospitals must examine every patient who comes to an emergency department for treatment, regardless of a patient's ability to pay. *Id.* § 1395dd(a). Second, if an examination reveals that a patient has an emergency medical condition, the hospital "usually must stabilize the patient" before discharging or transferring the patient to another facility. Pet. App. 4 (quoting *Genova*, 734 F.3d at 1097); *see also* 42 U.S.C. § 1395dd(b)-(c).

To encourage the disclosure of EMTALA violations, Congress included a whistleblower provision that provides protections to hospital employees under certain circumstances. The whistleblower provision states, in relevant part, that "[a] participating hospital may not penalize or take adverse action . . . against any hospital employee because the employee reports a violation" of EMTALA. 42 U.S.C. § 1395dd(i).

B. Factual Background

1. Petitioner Marie Gillispie worked for Respondent Southwest Regional Medical Center for 13 years in various positions. Pet. App. 5. This case concerns the events surrounding Gillispie's termination from employment in November 2012.

At all relevant times, Gillispie worked for the Medical Center as a Quality Project Coordinator. Pet. App. 5. In that role, she was responsible for monitoring patient care and addressing medical errors and complaints. *Id.*

On October 23, 2012, a pregnant female with the initials E.R. arrived at the Medical Center's emergency department complaining of pain and vaginal bleeding. Pet. App. 5. Medical Center staff performed a medical screening and examined E.R. before discharging her with instructions to go directly to her gynecologist, who was located at a nearby facility, Uniontown Hospital. *Id.*

The Medical Center offered E.R. an ambulance, but she opted to go to Uniontown Hospital on her own. Pet. App. 40. Meanwhile, a nurse practitioner at the Medical Center tried twice, without success, to contact Uniontown Hospital to confirm that E.R. had arrived. *Id.*

2. The next day, the Medical Center's Chief Executive Officer, Cynthia Cowie, held a conference call with several employees, including Gillispie, to discuss the events surrounding E.R.'s discharge the night before. Pet. App. 6. That initial call led to two more meetings, both held on October 25, 2012, that are central to this case.

The first meeting was a root cause analysis (RCA). Pet. App. 6. Its purpose was to "investigate whether E.R's discharge violated EMTALA and to determine whether the circumstances surrounding E.R.'s discharge triggered any reporting requirements" to State authorities. *Id.* at 6. The RCA meeting included Cowie and Gillispie, as well as the following employees: Michael Onusko, Senior Administrative Director of Emergency Outpatient and Environmental Services; Kathi Comandi, Chief Nursing Officer; Pamela Carroll, Chief Quality Officer; and Bridgett Trump, Director of the Emergency Department and Intensive Care Unit. *Id.* at 16.

During the RCA meeting, Onusko, Comandi, Carroll, and Trump each shared their "belie[f] that the Medical Center's handling of E.R.'s visit had not violated EMTALA." Pet. App. 16. Gillispie, for her part, "did not testify [in her deposition] that she told the attendees she believed the Medical Center's discharge of E.R. violated EMTALA and that it should have been reported" to the State. *Id.* at 17. Even so, despite the group's shared belief that no EMTALA violation had occurred, Cowie dispatched Onusko and Trump to Uniontown Hospital to follow-up on E.R.'s care. *Id.* at 7, 16-17.

When Onusko and Trump returned from Uniontown Hospital, Cowie convened a second meeting that same day to continue their review of E.R.'s discharge. Pet. App. 7, 17. Onusko and Trump began the meeting by recounting their discussion of E.R.'s treatment with Uniontown Hospital officials. *Id.* at 17. By that point, as a result of the Medical Center's investigation and Onusko and Trump's report, all the attendees were aware of the full "circumstances surrounding" E.R.'s discharge. *Id.* at 18.

According to Gillispie's own testimony, further discussion led Cowie to conclude that E.R.'s discharge did not need to be reported to the State. Pet. App. 17. Cowie reached this decision even though, according to Gillispie, everyone in the group now "agreed that the Medical Center's discharge of E.R. failed to comply with EMTALA." *Id.* at 7.

Gillispie then "expressed a contrary opinion" about E.R.'s care for the first time. Pet. App. 18. Gillispie testified that she told the group at the second meeting, "I think it's better to be on the side of safety and report

it . . . ." *Id.* at 17-18. Gillispie "protested with the group several times" to explain that the Medical Center should advise the State about the alleged EMTALA violation. *Id.* at 18. In other words, Gillispie expressed disagreement with the Medical Center's *reporting* decision only after the group had already decided that an EMTALA violation had occurred and that the Medical Center would not disclose that violation to the State. Pet. App. 18.

