NO. 18-168

In the
Supreme Court of the United States

BILL G. NICHOLS, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,

Petitioner,

v.

CHESAPEAKE OPERATING, LLC AND CHESAPEAKE EXPLORATION, LLC,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the unpublished decision below and hold that, for purposes of satisfying the exceptions to federal jurisdiction in the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(4), the citizenship of individuals in a proposed class may be presumed from unproven allegations of residency, when, in this case, petitioner's proposed class was not defined by residency, and petitioner's own evidence indicated that the citizenship of many class members would not be established by the presumption he invokes.

CORPORATE DISCLOSURE STATEMENT

Respondent Chesapeake Operating, L.L.C. ("Chesapeake Operating") is a limited liability company organized under the laws of Oklahoma and it maintains its principal place of business in Oklahoma City, Oklahoma. Chesapeake Operating's sole member is Chesapeake Energy Corporation. Chesapeake Energy Corporation is a publicly traded corporation organized under the laws of Oklahoma and has its principal place of business in Oklahoma City, Oklahoma. No publicly held corporation owns ten percent (10%) or more of the stock of Chesapeake Energy Corporation.

Respondent Chesapeake Exploration, L.L.C. ("Chesapeake Exploration") is a limited liability company organized under the laws of Oklahoma and it maintains its principal place of business in Oklahoma City, Oklahoma. Chesapeake Exploration's members are (i) Chesapeake Operating, L.L.C., (ii) Chesapeake E&P Holding Corporation, and (iii) Chesapeake Appalachia, L.L.C. Chesapeake Operating's disclosure information is stated above. Chesapeake E&P Holding Corporation is a privately traded corporation organized under the laws of Oklahoma and has its principal place of business in Oklahoma City, Oklahoma. It is wholly owned by Chesapeake Energy Corporation, a publicly traded corporation. Chesapeake Appalachia, L.L.C. is a limited liability company organized under the laws of Oklahoma and maintains its principal place of business in Oklahoma City, Oklahoma. It is wholly owned by Chesapeake Energy Corporation, a publicly traded corporation.

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INTRODUCTION

The Class Action Fairness Act of 2005 ("CAFA") allows defendants to remove to federal court class actions filed in state court whenever the amount in controversy exceeds $5,000,000 and the parties are at least minimally diverse—meaning that "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. §1332(d)(2)(A). CAFA also provides limited exceptions to federal jurisdiction, including what are known as the "local-controversy" and "home-state" exceptions. Under the local-controversy exception, a federal court "shall decline to exercise jurisdiction" when "greater than two-thirds of the members of all proposed plaintiff classes" are "citizens of the State in which the action was originally filed," and other requirements are met. *Id.* §1332(d)(4)(A)(i)(I). Under the home-state exception, a federal court shall decline to exercise jurisdiction when, as relevant here, "two-thirds or more of the members of all proposed plaintiff classes," along with "the primary defendants," are "citizens of the State in which the action was originally filed." *Id.* §1332(d)(4)(B).

Petitioner brought suit against respondents Chesapeake Operating, LLC and Chesapeake Exploration, LLC in Oklahoma state court alleging accounting errors in the determination of royalties on production from natural gas wells. He claimed to bring suit on behalf of a class of "Oklahoma residents," who were in turn defined as having Oklahoma mailing addresses. After respondents removed to federal court under CAFA, petitioner sought remand under CAFA's home-state exception and proffered evidence to satisfy

the requirement that two-thirds of his proposed class comprised Oklahoma citizens. The district court denied remand, and the Tenth Circuit affirmed in an unpublished, non-precedential decision after petitioner declined oral argument. The Tenth Circuit observed that petitioner's evidence of citizenship indicated that his proposed class included not just individuals but trusts and other entities, that many of the "residents" had non-Oklahoma addresses, and that a number of the proposed class members were deceased. The court also rejected petitioner's suggestion that the citizenship of his proposed class members could be presumed based on their purported Oklahoma residency.

Petitioner now asks this Court to determine whether a plaintiff seeking remand under 28 U.S.C. §1332(d)(4)(B) need not proffer some minimal evidence that two-thirds of the members of his proposed class are "citizens of the State in which the action was originally filed," but instead can rely solely on a presumption that *all* individuals in a proposed class defined as state residents are state citizens. The petition should be denied. Almost every court of appeals to address the issue has rejected such a presumption, and the lone outlier is a recent, divided decision that relied not just on the presumption but also on facts specific to that case. Furthermore, this case is an exceptionally poor vehicle for addressing the question presented because the decision below is unpublished and non-precedential, petitioner's proposed class is defined not by residency but by mailing addresses, and petitioner's proposed class includes not just individuals but trusts and other entities whose citizenship would not be affected by the

proposed presumption. The question presented is also relatively unimportant, as it presents no risk of forum shopping and similarly-situated plaintiffs have numerous options for obtaining remand under the CAFA exceptions. Finally, the decision below is correct on the merits. In short, there is no basis for further review.

STATEMENT OF THE CASE

Petitioner is a royalty owner in certain natural gas wells located in Oklahoma and operated by respondent Chesapeake Operating. In August 2016, he filed a lawsuit in Oklahoma state court alleging that respondents underpaid royalties. App.2a. Petitioner brought his suit individually and on behalf of a class defined as follows:

> All persons who are (a) an "*Oklahoma Resident*"; and, (b) a royalty owner in Oklahoma wells where Chesapeake Operating, LLC … is or was the operator (or a working interest owner who marketed its share of gas and directly paid royalties to the royalty owners) from January 1, 2015 to the date Class Notice is given.

App.12a. Petitioner then proceeded specifically to define "Oklahoma Resident":

> "*Oklahoma Resident*" means: Persons to whom, from January 1, 2015 to the date suit was filed herein, (a) Chesapeake mailed or sent each monthly royalty check on an Oklahoma well to an Oklahoma address (including direct deposit); (b) Chesapeake mailed or sent a 1099 for both 2014 and 2015 to an Oklahoma address; (c) the Settlement

> Administrator in *Fitzgerald Farms, LLC v. Chesapeake Operating, Inc.*, Case No. CJ-10-38, Beaver County, Oklahoma mailed or sent a distribution check and 1099 to an Oklahoma address; and, (d) except for charitable institutions, were *not* subject to the Oklahoma Withholding Tax for Nonresidents on royalties paid in 2014 to the date suit was filed.

App.2a, 13a.

