

No. 20-1793

IN THE
Supreme Court of the United States

AURA MOODY, ON BEHALF OF
HER MINOR CHILD, J. M.,

Petitioner,

v.

NATIONAL FOOTBALL LEAGUE,

Respondent.

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

BRIEF IN OPPOSITION

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**RESTATEMENT OF THE QUESTION
PRESENTED**

1. Whether this Court has jurisdiction to review a Petition for a Writ of Certiorari filed by a Petitioner who lacks standing?

CORPORATE DISCLOSURE STATEMENT

Pursuant to U.S. Sup. Ct. R. 29, Respondent National Football League discloses that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

Moody v. National Football League, No. 20-1551, United States Court of Appeals for the Second Circuit, Judgment entered on January 21, 2021.

Moody v. National Football League, No. 15-cv-01072, United States District Court for the Eastern District of New York, Judgment entered on March 11, 2020.

Moody v. National Football League, No. 18-393, Supreme Court of the United States, Judgment entered on February 19, 2019.

Moody v. National Football League, No. 16-4315, United States Court of Appeals for the Second Circuit, Judgment entered on May 3, 2018.

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OPINIONS BELOW

The United States Court of Appeals for the Second Circuit’s dismissal of Petitioner’s appeal is available at *Moody v. National Football League*, No. 20-1551, United States Court of Appeals for the Second Circuit, *appeal dismissed* (October 5, 2020) (Doc. 38). The United States Court of Appeals for the Second Circuit’s denial of Petitioner’s motion for leave to amend, to add parties, and for relief from judgment is available at *Moody v. National Football League*, No. 20-1551, United States Court of Appeals for the Second Circuit, *motion for leave to amend, to add parties, and for relief from judgment denied* (October 5, 2020) (Doc. 39). The United States Court of Appeals for the Second Circuit’s denial of Petitioner’s petition for panel rehearing and rehearing *en banc* is available at *Moody v. National Football League*, No. 20-1551, United States Court of Appeals for the Second Circuit, *petition for panel rehearing or, in the alternative, for rehearing en banc denied* (January 21, 2021) (Doc. 50).

STATEMENT OF JURISDICTION

This Court lacks jurisdiction as Petitioner lacks standing.

STATEMENT OF THE CASE

This petition for writ of certiorari (“Petition”) arises from an “appeal” commenced by *pro se* Petitioner, the non-party mother of Plaintiff, Julian Moody, in the underlying

action.¹ In 2015, Petitioner initially commenced the underlying suit in a representative capacity by asserting claims on behalf of her son, who Petitioner alleged was a minor child.² In truth, Petitioner's son was an adult, and Petitioner lacked standing to assert claims on his behalf. Consequently, Julian Moody, as the actual party in interest, was substituted as Plaintiff by an Amended Complaint filed by his counsel in the District Court.³ Thereafter, Petitioner, having neither intervened nor asserted any claims on her own behalf, ceased to be a party to the action in any capacity.

After mediation, the parties agreed to resolve all matters and dismiss the action.⁴ Unfortunately, non-party Petitioner objected to the resolution and engaged in multiple attempts to revive her son's dismissed claims on her own.⁵ In September 2016, the District Court conducted

1. See Doc. Entry No. 1, Notice of Civil Appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

2. See Doc. Entry No. 1, Summons and Complaint (*Aura Moody on behalf of her minor child, JM v. National Football League*, Supreme Court of the State of New York County of Queens Index No. 700890/2015).

3. See Doc. Entry No. 12, Amended Complaint (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

4. See Doc. Entry No. 22, Order Dismissing Case and Stipulation of Dismissal (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

5. See Doc. Entry No. 21 and 23, Letters from Aura Moody (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

a status conference and subsequently confirmed, via text order, that Petitioner’s son, with the aid of counsel, voluntarily resolved his claims and agreed to dismiss the case.⁶ The case was, therefore, resolved.⁷ Despite not being a party to the underlying action, Petitioner sought to appeal the District Court’s order, purportedly as “*pro se* Plaintiff.”⁸ The United States Court of Appeals for the Second Circuit (the “Second Circuit”) held that Petitioner lacked standing to pursue an appeal⁹ and, subsequently, the Supreme Court denied Petitioner’s petition for writ of certiorari.¹⁰

6. The District Court’s order stated: (“ELECTRONIC ORDER: The Court will take no further action in this case based upon the discussion held on the record at a conference held on September 16, 2016 whereby the plaintiff and his parents along with counsel for both sides were present. A copy of this order will be mailed to the plaintiff’s mother by regular mail from chambers. Ordered by Judge Frederic Block on 12/12/2016. (Innelli, Michael.”). *See* Doc. Entry No. 24, December 12, 2016 Order (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

7. *Id.*

8. *See* Doc. Entry No. 1, Notice of Civil Appeal (*Moody v. National Football League*, Court of Appeals Docket #16-4315).