3. One day later, on October 26, several representatives from the Pennsylvania Department of Health came to the Medical Center to investigate a complaint involving another patient, L.S. Pet. App. 8. During that visit, Cowie learned about a letter that Gillispie claimed to have prepared three months earlier as part of the Medical Center's initial investigation into L.S.'s complaint. *Id.* at 9. Although the letter was dated July 2012, the Medical Center's information-technology department determined that Gillispie had, in fact, created the letter that same day and backdated it to July. *Id.* at 9.

After the DOH investigators left, Cowie met with Gillispie and directed her to leave the Medical Center for the day. Pet. App. 9. Cowie also instructed Gillispie to meet with her the following Monday, October 29, but Gillispie did not return to the Medical Center until November 1. *Id.* at 9. At a meeting on November 1, Cowie asked Gillispie to prepare a statement about the backdated letter; Gillispie refused and instead gave Cowie a letter stating:

> I am also concerned about the EMTALA violation that occurred last week regarding the pregnant female and transfer of her from our ER to Uniontown Hospital's ER. This is

> a serious EMTALA violation. As you know, you informed us that you decided to not report this incident to the Department of Health. As I stated to you at the meeting last week, I believe we must self-report this incident. Pam Carroll spoke up as well and agreed with me. I struggle to understand your reasons for deciding to not report this incident. I again suggest that you do so, immediately, as it would be in the Hospital's best interest.

Id. at 9-10.

After Gillispie refused to provide a statement about the backdated letter, Cowie decided to terminate Gillispie's employment because Gillispie had falsified a document that she had intended to use as part of the DOH's investigation into L.S.'s care. Pet. App. 10. Cowie informed Gillispie of this decision at the end of their meeting on November 1. *Id.*

C. Procedural History

In October 2013—nearly one year after her discharge—Gillispie sued Respondents in the United States District Court for the Western District of Pennsylvania. Pet. App. 36. Gillispie's original five-count complaint alleged that her termination violated EMTALA's whistleblower provision and amounted to a wrongful discharge in violation of Pennsylvania public policy. *Id.* Gillispie later amended her complaint, adding four counts under the MCARE Act's anti-retaliation provision. *Id.* at 10, 36.

The district court dismissed Gillispie's MCARE Act claims because they were filed after the statute of limitations had run. Pet. App. 10, 36-37. Respondents then moved for summary judgment on Gillispie's remaining EMTALA and wrongful-discharge claims. *Id.* at 37.

In February 2016, the assigned Magistrate Judge issued a Report and Recommendation recommending that Respondents be granted summary judgment on all claims. Pet. App. 35, 50. Addressing Gillispie's whistleblower claim, the Magistrate Judge applied the "ordinary meaning" of the word "report" and concluded that Gillispie did not "report" a violation of EMTALA because she "undertook no initiating, resolute or official action to report an EMTALA violation." *Id.* at 43. As for Gillispie's public policy claims, the Magistrate Judge applied Pennsylvania state law and held that those claims could have been brought under the anti-retaliation provision of the MCARE Act, and so were precluded by that statutory remedy. *Id.* at 43-50.

After oral argument, the district court adopted the Magistrate Judge's Report and Recommendation in full. Pet. App. 29-30. Like the Magistrate Judge, the district court looked to the "ordinary meaning" of the word "report" in interpreting EMTALA's whistleblower language. *Id.* at 30. "Central to that concept," the court noted, "is the premise that a 'report' gives information or a notification or is otherwise an official or formal statement of facts or proceedings." *Id.* The court found that, under this definition, Gillispie did not make a "report" simply by "voic[ing] to hospital management her disagreement" with the decision not to disclose the alleged EMTALA violation to State authorities. *Id.* at 31. The court emphasized that

"what [Gillispie] did was not the 'giving of information' or a 'notification' of anything beyond" her contrary view on whether the alleged EMTALA violation should be disclosed to the State. *Id.* at 31-32.

A unanimous panel of the Third Circuit affirmed. Pet. App. 3, 28. The Third Circuit began its EMTALA analysis by noting the "dearth of case law"—including any decisions from any other court of appeals—defining the term "report" under EMTALA. *Id.* at 14. So the court applied settled principles of statutory construction by turning to the "ordinary meaning" of that term. *Id.*

To determine the ordinary meaning of "report," the Third Circuit relied on this Court's decision in *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011). Pet. App. 14-15. There, this Court held that a "report" is "something that gives information" or a "notification," or an "official or formal statement of facts or proceedings." *Schindler Elevator Corp.*, 563 U.S. at 407-08 (citing Webster's Third New International Dictionary 1925 (1986) and Black's Law Dictionary 1300 (6th ed. 1990)). Based on this definition, the Third Circuit explained that "the term ordinarily refers to nothing more than the transmission of information." *Id.* at 15.