Respondents removed to the United States District Court for the Western District of Oklahoma, invoking jurisdiction under CAFA because respondents were Oklahoma citizens and at least one entity meeting the class definition (a Texas college), was a Texas citizen. App.2a-3a.

In October 2016, petitioner moved to remand, invoking CAFA's home-state exception, 28 U.S.C. §1332(d)(4)(B). App.3a. Petitioner proffered evidence purporting to show that at least two-thirds of the proposed class members were Oklahoma citizens. Specifically, petitioner had a statistician randomly select 100 royalty owners from a set of royalty owners paid from Oklahoma wells and who had an Oklahoma address. Of those royalty owners, there were 13 trusts, 7 entities, and 80 individuals. App.3a. Petitioner then asked 54 of the 100 royalty owners about their Oklahoma citizenship. Petitioner did not ask any questions concerning trustees or trust beneficiaries. App.3a. Based on the answers received, petitioner claimed that 95% of the sample's royalty owners were Oklahoma citizens and, thus, that it was more likely than not that at least two-thirds of the

entire proposed class comprised Oklahoma citizens. App.3a-4a.

The district court denied petitioner's motion. The court's opinion did not address the presumption of citizenship that petitioner raises here. Instead, it discussed the evidence that petitioner submitted in support of remand, and it found that evidence wanting. Petitioner's evidence was "significant[ly] flaw[ed]," the district court explained, because (among other problems) petitioner had failed to address the citizenship of trusts, which made up 14% of his sample, App.16a & n.3, or their beneficiaries, *id.*; because some sampled class members were deceased; and because for others, "there was an insufficient basis for plaintiff's counsel's determination of Oklahoma citizenship," App.17a. Lacking "sufficient reliable data," the court stated that it could not "find by a preponderance of the evidence that two-thirds or more of the members of the proposed class are citizens of Oklahoma." *Id.*

Petitioner sought interlocutory appeal to Tenth Circuit, and the Tenth Circuit granted review. *See* 28 U.S.C. §1453(c)(1). When petitioner filed his appellate brief, he expressly disclaimed a desire for oral argument, asserting that "the facts and legal issues are adequately covered in the record and the briefs," and that the appeal therefore did "not meet the standards" for oral argument. C.A. Appellant Br.34. The court of appeals thus submitted the case without oral argument, *see* App.1a n.*, and affirmed in an unpublished decision.

In its unpublished decision, the court of appeals reviewed petitioner's submitted evidence. It noted

that of the sample of 100 royalty owners, there were "13 trusts, 7 entities, and 80 individuals." App.3a. Furthermore, petitioner's evidence indicated that "only 35 of the sample's class members had Oklahoma drivers' licenses," and "37 members had non-Oklahoma addresses." App.4a n.2. The trusts, "which ma[de] up nearly 15% of the sample," were "not properly accounted for," and some individuals were deceased. Reviewing the district court's factual findings for clear error, the court of appeals affirmed that petitioner "failed to prove at least two-thirds of the proposed plaintiff class members were Oklahoma citizens by a preponderance of the evidence." App.10a.

The court of appeals addressed petitioner's argument that he need not proffer *any* evidence of citizenship because "a rebuttable presumption of citizenship arises from his allegation that the proposed class members are Oklahoma residents." App.6a. The court declined to accept that argument, explaining that "triggering a CAFA exception based on the mere allegation of residence conflict[s] with the federal courts' strict duty to exercise the jurisdiction … conferred upon them by Congress," and that "an individual's residence is not equivalent to his domicile and it is domicile that is relevant for determining citizenship." App.7a-8a (alterations omitted). The court rejected the broad contention that "presumptions alone may transform a challenged allegation of residency into the establishment of citizenship" necessary to defeat federal jurisdiction under CAFA. App.7a.

Petitioner did not seek rehearing or rehearing *en banc*.

REASONS FOR DENYING THE PETITION

The petition should be denied for numerous independent reasons. First, while petitioner asserts a three-way circuit split, the reality is that five courts of appeals have rejected petitioner's proposition that, for purposes of satisfying the CAFA exceptions, citizenship can be presumed from unproven allegations of residency. Only one court of appeals has even arguably departed from this wall of precedent, and that was in a recent, divided decision that did not solely rely on the presumption but looked to case-specific factors as well, and as to which this Court denied certiorari. There is no square split, and even if there were, it is a lopsided 5-1 split of only recent vintage that warrants further percolation, not the Court's intervention.

Second, even if there were a square circuit split on the question presented that warranted the Court's intervention at some point, this case is a poor vehicle for resolving the split. The decision below is unpublished and non-precedential, and this Court typically does not review non-precedential decisions. On the rare occasion that it does, it is usually because the non-precedential decision itself relies on a precedential circuit decision, but even that is not the case here. The Tenth Circuit has never addressed the question presented in any published, precedential decision. And the likely reason the Tenth Circuit did not do so here is because the court honored petitioner's request that it not conduct oral argument, depriving the court of the opportunity to fully explore the issue.

The case is also a poor vehicle because it does not implicate the question presented. The question asks

whether courts may presume that a class "defined as state residents" consists of at least two-thirds state citizens. But petitioner's proposed class is not defined as Oklahoma residents; it is defined as persons with Oklahoma addresses. To address the question presented here, the Court would first need to assume or determine that receiving mail at an address establishes residency, an unsupported and likely incorrect inferential step. Furthermore, the question presented involves a presumption that applies only to individuals. But petitioner's own evidence showed that his proposed class includes many non-individuals, including trusts and other entities, whose citizenship is not determined by domicile. It is thus unclear whether the presumption would be enough for petitioner to satisfy the CAFA exception even if it applied.

Third, the question presented is not sufficiently important to warrant review. The existence *vel non* of a presumption of citizenship from residency does not affect primary conduct, and even if the circuits took differing views of the presumption, there is no risk of litigants' forum-shopping to take advantage of supposedly more favorable law. That is because a plaintiff invoking the CAFA exceptions must establish that two-thirds of the class members are "citizens of the State in which the action was originally filed." If a plaintiff alleging a class of residents from one state were to file suit in another state in order to enjoy the benefit of the presumption, the state residents in his class would not be "citizens of the State in which the action was originally filed," dooming his effort at remand.

Moreover, the presumption is largely unnecessary because a plaintiff can satisfy the CAFA exceptions merely by defining his class in terms of citizens rather than residents. That result is entirely consistent with both the plain text of CAFA and the federalism concerns that animated its passage. And even in the absence of a presumption, a plaintiff need only satisfy a preponderance-of-the-evidence evidentiary standard, and can do so through representative samples or affidavits.

