No.

IN THE

Supreme Court of the United States

UBER TECHNOLOGIES, INC., ET AL.,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal

PETITION FOR A WRIT OF CERTIORARI

JOSEPH E. BARAKAT
GIBSON DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201

THEANE D. EVANGELIS
Counsel of Record
BLAINE H. EVANSON
ALEXANDER N. HARRIS
PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tevangelis@gibsondunn.com

Counsel for Petitioners

QUESTION PRESENTED

The Federal Arbitration Act (FAA) requires the enforcement of "'terms that specify *with whom* the parties choose to arbitrate their disputes.'" *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 506 (2018). In *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279 (2002), this Court held that a federal agency could (pursuant to a federal statute) seek individualized relief in court against an employer in relation to an employee that had signed a valid arbitration agreement. That decision harmonized two co-equal *federal* statutes. In this case, the California Court of Appeal joined the courts of five other States in reading *Waffle House* to permit *state* officials to seek individualized relief on behalf of people who agreed to submit their claims for such relief to arbitration—an extension of *Waffle House* that conflicts with decisions of the Third and Ninth Circuits, as well as this Court's long line of decisions establishing that the FAA preempts "state-law rules that stand as an obstacle to the accomplishment of [its] objectives." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 343 (2011).

The question presented is:

Does the FAA allow state officials to litigate claims for monetary relief on behalf of people who agreed to arbitrate those claims?

PARTIES TO THE PROCEEDING

Petitioners and defendants below are Uber Technologies, Inc.; Rasier-CA, LLC; Uber-USA, LLC; and Portier, LLC. Lyft, Inc. also was a defendant below.

Respondents and plaintiffs below are the People of the State of California (represented by the California Attorney General and the City Attorneys of Los Angeles, San Diego, and San Francisco) and California Labor Commissioner Lilia García-Brower.

RULE 29.6 DISCLOSURE STATEMENT

Petitioners Rasier-CA, LLC; Uber-USA, LLC; and Portier, LLC are wholly owned subsidiaries of petitioner Uber Technologies, Inc., which is a publicly held corporation and not a subsidiary of any entity. Based solely on SEC filings regarding beneficial ownership of the stock of Uber Technologies, Inc., petitioners are unaware of any shareholder who beneficially owns more than 10% of Uber Technologies, Inc.'s outstanding stock.

RELATED PROCEEDINGS

Superior Court for the County of San Francisco

In re: Uber Technologies Wage & Hour Cases
No. CJC-21-005179 (Sept. 1, 2022)
(denying motions to compel arbitration)

California Court of Appeal

García-Brower v. *Superior Court*
No. A167201 (Feb. 23, 2023)
(denying petition for writ of mandate)

People v. *Superior Court*
No. A167203 (Feb. 23, 2023)
(denying petition for writ of mandate)

In re: Uber Technologies Wage & Hour Cases
No. A166355 (Sept. 28, 2023)
(opinion and judgment)

California Supreme Court

People v. *Superior Court*
No. S278933 (May 3, 2023)
(denying petition for review)

García-Brower v. *Superior Court*
No. S278946 (May 3, 2023)
(denying petition for review)

In re: Uber Technologies Wage & Hour Cases
No. S282614 (Jan. 17, 2024)
(denying petition for review)

TABLE OF CONTENTS

TABLE OF APPENDICES

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

IN THE

Supreme Court of the United States

No.

UBER TECHNOLOGIES, INC., ET AL.,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ET AL.,

Respondent.

On Petition For A Writ Of Certiorari To The California Court Of Appeal

PETITION FOR A WRIT OF CERTIORARI

Uber Technologies, Inc., Rasier-CA, LLC, Uber-USA, LLC, and Portier, LLC (collectively, Uber) respectfully petition for a writ of certiorari to review the judgment of the California Court of Appeal in this case.

OPINIONS BELOW

The California Supreme Court's order denying Uber's petition for review (App., *infra*, 1a) is not reported. The California Court of Appeal's opinion (*id.* at 2a-32a) is reported at 95 Cal. App. 5th 1297 (2023). The order of the Superior Court of San Francisco County denying the motions to compel arbitration (App., *infra*, 33a-47a) is not reported.

JURISDICTION

The California Court of Appeal issued its opinion on September 28, 2023. The California Supreme Court denied Uber's timely petition for review on January 17, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the United States Constitution states in relevant part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2.

Section 2 of the Federal Arbitration Act (FAA) states:

> "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

9 U.S.C. § 2.

INTRODUCTION

The decision below represents California's latest attempt to create a loophole in the FAA. Respondents—the California Attorney General, a collection of City Attorneys, and the California Labor Commissioner—seek to restore money they claim is owed to California drivers who entered into valid and enforceable arbitration agreements with Uber. If anyone else sought this individualized relief on behalf of the drivers (such as a contractual assignee or a class representative), this Court's precedents would foreclose that evasion of the drivers' arbitration agreements. But the Court of Appeal allowed respondents to circumvent the arbitration agreements because California law authorized them, as state officials, to pursue victim-specific relief in court.

The California Court of Appeal identified one main basis for allowing respondents to circumvent valid arbitration agreements: this Court's decision in *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279 (2002). In allowing a federal agency to seek relief for a person who agreed to arbitrate his claims, *Waffle House* aimed to harmonize two *federal* statutes that were on equal footing; it did not address the extent to which the FAA preempts inferior *state* statutes. But state courts in California, Iowa, Massachusetts, Minnesota, New York, and Virginia have invoked the decision to allow state officials to assert claims in court that in any other context would need to be brought in arbitration.

The decision below that state officials may litigate claims belonging to people who agreed to arbitrate them notwithstanding the FAA conflicts with the law in the Third and Ninth Circuits, which have held that the FAA prevents state officials from proceeding in

court or before an administrative agency when doing so would destroy the parties' arbitral rights.