With this definition in mind, the Third Circuit homed in on the precise chronology of events. Pet. App. 18-19. In particular, the court emphasized that Gillispie did not allege or testify that the Medical Center's leadership concluded that an EMTALA violation had occurred only *after* she had notified them "of the circumstances surrounding it." *Id.* at 18 (emphasis in original). Instead, the court noted that Gillispie's own deposition testimony showed that she first "expressed a contrary opinion

about E.R's care" during the second meeting on October 25, 2012, "only after everyone had already decided it was an EMTALA violation but would not be reported." *Id.* (internal alterations, citations, and quotation marks omitted). The court explained that, because the Medical Center had "already concluded" that an EMTALA violation had occurred, Gillispie did not "provide any information" or "notification" of that violation simply by disagreeing with the decision not to report the violation to the State.[1] *Id.* at 19. The court thus court concluded that Gillispie did not make a "report" under EMTALA. *Id.* at 20-21.[2]

The Third Circuit likewise affirmed summary judgment on Gillispie's wrongful-discharge claims. The court explained that Pennsylvania law "does not recognize a common law cause of action for violating public policy if a statutory remedy exists." Pet. App. 23. The court noted that a statutory remedy did exist under the MCARE Act because the crux of Gillispie's claim was that Respondents discharged her for reporting an "incident" within the meaning of the MCARE Act. *Id.* at 25-27. The court also observed that Gillispie's "belated attempt to disclaim" the MCARE Act's relevance stemmed from her unsuccessful efforts to bring MCARE Act claims after the statute of limitations had already run. *Id.* at 24.

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1. As the Third Circuit noted, it is not a requirement under EMTALA that violators self-report instances of non-compliance. Pet. App. 6-7 n.12.

2. The Third Circuit also held that an employee need not "report" an EMTALA violation to a governmental or regulatory agency to qualify for whistleblower protection. Pet. App. 21-22. That portion of the Third Circuit's opinion is not at issue in the Petition.

Gillispie petitioned for rehearing, which the Third Circuit denied on August 1, 2018. Pet. App. 52-53.

REASONS FOR DENYING THE PETITION

This Court's review is unwarranted for four reasons. First, the Third Circuit correctly applied this Court's precedents, as well as the normal rules of statutory construction, in defining the term "report" under EMTALA. Second, there is no circuit conflict for this Court to resolve: the Third Circuit is the first and only court of appeals to interpret the term "report" in EMTALA's whistleblower provision. Third, contrary to Gillispie's argument, there are no grounds for this Court to exercise its supervisory power to review the dismissal of Gillispie's wrongful-discharge claim under Pennsylvania state law. Finally, the decision below is correct on both questions presented. First, Gillispie did not engage in protected activity under EMTALA simply by disagreeing with the Medical Center's decision not to disclose to the State a violation that had already occurred. Second, Gillispie's common-law wrongful-discharge claim could have been brought under Pennsylvania's MCARE Act, and is therefore precluded under Pennsylvania law. The petition should be denied.

I. The Third Circuit applied straightforward rules of statutory construction in accord with the relevant decisions of this Court.

The Third Circuit's ruling used the normal tools of statutory construction to reach a result that is both logically sound and consistent with this Court's decisions. Contrary to Gillispie's argument, the Third Circuit did

not misapply this Court's precedents by improperly expanding the definition of the term "report" set forth in *Schindler Elevator.* Pet. 6-9. Instead, the unanimous court of appeals' panel analyzed EMTALA's whistleblower provision by following exactly the type of inquiry endorsed by this Court. That inquiry progressed in three steps.

First, because EMTALA does not define the term "report," the court looked to the "ordinary meaning" of that term. Pet. App. 14 (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997); *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175-76 (2009)); *see also Schindler Elevator Corp.*, 563 U.S. at 407. Next, in searching for the ordinary meaning, the Third Circuit relied on this Court's precedent and turned to the definition of "report" adopted in *Schindler Elevator Corp.* Pet. App. 14-15. In that case, this Court explained that a "report" is (1) "something that gives information" or a "notification"; (2) "an official or formal statement of facts or proceedings"; or (3) "an account brought by one person to another." *Schindler Elevator Corp.*, 563 U.S. at 407-08 (citing Webster's Third New International Dictionary 1925 (1986); Black's Law Dictionary 1300 (6th ed. 1990); 13 Oxford English Dictionary 650 (2d ed. 1989)). Finally, the Third Circuit applied the *Schindler Elevator* definition of "report" to the facts before it.

