No. 18-832

IN THE
Supreme Court of the United States

ANN WILMA PETERSEN,
Petitioner,
v.

NCL (BAHAMAS), LTD.
D/B/A NORWEGIAN CRUISE LINE,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Eleventh Circuit unanimously concluded in an unpublished, per curiam opinion that the spouse of a cruise-ship passenger could not recover loss-of-consortium damages under federal maritime law absent exceptional circumstances or intentional misconduct, and remanded the passenger's negligence claim for further proceedings.

The question presented is whether this Court should review on an interlocutory basis the Eleventh Circuit's decision, which (as Petitioner acknowledges) is in line with every federal court of appeals to have addressed this question.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, as of today's date Respondent NCL (Bahamas) Ltd., d/b/a Norwegian Cruise Line states: it is a wholly owned subsidiary of NCL International, Ltd. ("NCLI"), a Bermuda company; NCLI is a wholly owned subsidiary of Arrasas Limited ("Arrasas"), an Isle of Man company; Arrasas is a wholly owned subsidiary of NCL Corporation Ltd. ("NCLC"), a Bermuda company; and NCLC is a wholly owned subsidiary of Norwegian Cruise Line Holdings Ltd. ("NCLH"), a Bermuda company publicly traded on the Nasdaq Global Select Market as of January 31, 2016 (the listing was transferred to the New York Stock Exchange in December 2017). As of January 31, 2016, NCLH was owned by: Star NCLC Holdings Ltd. ("Genting HK"), a Bermuda company; AIF VI NCL (AIV), L.P., AIF VI NCL (AIV II), L.P., AIF VI NCL (AIV III), L.P., AIF VI NCL (AIV IV), L.P., AAA Guarantor—Co-Invest VI (B), L.P., Apollo Overseas Partners (Delaware) VI, L.P., Apollo Overseas Partners (Delaware 892) VI, L.P., Apollo Overseas Partners VI, L.P., Apollo Overseas Partners (Germany) VI, L.P., AAA Guarantor—Co-Invest VII, L.P., AIF VI Euro Holdings, L.P., AIF VII Euro Holdings, L.P., Apollo Alternative Assets, L.P., Apollo Management VI, L.P., and Apollo Management VII, L.P. (collectively, the "Apollo Funds"); TPG Viking, L.P., TPG Viking AIV I, L.P., TPG Viking AIV II, L.P., and TPG Viking AIV-III, L.P. (collectively, the "TPG Viking Funds"); and public shareholders. As of January 31, 2016, the relative ownership percentages of NCLH's ordinary shares were approximately: Genting HK (11.2%), Apollo Funds (15.9%), TPG Viking Funds (2.3%), and public shareholders (70.6%).

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INTRODUCTION

Petitioner challenges the limits on maritime loss-of-consortium claims for spouses of nonseafarers[1]—limits uniformly recognized by the lower federal courts. She has failed to show any reason justifying this Court's review, much less a compelling one.

The question presented reflects no circuit split. As Petitioner concedes, every court of appeals to consid-

[1] A "nonseafarer" is someone who is neither a Jones Act seaman, 46 U.S.C. § 30104, nor a qualifying longshoreman or harbor worker under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*

er the question has come to the same conclusion, generating precisely the uniform body of law held especially critical in the maritime context. Nor is there any conflict between the Eleventh Circuit's precedent and its faithful application of this Court's decision in *Atlantic Sounding Co., Inc*. v. *Townsend*, 557 U.S. 404 (2009). Nor would the Court benefit from granting certiorari here to further inform its deliberations in *Dutra Group* v. *Batterton*, No. 18-266, which raises different scope-of-liability questions in different procedural postures under different causes of action that turn on different common-law and statutory heritages.

Certiorari is also unwarranted because the underlying decision is an extraordinarily poor vehicle to address the question presented. If the District Court below resolves her husband's negligence claim in favor of Norwegian Cruise Line, Petitioner's derivative loss-of-consortium claim will be extinguished. Thus, the case may be mooted by developments in the ongoing litigation at any time.

Finally, Petitioner has failed to identify any issue of national importance that the question presented implicates. The cruise-ship industry doubtless is a vital and growing part of the American economy. And maritime law does on occasion present questions of significant import. This correct, nationally uniform, and unbroken body of lower-court precedent is not one of them.