9. *See* Doc. Entry No.133, Summary Order and Judgment (*Moody v. National Football League*, Court of Appeals Docket #16-4315).

10. *See Moody v. National Football League*, No. 18-393, Supreme Court of the United States, *Petition DENIED* (December 3, 2018); *see also* Doc. Entry No.149, Correspondence from the Office of the Clerk, Supreme Court of the United States (*Moody v. National Football League*, Court of Appeals Docket #16-4315).

On February 24, 2020, Petitioner moved to vacate the original order of the District Court and reopen the case. Again citing the fact that Plaintiff's claims were resolved, the District Court denied Petitioner's motion.¹¹ Despite not being a party to the underlying action, Petitioner sought to "appeal" that order, purportedly as "pro-se Plaintiff."¹² Petitioner also filed a motion pursuant to Rule 27 of the Federal Rules of Appellate Procedure, seeking leave to amend the caption of the case, add other parties, and for relief from judgment.¹³ The Second Circuit denied the motion and dismissed the appeal because it "lack[ed] an arguable basis either in law or in fact."¹⁴ Shortly thereafter, the Second Circuit denied Petitioner's motion for reconsideration and request for rehearing *en banc*.¹⁵ Now, Petitioner files a petition for writ of certiorari for

11. See Doc. Entry No. 40, March 11, 2020 Order (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK) ("ELECTRONIC ORDER: The plaintiff's mother's pro se motion [40] to vacate the judgment and re-open the case are DENIED for the reasons stated on the record at the a conference held on September 15, 2016. A copy of this order will be mailed to the plaintiff's mother by regular mail from chambers. Ordered by Judge Frederic Block on 3/11/2020. (Innelli, Michael) Modified on 3/11/2020 (Innelli, Michael).").

12. See Doc. Entry No. 1, Notice of Civil Appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

13. See Doc. Entry No. 15, Motion (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

14. See Doc. Entry No.51, Mandate Order denying motion for leave to amend, to add parties, and for relief from judgment and dismissing appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

15. See Doc. Entry No.50, Order denying motion for reconsideration and request for rehearing *en banc* (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

an appeal of the Second Circuit’s dismissal. The Petition should be denied for lack of jurisdiction because Petitioner, who is not a party to the underlying case, lacks standing.

A. Procedural Background

In 2015, Petitioner, through counsel, brought a discrimination action against the National Football League (“NFL”) on behalf of her son, Julian Moody, in the Supreme Court of New York, alleging that the NFL violated the Rehabilitation Act, 29 U.S.C. § 794.¹⁶ The case was removed to the District Court and, shortly thereafter, the parties and District Court learned that Julian was an adult.¹⁷ The complaint was amended to substitute Julian as the sole plaintiff.¹⁸ On August 12, 2016, Julian, with the assistance of counsel, reached an agreement with the NFL and voluntarily dismissed the action.¹⁹ Non-party Petitioner objected to her son’s decision and wrote letters to the trial court seeking to vacate the settlement agreement.²⁰

16. See Doc. Entry No. 1, Summons and Complaint (*Aura Moody on behalf of her minor child, JM v. National Football League*, Supreme Court of the State of New York County of Queens Index No. 700890/2015).

17. See Doc. Entry No. 1, Notice of Removal (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

18. See Doc. Entry No. 12, Amended Complaint (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

19. See Doc. Entry No. 22, Order Dismissing Case and Stipulation of Dismissal (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

20. See Doc. Entry No. 21 and 23, Letters from Aura Moody (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

On December 12, 2016, the District Court (Block, J.) entered an order (the “December 12, 2016 Order”) stating that it would “take no further action in this case based upon the discussion held on the record at a conference held on September 16, [sic] 2016 whereby the plaintiff and his parents along with counsel for both sides were present.”²¹

The Court stated the following at the conference on September 15, 2016:

So, Mrs. Moody, he was capable to understand what was happening and he had the capacity to agree or disagree. I know you’re his caring mother, but you were not the party to this litigation and your son wanted to do this. You have to respect his judgment. He’s a grown man and, you know, you’ve got to let go of the apron strings it seems a little bit here. So he entered into this thing knowingly and voluntarily.²²

...