Fourth, the decision below is correct. CAFA's text plainly states that courts should decline to exercise jurisdiction only when sufficient class members are "citizens," not residents or addressees, of the "State in which the action was originally filed." 28 U.S.C. §1332(d)(4). It is undisputed that the party seeking remand under a CAFA exception bears the burden of proving the exception's applicability; as such, the party must provide proof of citizenship—not unproven allegations of residency. It has long been understood, moreover, that mere allegations of residency are insufficient to establish citizenship under the diversity jurisdiction provisions of 28 U.S.C. §1332, and petitioner identifies no principled basis for treating citizenship differently in another provision of the same statutory section. Furthermore, CAFA's exceptions are to be construed narrowly, with doubts resolved in favor of exercising federal jurisdiction. Yet petitioner's presumption would prove most consequential in precisely those cases where compliance with CAFA's requirements is most in doubt—including cases like this one, where petitioner's own evidence demonstrates the dangers of blithely applying a presumption of citizenship.

I. Petitioner Does Not Identify A Circuit Split Warranting Review.

Contending that this case involves a "deep and persistent division of authority," Pet.9, petitioner argues that the question presented implicates a three-sided circuit split. The reality, however, is that five courts of appeals (not including the Tenth Circuit's non-precedential decisions) require a plaintiff invoking the "home-state" or "local-controversy" CAFA exceptions to proffer evidence that two-thirds of the class members are citizens of the state in which the action was originally filed, rather than assert that citizenship can simply be presumed from unproven allegations of residency. Only one court of appeals has even arguably departed from this unbroken line of precedent, and that was in a divided decision that relied not only on the presumption but also on facts particular to that distinctive case. This state of affairs does not warrant the Court's review.

A. Five Circuits Require a Plaintiff Invoking the CAFA Exceptions to Make an Evidentiary Showing of Citizenship, Rather Than Rely on a Presumption of Citizenship.

Not including the Tenth Circuit's two unpublished (and therefore non-precedential) decisions, at least five courts of appeals require a plaintiff invoking the local-controversy or home-state CAFA exceptions to proffer evidence indicating that two-thirds of class members are citizens of the state in which the action was originally filed. In so holding, these courts have either explicitly or implicitly rejected the proposition

that citizenship can be merely presumed from unproven allegations of residency.

For example, in *In re Sprint Nextel Corp.*, 593 F.3d 669 (7th Cir. 2010), the Seventh Circuit addressed a class alleged to be of "Kansas residents," but that was more specifically defined as limited to those who "(1) had a Kansas cell phone number, [and] (2) received their cell phone bill at a Kansas mailing address." *Id.* at 671. The court considered whether plaintiffs had proved applicability of a CAFA exception where, even though they "didn't submit any evidence about citizenship," the class definition, "keyed as it is to Kansas cell phone numbers and mailing addresses," made it "more likely than not that two-thirds of the putative class members [we]re Kansas citizens." *Id.* at 673. The court held that the party had not carried its burden, as it invited judicial "guesswork." *Id.* at 674. Classes based only on mailing addresses or property ownership could include, for example, "absentee landlords from other states," "local offices of national corporations," or "out-of-state students at Kansas colleges," none of whom would qualify as "citizens" of Kansas. *Id.* at 671, 674. The court therefore required plaintiffs invoking the CAFA exceptions to "submit[] evidence … going to the citizenship" of class members. *Id.* at 675. Alternatively, the court observed, plaintiffs can simply "define[] their class as all … *citizens*" who meet the remaining conditions of the class, which "guarantee[s]" that a suit will remain in state court. *Id.* at 676. As the court explained, "it doesn't take any evidence to establish that Kansas citizens make up at least two-thirds of the members of a class that is open only to Kansas citizens." *Id.*

Likewise, in *Hood v. Gilster-Mary Lee Corp.*, 785 F.3d 263 (8th Cir. 2015), the Eighth Circuit considered a class defined as former employees at a Missouri plant, as to whom plaintiffs had "provided only last-known addresses" in Missouri. *Id.* at 265. Relying on the presumption that state residency, including as established through a last-known address, constitutes state citizenship, the district court concluded that at least two-thirds of the class could be presumed to be Missouri citizens. *Hood v. Gilster-Mary Lee Corp.*, 2015 WL 328409, at *3 (W.D. Mo. Jan. 26, 2015). The Eighth Circuit rejected this approach, deeming the Seventh Circuit's reasoning in *Sprint* "[m]ore persuasive." *Hood*, 785 F.3d at 265-66. Like the Seventh Circuit, the Eighth Circuit observed that plaintiffs invoking the local-controversy or home-state CAFA exceptions need only (1) submit "affidavit evidence or statistically significant surveys showing two-thirds of the class members are local citizens"; or (2) "redefine the class as only local citizens." *Id.* at 266. The Eighth Circuit reaffirmed this position in *Hargett v. RevClaims, LLC*, 854 F.3d 962 (8th Cir. 2017), where it explicitly rejected the argument by a CAFA plaintiff "that presumptions alone may transform a challenged allegation of residency into the establishment of citizenship." *Id.* at 966 n.2.

Petitioner claims that the Fifth Circuit "allow[s] plaintiffs to use the presumption that state residents are state citizens." Pet.14. But the case he cites for that proposition, *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793 (5th Cir. 2007), does not support that claim and in fact holds that a plaintiff must produce evidence to satisfy the CAFA exceptions, just as the Seventh and Eighth Circuits require. In

Preston, the Fifth Circuit considered a class of persons injured at a New Orleans health facility during Hurricane Katrina. Plaintiffs contended that they satisfied the local-controversy CAFA exception because they presented pre-Katrina addresses of the hospitalized patients and that the "presumption of continuing domicile" required the defendant to demonstrate that class members who may have temporarily relocated did not intend to return home. *Id.* at 798. Alternatively, plaintiffs contended that they could rely simply on the allegations of residency, because of the "rebuttable presumption" that "a person's state of residence and state of citizenship are the same." *Id.* at 799. The court *declined* to adopt this approach, however. *Id.* at 800. Instead, the court observed, plaintiffs must "produce probative evidence" that "establish[es] citizenship." *Id.* at 801. For good reason, then, the Fifth Circuit has been described as one of the circuits that has "rejected the rebuttable presumption in the CAFA context." *Mason v. Lockwood, Andrews & Newnam, P.C.*, 842 F.3d 383, 393 (6th Cir. 2016); *see also id.* at 397-98 (Kethledge, J., dissenting).[1]