This Court should resolve this conflict and make clear that the FAA applies equally to state enforcement actions as it does to any other suit. "[N]othing in the FAA categorically exempts claims belonging to sovereigns from the scope of [9 U.S.C.] § 2," which "renders agreements to arbitrate enforceable as a matter of federal law." *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639, 650, 652 n.4 (2022). Nor does *Waffle House* immunize state enforcement actions that serve as a substitute for bilateral arbitration against preemption as "an obstacle to the accomplishment of the FAA's objectives." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 343 (2011). And to the extent that *Waffle House* provides any guidance in this context, that decision *supports* preemption because respondents—unlike the EEOC—lack exclusive authority to bring the claims in this case, act as a mere proxy for drivers who agreed to arbitrate, and seek relief that would have a preclusive effect on bilateral arbitrations between Uber and the drivers.

The Court of Appeal's decision represents a significant trend in state enforcement actions that seek to circumvent the FAA. Since this Court reinforced in *Concepcion* that the FAA protects parties' right to opt for bilateral arbitration, state officials have sought to step into the void and provide a claim-aggregating representative substitute for private class litigation. The decision below also contains no limiting principle that would prevent state legislatures from deputizing just about anyone to litigate on behalf of just about anybody who agreed to arbitrate just about any dispute. The FAA should not remain subject to such easy evasion.

This case is an ideal vehicle to resolve the question presented. By now, the arguments in favor of and against extending *Waffle House* to state enforcement actions have been fully ventilated across numerous state courts. The question also arises in state court with much greater frequency than in federal court given limitations of subject-matter jurisdiction and abstention, which will not impede review in this case. The Court should grant the petition and reverse the judgment below.

STATEMENT

A. Legal Background.

Congress enacted the FAA "in 1925 in response to widespread judicial hostility to arbitration agreements." *Concepcion*, 563 U.S. at 339. That hostility harmed parties to both commercial and labor contracts, depriving them of arbitration's many benefits—"not least the promise of quicker, more informal, and often cheaper resolutions for everyone involved." *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 505 (2018).

Congress codified a "liberal federal policy favoring arbitration" to overcome the hostility that pervaded not only the federal judiciary, but state legislatures and courts as well. *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 24 (1983). During hearings on the legislation that became the FAA, Senators canvassed "the widespread unwillingness of state courts to enforce arbitration agreements" and criticized "the failure of state arbitration statutes to mandate enforcement of arbitration agreements." *Southland Corp.* v. *Keating*, 465 U.S. 1, 13-14 (1984) (citing *Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration*, Hearing Before a Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess. 8

(1923)). The bill they ultimately adopted "foreclose[d] state legislative attempts to undercut the enforceability of arbitration agreements." *Id.* at 16.

In large part, Congress accomplished that objective through "Section 2, the 'primary substantive provision of the Act.'" *Concepcion*, 563 U.S. at 339 (quoting *Moses H. Cone*, 460 U.S. at 24). That provision mandates that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA thereby ensures that parties can make (and must adhere to) arbitration agreements by requiring courts to "place arbitration agreements on an equal footing with other contracts and enforce them according to their terms." *Concepcion*, 563 U.S. at 339 (citations omitted). Equal footing means "'rigorou[s]'" adherence to the agreement, "'including terms that specify *with whom* the parties choose to arbitrate their disputes and *the rules* under which that arbitration will be conducted.'" *Epic Systems*, 584 U.S. at 506 (quoting *American Express Co.* v. *Italian Colors Restaurant*, 570 U.S. 228, 233 (2013)).

This Court has consistently rejected invitations to curtail Section 2's sweeping text. For example, the Court has confirmed that Section 2 covers *all* arbitration agreements contained in contracts involving commerce (except as carved out by Section 1), not only agreements to arbitrate commercial disputes. *See Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 113-114 (2001). The Court has also made clear that agreements to arbitrate statutory claims are enforceable under the FAA. *See Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991). And the Court has overruled creative interpretations of federal statutes

that would "effectively nullif[y] the [FAA]." *Epic Systems*, 584 U.S. at 505; *see id.* at 505-507. Most recently, it clarified that "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of [9 U.S.C.] § 2"; so long as "[t]he contractual relationship between the parties is a but-for cause of" the controversy, the FAA governs regardless of who brings the claim. *Viking River*, 596 U.S. at 652 n.4.

Hostility to arbitration—which has only increased in recent years—comes in many forms. For that reason, this Court has been ever "alert to new devices and formulas" that would expressly or implicitly "'declar[e] arbitration against public policy.'" *Epic Systems*, 584 U.S. at 509 (quoting *Concepcion*, 563 U.S. at 342). The California Legislature and California courts have been especially inventive when it comes to new devices and formulas that undermine arbitration agreements.

Many of those "California laws or judge-made rules" have come before this Court. *Chamber of Commerce of the United States of America* v. *Bonta*, 62 F.4th 473, 478 & n.1 (9th Cir. 2023) (collecting examples). Among other decisions, this Court has held that the FAA preempts California statutes requiring a judicial forum for franchise claims (*Southland*, 465 U.S. at 10) and wage disputes (*Perry* v. *Thomas*, 482 U.S. 483, 491 (1987)); a California statute granting a state agency primary jurisdiction over talent agents (*Preston* v. *Ferrer*, 552 U.S. 346, 359 (2008)); a California judge-made rule requiring the availability of class procedures in arbitration (*Concepcion*, 563 U.S. at 344); the use of California's canon construing contract language against the drafter to undercut arbitration (*DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47, 58 (2015))

or to impose class procedures in arbitration on unwilling parties (*Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176, 189 (2019)); and a California judge-made rule preventing the division of Private Attorneys General Act actions (*Viking River*, 596 U.S. at 659-662). *See also generally* Lyra Haas, *The Endless Battleground: California's Continued Opposition to the Supreme Court's Federal Arbitration Act Jurisprudence*, 94 B.U. L. Rev. 1419 (2014).

B. Procedural History.

1. Uber is a technology company that develops smartphone applications. The Rides App connects riders in need of transportation with drivers who provide it. The Eats App connects restaurants, diners, and drivers to enable the purchase and delivery of food and drink.