The petition should be denied.

COUNTERSTATEMENT

This petition arises from a slip-and-fall lawsuit. Robert Petersen and his wife, Ann Wilma Petersen, are experienced cruise-ship passengers, having taken more than ten vacations at sea. Pet. App. 20. Walking barefoot from the "Spice H20 Bar" to the hot tub on Deck 16 of Norwegian Cruise Line's ship the *Breakaway*, facing "strong winds" and "pelting water" with drink in hand, Robert Petersen alleges that he lost his footing and injured himself. *Id.* at 20–21. He later testified that he was familiar with the hot-tub facilities at the time of his accident and that knew that the deck on which he slipped was wet. *Ibid.*

The Petersens sued in the Southern District of Florida, claiming two bases for relief. Robert Petersen pressed negligence. Ann Petersen pressed loss of consortium stemming from her husband's injuries—a derivative claim from her husband's. The Petersens lost on summary judgment before the magistrate judge. In the resulting report and recommendation, the magistrate judge concluded that Robert Petersen had failed to show a viable negligence claim because the "wet weather conditions" were objectively "open and obvious" dangers of which Petersen, as an "avid cruiser," should have been—and was in fact—aware. *Id.* at 24–29. As there was no independent showing of negligence, the magistrate judge further concluded that "it logically follows that" Ann Petersen's loss-of-consortium claim "likewise fails." *Id.* at 31.

The magistrate judge reasoned that Ann Petersen's claims also were barred for a more fundamental reason: "general maritime law does not allow for loss

of support or loss of services in passenger injury cases." *See id.* at 31–32 (citing *In re Amtrak Sunset Ltd. Train Crash*, 121 F.3d 1421 (11th Cir. 1997), *cert. denied sub nom. Altosino* v. *Warrior & Gulf Navigation Co.*, 522 U.S. 1110 (1998)). The District Court, on review of the Petersens' objections, affirmed and adopted that report and recommendation. *Id.* at 15.

On appeal, the Eleventh Circuit unanimously reversed in part and affirmed in part. In an unpublished, per curiam opinion decided without oral argument, the panel reversed as to Robert Petersen's negligence claim, reasoning that "there is evidence in the record from which a reasonable juror could conclude that the deck was unreasonably slippery." *Id.* at 9. The Court of Appeals therefore remanded to the District Court for further proceedings on a failure-to-warn theory as well as a negligent-maintenance theory the District Court had not addressed. *Id.* at 9–11. In doing so, the Court flagged the fact that Norwegian Cruise Line had "raised additional alternative arguments in its defense" and instructed the District Court to consider those "in the first instance." *Id.* at 9. Robert Petersen's negligence claim remains pending.

The Eleventh Circuit agreed, however, that Ann Petersen could not assert loss of consortium in any event because such a claim is not available under the facts alleged in the Petersens' negligence complaint. The Eleventh Circuit considered and rejected the Petersens' argument that this Court's decision in *Townsend* undermined that conclusion. Pet. App. 11–12. As the Eleventh Circuit explained, *Townsend*—which held that "as a matter of general maritime law, a seaman may recover punitive damages

for the willful and wanton disregard of the maintenance and cure obligation in the appropriate case"—did not give rise to loss-of-consortium damages in passenger negligence cases when "there are no exceptional circumstances" and "no allegations of intentional conduct." *Id.* at 12.

This petition for certiorari, raising only Ann Petersen's loss-of-consortium claim, followed. It should be denied.

ARGUMENT

I. THE QUESTION PRESENTED DOES NOT WARRANT THIS COURT'S REVIEW.

This Court exercises its discretionary certiorari jurisdiction "only for compelling reasons." *See* Sup. Ct. R. 10. None exists here.