The same goes for the Ninth Circuit, again notwithstanding petitioner's argument to the contrary. Pet.14-15. In *Mondragon v. Capital One Auto Finance*, 736 F.3d 880 (9th Cir. 2013), the district

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[1] *Hollinger v. Home State Mutual Insurance Co.*, 654 F.3d 564 (5th Cir. 2011) (per curiam), is not to the contrary. There, the Fifth Circuit held that plaintiff had established the two-thirds citizenship requirement not because of any naked presumption linking residency and citizenship, but because of the "statistical evidence" marshaled in the case. *Id.* at 574.

court held that plaintiff had satisfied the local-controversy exception because, despite submitting "no evidence regarding … the citizenship of prospective class members," citizenship could be presumed from residency. *Id.* at 881. Vacating the district court's decision, the Ninth Circuit squarely rejected this proposition, holding instead that "there must ordinarily be facts in evidence to support a finding that two-thirds of putative class members are local state citizens." *Id.* Echoing the Seventh Circuit's *Sprint* decision, the Ninth Circuit held that the *only* time "[a] pure inference regarding the citizenship of prospective class members may be sufficient" is "if the class is defined as limited to citizens of the state in question"; otherwise, "such a finding should not be based on guesswork." *Id.* at 881-82.

Petitioner notes (at 15) that the Ninth Circuit disagreed with the "suggest[ion]" in *Sprint* that "evidence of residency can never establish citizenship." *Id.* at 886. But this passing *dictum* does not remotely suggest some sort of material disagreement with the Seventh Circuit or broader uncertainty in the lower courts over the question presented. To the contrary, the Ninth Circuit repeatedly cited with approval the Seventh Circuit's reasoning in *Sprint* and remarked that it was "[j]oining the other three circuits" that had considered the issue, which included the Seventh Circuit (in *Sprint*) and the Fifth Circuit (in *Preston*). *Id.* at 884-85 & n.5; *see also King v. Great Am. Chicken Corp.*, 903 F.3d 875, 878-80 (9th Cir. 2018) (reaffirming *Mondragon* and holding that plaintiff did not produce "sufficient evidence" satisfying citizenship provision).

Finally, the last circuit that the Ninth Circuit said it was "[j]oining" was the very first circuit to consider the issue, the Eleventh Circuit. In *Evans v. Walter Industries, Inc.*, 449 F.3d 1159 (11th Cir. 2006), the Eleventh Circuit considered whether plaintiffs had satisfied the local-controversy exception. The court observed that plaintiffs had "offered little proof that Alabama citizens comprise at least two-thirds of the plaintiff class." *Id.* at 1166. The court reviewed an affidavit submitted by plaintiffs' counsel that 93.8% of class members were Alabama residents, and it addressed plaintiffs' argument that "if 93.8% … are Alabama residents, then surely two-thirds of the entire plaintiff class are Alabama citizens." *Id.* The court rejected this argument and concluded that "plaintiffs have not carried their burden of demonstrating that more than two-thirds of the plaintiff class are Alabama citizens." *Id.* Although the Eleventh Circuit did not specifically address whether plaintiffs could presume citizenship from residency, its holding necessarily rejects that proposition.

In short, even before considering the Tenth Circuit's unpublished, non-precedential opinions, five circuits have rejected the notion that a plaintiff can satisfy the local-controversy or home-state CAFA exceptions merely by presuming state citizenship based on unproven allegations of residency. Petitioner admits that two circuits (the Seventh and Eighth) have done so, Pet.15-17, and it is recognized that three others (the Fifth, Ninth, and Eleventh) have as well. *See Mondragon*, 736 F.3d at 884; *Mason*, 842 F.3d at 397-98 (Kethledge, J., dissenting) (noting that "every circuit to have considered the issue" has required record evidence rather than permitting a

presumption, and citing, *inter alia*, *Mondragon*, *Preston*, *Sprint*, and *Evans*).

B. The Sixth Circuit's *Mason* Decision Reflects at Most Shallow and Factbound Disagreement With Broader Authority.

To the extent that a split in authority exists, it is only because of one recent, divided Sixth Circuit decision, *Mason*, that relied only in part on something resembling petitioner's proposed presumption in the circumstances of a distinctive case.

Mason arose from the well-publicized water crisis affecting Flint, Michigan. That city hired an engineering firm to improve a water treatment plant, as part of preparations to switch to a new water source. 842 F.3d at 387. As alleged in the complaint, the firm's plan "did not include necessary upgrades for anti-corrosive treatment measures." *Id.* When the city switched to its new, more corrosive source of water, lead leached out of the city's service lines, resulting in serious harms, including "a spike in deaths from Legionnaires' disease," and "reports of dangerously high blood lead levels in Flint children." *Id.* Plaintiffs sued the engineering firm, and pressed claims on behalf of "residents and property owners in the City of Flint." *Id.* at 388.

Defendant removed to federal court, and plaintiffs moved to remand under CAFA's local-controversy exception. *Id.* The district court granted the motion to remand, and a divided panel of the Sixth Circuit affirmed. Yet while the panel majority did rely in part, on "the presumptive force of residency" in establishing citizenship, the panel also relied on features of the case that "bolster[ed] th[at] inference," including that

"according to the plaintiffs' class definition, the class members have continuously resided in Flint, Michigan for several years," and that "[t]here [we]re no circumstances—such as a large number of college students, military personnel, owners of second homes, or other temporary residents—suggesting that these Flint residents are anything other than citizens of Michigan." *Id.* at 395. It was only with the aid of these "additional domicile factors" that the court held that "the district court did not clearly err in finding that … more than two-thirds of the proposed class of Flint residents were Michigan citizens." *Id.*

The Sixth Circuit's analysis, though unique in its outcome as compared to other cases addressing the CAFA exceptions, does not produce a conflict warranting this Court's intervention. The majority based its decision not just on the proposition that citizenship can be presumed from residency, but also on "additional domicile factors" present in the circumstances of that case. As such, the majority situated its ruling in what other courts would term the "entire record," *Preston*, 485 F.3d at 800, not to mention considerations distinctive to the high-profile concerns in that case. *See* 842 F.3d at 397 (stating that "it defies common sense to say a suit by Flint residents against those purportedly responsible for injuring them through their municipal water service" does not satisfy local-controversy exception). Furthermore, by relying on these "additional … factors" apart from the presumption, the Sixth Circuit's decision parts company with this case, in which petitioner has argued that he has satisfied the CAFA exception *solely* because of the presumption of citizenship from residency. Perhaps not surprisingly

given its fact-dependent holding, no other appellate court has applied *Mason* to hold that a plaintiff may invoke a presumption to establish citizenship based on unproven allegations of residency.[2]