Drivers wishing to use these apps must first enter into the Platform Access Agreement, which governs the relationship between Uber and drivers. App., *infra*, 48a-81a (Rides App); *id.* at 82a-115a (Eats App). The Agreement contains an "Arbitration Provision" that requires Uber and the drivers to resolve virtually "all claims … through final and binding individual arbitration and not by way of court or jury trial." *Id.* at 70a-71a, 105a. The Arbitration Provision applies to "any legal dispute, past, present or future, arising out of or related to" the drivers' relationship with Uber or any of Uber's agents and affiliates, including "the nature of [the drivers'] relationship with [Uber] (including, but not limited to, any claim that [drivers are Uber's] employee[s])," as well as "compensation, minimum wage, expense reimbursement, [and] overtime breaks and rest periods." *Id.* at 70a-71a, 104a-106a.

The Arbitration Provision requires that all covered disputes be resolved "in arbitration on an individual basis only, and not on a representative basis." App., *infra*, 77a, 111a. Uber and drivers likewise waive the right to "participate as a member in any … representative proceeding," including "a class or collective action." *Id.* at 76a, 110a. Drivers may opt out of the Arbitration Provision by simply sending an email to Uber within 30 days of accepting the Agreement. *Id.* at 79a-80a, 113a-114a. The vast majority of drivers do not opt out of arbitration.

2. In May 2020, respondents California Attorney General and City Attorneys of Los Angeles, San Diego, and San Francisco filed suit alleging that Uber and Lyft violated various wage-and-hour provisions by misclassifying drivers as independent contractors. App., *infra*, 3a. The complaint styled itself as on behalf of the "People of the State of California" and sought civil penalties, injunctive relief, and restitution under the California Unfair Competition Law (UCL) and the California Labor Code. *Id.* at 2a-3a. Those statutes authorize the state officials to seek restitution on behalf of drivers who agreed to arbitration.

In August 2020, respondent California Labor Commissioner brought her own enforcement action, similarly alleging that Uber and Lyft violated Labor Code provisions and wage orders by misclassifying drivers as independent contractors. App., *infra*, 4a. Like the People, the Labor Commissioner sought civil penalties and injunctive relief on behalf of the State, as well as unpaid wages and other amounts allegedly due to drivers. *Ibid.*

3. After coordinating the People's and the Labor Commissioner's actions, the trial court denied Uber's

motions to compel arbitration, as well as Lyft's motions to compel arbitration. App., *infra*, 33a-47a. The court relied heavily on the fact that respondents were not parties to the arbitration agreements between Uber and the drivers. *Id.* at 36a. The court also emphasized that the People and the Labor Commissioner have statutory authority "to enforce the UCL and the Labor Code," which purportedly means that "they are independent of Defendants' drivers, and cannot be bound by Defendants' private arbitration agreements with those persons." *Ibid.* And the court analogized the state enforcement actions to the federal enforcement action in *Waffle House*, where this Court held that the EEOC could seek individualized relief on behalf of a person who had agreed to arbitrate her claims against the defendant. *See id.* at 36a-39a.

4. The California Court of Appeal affirmed the trial court's denial of the motions to compel arbitration. Like the trial court, the Court of Appeal considered it dispositive that respondents "are not parties to the arbitration agreements Uber and Lyft entered into with their drivers." App., *infra*, 7a. The court stressed that the People and Labor Commissioner could maintain their claims for individualized relief in court, despite drivers' arbitration agreements, because the UCL and the Labor Code "expressly authorize" the People and the Labor Commissioner to bring "their own statutory claims." *Id.* at 9a-10a, 20a-21a. Given this statutory authority, the court reasoned, the People and the Labor Commissioner were not a mere "proxy for the drivers." *Id.* at 23a.

The Court of Appeal also rejected Uber's argument that, whatever the statutory grant of authority, the FAA preempts California law and requires the People and the Labor Commissioner to arbitrate the

restitution claims that, if litigated, would destroy Uber's and the drivers' arbitral rights. App., *infra*, 7a-23a. Again like the trial court, the Court of Appeal read *Waffle House* to establish that *all* "public agencies"—federal and state—"bringing enforcement actions as authorized by statute are not bound by arbitration agreements between private parties" under the FAA. *Id.* at 10a-11a.

5. The California Supreme Court denied Uber's petition for review. App., *infra*, 1a.

REASONS FOR GRANTING THE PETITION

The FAA protects "the freedom of parties to determine 'the issues subject to arbitration' and 'the rules by which they will arbitrate.'" *Viking River*, 596 U.S. at 659. To safeguard the freedom to arbitrate, the FAA also "'foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements.'" *Preston*, 552 U.S. at 353. That principle applies with equal force to state enforcement actions because "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of [9 U.S.C.] § 2." *Viking River*, 596 U.S. at 652 n.4. And for years, the circuit courts have recognized that the FAA requires state officials to arbitrate claims to recover relief on behalf of people who agreed to arbitrate such claims, even when the state officials did not separately agree to arbitration. *See Olde Discount Corp.* v. *Tupman*, 1 F.3d 202, 209 (3d Cir. 1993) (opinion of Greenberg, J.); *Bennett* v. *Liberty National Fire Ins. Co.*, 968 F.2d 969, 972 (9th Cir. 1992).

A series of state courts have misread this Court's decision in *Waffle House* to allow state officials to circumvent the FAA. In direct conflict with the Third and Ninth Circuits, state courts in California, Iowa,

Massachusetts, Minnesota, New York, North Carolina, and Virginia have understood *Waffle House* to permit state actors to pursue victim-specific relief in court irrespective of any agreement to arbitrate those disputes. The California Court of Appeal joined these courts in rejecting Uber's preemption challenge to California officials' attempt to seek individualized monetary relief on behalf of drivers who agreed to arbitrate such claims.