A. There Is No Circuit Split.

Petitioner contends that loss-of-consortium damages should be generally available under federal maritime law for nonseafarers' injuries arising from negligent conduct. There is no circuit split over this issue, as Petitioner candidly concedes. *See* Pet. 11 ("This issue does not involve a split among the circuit courts of appeals."). Indeed, every court of appeals to have considered the issue has reached the same conclusion, without so much as a dissenting vote. *See* Pet. App. 12 (reaffirming *In re Amtrak Sunset Ltd. Train Crash*, 121 F.3d 1421 (11th Cir. 1997)); *Doyle* v. *Graske*, 579 F.3d 898 (8th Cir. 2009), *as amended* (Oct. 21, 2009), *cert. denied*, 559 U.S. 1036 (Mar. 29, 2010); *Horsley* v. *Mobil Oil Corp.*, 15 F.3d 200 (1st Cir. 1994); *Chan* v. *Society Expeditions, Inc.*, 39 F.3d 1398 (9th Cir. 1994); *Michel* v. *Total Transp., Inc.*, 957 F.2d 186 (5th Cir. 1992); *Igneri* v. *Cie. de*

Transports Oceaniques, 323 F.2d 257 (2d Cir. 1963) (Friendly, J.). And both the Eleventh Circuit below and the Eighth Circuit in *Graske* did so after considering—and rejecting—the argument that this Court's *Townsend* decision warranted a different result. This Court denied certiorari on this issue in *Graske*. Nothing has changed.

Uniformity among the circuits generally weighs strongly against certiorari—and all the more so in the maritime context. Article III's broad grant of admiralty jurisdiction empowers the federal courts to decide a wide range of issues, including the scope of maritime loss-of-consortium actions, "in the manner of a common law court, subject to the authority of Congress to legislate otherwise." *See Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 489–490 (2008) (citing U.S. Const. art. III, § 2, cl. 1). Pursuant to this Court's guidance, that authority should be exercised with two goals in mind: providing special solicitude for the wellbeing of seafarers, and ensuring national uniformity so that the same body of law governs actions arising from all waters regardless of where suit may be filed. *See Sea-Land Servs., Inc.* v. *Gaudet*, 414 U.S. 573, 577 (1974) (citing *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375 (1970)). Imposing a new categorical rule, and upending established national consensus under maritime law, should be reserved for those rare cases demonstrating an exceptionally compelling legal error. This is not such a case.

B. The Lower Courts' Unanimity Does Not Conflict With This Court's Precedent.

The lower courts' uniform rejection of a maritime loss-of-consortium action for simple negligence is

perfectly consonant with this Court's precedent. There are four primary decisions, decided over the last five decades, that inform the question presented: *Atlantic Sounding Co., Inc.* v. *Townsend*, 557 U.S. 404 (2009), *Miles* v. *Apex Marine Corp.*, 498 U.S. 19 (1990), *American Exp. Lines, Inc.* v. *Alvez*, 446 U.S. 274 (1980), and *Sea-Land Services, Inc.* v. *Gaudet*, 414 U.S. 573 (1974). None suggests that the rule Petitioner seeks is correct, much less adopts it as controlling.

Petitioner nevertheless argues that the Eleventh Circuit's decision cannot "be reconciled with this Court's precedents"; indeed, she insists that this Court has *already* "answer[ed]" the question presented here "in the affirmative" in *Alvez*, and that every court since 1980 has "misapplied" the law. Pet. i, 5, 4. *Alvez* did nothing of the sort. In line with *Gaudet*, which contemplated maritime loss-of-consortium claims for spouses of longshoremen *fatally* injured *in territorial waters*, *see* 414 U.S. at 575, *Alvez* recognized that loss of consortium may be recognized under maritime law for the spouse of a harbor worker *nonfatally* injured *in territorial waters*. *See* 446 U.S. at 275–276. *Gaudet* and *Alvez* have been widely recognized as confined to their facts. *See Miles*, 498 U.S. at 30–31 & n.1 (declaring that "[t]he holding of *Gaudet* applies only in territorial waters, and it applies only to longshoremen" and that, in any event, *Gaudet* had been rendered "inapplicable on its facts" due to subsequent statutory amendments); *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618, 623 (1978) (noting that *Gaudet*'s holding "applies only to coastal waters"); *see also Nichols* v. *Petroleum Helicopters, Inc.*, 17 F.3d 119, 123 (5th Cir. 1994) (noting the Supreme Court's "explicit

limitation of *Gaudet* to its facts, as well as its implicit limitation of *Alvez* to its facts"). Contrary to Petitioner's argument, therefore, neither *Gaudet* nor *Alvez* adopted a per se rule making available loss-of-consortium claims in *all* cases of maritime law—only those occurring to longshoremen and harbor workers in territorial waters.