Petitioner is thus wrong to infer a "deep" and "entrenche[d]" division from this single, outlying factbound decision—which, notably, generated a petition for certiorari claiming a circuit split that this Court denied. *See* 137 S. Ct. 2242 (2017) (mem.). Petitioner is further wrong to suggest that any disagreement in the courts of appeals is "persistent," Pet.9, given that the Sixth Circuit's decision is barely two years old; the Sixth Circuit has yet to hold that the presumption *alone*—as opposed to the presumption plus "additional … factors"—satisfies a plaintiff's burden under 28 U.S.C. §1332(d)(4); and no other court of appeals has applied *Mason* to hold that a plaintiff may invoke a presumption to establish citizenship based on unproven allegations of residency. These circumstances warrant further percolation, not the Court's intervention.[3]

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[2] Petitioner suggests that in *Scott v. Cricket Communications, LLC*, 865 F.3d 189 (4th Cir. 2017), the Fourth Circuit "impli[ed]" that it "might follow *Mason*." Pet.13 n.3. But that case addressed the amount-in-controversy requirement, so the court had no occasion to address, much less decide, whether it would "follow *Mason*."

[3] Petitioner invokes "inconsistency and confusion" among district courts, Pet.19-20, but divergent district court views are not a basis for certiorari. Indeed, to the extent "different district courts within the same circuit or even judges within the same district have come to inconsistent conclusions," *id.* at 20, that only increases the likelihood that the court of appeals for that circuit will soon "accept an appeal from an order of a district court

II. This Case Is A Poor Vehicle To Address The Question Presented.

Even if there were a circuit split warranting review, this case would be a poor vehicle for resolving that split for at least three reasons.

A. First and foremost, as petitioner grudgingly acknowledges (thirty pages into the petition), the decision below is unpublished, thus rendering it non-precedential in the Tenth Circuit. This Court typically does not review unpublished, non-precedential decisions because they do not reflect a circuit's definitive position on a legal issue. *See Plumley v. Austin*, 135 S. Ct. 828, 831 (2015) (Thomas, J., dissenting from the denial of certiorari) (noting that an unpublished opinion "preserves [a circuit's] ability to change course in the future"). Here, not only is the decision below non-precedential by operation of Tenth Circuit rules governing unpublished decisions, *see* 10th Cir. R. 32.1; the panel went out of its way to explicitly state, "This order and judgment is not binding precedent," App.1a n.*.

To be sure, this Court does very infrequently grant review of unpublished decisions. *See* Pet.31. But it is

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granting or denying a motion to remand a class action," 28 U.S.C. §1453(c)(1), resolving any inconsistencies and contributing to further percolation. Regardless, petitioner overstates his purportedly supportive decisions. For example, in *Ellis v. Montgomery County*, 267 F. Supp. 3d 510 (E.D. Pa. 2017), the court observed that "[t]he party seeking to invoke an exception [to CAFA] must provide *evidence* (not merely assertions)" establishing citizenship. *Id.* at 516. The court did not hold that a party may obtain remand simply by pointing to unproven allegations of residency and invoking a presumption of citizenship.

truly exceptional for the Court to do so; petitioner's most recent case is from eighteen years ago. And even those limited exceptions generally consist of unpublished decisions that rely on circuit precedent. That was the case, for example, in petitioner's cited cases of *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999) (reviewing unpublished Tenth Circuit decision relying on circuit precedent), and *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447 (1993) (same, within Ninth Circuit). Likewise, petitioner contends that in *Standard Fire Insurance Co. v. Knowles*, 568 U.S. 588 (2013), this Court "did not even have the benefit of a reasoned opinion below." Pet.31. But that ignores that the Court *did* have the benefit of the existing Eighth Circuit precedent upon which the "one-sentence denial of permission to appeal" was based—because the Court cited that very precedent in its decision in *Knowles*. *See* 568 U.S. at 591-92 (citing *Rolwing v. Nestle Holdings, Inc.*, 666 F.3d 1069, 1072 (8th Cir. 2012)).

Here, however, it is undisputed that the Tenth Circuit has not issued a precedential opinion on the question presented in *any* case. The only other time the court addressed the issue was in another unpublished, non-precedential decision, *Reece v. AES Corp.*, 638 F. App'x 755 (10th Cir. 2016). In short, there is no binding Tenth Circuit precedent on the question presented. Because another Tenth Circuit panel may well "change course in the future," *Plumley*, 135 S. Ct. at 831, the Court should not review the decision below.

Petitioner contends that the fact that the decision below is unpublished and non-precedential should not

be held against him because, under CAFA, "the courts of appeals have a statutory 60-day period in which they must render judgment," which "likely discourages circuit judges from writing precedential opinions." Pet.31. But it did not discourage the judges in *Sprint*, *Hood*, *Preston*, *Mondragon*, and *Evans*, all of which were published, precedential decisions issued during the statutorily prescribed period and all of which rejected the presumption.[4] Indeed, the fact that the vast majority of circuit decisions addressing the question presented *are* precedential only underscores that the Court should not review the unpublished, non-precedential decision here and should instead await a precedential decision.

Petitioner also complains that the decision below is "in tension with" Tenth Circuit rules, and he suggests that the Tenth Circuit was "us[ing] the mechanism of unpublished opinions to avoid creating precedent," therefore "diminish[ing] the odds of review by this Court." Pet.32. That argument is pure speculation, of course; moreover, this Court does not review purported (and factbound) misapplications of a circuit's own rules. Regardless, petitioner fails to mention the most likely reason the Tenth Circuit declined to publish its decision—because petitioner affirmatively *declined* oral argument before that court. *See* p.5, *supra*; App.1a n.* (noting "the parties' request for a decision on the briefs without oral

[4] In *Preston*, the court availed itself of the 10-day extension provided by 28 U.S.C. §1453(c)(3)(B). The courts of appeals have interpreted the statutory period as running from the date the court accepts the appeal, not the date the appellant applied for appeal. *See Evans*, 449 F.3d at 1162-63.

argument"). Precisely because the lack of oral argument precludes a court from giving its fullest consideration to an issue, courts of appeals often decline to issue binding precedent when they have not conducted oral argument. Petitioner thus cannot complain of the Tenth Circuit's decision not to publish the decision in this case. Indeed, it is more than a little ironic that petitioner did not deem his case fit for oral argument before the panel below but now asks nine Justices of this Court to hear his case. In any event, the lack of oral argument only underscores that the unpublished, non-precedential decision below—from a court of appeals that has yet to issue a precedential decision addressing the question presented—does not warrant review.[5]

B. This case is also a poor vehicle because it does not squarely implicate the question presented or the split that petitioner alleges. The question presented asks whether courts may "presume that a class *defined as state residents* consists of at least two-thirds state citizens." Pet.i (emphasis added); *see also* Pet.2 (question presented involves "a class that, by definition, consists of residents of a particular state"). The "defined as state residents" phrase is integral to petitioner's case, because that is the premise upon which his proposed presumption rests (*i.e.*, that citizenship can be presumed from allegations of residency).