The California Court of Appeal and the other state courts that have staked out this position are wrong to extend *Waffle House* to actions where state officials seek to obtain relief owing to individuals who could bring those claims themselves. In *Waffle House*, this Court sought to reconcile two coequal federal statutes. This Court's mode of resolving a perceived conflict between two federal statutes is fundamentally different from its analysis whether a federal law preempts a conflicting state law. In the preemption context, the Constitution adopts a rule of federal supremacy where courts must apply federal statutes, no matter what state law might say to the contrary. The Court of Appeal also overlooked key differences between the EEOC's authority in *Waffle House* and respondents' claims here. Most notably, the employee in *Waffle House* possessed no independent cause of action and thus had nothing to submit to arbitration absent the EEOC's consent, while the respondents' individualized-relief claims in this case will supplant existing arbitrations brought by drivers and preclude still others from exercising their arbitral rights.

The Court of Appeal's approach has broad, harmful consequences for arbitral rights. State enforcement actions serve as a substitute to class actions and allow state officials to aggregate distinct claims as

representatives of state residents. In response to this Court's decisions enforcing the FAA's limitations on class proceedings, state officials have turned to this class-action substitute with increasing vigor. And nothing in the Court of Appeal's decision limits the potential for abuse to top-level state officials—as the role of the City Attorneys in this case demonstrates—or even to public officials, as opposed to private litigants who are deputized to represent the State.

This case is an ideal vehicle to resolve this important issue. The California Court of Appeal squarely answered the question presented. Because state courts have incorrectly read *Waffle House* already to have decided the preemption question, only this Court can correct that misimpression. This issue also typically arises in state court, which does not present the jurisdictional and abstention issues that can keep state enforcement actions out of federal court. The Court should grant the petition and reverse the judgment below.

I. The Decision Below Entrenches a Conflict over the FAA's Application to State Actors.

The lower courts remain deeply divided as to whether state actors may seek victim-specific relief for people who have agreed to arbitration. The Third and Ninth Circuits have held that state officials must arbitrate requests for individualized relief allegedly owed to people who agreed to arbitrate such requests. In contrast, courts in Iowa, Massachusetts, Minnesota, New York, and Virginia hold that the FAA does not preempt attempts by state officials to pursue relief that the beneficiaries could not seek outside of arbitration. The California Court of Appeal in this case aligned itself with this latter camp.

A. The Third and Ninth Circuits have rebuffed state attempts to litigate claims on behalf of parties who agreed to arbitrate those claims.

1. In *Olde Discount Corp.* v. *Tupman*, 1 F.3d 202 (3d Cir. 1993), two investors agreed to arbitrate disputes regarding their purchases of stock from a broker. *Id.* at 204. The investors later filed a complaint with the Delaware Department of Justice that alleged fraud by the broker. *Ibid.* A Delaware official brought an enforcement action seeking both suspension of the broker's license and rescission of the investors' stock purchases. *Id.* at 204-205. Although the broker did not dispute Delaware's authority to pursue license revocation, the broker filed suit to enjoin Delaware from seeking rescission because the investors had agreed to arbitrate that remedy. *Id*. at 205. The Third Circuit agreed that Delaware could not seek individualized remedies that the investors had agreed to arbitrate.

One member of the panel reached that holding on preemption grounds, concluding that Delaware's request to rescind the stock purchases "interfered with [the parties'] right under the FAA to resolution of these issues through arbitration." *Olde Discount*, 1 F.3d at 209 (opinion of Greenberg, J.). Judge Greenberg explained that, if Delaware could "pursu[e] rescission in the administrative proceeding, [the broker's] federal right to arbitration would be impaired, as the merits of the claim that the arbitration agreement reserve[d] for an arbitral forum w[ould] be resolved administratively." *Id.* at 207. That overlap between what Delaware sought to litigate and what the investors had agreed to arbitrate—in Judge Greenberg's words, that "community of interest"—posed "an obstacle to Congress' purpose in adopting the FAA." *Id.* at 209. The FAA therefore preempted the enforcement action even

though Delaware was not literally a "part[y] to the arbitration clause." *Ibid.* But because preemption reached no further than the rescission remedy, Delaware retained "many avenues for the exercise of its proper role in dealing with alleged violations of its securities laws." *Id.* at 210-211.

Another member of the panel applied "contract law" principles informed by the FAA's "strong federal policy in favor of arbitral dispute resolution." *Olde Discount*, 1 F.3d at 215 (Rosenn, J., concurring). Judge Rosenn reasoned that the Delaware law authorizing the state agency to award rescission conflicted with "the parties' contractually created right to arbitrate disputes relating to the securities transaction"—a contractual right that the FAA "protect[ed]." *Id.* at 216.

The result was the same either way: Thanks to the FAA, Delaware could not pursue rescission "that the [investors] themselves could pursue only within an arbitration." *Olde Discount*, 1 F.3d at 209 (opinion of Greenberg, J.); *accord id.* at 215 (Rosenn, J., concurring) (criticizing the state enforcement action's "'end run' around the terms of the arbitration agreement").

2. The Ninth Circuit has twice compelled state officials to arbitrate claims that someone else agreed to arbitrate.

In *Bennett* v. *Liberty National Fire Insurance Co.*, 968 F.2d 969 (9th Cir. 1992), the Montana Commissioner of Insurance brought an enforcement action to recover assets allegedly belonging to an insolvent insurer who had agreed to arbitration. *Id.* at 970. The Ninth Circuit acknowledged that the Commissioner possessed "broad jurisdiction over insurance insolvency proceedings and complete control and authority

over the insolvent's assets" under Montana law. *Id.* at 972. But the court also noted that the underlying dispute was "in essence a contractual one" that could not "be resolved without examining and interpreting the contract." *Ibid.* Because the Commissioner "st[ood] in the shoes of the insolvent insurer" and "attempt[ed] to enforce [its] contractual rights," the court determined that the Commissioner was "bound by [the arbitration] agreements." *Ibid.*

The story was much the same in *Quackenbush* v. *Allstate Insurance Co.*, 121 F.3d 1372 (9th Cir. 1997). There, the California Insurance Commissioner filed suit to recover money that Allstate allegedly owed another insurance group. *Id.* at 1375-1376. Allstate removed the case to federal court and sought to compel the Commissioner to arbitrate the dispute, but the district court remanded the case to state court on an abstention theory. *Id.* at 1376. After this Court affirmed the Ninth Circuit's reversal of the remand order (*Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 731 (1996)), the Ninth Circuit held that the Commissioner had to arbitrate with Allstate under its earlier decision in *Bennett* (*Quackenbush*, 121 F.3d at 1380-1381).