21. See Doc. Entry No. 24, December 12, 2016 Order (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK) (“ELECTRONIC ORDER: The Court will take no further action in this case based upon the discussion held on the record at a conference held on September 16, 2016 whereby the plaintiff and his parents along with counsel for both sides were present. A copy of this order will be mailed to the plaintiff’s mother by regular mail from chambers. Ordered by Judge Frederic Block on 12/12/2016. (Innelli, Michael.”)).

22. See Doc. Entry No. 25, Transcript of Status Conference held on September 15, 2016 at Page 6, ¶¶ 3-10 (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

Mrs. Moody, I've gone about as far as I'm going to go. My concern was to welcome you to court and to see whether or not there's a problem here with your son. He seems to be a fine young man. This is what he wants. You have to respect that and I hope that you can do that. There's nothing that the law can do for you. I just want you to understand that, under the circumstances. Your son has told me that he was treated fairly and nobody forced him to agree to this. He was represented by counsel. I think you have to respect that.²³

On December 30, 2016, Petitioner filed a notice of appeal from the December 12, 2016 Order to the Second Circuit.²⁴

On February 15, 2018, the Second Circuit dismissed the appeal of the District Court's December 12, 2016 Order for lack of appellate jurisdiction because Petitioner lacked standing because Petitioner was not a party to the litigation and, further, (i) Petitioner was not bound by the District Court's order, which pertained only to Julian's (Petitioner's son) claim and (ii) Petitioner did not identify any legal interest of her own that may be plausibly said to be affected by the order.²⁵ On September 24, 2018,

23. See Doc. Entry No. 25, Transcript of Status Conference held on September 15, 2016 at Page 10, ¶¶ 14-23 (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

24. See Doc. Entry No. 1, Notice of Civil Appeal (*Moody v. National Football League*, Court of Appeals Docket #16-4315).

25. See Doc. Entry No. 133, Summary Order and Judgment (*Moody v. National Football League*, Court of Appeals Docket #16-4315).

Petitioner filed her first petition for a writ of certiorari, which this Court denied on December 3, 2018.²⁶

On February 24, 2020, Petitioner filed a motion in the District Court to vacate the December 12, 2016 Order and reopen the case.²⁷ On March 11, 2020, the District Court again entered an order²⁸ (the “March 11, 2020 Order”) denying Petitioner’s motion for the same reasons as the December 12, 2016 Order.²⁹

On May 13, 2020, Petitioner filed a notice of appeal from the March 11, 2020 Order to the United States Court of Appeals for the Second Circuit.³⁰ On June 3,

26. See *Moody v. National Football League*, No. 18-393, Supreme Court of the United States (December 3, 2018).

27. See Doc. Entry No. 40, Motion to Vacate (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK).

28. See Doc. Entry No. 40, March 11, 2020 Order (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK) (“ELECTRONIC ORDER: The plaintiff’s mother’s pro se motion [40] to vacate the judgment and re-open the case are DENIED for the reasons stated on the record at the a conference held on September 15, 2016. A copy of this order will be mailed to the plaintiff’s mother by regular mail from chambers. Ordered by Judge Frederic Block on 3/11/2020. (Innelli, Michael) Modified on 3/11/2020 (Innelli, Michael).”).

29. See Doc. Entry No. 1, Notice of Civil Appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

30. See Doc. Entry No. 1, Notice of Civil Appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

2020, Petitioner filed a motion pursuant to Rule 27 of the Federal Rules of Appellate Procedure, seeking leave to amend the caption of the case, to add other parties, and for relief from judgment.³¹ On August 4, 2020, Petitioner filed an addendum to the motion.³² Because the case was disposed, and because NFL counsel changed personnel, the NFL inadvertently failed to update the Notice of Appearance. After receiving a call from the Court’s Clerk, counsel for the NFL filed an Acknowledgement on July 16, 2020, and an Acknowledgement and Notice of Appearance on July 17, 2020.³³

On October 5, 2020, the Second Circuit denied the motion to amend the caption of the case, to add other parties, and for relief from judgment and dismissed the appeal for lack of “an arguable basis either in law or in fact.”³⁴ On January 21, 2021, the Second Circuit

31. See Doc. Entry No. 15, Motion (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

32. See Doc. Entry No. 30, Supplementary Papers to Motion (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

33. See Doc. Entry No. 24 and 26, Notice of Appearance as Substitute Counsel and Acknowledgement and Notice of Appearance (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