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[5] The lack of oral argument, among other things, distinguishes this case from the case addressed in Justice Thomas's separate opinion in *Plumley*. *See* 135 S. Ct. at 831 (noting that the court of appeals "had full briefing and argument" and issued "a 39-page opinion written over a dissent").

But petitioner's proposed class is *not* "defined as state residents." To be sure, petitioner does initially define his proposed class as any "Oklahoma resident" who owned royalties in Oklahoma wells operated by respondents. But he then proceeds to further define "Oklahoma resident" to mean, as relevant here, any person to whom respondents "mailed or sent" a monthly royalty check and a 1099 form "to an Oklahoma address." App.13a. Accordingly, petitioner's proposed class is not "by definition" comprised of Oklahoma "residents." Rather, the class is comprised of parties with Oklahoma addresses, who may or may not actually reside in Oklahoma. *See, e.g.*, *Mondragon*, 736 F.3d at 884 (noting that persons may have only temporary residences or second homes in a state); *Hood*, 785 F.3d at 265 (noting that of 58 individuals with last-known Missouri addresses, only 13 were Missouri citizens); *Sprint*, 593 F.3d at 671 (referring to "out-of-state students at Kansas colleges"); *see also Transit Connection, Inc. v. NLRB*, 887 F.3d 1097, 1103-04 (11th Cir. 2018) (distinguishing between P.O. Box addresses and residential addresses).

This creates a serious problem for petitioner: His question presented requires the Court to start from the premise of residency (such that citizenship can be presumed from residency), but residency is not even the premise of petitioner's proposed class. In order to decide the question presented, the Court would first have to assume or determine that receiving mail at an address establishes residency—a dubious proposition by itself, but a threshold question that underscores the improvidence of granting certiorari here. If the Court were ever to grant certiorari on the issue whether

citizenship can be presumed from residency for purposes of 28 U.S.C. §1332(d)(4), at a minimum, it should be in a case where the class is squarely and solely defined as "residents," and not as something that requires the Court to make an unsupported (and likely incorrect) inferential leap in order to get to the starting point of "residency."

Relatedly, petitioner's class definition distinguishes his case from *Mason*, the one case he claims supports him. In that case, the class *was* defined as "residents"—more specifically, "residents and property owners in the City of Flint" who "ha[d] continuously resided in Flint, Michigan, for several years," 842 F.3d at 388, 395. Accordingly, while petitioner attempts to liken his case to *Mason*, the reality is that, because the plaintiff in *Mason* defined the class in terms of residents but petitioner defines his in terms of addressees, this case does not even implicate the circuit split that petitioner alleges.[6]

C. There is yet another vehicle problem. The question presented involves a presumption that only applies to individuals. *See* Pet.i (invoking "this Court's long-standing presumption that a *person's* residence is his domicile" (emphasis added)).

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[6] There is a reason for the mismatch between the question presented and the circumstances of this case, and the related mismatch between this case and *Mason*. The question presented attempts to track the issue addressed in *Mason*, because petitioner evidently believes that is his best bet for alleging a circuit split. But petitioner filed this case and sought remand under the home-state CAFA exception *before Mason* was decided. Accordingly, petitioner is forced to shoehorn the circumstances of his case into the materially different circumstances of *Mason* and the question presented. But the shoe does not fit.

Petitioner's argument for why that presumption is appropriate is that an individual's residence is presumed to be his domicile, and domicile equates to citizenship; therefore, an individual's residence is presumed to be his citizenship. In this case, however, petitioner's own evidence indicated that a substantial portion of the members of his proposed class are *not* individuals, but rather trusts or entities. *See* App.3a (noting that of 100 royalty owners sampled by petitioner, "there were 13 trusts [and] 7 entities"). Additionally, even of the individuals in petitioner's sample, over one-third "had non-Oklahoma addresses," App.4a n.2, and "a number of individuals identified as Oklahoma citizens were actually deceased, with no information provided as to heirs' citizenship," App.4a.

Petitioner's own evidence—which he never mentions—thus creates further reasons to deny review. First, it demonstrates the hazards of blithely presuming citizenship from unproven allegations of residency, because the reality may be quite different. Second, the presumption that petitioner asks this Court to endorse would have no applicability to a considerable portion of the members of his proposed class. Citizenship for non-individuals is determined by other factors besides domicile. For example, the citizenship of a corporation is determined by its place of incorporation or principal place of business. *See, e.g.*, *Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1015-16 (2016). Depending on the circumstances, the citizenship of a trust for jurisdictional purposes is determined by the citizenship of its trustee or beneficiaries, which can be entities or individuals. *E.g.*, *Conagra Foods, Inc. v.*

Americold Logistics, LLC, 776 F.3d 1175, 1181 (10th Cir. 2015), *aff'd*, 136 S. Ct. 1012 (2016). Because the presumption presented in the petition applies only to individuals, but petitioner's proposed class extends well beyond individuals, the Court's decision may not be outcome-determinative as to whether petitioner can satisfy the CAFA exception. If the Court were ever inclined to review whether "the presumption that a person's residence is his domicile" applies to establish citizenship under 28 U.S.C. §1332(d)(4), it should do so in a case where the proposed class includes only individuals, not trusts or business entities. *Cf. Relford v. Commandant*, 401 U.S. 355, 370 (1971) (advising that question presented would be "better resolved in other litigation where … it would be solely dispositive").