B. In *Waffle House*, this Court considered a related—but fundamentally distinct—issue: whether a *federal* agency (there, the EEOC) could bring *federal* claims (there, under the Americans with Disabilities Act) on behalf of an employee who had agreed to arbitrate his claims. 534 U.S. at 282. Courts in five other States have nonetheless read *Waffle House* to short-circuit the application of the preemption framework reflected in decisions of this Court like *Concepcion* and *Viking River*.

1. In *Waffle House*, the Fourth Circuit held that the FAA precluded the EEOC from seeking "victim-specific relief in court" on behalf of employees who had agreed to arbitrate with their employers. 534 U.S. at 284. This Court reversed for two principal reasons.

First, Congress had "authorize[d] the EEOC to bring its own enforcement actions." *Waffle House*, 534 U.S. at 286. That congressional choice meant that this Court would not "second-guess" whether the EEOC's enforcement activities posed an obstacle to the FAA's goals. *Id.* at 297. Rather than "balance the competing policies of the ADA and the FAA," the Court simply applied plain "statutory text" to reconcile the operation of two coequal federal laws. *Id.* at 292, 297. The Court found "no language in the statutes … suggesting that the existence of an arbitration agreement between private parties materially change[d] the EEOC's statutory function." *Id.* at 288. "Absent textual support," this Court would not interpret the ADA and FAA so as to "undermine the detailed enforcement scheme created by Congress" and "jeopardize the EEOC's ability to investigate and select cases from a broad sample of claims." *Id.* at 291, 296 & n.11.

Second, this Court concluded that the EEOC was not "a proxy for the employee" because the claims belonged solely to the EEOC—not the employee. *Waffle House*, 534 U.S. at 288, 298. As the Court explained, the "EEOC ha[d] exclusive jurisdiction over the claim," and "the employee ha[d] no independent cause of action." *Id.* at 291. The employee could not effectuate "a waiver of the substantive statutory prerogative of the EEOC to enforce … claims" that never belonged to the employee in the first instance. *Id.* at 295 n.10.

This Court therefore held that the arbitration agreement did not prevent the EEOC from seeking the full range of remedies against the employer in court, including "victim-specific relief" on behalf of the employee. *Id.* at 295.

2. Courts in Iowa, Massachusetts, Minnesota, New York, and Virginia have all read *Waffle House* to allow state entities to seek individualized relief on behalf of people who agreed to arbitrate their entitlement to such relief:

- In *NC Financial Solutions of Utah, LLC* v. *Commonwealth ex rel. Herring*, 854 S.E.2d 642 (Va. 2021), the Virginia Supreme Court allowed the Virginia Attorney General to seek restitution for individual consumers subject to arbitration agreements because he "was not a party to the[m]." *Id.* at 645. Despite recognizing that "*Waffle House* was decided within the context of a" federal statutory scheme, the court believed that its "principles … apply with equal weight" to immunize state actors from the FAA. *Id.* at 646-647.
- In *Rent-A-Center, Inc.* v. *Iowa Civil Rights Commission*, 843 N.W.2d 727 (Iowa 2014), the Iowa Supreme Court held that an Iowa agency could bring an administrative proceeding on behalf of an employee who had agreed to arbitration. *Id.* at 736. The court grounded this result in *Waffle House*. *See id.* at 733-736. In the court's view, "it should not matter whether a federal or a state civil rights enforcement regime is at issue." *Id.* at 736. The Iowa Supreme Court thus held that the logic of *Waffle House* controlled over this Court's preemption

decisions in *Preston* and *Concepcion*. *Id.* at 736-739.

- In *Joule, Inc.* v. *Simmons*, 944 N.E.2d 143 (Mass. 2011), the Supreme Judicial Court of Massachusetts affirmed the denial of a petition to compel arbitration of a Massachusetts agency's investigation into a discrimination claim. *Id.* at 145. The court held that *Waffle House* exempted the agency from arbitration, given its "broad statutory … authority … to investigate and remedy instances of discrimination." *Id.* at 149.
- In *People ex rel. Cuomo* v. *Coventry First LLC*, 915 N.E.2d 616 (N.Y. 2009), the New York Court of Appeals upheld the denial of a motion to compel the New York Attorney General to arbitrate "claims for victim-specific relief" on behalf of investors who had agreed to arbitrate. *Id.* at 617-618. Even though the alleged victims could have arbitrated their claims, the court read *Waffle House* to establish that "the Attorney General should not be limited, in his duty to protect the public interest, by an arbitration agreement he did not join." *Id.* at 619.
- In *State ex rel. Hatch* v. *Cross Country Bank, Inc.*, 703 N.W.2d 562 (Minn. Ct. App. 2005), the Minnesota Court of Appeals applied *Waffle House* to allow the Minnesota Attorney General to "see[k] victim-specific relief" on behalf of consumers who had agreed to arbitrate with the bank. *Id.* at 570; see *id.* at 566-567 & n.2.

C. California courts have broken with the Third and Ninth Circuits and instead followed those state courts that understand *Waffle House* to implicitly resolve preemption challenges to state agency actions

seeking individualized relief on behalf of people who agreed to arbitrate such claims.

Below, the California Court of Appeal effectively began and ended its analysis with *Waffle House*. The court understood *Waffle House* to "establis[h] [that] the drivers' arbitration agreements do not bar the People and the Labor Commissioner from seeking judicial relief." App., *infra*, 10a (formatting omitted). Although Uber explained that *Viking River* made clear that "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of [9 U.S.C.] § 2" (596 U.S. at 652 n.4), the court responded that *Viking River* "did not cite *Waffle House* and did not state it was altering or limiting the holding in that case" (App., *infra*, 14a). The Court of Appeal on this basis broadly concluded that *all* "public agencies" (federal *or* state) "bringing enforcement actions as authorized by statute are not bound by arbitration agreements between private parties." *Id.* at 10a-11a.