Nor do *Miles* and *Townsend* help Petitioner's cause. *Miles* recognized for seafarers a general maritime wrongful-death claim, but *not* a separate one for loss of society,[2] balancing principles of judge-made federal maritime law against the limitations on liability Congress placed in the Death on the High Seas Act and the Jones Act. *See* 498 U.S. at 37. As the *Miles* Court explained, beyond *Gaudet*'s limited carve-out, the Court otherwise intended to "restore a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law." *Id.* at 33; *see also Higgonbotham*, 436 U.S. at 625–626 (denying loss-of-consortium action for seafarer fatality outside territorial waters). *Townsend*, for its part, held that punitive damages *are* available to remedy "willful and wanton" conduct under the doctrine of maintenance and cure, based on that doctrine's longstanding common-law application, which was unaltered by the Jones Act. *See* 557 U.S. at 425.

The general approaches in *Miles* and *Townsend* may appear at first glance to be in some degree of

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[2] "Loss of consortium" and "loss of society" are used interchangeably when, as here, the relevant parties are spouses. *Complaint of Midland Enters., Inc.*, 886 F.2d 812, 816 n.4 (6th Cir. 1989).

conflict. But the disparate outcomes stem from the original sources of seafarers' rights, not from any dissonance in analysis. "As this Court has repeatedly explained, 'remedies for negligence, unseaworthiness, and maintenance and cure have different origins and may on occasion call for application of slightly different principles and procedures.' " *Townsend*, 557 U.S. at 423 (quoting *Fitzgerald* v. *United States Lines Co.*, 374 U.S. 16, 18 (1963)). The doctrine of maintenance and cure is a common-law obligation to care for injured seafarers that "dates back centuries as an aspect of general maritime law"; the maritime wrongful-death cause of action, by contrast, exists "only because of congressional action." *Id.* at 413, 420. That punitive damages may be allowed under the former, as a matter of historical practice, but not the latter, in line with Congress's intent, is logically consistent. And in any event, neither *Miles* nor *Townsend* addresses the question presented here, much less answers it contrary to every court to have ever considered the issue.

The Eighth Circuit explained why this is so in the wake of *Townsend*. Writing for a unanimous court in *Graske*, Judge Colloton rejected the precise argument Petitioner makes here, explaining why a maritime loss-of-consortium action was unavailable to the spouse of a non-seafarer boat passenger claiming negligent conduct arising beyond the territorial waters of the United States. Beginning its analysis with *Townsend*, this Court's "most recent guidance on how to approach this sort of problem," the Eighth Circuit concluded that "there is no well-established admiralty rule, as there is with respect to punitive damages, authorizing loss-of-consortium damages as a general matter." *Graske*, 579 F.3d at 905–906.

Because "general maritime law on loss-of-consortium damages remains an area marked by few settled principles," Judge Colloton gave particular "heed" to "the policy choices made by Congress" by considering the "legislative enactments governing closely related claims." *See id.* at 906–907.

Under that framework, the Eighth Circuit gave three independent reasons for declining to adopt the rule pressed by Petitioner here. First, allowing a loss-of-consortium claim under the circumstances would lead to a disparity between the spouses of those "injured nonfatally beyond state territorial waters" and "those injured fatally," because the Death on the High Seas Act does not provide for nonpecuniary damages for the latter. *See id.* at 907 (citing 46 U.S.C. §§ 30302, 30303). Second, allowing for a loss-of-consortium claim for the spouses of *non*-seafarers injured beyond territorial waters would make non-seafarer spouses' rights greater than those available to spouses of injured seamen, because the Jones Act "does not authorize recovery by the seaman's spouse for loss of consortium." *Id.* (citing *Miles*, 498 U.S. at 32). That "odd" disparity in turn would impermissibly undercut the special solicitude that maritime law recognizes for the " 'welfare of seamen and their family.' " *See id.* (quoting *Miles*, 498 U.S. at 36). Finally, adopting a contrary rule would scuttle "the value of uniformity," as the Ninth and Fifth Circuits had already come to the same conclusion. *Id.* at 908. While the *Graske* court recognized that its holding arguably "creates an anomaly of its own," because a loss-of-consortium claim would be available to nonseafarer spouses under *Alvez* for injuries suffered in *territorial* waters, that "kind of disparity, however, already exists in

maritime law," owing to *Gaudet* and *Higgonbotham*. *Id.*

Petitioner cites *Graske* exactly once on other grounds, Pet. 6, and nowhere distinguishes the Eighth Circuit's closely reasoned reconciliation of this Court's relevant precedent. As both the Eighth Circuit's opinion in *Graske* and the Eleventh Circuit's affirmance below recognize, the conflict Petitioner seeks to drum up simply does not exist. There is no grounding in either logic or precedent for the assorted doctrinal extensions necessary to grant Petitioner the relief she seeks.