34. See Doc. Entry No.51, Mandate Order denying motion for leave to amend, to add parties, and for relief from judgment and dismissing appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551); see also Doc. Entry Nos. 38, 39, Order denying motion for leave to amend, to add parties and for relief from judgment and dismissing appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

summarily denied Petitioner’s motion for reconsideration and request for rehearing *en banc*.³⁵

On June 18, 2021, Petitioner filed this Petition, seeking leave to appeal the Second Circuit’s denial—her second petition for a writ of certiorari regarding the same underlying facts and dispute. The Petition should be denied because, as the District Court and the Second Circuit have each already held, Petitioner lacks standing and this Court lacks jurisdiction to hear the appeal.

REASONS FOR DENYING THE PETITION

The Petition Must be Denied Because the Petitioner Lacks Standing and the Court Lacks Jurisdiction

It is “sound practice [] to deny a petition for certiorari when the facts do not firmly establish that the petitioner has standing to raise the question presented.” *Vasquez v. United States*, 454 U.S. 975, 977 n.3 (1981); *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (standing “is the threshold question in every federal case, determining the power of the court to entertain the suit”). Similarly, an appellant must have standing to pursue an appeal in the Court of Appeals and for the Court of Appeals to have appellate jurisdiction. *Concerned Citizens of Cohocton Valley, Inc. v. New York State Dep’t of Environ. Conservation*, 127 F.3d 201, 204 (2d Cir. 1997); *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 77 (2d Cir. 2006) (Sotomayor, J.) (“Standing to appeal is an

35. See Doc. Entry No.50, Order denying motion for reconsideration and request for rehearing *en banc* (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

essential component of [] appellate jurisdiction.”). Only a party of “record in a lawsuit has standing to appeal from a judgment of the district court.” *Hispanic Soc'y of N.Y.C. Police Dep't v. N.Y.C. Police Dep't*, 806 F.2d 1147, 1152 (2d Cir. 1986). “Parties of record include the original parties and those who have become parties by intervention, substitution, or third-party practice.” *Id.* Exceptions to this rule may allow non-parties to have standing “where the non-party is bound by the judgment and where the non-party has an interest plausibly affected by the judgment.” *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 239 (2d Cir. 2013). Petitioner lacks standing because Petitioner is not a party of record in the litigation, is not bound by the District Court’s order, and has not identified a legal interest of her own that may plausibly be said to be affected.

Petitioner Is Not a Party of Record

First, Petitioner is not a party of record in the litigation. *See* Doc. Entry No.51, Mandate Order denying motion for leave to amend, to add parties, and for relief from judgment and dismissing appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551) (the appeal “lacks an arguable basis either in law or in fact”) (citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). While Petitioner initially brought a discrimination suit on behalf of her son, Julian, it later “came to light that Julian was an adult, and the complaint was amended to substitute Julian as the sole plaintiff.”³⁶ The actual party

36. *See* Doc. Entry No.133, Summary Order and Judgment at Page 2, ¶¶ 17-20 (*Moody v. National Football League*, Court of Appeals Docket #16-4315).

of record—*i.e.*, Petitioner’s son Julian Moody—indicated that he does not wish to continue the case at the conference held on September 15, 2016.³⁷ The Second Circuit and this Court rightly denied Petitioner’s first attempts to appeal any issues arising out of the underlying litigation. *See Doc. Entry No.133, Summary Order and Judgment (Moody v. National Football League, Court of Appeals Docket #16-4315); see Moody v. National Football League, No. 18-393, Supreme Court of the United States (December 3, 2018).* This Petition, which seeks to appeal the lower court’s determination on a motion to vacate, is the same issue repackaged. Petitioner remains a non-party to this case. Accordingly, Petitioner has no standing to appeal.

Petitioner Is Not Bound by the Trial Court’s Determination

Second, Petitioner is not bound by the District Court’s order from which she attempts to appeal. Petitioner appeals from the March 11, 2020 Order, which denied Petitioner’s motion to vacate the judgment and re-open the case. The March 11, 2020 Order affects the rights of her son, Julian Moody. The March 11, 2020 Order denied Petitioner’s attempt to disturb the agreement reached by Julian Moody, through counsel, and the NFL and Julian’s subsequent decision to voluntarily dismiss the action.³⁸

37. *See Doc. Entry No. 25, Transcript of Status Conference held on September 15, 2016 at Page 9, ¶¶ 19-25 (Julian Moody v. National Football League, Eastern District of New York 1:15-cv-01072-FB-PK).*

38. *See Doc. Entry No. 40, March 11, 2020 Order (Julian Moody v. National Football League, Eastern District of New York 1:15-cv-01072-FB-PK) (“ELECTRONIC ORDER: The*

Accordingly, Petitioner is not bound by the order and for that reason lacks standing to appeal.