In other cases, California courts have similarly given dispositive effect to *Waffle House* in their analysis of FAA preemption. *See* App., *infra*, 10a-12a. Those decisions treat *Waffle House* as "the relevant binding authority" when state officials initiate court actions or administrative proceedings to secure individualized relief that would otherwise be resolved in an arbitration between the defendant and another party. *People* v. *Maplebear Inc.*, 81 Cal. App. 5th 923, 935 (2022); *accord Dep't of Fair Employment & Housing* v. *Cisco Systems, Inc.*, 82 Cal. App. 5th 93, 103 (2022); *Crestwood Behavioral Health, Inc.* v. *Lacy*, 70 Cal. App. 5th 560, 584-585 (2021).

II. This Court's Decisions Do Not Allow State Actors to Circumvent Arbitration Agreements.

The Court of Appeal's decision cannot be reconciled with this Court's decisions. As this Court has explained, the FAA protects "'terms that specify *with whom* the parties choose to arbitrate their disputes and *the rules* under which that arbitration will be conducted.'" *Epic Systems*, 584 U.S. at 506. Federal law therefore preempts "state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives." *Concepcion*, 563 U.S. at 343. And this case involves such an obstacle: an attempt to replace individual arbitration with representative litigation of the same claims for monetary relief.

The decision below reflects the uncritical extension of *Waffle House* beyond the federal enforcement context to preemption challenges to state enforcement actions. Given the pervasive misreading of *Waffle House* in state courts across the country, this Court alone can set the record straight on the scope of its own decision.

A. No plaintiff in any other context could litigate someone else's claim in court where the claim's owner agreed to arbitrate it, as even the California Court of Appeal acknowledged here. App., *infra*, 20a-21a. Consider just a few variations on the facts of this case:

- If a driver brought these claims herself, Uber could compel the driver's claims to arbitration. *E.g.*, *Mohamed* v. *Uber Technologies, Inc.*, 848 F.3d 1201, 1208 (9th Cir. 2016).
- If other third parties (like a successor in interest, assignee, insurer, guardian, or counsel)

had brought claims that drivers agreed to arbitrate, Uber could compel the third-party representative's claims to arbitration. *E.g.*, *American Trucking & Transportation Ins. Co.* v. *Nelson*, 771 F. App'x 445, 446 n.1 (9th Cir. 2019).

- If a driver who opted out of arbitration brought these claims as part of a class action, Uber could compel arbitration of the claims of drivers who had not opted out. *E.g.*, *Lawson* v. *Grubhub, Inc.*, 13 F.4th 908, 913 (9th Cir. 2021); *O'Connor* v. *Uber Technologies, Inc.*, 904 F.3d 1087, 1094 (9th Cir. 2018).
- If a driver who agreed to arbitrate brought these claims as part of a PAGA action, Uber could compel the claims to arbitration—even if the State had not itself agreed to arbitrate. *Viking River*, 596 U.S. at 645, 652 & nn.2, 4.

All these examples illustrate the general principle that an arbitration agreement can bind a nonsignatory that seeks relief arising from the contract containing the arbitration agreement. *See Arthur Andersen LLP* v. *Carlisle*, 556 U.S. 624, 631 (2009); *GE Energy Power Conversion France SAS, Corp.* v. *Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1643-1644 (2020). A rule that immunizes state actors against the operation of these principles for arbitration agreements would be the type of arbitration-disfavoring rule that this Court has invalidated time and again. *See*, *e.g.*, *Kindred Nursing Centers L.P.* v. *Clark*, 581 U.S. 246, 251-252 (2017); *Perry*, 482 U.S. at 490-492 & n.9.

This Court also has developed a framework for assessing whether a state law improperly impedes the

enforcement of arbitration agreements. Federal law preempts any state law that "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA." *Lamps Plus*, 587 U.S. at 183 (quoting *Concepcion*, 563 U.S. at 352). A state law that shifts a dispute from arbitration to another forum has just that impermissible effect. *Preston*, 552 U.S. at 359; *Perry*, 482 U.S. at 490-491.

B. The Court of Appeal was wrong to treat *Waffle House* as a license to bypass the ordinary FAA framework on the theory that the plaintiffs in this case are state entities. App., *infra*, 10a-19a. This Court recently confirmed that "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of [9 U.S.C.] § 2" and that the FAA applies when, as here, the claims "'arise out of'" a private arbitration agreement. *Viking River*, 596 U.S. at 652 n.4. *Waffle House* did nothing to override these principles for state enforcement actions.

1. *Waffle House* was not a preemption case. This Court sought to reconcile the operation of two coequal federal statutes to ensure the proper functioning of a "detailed enforcement scheme created by Congress." 534 U.S. at 296. The interaction of two statutes is a question of giving effect to congressional intent as expressed in both statutes—not of federal supremacy over state law. *Epic Systems*, 584 U.S. at 510. As Chief Justice Marshall explained long ago, "one legislature is competent to repeal any act which a former legislature was competent to pass," and "one legislature cannot abridge the powers of a succeeding legislature." *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 135 (1810).

The consequence is that Congress, whenever it so pleases, can abrogate or modify any statute—including the FAA. *CompuCredit Corp.* v. *Greenwood*, 565 U.S. 95, 98 (2012). That principle was at work in *Waffle House*: Because the ADA's "statutory language [was] clear" that the EEOC had "authority to pursue victim-specific relief regardless of the forum that the employer and employee ha[d] chosen to resolve their disputes," this Court gave effect to the later-enacted federal statute. 534 U.S. at 295-296. The Court also suggested that EEOC actions would "have a negligible effect on the federal policy favoring arbitration" because "some of the benefits of arbitration [we]re already built into the EEOC's statutory duties," such as the conciliation process. *Id.* at 290 n.7.