III. The Question Presented Is Not Of Sufficient Importance To Warrant Review.

The question presented also is not of sufficient importance to warrant this Court's review. Petitioner argues that CAFA "substantially increased the number of diversity-based class actions in federal court," and "[t]he CAFA exceptions therefore present an important and recurring threshold issue in a large number of class actions." Pet.25. But this case is not about CAFA in general, nor about the CAFA exceptions in general. It is about one phrase in one subsection of the CAFA exceptions—the two-thirds state-citizenship requirement. And when it comes to that specific issue, petitioner has little to say supporting the notion that the question presented is sufficiently important for this Court to review. For good reason: it is not.

A. Petitioner claims that "[d]ifferent outcomes for similar classes in different circuits undercut Congress's goal of uniformity," and cites the need for avoiding "uncertainty." Pet.29. But in the context of the particular statutory provision at issue here, those concerns are vastly overstated. Concerns about "uniformity" and "uncertainty" are at their nadir when differences among the circuits do not affect primary conduct and will not lead to forum shopping. *Cf. Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 820 (1988) (Stevens, J., concurring) (noting the "forum-shopping … generated" by "divergent appellate views" of patent law before Federal Circuit's creation). That is precisely the case here. The CAFA exceptions do not affect primary conduct; it is extremely doubtful that a plaintiff's choice of state-court forum for his class-action suit will turn on the attenuated concern that, *if* the defendant removes, and *if* the plaintiff seeks remand under one of the exceptions, the district court might deny remand because the regional court of appeals does not apply a presumption of citizenship to allegations of residency.

Moreover, even if a plaintiff *did* improbably take into account regional circuit law governing CAFA exceptions in deciding in which state to file suit, that would only *constrain* the plaintiff's choice of forum. Both CAFA exceptions are applicable only if at least two-thirds (for the home-state exception) or more than two-thirds (for the local-controversy exception) of the class members are "citizens of the State in which the action was originally filed." 28 U.S.C. §§1332(d)(4)(A)(i)(I), (B). Thus, if a plaintiff intends to file suit on behalf of a class of state residents—the only circumstance where the residency-citizenship

presumption at issue is relevant—and chooses his forum with an eye toward satisfying the CAFA exceptions, he will *necessarily* have filed suit in the one state that allows him to show that his state class members are citizens "of the State in which the action was originally filed." And there will only be one such state—the state of the class members' residency. If the plaintiff files in a different state—to take advantage of circuit law applying the presumption or to avoid circuit law rejecting the presumption—he will almost certainly be unable to satisfy the CAFA exception because, even if the presumption is applied, and the residents are deemed citizens, they will not be citizens of the "State in which the action was originally filed."

This case is instructive. Suppose that, in order to take advantage of the Sixth Circuit's purportedly more favorable law, petitioner had filed his suit not in Oklahoma but Tennessee state court—classic forum-shopping. After respondents removed to federal court, petitioner would have invoked the presumption supposedly endorsed by *Mason*. This would, in petitioner's view, result in his class of Oklahoma residents being treated as Oklahoma citizens (putting aside that he defines "residents" as something besides "residents"). The problem, though, is that petitioner has now failed the rest of U.S.C. §1332(d)(4)(B), because the members of his proposed class—Oklahoma citizens—are not "citizens of the State in which the action was originally filed"—Tennessee. In short, even if there were wildly divergent views of the presumption across the circuits, there would be no risk of forum shopping on that basis. Any plaintiff wishing to select a forum different from the state of his

proposed class members' residency in order to take advantage of favorable law regarding the presumption would not actually do so, because any attempt at remand would be doomed upon application of the presumption.[7]

B. The question presented is also unimportant because, as numerous courts of appeals have observed, plaintiffs can virtually "guarantee" remand under the CAFA exceptions by defining their classes in terms of citizens, not residents. *Sprint*, 593 F.3d at 676; *see also, e.g.*, *Hargett*, 854 F.3d at 966 (plaintiff "could have met her burden by … defining her class to include only Arkansas citizens"); *Mondragon*, 736 F.3d at 885 (plaintiff "could have limited the class by defining it to consist only of California citizens"); *cf. Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1118 (9th Cir. 2015) (plaintiff "easily" met citizenship requirement by defining class as "Nevada citizens"); *Preston*, 485 F.3d at 801 (noting that plaintiffs are "master[s] of the complaint with the creative license for defining the putative class").

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[7] Indeed, the attempt at remand would be doomed for a second reason that also forecloses the possibility of forum-shopping. The local-controversy exception requires that at least one *defendant* be "a citizen of the State in which the action was originally filed," 28 U.S.C. §1332(d)(4)(A)(i)(II)(cc), and the home-state exception requires that the "primary defendants" be "citizens of the State in which the action was originally filed," *id.* §1332(d)(4)(B). Thus, if a class defined as Florida residents sued a Florida defendant in Tennessee state court and the case were removed, a motion to remand would fail not simply because the Florida citizens would not be Tennessee citizens, but also because the Florida defendant would not be a Tennessee citizen.

Petitioner claims that "defin[ing] classes in terms of state citizens" is not "what Congress intended." Pet.27. But despite spilling several pages of ink, *see* Pet.25-28, petitioner never actually explains why defining a class in terms of citizens would be contrary to congressional intent. That proposition is hard to square with Congress' deliberate choice of the word "citizens" in the statute, rather than "residents," "addressees," or other terms. Petitioner claims that in creating the CAFA exceptions, Congress was promoting "federalism interests," Pet.25, and "balanc[ing] local interests against the federal interest in adjudicating national litigation," Pet.27. But nothing about defining a class in terms of a state's citizens upsets that balance or disturbs federalism interests. A suit filed on behalf of a state's citizens will remain in state court—just as Congress intended. Defining a class as citizens readily "effectuate[s] Congress's federalism concerns, ensuring that national cases remain in federal court, while state courts continue to adjudicate local controversies." Pet.25.

Nothing, moreover, "requires" a plaintiff to define a proposed class in terms of citizenship. Pet.27. A plaintiff can define the class any way he or she wants, and can obtain remand by submitting evidence that the class satisfies the statutory citizenship requirement. Defining the class in terms of citizenship simply provides one "eas[y]" means for satisfying the statutory requirement. *Benko*, 789 F.3d at 1118. It is merely another option for a plaintiff who prefers to litigate in state court—not the only option.