Petitioner Has No Legal Interest In the Lower Court's Judgment

Third, Petitioner has not identified—nor can she identify—a legal interest of her own that can plausibly be said to be affected by the judgment. Petitioner claims that she is an interested party who has a right to be a named plaintiff in the case because she “has been anguished and spent a great amount of money and time while dealing with this case.”³⁹ However, as the Second Circuit held, “Mrs.

plaintiff’s mother’s pro se motion [40] to vacate the judgment and re-open the case are DENIED for the reasons stated on the record at the a conference held on September 15, 2016. A copy of this order will be mailed to the plaintiff’s mother by regular mail from chambers. Ordered by Judge Frederic Block on 3/11/2020. (Innelli, Michael) Modified on 3/11/2020 (Innelli, Michael.”); Doc. Entry No. 25, Transcript of Status Conference held on September 15, 2016, at Page 9, ¶¶ 12-25 (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK) (Julian Moody confirms that he does not “want [the court] to do anything,” “to get a lawyer to open up this whole case against the NFL and to relitigate it and to do all of that”); Doc. Entry No. 22, Order Dismissing Case and Stipulation of Dismissal (*Julian Moody v. National Football League*, Eastern District of New York 1:15-cv-01072-FB-PK); *see also* Doc. Entry No.133, Summary Order and Judgment at Page 2, ¶¶ 17-20 (*Moody v. National Football League*, Court of Appeals Docket #16-4315) (“Julian, through counsel, then reached an agreement with the NFL and, on August 12, 2016, voluntarily dismissed the action under Federal Rule of Civil Procedure 41(a)(1)(A)(ii.”).

39. See Doc. Entry No. 15, Motion at Page 13, ¶ 30 (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

Moody's legal rights [were not] affected by the stipulation with the NFL to which Julian agreed”⁴⁰ and in the second, dismissed appeal when the United States Court of Appeals for the Second Circuit ruled that Petitioner's appeal “lack[ed] an arguable basis either in law or in fact.”⁴¹ Petitioner's argument that she somehow has an interest in the vacatur of the original order to which she had no interest in the first place is meritless. Petitioner's alleged “interests,” which rely exclusively on the resources she has devoted to attempting to litigate a case, in which she no legal interest, are not legally recognized interests for standing purposes. They have nothing to do with the application of the underlying order, which affects only her son. *See Cent. States Se. & Sv. 8 Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC*, 504 F.3d 229, 244 (2d Cir. 2007) (holding that non-party appellant lacked standing because it “would possess the same legal rights . . . whether or not the Settlement Agreement were approved”). Accordingly, because Petitioner lacks any rights or interests that were affected by the order, Petitioner lacks standing.

40. *See* Doc. Entry No.133, Summary Order and Judgment at Page 4, ¶¶ 6-7 (*Moody v. National Football League*, Court of Appeals Docket #16-4315).

41. *See* Doc. Entry No.51, Mandate Order denying motion for leave to amend, to add parties, and for relief from judgment and dismissing appeal (*Moody v. National Football League*, Court of Appeals Docket #20-1551); *see also* Doc. Entry No.50, Order denying motion for reconsideration and request for rehearing *en banc* (*Moody v. National Football League*, Court of Appeals Docket #20-1551).

The Petition for a Writ of Certiorari Must Be Denied For Lack of Jurisdiction

This Court has jurisdiction only if Petitioner has standing. *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (standing “is the threshold question in every federal case, determining the power of the court to entertain the suit”); *see also Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 77 (2d Cir. 2006) (Sotomayor, J.) (“Standing to appeal is an essential component of [] appellate jurisdiction.”). As Petitioner lacks standing, the petition for writ of certiorari must be denied for lack of jurisdiction. *Vasquez v. United States*, 454 U.S. 975, 977 n.3 (1981) (“It is sound practice [] to deny a petition for certiorari when the facts do not firmly establish that the petitioner has standing to raise the question presented.”).

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Dated: July 23, 2021 Respectfully submitted,

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