Unlike Congress, California cannot abrogate a federal statute or undermine its administration by authorizing state enforcement actions that supplant contractually agreed-on arbitrations. The analysis in *Waffle House* of "'federally created rights'" therefore says little about "the issue of federal pre-emption of state-created rights," as here. *Perry*, 482 U.S. at 491. In other words, respondents' authority under California statutes asks rather than answers the preemption question. *Cf. Hollingsworth* v. *Perry*, 570 U.S. 693, 715-716 (2013) (holding that statutory authority to bring a claim under state law does not determine "standing in federal court").

The critical distinction between reconciling federal statutes and applying preemption reveals that the Court of Appeal was wrong to emphasize below that respondents "are suing in their law enforcement capacities and pursuing statutorily authorized remedies." App., *infra*, 23a. However clearly California

law might authorize the People and Labor Commissioner to seek individualized relief on behalf of drivers who agreed to arbitrate with Uber, "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons." *Concepcion*, 563 U.S. at 351. And here, unlike in *Waffle House*, allowing respondents to rush into court with duplicative claims would have anything but a "negligible" effect on the bilateral arbitration between Uber and drivers currently proceeding apace. *Cf.* 534 U.S. at 290 n.7.

2. *Waffle House* also dealt with claims that belonged solely to the federal agency. Under the congressional scheme, the EEOC possessed "*exclusive* jurisdiction over the claim for 180 days," and the employee had no "independent cause of action." 534 U.S. at 291 (emphasis added). The employee could not have brought the claims in *any* forum absent government permission to sue on the claim—in effect, a delegation of the EEOC's claim to the employee. The upshot was that the employee could not bind the EEOC to arbitrate claims that never belonged to the employee to begin with. *See id.* at 295 n.10.

Here, in contrast, respondents' request for individualized monetary relief is a "proxy" for relief that drivers currently could seek in arbitration—in effect, a delegation of the drivers' claims to the state actors. *Waffle House*, 534 U.S. at 298. Respondents do not have "exclusive authority over the choice of forum" (*ibid.*); drivers can and do bring claims seeking the same relief in arbitration. That is why respondents cannot recover money for drivers who already resolved their claims. *California* v. *IntelliGender, LLC*,

771 F.3d 1169, 1175 (9th Cir. 2014). By the same token, this case's outcome will render the arbitration agreements a nullity because drivers will be bound by the judgment—and thus forever stripped of their ability to bring their claims in the arbitral forum to which they and Uber agreed. *E.g.*, *Kamm* v. *California City Development Co.*, 509 F.2d 205, 208 (9th Cir. 1975); *cf. Viking River*, 596 U.S. at 654.

At bottom, these representative claims are the same claims that drivers could pursue (and are presently pursuing) only in arbitration. Respondents' attempt to seek this relief in court effectively shreds Uber's and drivers' arbitration agreements. The FAA does not permit such easy evasion. Neither does *Waffle House*.

3. Finally, the Court of Appeal thought that the FAA did not apply because respondents had not themselves signed the arbitration agreements between Uber and the drivers. App., *infra*, 9a. But *Waffle House* in no way "jettison[ed] hundreds of years of common law under which nonparties can be contractually liable under ordinary contract and agency principles." *Comer* v. *Micor, Inc.*, 436 F.3d 1098, 1104 n.10 (9th Cir. 2006). On the contrary, this Court has recognized since *Waffle House* that arbitration agreements can bind nonsignatories. *See supra*, p. 22.

In this case, the contractual relationship between Uber and the drivers is a "but-for cause of any justiciable legal controversy" seeking individualized relief for the drivers. *Viking River*, 596 U.S. at 652 n.4. But the Court of Appeal nonetheless held that an order compelling respondents to arbitrate would "undermine" state policy and "would 'effectively negate' *Waffle House*." App., *infra*, 28a. The Court of Appeal's

creation of special arbitration-disfavoring rules to protect *state* law from the *federal* policy in favor of arbitration underscores how its extension of *Waffle House* sets this Court's decision at war with other FAA decisions.

III. The Question Presented Is Exceptionally Important.

This Court has always been "alert to new devices and formulas that would achieve much the same result" the drafters of the FAA sought to prevent. *Epic Systems*, 584 U.S. at 509. The Court of Appeal's decision should set off alarm bells. And given the ossification of the position that *Waffle House* allows state enforcement actions to supplant arbitration agreements, only this Court can close the loophole that state courts have sought to pry open.

A. The question presented has sweeping, nationwide consequences. "'State attorneys general have authority under the laws of every State to bring enforcement actions to protect their citizens'" and to seek restitution on their behalf. *Harvey* v. *Blockbuster, Inc.*, 384 F. Supp. 2d 749, 753 (D.N.J. 2005); *see also*, *e.g.*, *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 386 (D.D.C. 2002) (recognizing "forty-three states that have specific authority to represent consumers and to settle and release their claims" for restitution). In the wake of *Concepcion*, States have increasingly brought enforcement actions "encompassing virtually all economic sectors, including financial, healthcare, consumer products, and commercial transactions." James C. Martin, et al., *The Expanding Role of Private Lawyers in* Parens Patriae *Lawsuits*, ABA Section of Antitrust Law 3 (Spring 2014); *see also* Margaret H. Lemos, *Aggregate Litigation Goes Public: Representative Suits by State*

Attorneys General, 126 Harv. L. Rev. 486, 488 n.5 (2012) ("public suits seeking to compensate injured citizens are far more common at the state level").

State enforcement actions like this one serve the same purposes and pose the same risks as private class actions. As Chief Judge Pryor has explained, state enforcement actions are a "variation of the use and abuse of class actions." William H. Pryor Jr., *A Comparison of Abuses and Reforms of Class Actions and Multigovernment Lawsuits*, 74 Tul. L. Rev. 1885, 1886 (2000). They both "collec[t] many claims into one suit and pursu[e] recovery for all." Lemos, *supra*, at 488. They both provide plaintiffs with "overwhelming bargaining power" due to "the immense scope of damages" arising "from the amalgamation of claims." Donald G. Gifford, *Impersonating the Legislature: State Attorneys General and* Parens Patriae *Product Litigation*, 49 B.C. L. Rev. 913, 946 (2008). And they both pressure defendants "into settling questionable claims" to avoid "a small chance of a devastating loss." *Concepcion*, 563 U.S. at 350; *see also*, *e.g.*, Gifford, *supra*, at 916 ("Few [companies] are capable and willing to risk trial when the plaintiff is a state … that may collect billions of dollars as a result of harms allegedly suffered by millions of its residents."). In fact, restitution actions brought by state actors so "closely resemble … private class actions" that States often "hire the class counsel from a class action" to sue "the same target arising from the same misconduct on behalf of state residents who may have also been class members." Elysa M. Dishman, *Enforcement Piggybacking and Multistate Actions*, 2019 B.Y.U. L. Rev. 421, 426-427.