C. *Dutra Group* v. *Batterton* Has No Bearing On This Case.

Petitioner alternatively argues that review should be granted because this case supposedly is "related to" *Dutra Group* v. *Batterton*, No. 18-266, which is currently pending before this Court. Not so.

The issue raised here and that in *Batterton* share a connection only when viewed at a sufficiently high level of generality: namely, federal maritime law. Consider the actual question presented on which this Court granted certiorari in *Batterton*:

> Whether punitive damages may be awarded to a Jones Act seaman in a personal injury suit alleging a breach of the general maritime duty to provide a seaworthy vessel.

This case does not involve punitive damages. It does not involve a Jones Act seaman. And it does not involve a seaworthiness claim. Each of these differences alone is material and would require additional,

distinct lines of legal inquiry far afield from the *Batterton* question presented.

Moreover, a cursory peek behind the curtain confirms the meaningfully different paths by which these cases arrived at this Court. *Batterton* arises from a circuit split between the Fifth and Ninth Circuits (as well as several state courts of last resort) stemming from confusion about punitive-damages-specific questions left after *Townsend* and *Miles*. *See* Pet. for Cert., *Dutra Grp.* v. *Batterton*, No. 18-266 at 7–9 (Aug. 30, 2018).[3] The Ninth Circuit—breaking with the Fifth, the circuit with the "leading role in adjudicating admiralty law (by a wide margin)"—adopted a rule allowing Jones Act seamen to press punitive damages in unseaworthiness actions. *Id.* at 11 & n.4. In addition to undermining national uniformity, the Ninth Circuit's expansion of the availability of punitive damages held special significance because it would potentially allow plaintiffs to select a favorable forum for their actions. *See id.* at 23–26. This case presents none of those considerations.

Given these obvious and pervasive differences, this would-be tagalong case should be left behind, and certiorari denied.

II. THIS CASE IS AN EXTRAORDINARILY POOR VEHICLE FOR THE QUESTION PRESENTED.

This Court's review is further unwarranted because the underlying case is an extraordinarily poor

[3] *Available at* https://bit.ly/2Uj0thL.

vehicle to address the question presented for two reasons.

First, this case arrives in an interlocutory posture and may be mooted at any time. Without an independent cause of action, there can be no loss-of-consortium claim as a matter of black-letter law. *See* Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, The Law of Torts § 392 (2d ed. 2018) ("[C]ourts usually say that the consortium claim is derivative, that is, that it will fail if the primary victim's claim would fail, and that damages will be reduced under comparative fault rules if the primary victim's damages would be reduced." (footnote omitted)). The Eleventh Circuit remanded Robert Petersen's negligence claim to the District Court, specifically calling the court's attention to Norwegian Cruise Line's "additional alternative arguments in its defense." Pet. App. 9. The Petersens' case, including that contested negligence claim, is still pending.[4] If any one of Norwegian Cruise Lines' alternative arguments prevails, Robert Petersen's negligence claim again fails, and so must Ann Petersen's loss-of-consortium claim. *See, e.g.*, *Gomez* v. *Pfizer, Inc.*, 675 F. Supp. 2d 1159, 1163–64 (S.D. Fla. 2009) (citing *Faulkner* v. *Allstate Ins. Co.*, 367 So. 2d 214, 217 (Fla. 1979)). Indeed, Petitioner's loss-of-consortium claim has already been rejected once on precisely that basis below. Pet. App. 15, 31.

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[4] Since having their case remanded by the Eleventh Circuit, the Petersens have continued to actively litigate, including by amending their complaint to add new defendants and new claims. *See* Second Am. Compl., *Petersen* v. *NCL (Bahamas) Ltd.*, No. 16-cv-24421 (S.D. Fla. Dec. 11, 2018), ECF 107.