C. Relatedly, the question is also unimportant because, even if no presumption applies, a plaintiff can obtain remand simply by submitting evidence that the class satisfies the citizenship requirement. As the courts of appeals have held, "the burden of proof placed upon a plaintiff should not be exceptionally difficult to bear." *Mondragon*, 736 F.3d at 886. A plaintiff need only provide data indicating citizenship of a representative sample of his proposed class, *see Sprint*, 593 F.3d at 675-76, or even affidavit evidence, *see Hood*, 785 F.3d at 266. Courts are to "consider 'the entire record,'" and to "make reasonable inferences from facts in evidence." *Mondragon*, 736 F.3d at 886 (quoting *Preston*, 485 F.3d at 800); *see also Preston*, 485 F.3d at 801 (observing that "indicators of … citizenship are often a matter of public record" and thus "easily accessed"). Petitioner failed to carry that burden here, not because the *type* of evidence he proffered was inherently problematic, but because the district court ultimately found petitioner's evidence insufficient to prove that Oklahoma citizens comprised at least two-thirds of this particular proposed class—a determination petitioner does not challenge before this Court. That petitioner was not able to satisfy his burden of proof in this particular case does not obviate the fact that there is a well-established path for litigants to prove the applicability of the home-state exception to CAFA jurisdiction.[8]

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[8] Petitioner's assertion that the issue "arises frequently," Pet.28, is an overstatement. CAFA has been the law for nearly fourteen years, and by petitioner's own account "shift[ed] most class actions to federal court," Pet.28, yet the issue has been addressed in precedential opinions by only half the circuits.

IV. The Decision Below Is Correct.

Finally, review is unnecessary because the Tenth Circuit did not err in declining to apply a presumption of citizenship on the basis of petitioner's mere allegations of residency. Plaintiff's proposed class, containing many trusts and entities to whom petitioner's proposed presumption would not apply, as well as individuals who (petitioner's evidence showed) may well not be Oklahoma citizens, is a good example of why courts are correct to require an evidentiary showing before remanding cases under the CAFA exceptions. Requiring that evidentiary showing, moreover, best fits the text and purposes of the statute.

CAFA plainly states that courts must "decline to exercise jurisdiction" when class members "are *citizens* of the State in which the action was originally filed." 28 U.S.C. §1332(d)(4) (emphasis added). "[C]itizenship is clearly not co-extensive with inhabitancy," App.8a (quoting *Bingham v. Cabot*, 3 U.S. (3 Dall.) 382, 383 (1798)), and had Congress wished to make special provision for residents in the CAFA exceptions, it could have done so. Indeed, Congress has created express presumptions in other statutes, and yet did not do so here. *See, e.g.*, 11 U.S.C. §1516(c) ("In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.").

That textual choice has added significance, moreover, when considered against surrounding statutory provisions. Petitioner argues that "[t]he rule that an allegation of residency alone does not

suffice to invoke federal diversity jurisdiction is limited to that specific context." Pet.22. But that view ignores that CAFA is very much in that "specific context"—beyond just choosing the word "citizen," Congress also chose to draft CAFA not as a standalone provision, but rather as an addition to 28 U.S.C. §1332, which has provided for federal diversity jurisdiction since 1948, *see* Act of June 25, 1948, ch. 626, 62 Stat. 930. It is a "normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990); *see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (noting that using language in a new statute generally "indicates[] … the intent to incorporate [the] judicial interpretations as well"). Here, there is no reason to suspect Congress intended for mere residency to satisfy the CAFA exceptions of Section 1332, even while not satisfying the diversity provision of that same statute.

That is especially true where Section 1332 demonstrates that the exceptions are invoked only after jurisdiction is established—they are an "exception to CAFA jurisdiction." *Mondragon*, 736 F.3d at 883. It is common ground among the parties, and undisputed among the courts of appeals, that as the party invoking an exception to federal jurisdiction, the plaintiff seeking remand under the CAFA exceptions bears the burden of proof. *See, e.g.*, *Mondragon*, 736 F.3d at 883; *Preston*, 485 F.3d at 797; *Hargett*, 854 F.3d at 965; Pet.4. Burdens of proof ordinarily and unsurprisingly require "proof"—here, that members of the proposed class are "citizens," and not just residents or addressees.

This understanding is confirmed by the federal courts' "strict duty to exercise the jurisdiction that is conferred upon them by Congress," *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996), and by the acknowledged purposes of the statute itself. "CAFA's legislative history suggests that Congress intended the local controversy exception to be a narrow one, with all doubts resolved 'in favor of exercising jurisdiction over the case.'" *Evans*, 449 F.3d at 1163 (citing S. Rep. No. 109-14, at 41 (2005)). Petitioner's presumption, however, would obviate the courts' "strict duty," and would resolve doubts against federal jurisdiction, not for it. Indeed, petitioners' cases (none of which discusses diversity jurisdiction), Pet.21-22, generally rely on the proposition that "[w]here a change of domicile is alleged, the burden of proof rests upon the party making the allegation," *Desmare v. United States*, 93 U.S. 605, 610 (1876). But that is the opposite of this case, where all courts of appeals agree that the burden of proof rests upon the party invoking remand, not on the party opposing it.

There is good reason, moreover, to avoid flipping the burden of proof in this context. A presumption of citizenship based on unproven allegations of residency would prove most consequential in precisely the wrong set of cases—cases where class members' citizenship is most doubtful. If class members' citizenship can be readily proven, then there is no reason why representative samples or affidavit evidence would not satisfy a plaintiff's burden of proof of demonstrating citizenship status.

That a presumption of citizenship might tolerate inaccuracy, and allow plaintiffs to avoid federal

jurisdiction in a broader swath of cases than Congress intended, is in fact apparent in the decisions that have considered it. "That a purchaser may have a residential address in California does not mean that person is a citizen of California." *Mondragon*, 736 F.3d at 884. Rather, "temporary residents," and "members of the military, … out-of-state students," and "owners of second homes" may skew citizenship presumptions. *Id.* Indeed, second-home owners appear to have unsurprisingly abounded in the proposed class of royalty owners here, where "37 members" of a sample of 100 "had non-Oklahoma addresses." App.4a n.2. And presumptions may also be inaccurate through the passage of time, where class members have "subsequently moved to other states." *Mondragon*, 736 F.3d at 884; *see also Hood*, 785 F.3d at 265.

In many cases, therefore, the presumption petitioner seeks would serve not to further Congress' intended purpose, but rather to subvert the statutory requirements when their proof is most in doubt. Here, where petitioner's evidence showed this to be just such a case, the court of appeals did not err by requiring petitioner to prove compliance with the statute's requirements, and by affirming the district court's dutiful exercise of jurisdiction when petitioner failed to do so.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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