The Court of Appeal's opinion also breathes new life into a disturbing trend among state governmental

entities that exercise this authority in an effort to evade arbitration agreements. Academics and activists alike have urged States to assume a more aggressive role in pursuing victim-specific relief to sidestep arbitration agreements that would limit the availability of class procedures. *See*, *e.g.*, Myriam Gilles & Gary Friedman, *After Class: Aggregate Litigation in the Wake of* AT&T Mobility v. Concepcion, 79 U. Chi. L. Rev. 623, 660-661 (2012) (arguing that state attorneys general should "fill the void left by class actions" because "[p]arens patriae suits are not subject to Rule 23 or contractual waiver provisions, and so avoid the majority of impediments to contemporary class actions"); Myriam Gilles, *The Politics of Access: Examining Concerted State/Private Enforcement Solutions to Class Action Bans*, 86 Fordham L. Rev. 2223, 2231 (2018); *see generally* Jack Ratliff, *Parens Patriae: An Overview*, 74 Tul. L. Rev. 1847 (2000).

This case provides a clear example of a state circumventing arbitration agreements whose enforcement the FAA should protect. The primary architect of the statute authorizing this action publicly decried Uber's arbitration agreements as a "huge problem" and asked the "City Attorneys offices to file" suit to circumvent them. @LorenaSGonzalez, Twitter (Nov. 21, 2019, 8:05 a.m.), https://twitter.com/lorenasgonzalez/status/1197546573158158336. And the Court of Appeal sought to justify a preliminary injunction against Uber based on the "ready enforceability of [Uber's] contractual arbitration clauses" in private actions that respondents sought to end-run. *People* v. *Uber Technologies, Inc.*, 56 Cal. App. 5th 266, 312 (2020).

The Court of Appeal's opinion charts a roadmap for state legislatures to impede the FAA in yet more

ways. Its flawed reasoning suggests that a State need only enact a statute deputizing someone to bring in court claims belonging to someone else. Even if the claim's owner has agreed to arbitrate that very claim, the Court of Appeal's decision would allow the claim to proceed in court so long as the state-deputized representative did not himself agree to arbitration. It is of no moment, under the Court of Appeal's logic, that the claim "arise[s] out of [a] contract that contains [an] agreement" to arbitrate the claim. App., *infra*, 21a; *contra Viking River*, 596 U.S. at 652 n.4. Nor does it matter under the decision below that the state-deputized representative would turn the recovery over to the claim's true owner. App., *infra*, 23a.

Nothing in the Court of Appeal's reasoning turns on the identity of the state-deputized representative. The plaintiffs pursuing drivers' claims in this very case include not only the California Attorney General, but also a collection of city attorneys and an administrative agency, all seeking individualized relief on behalf of drivers who agreed to arbitrate such claims. And the California Legislature has recently codified the Court of Appeal's ruling, authorizing "the Attorney General, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor" to bring suit to enforce the California Labor Code and providing that "private arbitration [agreements] shall have no effect on the[ir] authority" to do so. Cal. Lab. Code §§ 180, 182. More direct defiance of the FAA is hard to imagine.

Nor would anything in the Court of Appeal's opinion preclude state legislatures from adding private plaintiffs to this already expansive list of representative deputies—as California has already done under PAGA and for claims involving the manufacture and

distribution of firearms. *See* Cal. Lab. Code § 2699; Cal. Bus. & Prof. Code § 22949.60. All that matters, according to the Court of Appeal, is that respondents "are authorized by [state] statute to bring the claims at issue here and to seek the relief they request." App., *infra*, 23a. Under that lax standard, state legislatures could enact new statutes authorizing anyone to bring any claims and seek any relief—and thereby circumvent the FAA. Further state exploration of escape routes from arbitration should be stopped in its tracks.

B. The time is ripe for this Court's review because there is little hope that further percolation will resolve the entrenched conflict between state courts that overread *Waffle House* and the prior understanding that arbitration agreements bind state officials who seek relief on behalf of parties who agreed to arbitration. As the California Court of Appeal read *Waffle House*, this Court has *already* decided the preemption question against Uber. That is plainly wrong given the preemption context here and the different built-in limitations of the EEOC's scheme that meant that the claim did not belong to the person who agreed to arbitration. *Supra*, pp. 23-26. But only this Court can correct this pervasive misunderstanding among state courts.

This case also is an ideal vehicle to address the question presented. This issue rarely arises in federal court because state enforcement actions are removable only in the event of easily defeated complete diversity. *See*, *e.g.*, *Bennett*, 968 F.2d at 970; *see also Mississippi ex rel. Hood* v. *AU Optronics Corp.*, 571 U.S. 161, 168-169 (2014) (holding that the mass-action removal provision of the Class Action Fairness Act does not apply to state enforcement actions). Even the rare

case that lands in federal court will often present potential vehicle problems, such as abstention. *See*, *e.g.*, *Quackenbush*, 121 F.3d at 1375-1376; *Olde Discount*, 1 F.3d at 211-215. This petition provides the Court a clean and unobstructed opportunity to resolve the application of *Waffle House* to state enforcement actions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

JOSEPH E. BARAKAT
GIBSON DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201

THEANE D. EVANGELIS
Counsel of Record
BLAINE H. EVANSON
ALEXANDER N. HARRIS
PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tevangelis@gibsondunn.com

Counsel for Petitioners

April 16, 2024