Facing a similar procedural hurdle in *Alvez*, this Court concluded that, while the "the question is a close one," review was appropriate for a loss-of-society claim when other claims were still being contested because the outcome of *that* particular claim had already been decided. *See* 446 U.S. at 277–279 (observing that the underlying case had by that time "been tried and respondent Alvez has prevailed," and that counsel had conceded at oral argument that petitioner "will not challenge that element of the verdict which awarded damages for loss of society."); *but see id.* at 286 (Marshall, J., joined by Stewart and Rehnquist, JJ., dissenting) (arguing that the Court lacked jurisdiction). Exactly the opposite is true here, as the status of Petitioner's loss-of-consortium claim is anything but settled.

This case is also a poor vehicle to resolve the question presented because of the nature of the claim below. Mrs. Petersen's putative loss-of-consortium claim arises from a routine slip-and-fall claim. But as the Eleventh Circuit panel below recognized, even if *Townsend* had some bearing on loss-of-consortium claims brought by cruise-ship passengers arising from conduct on the high seas, it would mean only that such damages *may* be available in "exceptional circumstances" or when there have been "allegations of misconduct." Pet. App. 12. Unless this Court were to radically upend the lower courts' consensus—by fashioning a rule providing that loss-of-consortium claims are *always* available—any attempt to limit the scope of this newfound cause of action would be rendered dicta.

The obvious shortcomings in this case's posture strongly counsel against granting certiorari.

III. THE PETITION DOES NOT RAISE AN ISSUE OF NATIONAL IMPORTANCE.

Petitioner has further failed to identify any issue of national importance implicated by the question presented. Nor is there any. Petitioner argues that the "sheer number" of cruise-ship passengers and the variety of activities offered as part of the modern cruise experience alone warrant this Court's review. *See* Pet. 12–13. Hardly. To be sure, the cruise-ship industry is of great importance to the nation's economy. *See* Joseph V. Micallef, *The Cruise Industry's Boom Is Primed To Continue*, Forbes (Sept. 1, 2018).[5] That does not, however, make the routine application of approximately six decades of unbroken precedent worth examining.

This Court's review is unwarranted for yet another reason: the Eleventh Circuit—like every other court of appeals to consider the question—got it right, aptly striking the balance between a particular cause of action's common-law heritage and Congress's legislative and policy choices. Indeed, as the Eleventh Circuit observed, a loss-of-consortium remedy *may* be available even in cases arising beyond territorial waters if the conduct involves intentional wrongdoing or other exceptional circumstances (which Petitioner's case lacks). *See* Pet. App. 12. Expanding that rule to further recognize an unprecedented right to recovery regardless of the nature of the underlying conduct would dramatically increase the potential liability against all vessel owners and operators, from container ships and tankers to

[5] *Available at* https://bit.ly/2VN0ivB.

ferries and water taxis to fishing boats and cruise ships. Raising the costs of routine maritime litigation would unwisely and unnecessarily burden our commercial fleet. These additional costs, in turn, would necessarily be passed on to all of us who rely upon the myriad goods and services American vessel owners and operators provide.

Congress agrees. As the Eighth Circuit explained, Congress declined to authorize an analogous source of recovery for those injured fatally and for seafarer spouses when enacting the Death on the High Seas Act and the Jones Act. *See Graske*, 579 F.3d at 907. Not only would creating the sort of carve-out Petitioner desires be bad policy; it would thus also break with the clear thrust of the federal statutory regime governing modern maritime law without any historically rooted contrary tradition.

The rule Petitioner seeks to advance thus directly undermines both of the cardinal aims of maritime law: It would upset a nationally uniform rule, and it would provide favored treatment to non-seafarer spouses in derogation of the special solicitude reserved for seafarers and their families. The lower courts have—correctly and repeatedly—rejected similar entreaties in analogous circumstances. *See, e.g.*, *In re Am. River Transp. Co.*, 490 F.3d 351, 359 (5th Cir. 2007) (holding that loss-of-society damages not available to non-dependent parents of fatally injured longshoreman); *Tucker* v. *Fearn*, 333 F.3d 1216, 1222 (11th Cir. 2003) (holding that loss-of-society damages not available to parent of minor child fatally injured in territorial waters); *Wahlstrom* v. *Kawasaki Heavy Indus., Ltd.*, 4 F.3d 1084, 1092 (2d Cir. 1993) (same). This Court should as well.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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