In applying that definition, the unanimous panel reached a result that was both predictable and unremarkable. The court held that Gillispie did not make a report under EMTALA because she did not provide any "information" or "notification" of an EMTALA violation. Pet. App. 19. Instead, by her own admission, all Gillispie did was "express a contrary opinion" about whether to

notify State authorities of an EMTALA violation that every decisionmaker had already agreed had occurred. *Id.* at 18-19. In other words, Gillispie simply disagreed about how to handle an EMTALA violation—that is, whether to report that violation to the State—*after* the violation was already established. *Id.* at 17-21. In holding that Gillispie's disagreement with the Medical Center's disclosure decision was not protected activity under EMTALA, the court applied the definition of "report" in accord with the ordinary meaning of that term and this Court's precedent.[3]

The Third Circuit then continued its careful statutory analysis by contrasting EMTALA's anti-retaliation language with the anti-retaliation provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Pet App. 19-20. The court pointed to the much broader protection that Congress deliberately afforded under Title VII: unlike EMTALA, Title VII broadly extends protection to employees who "oppose[]" a violation of the statute or "participate[] in any manner" in investigating a violation. Pet. App. 20 (citing 42 U.S.C. § 2000e-3(a)). As the Third Circuit observed, "the difference between

3. Contrary to Gillispie's contention (Pet. 8), the Third Circuit's ruling does not conflict with this Court's decision in *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2011). *Saint-Gobain* addressed the limited question whether the phrase "filed any complaint" in the anti-retaliation provision of the Fair Labor Standards Act applies to both oral and written complaints. 562 U.S. at 4. The Court there did not purport to define the word "report" in any context, and so its analysis has little bearing on the meaning of "report" under EMTALA. Indeed, the Third Circuit below did not even cite *Saint-Gobain*, presumably because of its limited relevance to the question at hand.

the breadth of that protection and the much narrower protection Congress provided by EMTALA" cannot be ignored. Pet. App. 20. That difference is particularly salient where, as here, Congress had the "benefit of hindsight" in drafting EMTALA: the statute was enacted over two decades after Title VII. *Id.* Although Gillispie's participation in the EMTALA meetings and her opposition to the Medical Center's decision not to report the EMTALA violation to the State might have fallen under broader "participation" or "opposition" language that Congress could have used in EMTALA, it does not fall within the much narrower language that Congress actually used. *Id.* at 19-21.

Gillispie nonetheless contends that the Third Circuit erred in its reasoning, not because the court articulated the wrong definition of "report," but because the court misapplied *Schindler Elevator* by "graft[ing] onto the definition of the word 'report' a requirement that the information conveyed . . . be not already known." Pet. 6. This argument misses the essence of the Third Circuit's holding. The court did not rule against Gillispie because she provided a "notification" or "information" that was already known. To the contrary, the court held that Gillispie provided no "notification" or "information"—that is, no "report"—*at all*. *See* Pet. App. 19 ("It is clear that she did not provide any 'information' or 'notification' of E.R.s discharge, and she does not allege anything to the contrary.").

As the court explained, the chronology of events leads naturally to the conclusion that Gillispie did not provide any "information" or "notification." Gillispie's only alleged protected activity was her "disagreement with the decision

of hospital management not to report" an EMTALA violation that had already been established. Pet. App. 19-20. As the court ruled, under the ordinary meaning of the term "report," disagreeing about how to handle a violation cannot, by definition, amount to providing "information" about or a "notification" of that violation's existence. *Id.* at 17-21.

In sum, the Third Circuit's common-sense conclusion faithfully applied the definition of "report" from *Schindler Elevator* to the facts before it. There is thus no compelling reason for this Court to grant review.

II. The decision below implicates no conflict in the circuit courts.

Gillispie notably does not ask this Court to grant certiorari to resolve a conflict in the circuit courts about the meaning of the term "report" under EMTALA. And for good reason: no such conflict exists. On this basis, too, the Third Circuit's decision is unworthy of review.

In beginning its rigorous analysis of Gillispie's whistleblower claim, the Third Circuit observed that there is a "dearth" of case law defining the term "report[]" under EMTALA. Pet. App. 14. Indeed, the court could credibly have said that there is "no case law." That is because no other court of appeals has decided what it means to "report[] a violation" under EMTALA's whistleblower provision. *See* 42 U.S.C. § 1395dd(i).

On this point, Gillispie's reliance on *Schindler Elevator Corp.* to urge this Court's review is illustrative. The Court in that case took up the task of defining the word "report"

under the False Claims Act's public-disclosure bar only after a division emerged in the lower courts. *Schindler Elevator Corp.*, 563 U.S. at 406 (collecting cases exhibiting circuit conflict among three circuits). Similarly, in the only other case Gillispie cites in her petition, *Saint-Gobain*, 563 U.S. at 6, this Court expressly noted that it accepted the case for review only after the courts of appeals disagreed on the meaning of the FLSA's anti-retaliation provision. *Id.* at 6-7 (collecting cases exhibiting circuit conflict among eight circuits).

As these cases show, in the absence of a circuit conflict, Gillispie's request for this Court's review is premature. *See Box v. Planned Parenthood of Ind. & Ky., Inc.*, 204 L. Ed. 78, 81 (2019) ("We follow our ordinary practice of denying petitions insofar as they raise legal issues that have not been considered by additional Courts of Appeals.") (citation omitted). Further percolation is warranted.

III. The Third Circuit's application of Pennsylvania state law to the record facts does not call for an exercise of this Court's supervisory power.

In her second question presented, Gillispie urges this Court to grant review to correct what she believes to be the Third Circuit's mistake in affirming the dismissal of her wrongful-discharge claim.[4] Although Gillispie frames her question as a request for this Court to invoke

4. Gillispie originally brought several wrongful-discharge claims, each related to her alleged involvement in reporting concerns about four different patients. Pet. App. 46-51. In her petition, however, Gillispie only challenges the Third Circuit's decision on the wrongful-discharge claim involving E.R—Count II of her amended complaint. *See* Pet. 9-10.

its supervisory power, she is really seeking this Court's intervention to correct the perceived misapplication of a properly stated rule of law—a rule of Pennsylvania state law, at that—to the particular facts of this case. This is an insufficient basis for review.

As a general matter, the supervisory power reflects this Court's "significant interest in supervising the administration of the judicial system." *Hollingsworth v. Perry*, 558 U.S. 183, 196 (2010) (per curiam). The supervisory power advances this interest by allowing the Court to "use that authority to prescribe rules of evidence and procedure that are binding" on the federal courts. *Dickerson v. United States*, 530 U.S. 428, 437 (2000) (citing *Carlisle v. United States*, 517 U.S. 416, 426 (1996)).

Since first invoking its supervisory authority nearly eight decades ago, *see Johnson v. United States*, 318 U.S. 189, 199 (1943), this Court has exercised the power in only limited circumstances. Although these cases vary on their facts, they "share three important characteristics": (1) "they announce procedural rules not otherwise required by Congress or the Constitution"; (2) they "announce generally applicable rules rather than case-specific commands"; and (3) they do not "announce rules governing [this Court's] own procedure," but rather "rules governing procedure in inferior courts." Amy Coney Barrett, *The Supervisory Power of the Supreme Court*, 106 Colum. L. Rev. 324, 332-333 (2006).

This Court's recent applications of its supervisory power reflect these characteristics. The Court, for instance, has used its authority to stay the broadcast of a prominent federal trial where the lower courts did not

"follow the appropriate procedures set forth in federal law before changing their rules to allow such broadcasting," *see Hollingsworth*, 558 U.S. at 184; to require that appellate panels consist of Article III judges, *see Khanh Phuong Nguyen v. United States*, 539 U.S. 69, 81 (2003); and to prohibit lower courts from appointing interested prosecutors in contempt proceedings, *see Young v. United States ex rel. Vuitton Et Fils S. A.*, 481 U.S. 787, 808-09 (1987). These cases highlight what this Court has made plain: the supervisory power is designed to establish broadly applicable rules aimed at ensuring "the integrity of judicial processes," *Hollingsworth*, 558 U.S. at 196, and the "proper administration of judicial business," *see Khanh Phuong Nguyen*, 539 U.S. at 81.

No such concerns animate Gillispie's request here. Indeed, Gillispie has not cited a single case—from this Court or any other—supporting her request for the Court to invoke its supervisory power.

To the contrary, Gillispie makes a bald appeal for this Court to fix what she believes to be the Third Circuit's misapplication of Pennsylvania substantive law to the facts of this case. *See* Pet. 9-10. Gillispie notably does not claim that the Third Circuit was wrong on the law. As she concedes, the decision below correctly held that Pennsylvania law does not recognize a common-law wrongful-discharge claim "if a statutory remedy exists." Pet. App. 23. Gillispie's mere disagreement with the way the Third Circuit applied that law to the distinct facts here does not merit this Court's review. Indeed, Sup. Ct. R. 10 explains that petitions are "rarely granted" when the alleged error consists only of "the misapplication of a properly stated rule of law."

Additionally, where, as here, this Court's decision on the merits—either way—would have no immediate importance beyond the specific facts and parties involved, the Court should be particularly reluctant to exercise its supervisory power. The Court should therefore deny review of Gillispie's second question.

IV. The decision below is correct.

Finally, the Third Circuit reached the right result for the right reasons. In holding that Gillispie did not engage in protected activity under EMTALA and that her wrongful-discharge claim could have been brought under Pennsylvania's MCARE Act, the unanimous panel correctly applied properly stated rules of law. There are no grounds for this Court's review.

The Third Circuit, for the reasons laid out above, *supra* Part I, correctly held that Gillispie did not engage in protected activity by reporting an EMTALA violation. Again, in construing the word "report," the unanimous panel undertook exactly the type of statutory inquiry endorsed by this Court. The court adopted the ordinary meaning of "report" from *Schindler Elevator*, and then applied that definition to the facts before it. Pet. App. 14-21.

That application led to a straightforward result. Because a "report" is "something that gives information" or a "notification," the court reasoned that Gillispie could not have made a report of an EMTALA violation merely by disagreeing about whether to alert State authorities about a violation *that had already been established.* Pet. App. 14, 18-20 (emphasis added).

The court, moreover, buttressed this logical conclusion by comparing EMTALA's narrow anti-retaliation provision with the broader anti-retaliation language Congress included in an earlier statute, Title VII. Pet. App. 20. Again, the court noted that Title VII, unlike EMTALA, extends protection to any employee who "oppose[s]" a Title VII violation or "participate[s] in any manner" in an investigation of a violation. *Id.* (citing 42 U.S.C. § 2000e-3(a)). As the Third Circuit observed, the "breadth of that protection"—had Congress included it in EMTALA—may have covered Gillispie's opposition to the Medical Center's reporting decision. *Id.* at 19-20. But the Third Circuit concluded that EMTALA's "much narrower protection," drafted against the backdrop of Title VII, does not apply to her conduct. *Id.* at 20.

The Third Circuit also correctly affirmed dismissal of Gillispie's wrongful-discharge claim. As noted, all parties agree that the Third Circuit correctly stated the law. That is, under Pennsylvania law, there is no common-law claim for wrongful discharge in violation of public policy if a statutory remedy exists for the harm alleged. Pet. App. 23 (citations omitted). And here, the Third Circuit correctly held that Gillispie did have a statutory remedy under Pennsylvania's MCARE Act. *Id.* at 22-27.

In relevant part, the MCARE Act protects Pennsylvania health care workers from retaliation for reporting "incidents." Pet. App. 25-26 (citing 40 Pa. Cons. Stat. § 1303.302). An "incident," in turn, is defined as:

> An event, occurrence or situation involving the clinical care of a patient in a medical facility which could have injured the patient but did not

> either cause an unanticipated injury or require the delivery of additional health care services to the patient.

Id. at 26 (citing 40 Pa. Cons. Stat. § 1303.302).

As the Third Circuit explained, Gillispie's argument that this statutory protection does not cover her wrongful-discharge claim represents an obvious about-face in her position. Pet. App. 24. Indeed, Gillispie tried to bring an MCARE Act claim on the very facts at issue—the facts surrounding E.R.'s discharge—but that claim was dismissed as time-barred under the applicable statute of limitations. *Id.* So Gillispie's argument to disclaim the MCARE Act's relevance is simply an attempt to disguise a time-barred statutory claim as a common-law cause of action, in a last-ditch effort to preserve the claim.

All the same, the Third Circuit thoroughly reviewed the record before it and correctly held that E.R.'s discharge did qualify as an "incident" under the MCARE Act. Pet. App. 24-26. This conclusion, as the court reasoned, followed from the clear absence of record evidence that E.R. required additional health care services after her discharge from the Medical Center. *Id.* at 26; *see also id.* at 46-47.

There is, in brief, no basis to conclude that the Third Circuit erred. Its decision does not warrant review.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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